



# BOARD OF TRUSTEES

2020 BY-LAWS AND POLICIES



# **BOARD OPERATIONS**

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## **BY-LAWS:**

The University by-laws comprise the legal operating "rules" for the Board of Trustees. The Executive Committee reviews the by-laws at its annual meeting and recommends any updates that may be necessary to reflect the current needs of the University and the Board.

## **BOARD POLICIES:**

A compilation and delineation of Board policies supplement the by-laws and serve both the Administration and the Board in their duties.

## **FUND ACCOUNTING:**

Fund accounting is an accounting system unique to the management of non-profit institutions. Funds are segregated for physical plant purposes, loan funds, endowment/quasi-endowment, and current operations. Current operations receive all unrestricted revenues and revenues restricted to current operations use. Fund accounting provides a sort of asset inventory system as well as the current level of these assets. (Governing Independent Colleges and Universities)

The University uses fund accounting and complies with all legal requirements and recommendations of the Financial Accounting Standards Board. The University's external auditor is skilled in the analysis and presentation of fund accounting and is available (as are staff in the Finance Division) to answer questions the Trustees may have.

# CLEARY UNIVERSITY BY-LAWS

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## Article I Organization

**Section 1 - Name:** The name of this organization is Cleary University, hereinafter referred to as the University.

Cleary University was organized in 1933 as a non-profit corporation under the laws of the State of Michigan. Its charter was renewed by the State of Michigan in 1963. Cleary University received a ruling from the Internal Revenue Service indicating that it qualified for a non-taxable status under Section 501(c)(3) of the 1954 Internal Revenue Code as amended. Nothing contained in these by-laws shall negate the tax-exempt ruling of the Internal Revenue Service.

**Section 2 - Seal:** The corporate seal of the University shall be circular in form, having within the inscription: Cleary University founded 1883.

**Section 3 - Fiscal Year:** The fiscal year of the University shall be from July 1 through June 30.

**Section 4 - Purpose:** The purposes of this corporation are as follows: To conduct a general university as provided in Class A, Section 171 and 172 of Act 327, Public Acts of 1931, as amended, in which to give instruction in any or all branches of business, academic or other educational subjects and to offer courses of one to four years in length; to confer and distribute honors as commonly done by other like universities in the United States and to grant diplomas, certificates and undergraduate, and graduate degrees, and other honors of graduation in said courses; to receive and hold property and funds for the furtherance of this purpose; to receive tuition, fees, and funds which may be received from tuition, fees, sales, gifts, devise, bequest, endowment or otherwise for the furtherance of this purpose; to mortgage, lease, encumber and/or sell property and invest or reinvest such funds and make such distributions from the income or principal thereof as may be in the furtherance of this institution, and to all such things as may be incidental to the purposes herein enumerated.

## Article II Powers of Trustees

The Board of Trustees of the University shall have and exercise the corporate powers prescribed by law. Its primary functions shall be policy-making and responsibility for sound resource management of the University. The Board of Trustees shall further determine the general, educational and financial policies, and shall have the power to carry out any other functions which are permitted by these by-laws or by the articles of incorporation, except as limited by law. These powers shall include, but shall not be limited to the following:

1. Determine and periodically review the purposes and the mission of the University.
2. Establish, review and approve changes in the educational programs of the University, consistent with its mission.
3. Establish procedures regarding appointment, promotion, tenure and dismissal of faculty members.
4. Approve the terms and conditions of employment, salary policies and schedules for all staff, faculty, administrators and other employees of the University.
5. Appoint the President, who shall be the Chief Executive Officer of the University, and any officers of the Board, in accordance with these by-laws, and remove such officers for just cause.
6. Approve and authorize all earned and honorary degrees.
7. Oversee and approve the budget of the University, and establish policy guidelines for the endowment and for all investments and major fundraising efforts.
8. Authorize the purchase, management and sale of all land, buildings and major equipment for use of the University.
9. Authorize the construction of new buildings and major renovations of existing buildings.
10. Authorize the incurring of debts by the University and securing thereof by mortgage and pledge of real and personal property, tangible and intangible.
11. Authorize any changes in tuition and fees within the University.
12. Accept in the name of the University, any gifts, endowments, devises or bequests to the University and to administer the same according to their terms or in the absence of terms as matters of policy.

### **Article III** **Membership**

**Section 1:** The Board of Trustees shall consist of not less than fifteen (15) or more than twenty-five (25) persons.

**Section 2:** New members of the Board of Trustees shall be nominated by the Nominating and

Governance Committee and elected by a majority of the Trustees then in office at any regular meeting of the Board or by electronic vote.

**Section 3:** Each Trustee shall serve for a term of three (3) years. Trustees shall be limited to uninterrupted Board membership of three (3) three-year terms. The Cleary/McKenny family shall have two permanent seats on the Board. An initial appointment as a Trustee to serve the remainder of an unexpired term shall not count toward the three consecutive term limit. This provision for term limits shall not apply to members of the Board of Trustees while serving in the capacity as Vice-Chair or Chair of the Board of Trustees. Such individuals will be considered eligible for re-election or re-appointment as a member by the respective constituent group. If the Trustee reaches the three-year consecutive limit in the officer role of Vice-Chair or Chair or is not reelected in any consecutive year after reaching the term limit of service, they would be required to rotate off the board at that time.

**Section 4:** Any member of the Board of Trustees may be removed from office for cause, at any meeting of the Board by affirmative vote of two-thirds of the Trustees then in office. Any Trustee who misses two consecutive meetings unexcused by the Chair will be considered as resigning.

**Section 5:** Whenever any vacancy shall occur on the Board of Trustees by death, resignation or otherwise, a replacement Trustee may be nominated by the Nominating and Governance Committee, and upon approval of the Board of Trustees at the next regular meeting, the Trustee elected at that time shall hold office for the remainder of the unexpired term.

**Section 6:** Trustees are expected to complete a self- assessment form annually for submission to the Board Chairman.

## **Article IV** **Trustees Emeriti**

A Trustee who has served the University with distinction may be elected by a majority of the Board as a Trustee emeritus. This position shall be reserved for those Trustees with records of distinguished service. A Trustee emeritus is not entitled to vote, and shall not be counted as a member of the Board of Trustees for any purpose.

## **Article V** **Officers of the Board of Trustees**

**Section 1:** The officers of the Board shall consist of the Board Chair, Immediate Past-Chair, Vice Chair, President, one or more Vice Presidents, Treasurer, Vice Treasurer, Secretary, and Committee Chairpersons (Academic Affairs, Development, Nominating and Governance, Athletics, and Finance). Unless a vacancy occurs at another time, elections of the Trustee officers shall be held at

the annual meetings of the Board. In the event of an even number, the Board Chair may appoint an additional Trustee to the Executive Committee.

Officers of the Board shall serve for a one-year term and may succeed themselves in office for up to three consecutive terms. In the event of a vacancy, the Board Chair may appoint a Trustee to fill the remainder of the vacated term of office. The President shall serve such term as may be determined by the Board of Trustees at the time of his/her appointment.

**Section 2:** The officers of the Board shall be members of the Board of Trustees. The President shall be ex-officio: a member of the Board without power to vote and shall not be counted as a member of the Board or any committee for the purposes of determining a quorum. The other officers of the University shall not be members of the Board of Trustees.

**Section 3:** The Board may approve the appointment of other officers (such as an assistant secretary) in its own right or upon recommendation of the President, as it deems necessary. Such officers shall hold office at the discretion of the Board of Trustees and shall be subject to removal by affirmative vote of a majority of the entire membership of the Board of Trustees.

**Section 4:** In the event of a vacancy in the office of the President, the Board shall appoint a special presidential search committee to submit nominations for candidates to the office in line with standing Board policy, which is separate from these by-laws.

## **Article VI** **Powers and Duties of the Chair** **and Vice Chair of the Board of Trustees**

The Board Chair shall preside at all meetings of the Board of Trustees and of the Executive Committee of the Board, shall have a right to vote on all questions, shall appoint to all committees the members who are not appointed by the Board of Trustees, shall serve as spokesperson for the Board, shall lead Trustees philanthropy for the University, shall lead the search for prospective Trustees, shall serve as the lead Trustee liaison to the President, and shall have such other powers and duties as the Board from time to time may prescribe. In the absence of the Chair, the Vice Chair shall perform the duties of the office of the Chair and have such powers and duties as the Board may from time to time prescribe.

The Vice Chair shall lead Trustee efforts to build business relationships with the University (e.g. Strategic Business Partnerships), and shall lead efforts focused on Board development, including new Trustee orientation.

## **Article VII** **Powers and Duties of the President of the University**

The President of the University shall be the Chief Executive Officer of the University and the official

advisor to and executive agent of the Board of Trustees and its Executive Committee. The President shall, as educational and administrative head of the University, exercise a general superintendence over all the affairs of the institution, and bring such matters to the attention of the Board as are appropriate to keep the Board fully informed in meeting its policy-making responsibilities. Furthermore, the President shall have power, on behalf of the Board of Trustees, to perform all acts and execute all documents to make effective the actions of the Board or its Executive Committee, and except as otherwise provided in these by-laws, shall be ex-officio a member of all committees of the Board without power to vote.

## **Article VIII**

### **Powers and Duties of the Vice President(s) of the Board**

Each Vice President shall have such powers and shall perform such duties as may be assigned by the President with approval of the Board of Trustees.

## **Article IX**

### **Powers and Duties of the Secretary to the Board**

The Secretary shall be responsible for custody of the seal of the University and shall attest to and affix said seal to such documents as required in the business of the University, including but not limited to deeds, bonds, mortgages, agreements, contracts, diplomas, evidences of the award of degrees, transcripts, abstracts or resolutions, certificates, minutes, and by-laws issued pursuant to the authority of the University. The Secretary shall sign official documents as required. The Secretary shall ensure the Board acts in accordance with its by-laws and policies. The Secretary shall give proper notice of all meetings of the Board of Trustees and shall keep a record of the appointment of all committees of the Board of Trustees. Furthermore, the Secretary shall keep or cause to be kept a record of the minutes of all meetings of the Board of Trustees and each of its committees and official records in accordance with all policies and legal requirements. Any of the duties or powers of the Secretary may be delegated to an assistant secretary.

## **Article X**

### **Powers and Duties of the Treasurer and Vice Treasurer to the Board**

The Treasurer shall be responsible for advising the administration of the mandates of the Board of Trustees and its finance committee in overseeing the financial resources of the University including, but not limited to, cash, securities, stocks, bonds and all other property, personal or real, owned by the University. The Treasurer shall ensure that all books and accounts are accurately kept and shall present a full and detailed financial statement properly audited by an independent certified accountant to the Board at its annual meeting and if requested, at any other meeting of the Board of Trustees or any meetings of its Finance or Executive Committee.

The Treasurer shall monitor the investments of the University, including all funds and

endowments, as approved by the Board of Trustees. The Vice Treasurer shall perform duties of the Treasurer in the absence or inability of the Treasurer to perform these duties.

## **Article XI** **Powers and Duties of Standing Committee Chairpersons**

Standing Committee Chairpersons shall serve as chairs for their Standing Committees as appropriate, shall serve to represent the Board and the University at various university and community events, and serve as members of the Executive Committee to take actions as necessary and appropriate.

## **Article XII** **Meetings**

**Section 1:** There shall be three regular meetings of the Board of Trustees annually, which shall be held in the fall, winter, and spring, on such date and place as may be designated by the Board. The annual meeting of the Board shall be the winter meeting each year.

**Section 2:** Special meetings may be held at the call of any two of the following: Chair, President, and/or Secretary; it shall also be the duty of the Chair or the Secretary to call such special meetings on the request of five Trustees, setting forth the objectives of the meeting.

**Section 3:** Written notice of all meetings of the Board of Trustees shall be sent by the Secretary to each Trustee at least seven days before the date of the meeting. In the case of special meetings, the notice shall state the purpose of the meeting, and no business shall be transacted at such meeting that does not relate to the purpose stated.

**Section 4:** 60% of the Trustees shall constitute a quorum for the transaction of business. The act of a majority of the Trustees present and voting at a duly called meeting of the Board shall be the act of the Board of Trustees.

**Section 5:** Trustees may participate in all meetings by conference call, or other form of electronic communication in which all Trustees may simultaneously hear and speak with each other during the meeting. A Trustee participating in a meeting in this manner is deemed to be present in person during such meeting.

## **Article XIII** **Action Without Formal Meetings**

Any action required or permitted to be taken by the Board of Trustees or by any committee thereof may be taken without a formal meeting. Written consent of Trustees may be obtained by mail, electronic media, or in any other way the Trustees shall decide. However, written minutes of the

proceedings of the Board or the committee must be filed and made available to the full Board.

## **Article XIV** **Committees**

**Section 1:** The Board of Trustees may from time to time, establish such committees for the discharge of particular duties. Persons shall be nominated and appointed to such committees by the Board, in consultation with the President, if possible.

**Section 2:** The Board of Trustees may at any time discontinue or cease any of its committees for such time as may be determined, and the Executive Committee shall perform the duties of any committee so discontinued during the interim if necessary.

**Section 3:** The chair of any committee, with the consent of the Chair of the Board, may request the President of the University to appoint an officer of the University or a member of the administrative staff to serve as a liaison between the committee and the President; the President shall designate such a person to perform that service. Such liaison persons shall assist the committee in carrying out its duties. Additionally, the chair of any committee, with the consent of the Chair of the Board, may appoint additional non-Trustee non-voting members to the committee to provide additional expertise and/or to build a relationship with a potential future Trustee.

**Section 4:** Executive Committee: The Chair of the Board of Trustees shall also Chair the Executive Committee. The Chair, Immediate Past-Chair, Vice Chair, Secretary, Treasurer, Vice Treasurer, and the Committee Chairpersons, shall constitute the Executive Committee. Between meetings of the Board of Trustees, the Executive Committee shall have general supervision of the administration and property of the University except that, unless specifically empowered by the Board of Trustees to do so, it may not take any action inconsistent with a prior act of the Board of Trustees, award degrees, alter any by-laws, elect officers, remove officers or Trustees from the Board, approve permanent buildings on tax-exempt property held for University purposes, remove or appoint the President of the University, or take any action which has been reserved for the Board or the President.

The Executive Committee shall meet regularly at least three times a year. Special meetings may be called by any two of the following: Board Chair, President and/or Secretary. A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business. Minutes of Executive Committee meetings shall be taken and shall be distributed promptly to each member of the Board. The President shall be ex-officio a member of the Executive Committee, without power to vote, and shall not be counted as a member of that committee for the purpose of determining a quorum.

The Executive Committee shall provide guidance and direction to the University's CEO, President, and the Chairman of the Board. This direction and guidance should be pertaining to but not limited to the mission, strategic goals, and objectives set forth by the University's full Board of Trustees.

The Executive Committee should provide enforcement of established policies related to programs, activities and services provided by the University.

The Executive committee shall:

- Accumulate and disseminate information to provide direction and clarity to the University
- Review and act accordingly on committee reports and motions
- Call for and hold special meetings and votes as deemed necessary
- Engage and monitor the actions of the office of the CEO and President and his/her administration
- Recommend CEO and/or Presidential compensation and benefits
- Perform succession planning for the position of CEO, President, and any other position critical to the daily operations of the University
- Act in a pro-active state regarding the known issues facing the University as well as other similar Universities
- Monitor and act according to the physical and financial conditions and needs of the University
- Regularly review and seek changes in the by-laws as may be required due to changing times and/or regulations
- Review the University's cyber security policies and perform any risk assessment
- Review staff, student and faculty policies
- Review/assess student admission and retention
- Champion the University's strategic plan and planning process
- Document and share the history of the University as well as the current and future vision and mission of the University

**Section 5:** Finance Committee: The Finance Committee shall have a minimum of two Trustee members. It shall review annual operating and capital budgets prepared and presented under the direction of the President. It shall also recommend the designation of an independent auditor each year. The committee shall cause to be prepared and submitted to the Board of Trustees at least once a year, an audited statement of the financial condition of the University as of the close of the fiscal year and of the receipts and expenditures for each year. It shall monitor the administration of student financial aid. It shall review major financial transactions not provided for in the budget and submit proposed variances with recommendations to the Board of Trustees or Executive Committee. The President and/or his/her designee shall be an ex-officio member of the finance and facilities committee, without power to vote and shall not be counted as a member of the committee for any purpose.

The Finance committee shall:

- Review, analyze, and recommend plans and cost estimates for facilities
- Review the annual operating and capital plans for building and grounds
- Review/recommend any sale or purchase of property

- Monitor the administration of financial aid
- Provide recommendations of changes in student tuition and fees
- Report on its activities at the annual meetings of the Board of Trustees and at such other times, as it may be required.

**Section 6:** Nominating and Governance Committee: The Nominating and Governance Committee shall present to the Board of Trustees nominations for Trustees to be elected by the Board. The committee shall recruit and communicate with nominees, and furnish information relating to the background and qualifications of all such nominees prior to the Board meeting at which an election or appointment is scheduled. The committee shall develop and administer a program of orientation for newly elected Trustees.

The committee shall develop and present to the board nominations for board officers as defined in the by-laws.

The committee shall also, subject to the requirements set forth in these by-laws, nominate Trustees Emeriti. It shall submit to the Board recommendations for commencement speakers, honorary degrees, and awards.

The Nominating and Governance Committee shall:

- Be responsible for an annual review of the by-laws and board policies and providing recommendations for updates to the Board.
- Perform a yearly review and recommend updates the Trustee handbook
- Review and provide recommended updates to the University's Mission, Vision and Values statements
- Review the annual board conflict of interest responses
- Perform any other (Nomination/Governance) related responsibilities as directed by the President/Board/Chairman.

**Section 7:** Academic Affairs Committee: The Academic Affairs Committee shall consider the attributes of The Cleary Mind™ and the cognitive, social, and professional aspects of business education in relationship to the holistic development of the entire student. The Committee is expected to recommend and identify practices, standards, and guidelines that will aid faculty and student services in developing students to their maximum potential. It will also be concerned with curriculum analysis, development, and evaluation beginning with the undergraduate programs and extending through graduate education. The Committee shall seek to identify issues and problems affecting the administrative and financial aspects of the institution. The Academic Affairs Committee shall extend its attention beyond institutional matters of Cleary University to include interdisciplinary concerns with the local community, area schools, and other institutions of higher education.

The Academic Affairs Committee shall:

- Provide governance oversight on such matters as the growth and development of *The Cleary Mind*, including academic programs, admission and performance standards, major academic initiatives, and maintaining an appropriate balance among innovation and operations.
- Review curriculum, new program proposals, and academic policies and procedures in order to ensure that they are consistent with Cleary University's strategy, mission, and *The Cleary Mind*.
- Review proposals for new academic programs, information from periodic program reviews and accreditation processes, and proposals for the discontinuance of any academic programs.
- Ensure appropriate alignment between *The Cleary Mind* Initiative to ensure that programs are appropriate to respond to student interest and professional workforce needs.
- Monitor University compliance with The Board of Trustees.
- Ensure that the academic budget reflects the institution's academic mission and priorities.
- Ensure that the institution assesses the effectiveness of its academic programs.

**Section 8:** Fund Development Committee: The Development committee shall:

- Partner with the Governance Committee to assure appropriate articulation of roles and performance expectations in fund development (e.g., for Fund Development Committee, Board, individual board members, staff)
- Devise and recommend philanthropy and fund development policies.
- Recommend to the Board for action, including any limitation policies.
- Help nurture a culture of philanthropy throughout the organization, and assure that all donors of time and money are respected and honored.
- Assure that the Board and individual Board members are adequately educated about the basic principles and best practices in fund development, including the design of a donor-centered organization.
- Through the fund development planning process: establish the charitable contributions goals for the annual budget; devise the annual fund development plan for action by the Board; and, recommend results and benchmarks for action by the Board.
- Review results and evaluate return on investment (ROI) compared to plan. Identify trends and implications and engage the Board in strategic dialogue and decision-making regarding philanthropy and fund development.
- Help the Board articulate the case for philanthropic support directed at specific audiences. Establish task forces to carry out specific fund development activities. Monitor task force performance.
- Review endowment policies.
- Recommend, plan for and review any capital campaigns.

**Section 9:** Athletics Committee: The Athletics committee is responsible for making sure the investment in this program is to benefit the University's mission, while recognizing that many of the benefits arising from investments in athletics are indirect. For example, athletics programs can have positive effects on prestige, political capital, donor support, and student enrollment. Ultimately, it is up to the board, working with its chief executive, to determine the most appropriate application of resources in pursuit of the institution's mission. The aim should be to keep in mind among the fundamental responsibilities of higher education's leaders, at any level of athletic competition, none is greater than the protection of students and minors on campus.

The Athletics committee shall:

- Develop and annually review the intercollegiate athletics policies, while keeping in mind the Board's fiduciary responsibilities.
- Be accountable for upholding the integrity of the athletics program and ensuring it advances the institution's educational mission.
- Recommend/review new/retiring/changing athletic programs and perform yearly assessment of all athletic programs

## **Article XV** **Indemnification**

**Section 1:** Provided such action will not violate any applicable provision of the Internal Revenue Code (Code), or cause the University to lose its tax exempt status under the Code, the University shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the University), by reason of the fact that he or she is or was a Trustee or officer of the University, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the University and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the University, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

**Section 2:** Provided such action will not violate any applicable provision of the Code or cause the University to lose its tax exempt status under the Code, the University shall have the power to indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the University to procure a judgment in its favor by reason of the fact that such person is or was a Trustee or officer of the University, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if he or she acted in good

faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the University and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the University unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

**Section 3:** Indemnification against expenses shall be provided as follows:

- A. To the extent that a Trustee or officer of the University has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to above in Sections 1 and 2, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.
- B. Any indemnification under Sections 1 and 2 above (unless ordered by a court) shall be made by the University only as authorized in the specific case upon a determination that indemnification of the Trustee or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections 1 and 2. Such determination shall be made in either of the following ways:
  - 1. by the Board by a majority vote of a quorum consisting of Trustees who were not parties to such action, suit or proceeding; or
  - 2. if such quorum is not obtainable or, even if obtainable, a quorum of disinterested Trustees so directs by independent legal counsel in a written opinion.
- C. If a person is entitled to indemnification under Section 1 or 2 above for a portion of expenses including attorneys' fees, judgments, penalties, fines and amounts paid in settlement, but not for the total amount thereof, the University may indemnify the person for the portion of the expenses, judgments, penalties, fines or amounts paid in settlement for which the person is entitled to be indemnified.

**Section 4:** Expenses incurred in defending a civil or criminal action, suit or proceeding described in Sections 1-3 above may be paid by the University in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in Subsection 3(B) above upon receipt of an undertaking by or on behalf of the Trustee or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the University, provided such action will not violate any applicable provision of the Code or cause the University to lose its tax exempt status under the Code.

**Section 5:** The indemnification or advancement of expenses provided under Sections 1 to 4 above is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the Articles of Incorporation, these by-laws or a contractual agreement. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided in Sections 1 to 4 above and this Section 5 continues as to a person who ceases to be a trustee or officer, and shall inure to the benefit of the heirs, executors and administrators of the person.

**Section 6:** The University shall have the power to purchase and maintain insurance on behalf of any person who is or was a Trustee or officer of the University against any liability asserted against such Trustee or officers and incurred by such person in any such capacity or arising out of his or her status as such, whether or not the University would have the power to indemnify such person against such liability under Sections 1 through 4 above.

## **Article XVI** **Conflict of Interest**

A Trustee shall be considered to have a conflict of interest if (a) such Trustee has existing or potential financial or other interests which impair or might reasonably appear to impair such member's independent, unbiased judgment in the discharge of his or her responsibilities to the University, (b) such Trustee is aware that a member of his or her family (which for purposes of this paragraph shall be a spouse, parents, siblings, children and any other relative if the latter reside in the same household as the Trustee), or any organization in which such Trustee (or member of his or her family) is an officer, director, employee, member, partner, trustee or controlling stockholder, has such existing or potential financial or other interests which impair or might reasonably appear to impair such member's independent, unbiased judgment in the discharge of his or her responsibilities to the University, or (c) is otherwise determined to be a conflict of interest under the Conflict of Interest Policy as adopted by the Board of Trustees. No Trustee shall vote on any matter under consideration at a Board or committee meeting in which such Trustee has a conflict of interest. The minutes of such meetings shall reflect that a disclosure was made and that the Trustee having a conflict of interest abstained from voting. Any Trustee who is uncertain whether a conflict of interest may exist in any matter may request the Board or Committee to resolve the issue by majority vote.

## **Article XVII** **Discrimination Prohibited**

In administering its affairs, the University shall not discriminate against any person on the basis of race, creed, color, national or ethnic origin, sex, age or physical disability.

## **Article XVIII** **Review and Amendment of By-laws**

**Section 1:** These by-laws may be changed or amended at any meeting of the Trustees by a two-thirds vote of those present, provided notice of the substance of the proposed amendment is sent to all Trustees before the meeting.

**Section 2:** Prior to each annual meeting of the Board of Trustees the Executive Committee shall review these by-laws and suggest any necessary changes thereto.

## **Article XIX** **Miscellaneous Provisions**

**Section 1:** The University shall use its funds only to accomplish the objectives and purposes specified in these by-laws, and no part of said funds shall inure, or be distributed, to any member of the Board, or to any other individual; and the University shall not participate in, or interfere in any political campaign on behalf of any candidate for office (including the publishing or distributing of statements).

**Section 2 - Dissolution:** Upon dissolution of the University, any assets remaining after payment of all liabilities shall be distributed to one or more regularly organized and qualified charitable, educational, scientific, or philanthropic organizations qualifying as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, to be selected by the Board of Trustees, or to an educational foundation established by the Board. An affirmative vote of the majority of the Board shall be required to approve dissolution of the University.

**Section 3 - Savings Clause:** If any part of these by-laws should be construed by the Internal Revenue Service or the State of Michigan as disqualifying the University as a non-profit, tax-exempt educational institution, then such part shall be null and void; and the remainder of the by-laws shall remain in full force and effect.

**Section 4:** "Robert's Rules of Order" shall be adopted as the standard for operation of this Board to the extent such rules do not contradict or overrule these by-laws, the Michigan Nonprofit Corporation Act and the Internal Revenue Code.

# BOARD POLICIES

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## Introduction

This Policy section of the Guidebook contains the standing Policies adopted by the Board of Trustees and is intended to:

- improve efficiency by having policies assembled in one place
- improve new Trustee orientation
- eliminate redundant or conflicting policies
- ease review of policies
- provide clear guidance to the President and staff

Each policy is consistent with the Articles of Incorporation and the by-laws, which have precedence over standing Board Policies. These policies are subject to review and refinement. The Board or the Executive Committee of the Board must approve changes. The Board Chair, or the Board, will resolve any conflict(s) in interpretation.

## 1. Board Governance Structure and Process

- 1.1 **General Guidance:** The President is expected to assist Trustees engage in meaningful discussion regarding the future of the University and to present appropriate Policies for consideration by the Board. Trustees are encouraged to discuss and exchange ideas, participate in Task Forces, Committees, full Board meetings, and to offer comment on issues directly to the Chair or the President when they anticipate absence from a Board meeting.
- 1.2 **Board Membership Criteria:** The Executive Committee of the Board shall annually establish the desired mix of Board membership to include geographic, gender, and ethnic representation, financial capacity, and professional or community involvement.

The Board will adopt a style that emphasizes outward vision, encouragement of diversity in viewpoints, strategic leadership more than administrative detail, and pro-activity rather than reactivity. In this spirit, the Board will:

- A. Enforce upon itself appropriate discipline to govern with excellence.
- B. Be accountable to members and the public for the competent, conscientious, and effective accomplishment of its obligations as a body.
- C. Monitor and regularly discuss the Board's own process and performance.
- D. Ensure continuity of governance capability by selection, orientation, training, and evaluation of

capable Trustees.

- E. Be responsible for its own performance.
- F. Seek and encourage assistance from the President in the Board pursuit of excellence.

1.3 **Board Meetings:**

- A. Board meetings should be scheduled annually prior to the beginning of the calendar year.
- B. The President and the Chair should collaborate on meeting agendas and the President should send appropriate materials in advance of the meeting.
- C. The Board will meet at least three times per year, including the annual meeting.

1.4 **Task Forces / Committees:** Committees and Task Forces help the Board be effective and efficient. They speak “to the Board” and not “for the Board.” Committees of the Board are generally intended to be created for a period of at least one year and involve broader issues or concerns, (e.g. the standing Finance Committee, a Campaign Committee, etc.). Task Forces are intended to be shorter in duration and designed to assist the administration and the Board shape response to specific issues or initiatives.

- A. Trustees are expected to volunteer service on Committees and Task Forces.
- B. The Chair appoints committee members and chairs. The President and the Chair are members of all Committees and Task Forces, however, this membership may be delegated.

1.5 **Trustee Conduct:** The Board expects of itself and its members ethical and business like conduct. Board members must represent un-compromised loyalty to the interests of the institution. They must avoid any conflict of interest with respect to their fiduciary responsibility.

1.6 **Trustee Finances:** Each Trustee is expected to be a donor of record each fiscal year, participate in university events and make a significant and sustainable level of annual unrestricted giving. Trustees are expected to complete a pledge form annually and are expected to pledge a minimum of \$5,000.00 per year (\$2,500.00 will be in cash). The remainder of the pledge can be fulfilled by the Trustee personally or by the Trustee causing a similar donation to occur. A yearly review of the expected amount will be conducted by the Governance and Executive Committees.

Each Trustee shall pay her/his own travel and other expenses associated with Board membership. Trustees are encouraged to seek foundation and other gifts for programs and services at the University, and to pledge an additional gift to the endowment prior to stepping down from the Board.

1.7 **Public Relations:** Each Trustee is encouraged to represent her/his affiliation in contacts with elected officials and in contacts with various media.

## 2. **Board-CEO/Staff**

- 2.1 **Delegation to the Chief Executive:** Generally, the Board role is confined to establishing the broadest Policies, while implementation and subsidiary policy development is delegated to the President. The President is authorized to establish all further policies, make decisions, take actions, and develop activities as long as they do not violate reasonable interpretation of Board by-Laws or standing Policies.
- 2.2 **Communication and counsel to the Board:** The President shall keep the Board informed about matters essential to carrying out its Policy duties. Accordingly, the President shall:
- A. Keep the Board aware of relevant trends, anticipated adverse media coverage, and material external or internal changes.
  - B. Seek staff and external points of view, issues, and options as needed to offer fully informed Board recommendations.
  - C. Present information in clear and simple terms.
  - D. Relate to the Board as a whole, except for fulfilling reasonable individual requests for information, or responding to officers, committees, or task forces duly charged by the Board.
  - E. Report actual or anticipated material non-compliance with Board Policy.
- 2.3 **Presidential Evaluation and Compensation:** The Executive Committee will formally evaluate the President annually, based on achievement of organizational goals and any other specific goals the Board adopts for the President. At that time, any specific goals for the President for the year ahead will be determined, and the Chair will facilitate the President's compensation review.
- 2.4 **Board Monitoring and Reports:** Besides reports the President may choose to make at Board meetings, the President shall maintain a Trustee Guidebook with all pertinent documents for use by the Board. In addition, the President shall provide the Board with information updates on significant achievements and conditions at the University. The Board or Executive Committee can request formal reports at any time.
- 2.5 **Employee Compensation and Benefits:** The President shall implement and modify as appropriate a compensation system designed to achieve competitive wage and cost-effective benefit levels at the University for its employees. Regarding employment and benefits, the President may not cause or allow jeopardy to fiscal integrity or public image. Accordingly, the President may not change his own compensation or benefits, or promise or imply permanent or guaranteed employment to anyone.
- 2.6 **Employee Professional Development:** The President shall encourage, plan, and prudently budget for appropriate professional development for all employees.
- 2.7 **Employee Treatment:** The President shall ensure working conditions that are humane, fair, and dignified.

Accordingly, the President shall ensure that there is:

- A. No discriminatory act toward employees other than clearly job-related, individual performance or qualifications.
- B. Reasonable protection of staff from unsafe or unhealthy conditions.
- C. Compliance with ethical practices in matters of gender, sexual harassment, and similar issues.
- D. No discriminatory action taken against employees for expressing an ethical dissent.
- E. No dispute resolution procedures withheld from any employees.

2.8 **Governmental & Public Relations:** The President shall engage in governmental and other public relations activities that focus on issues directly impacting independent higher education in general or specifically on advancing the University. The President should also encourage staff /faculty to be good citizens by being involved in a wider range of public issues.

### 3. Planning

3.1 **Strategic Planning:** The President is responsible for creating and updating a strategic plan to implement Board Policies and fulfill the University mission.

3.2 **Financial Planning:** Budgeting for any fiscal period shall not materially deviate from the mission, goals, and strategies, risk fiscal jeopardy, nor fail to show a generally acceptable level of foresight. Accordingly, the President shall develop budgets which:

- A. Contain enough detail to enable a reasonable projection of revenues and expenses, separation of capital and operational items, cash flow and subsequent audit trails, and disclosure of planning assumptions.
- B. Plan the operational expenditure in any fiscal year of no more funds than are available to allow achievement of the agreed upon annual operating margin.
- C. Maintain current assets (cash, accounts receivable, pre-paid expenses, etc.) at any time not less than a 2 to 1 ratio of current liabilities (accounts payable, fiscal year debt, etc., but excluding deferred revenues).
- D. Do not materially deviate from Board-stated priorities without Board approval.

3.3 **Instructional Delivery:** The President shall ensure that instruction at each site used by the University provides similar educational program quality and reasonable service delivery to the customers at that site.

## 4. Finance

- 4.1 **Financial Condition:** The President shall plan and operate the University so as to prevent fiscal jeopardy. Accordingly, the University should plan to have an annual operating surplus and ensure that each site operates in such a manner as to meet direct expenses and contribute to the operating margins and the University's budgeted net margin for the fiscal year.
- 4.2 **Asset Protection:** The President shall adequately protect and maintain assets from unnecessary risks. Accordingly, the University should plan to have:
- A. Insurance against theft and casualty losses at 100% of replacement value less deductible and against liability losses to Board members, staff, or the organization itself at no less than minimally acceptable prudent levels.
  - B. Bonded personnel with access to material amounts of money.
  - C. Office and equipment not subjected to improper wear and tear or insufficient maintenance.
  - D. Protection from exposure leading to claims of liability.
  - E. Prudent methods for purchases, with protections against conflict of interest.
  - F. Sufficient controls for receipt, disbursement, and processing of funds to meet audit standards.
  - G. Acquisition, encumbrance, or disposal of real property only with Board approval.
- 4.3 **Investment Policy:** Investments will be limited to those organizations and instruments which follow policies consistent with those of Cleary University and which meet the standards of a prudent investor, and are delegated to the administration within guidelines as established with the Finance Committee of the Board.
- A. Operating Cash, Cash Reserves, and Short Term Investments:  
Staff may pool these funds with endowment funds and transfer management over to the investment managers. Generally, the administration will invest any such current funds in:
    1. Certificates of Deposit issued by commercial banks and insured by FDIC or FSLIC.
    2. U.S. Treasury Bills or notes with a maturity date of one year or less.
    3. Money market funds which assure safety on the basis of high credit standards and a proven record of superior performance over a period of not less than 10 years. (SIPC – insured)
    4. Commercial paper rated no less than A-1 or P-1.
    5. Repurchase agreements secured by the U.S. government securities and agencies.
  - B. Endowment, Reserve fund, and Long Term Investments:  
All non-cash gifts, donations and contributions shall be evaluated for conversion into cash within ten

business days after receipt, and, if so determined, shall be converted to cash within ten additional business days. This includes gifts of securities, physical assets and other forms or instruments that may be reasonably converted in such a manner. Gifts of real property, or those of such a nature that cannot be readily converted to cash, will be evaluated and decisions made on a case-by-case basis. Endowment fund assets may be pooled with other cash reserves for the purpose of obtaining investment advantage.

For the long term, the primary investment objectives for the Endowment fund are:

1. To earn the highest possible total return (capital appreciation and current return) consistent with prudent levels of risk.
2. To maintain in real terms, purchasing power of the Endowment fund.
3. To create a stream of investment returns through contributions and professional management of the assets.

C. Restricted Investments:

Certain funds may be obtained through donations wherein the donor has placed restrictions on the form of investment to which these amounts may be applied, either directly by specifying qualifying investments vehicles, or indirectly by stipulating a higher-than-normal spending rate. Such funds will be invested according to the donor's requirements to the extent such requirements are a condition of the gift, and will be excluded from the total pool of available funds subject to the present investment guidelines with respect to asset allocation.

4.4 **Asset Allocation:** Income from these assets shall accrue to the individual funds as the rate earned by the combined assets unless otherwise specified by the donor. Investments shall be diversified within both equity and fixed-income securities so as to provide a balance that will enhance total return while avoiding undue risk concentration in any single asset class or investment category. Investment distribution percentage targets are 55-60% equity with the balance in fixed income instruments.

4.5 **Expenditure Policy**

- A. **Endowment Funds:** The University will annually establish a maximum distribution of endowment funds. This maximum distribution will not exceed the average rate of return achieved on the endowment asset value less inflation as measured by CPI, during the preceding year multiplied by the asset value at the beginning of the year. The actual amount of the distribution will be reviewed and approved annually by the Board of Trustees as part of the budget process.
- B. **Reserve Fund and Carry-Forward Operating Balance:** The reserve fund and the operating fund balance may be used as a defensive reserve for adverse economic periods or for specific initiatives to advance the University. In addition, provision shall be made for borrowing against the reserve fund in case of emergency. Board approval will be required in order to expend or borrow from the reserve fund or current operating fund balance. No interest will be charged on the expended or borrowed fund from the reserve fund or current operating balance.
- C. **Restricted Endowment Fund:** The restricted endowment fund may be used as a defensive reserve for adverse economic periods or for specific initiatives to advance the University. In addition, provision

shall be made for borrowing against the restricted endowment fund in case of emergency. Board approval will be required in order to expend or borrow from the restricted endowment fund. The expended or borrowed fund will be charged interest at the rate equal to the University's Bank's Reference Rate for the period of the loan.

- 4.6 **Investment Manager Selection and Performance:** Professional management services for investment of the endowment pool along with the University's other Board Designated Funds, Restricted Funds and operating cash may be used by the Administration. The manager shall be responsible for reviewing these guidelines, performance and portfolio holdings with the administration at least quarterly to assure that they remain valid and relevant. Administrative recommendations to change should be submitted to the Finance Committee in writing.