CEA Board of Directors Fiduciary Training

Stephanie Wanzer, CEA Treasurer

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NEA NATIONAL EDUCATION ASSOCIATION nea.org

CEA Connecticut Education Association

NEA/CEA Members and External Audiences

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Fiduciary Responsibilities

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How Did You Become a Fiduciary?

You knowingly accepted an officer, board of director, or other leadership role within your association that by law comes with certain responsibilities

Fiduciary Responsibilities

As a leader who has been elected or appointed to represent others, you have legal and ethical obligations:

- Act in the best interest of the association
- Use good faith and honesty when making decisions
- Exercise all 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

Fiduciary Responsibilities (cont.)

- The board's fiduciary role reflects the board's obligation to protect and enhance the assets of the association

- Relies on each leader or board member adhering to the standards of conduct which are:
  - Duty of Care
  - Duty of Loyalty
  - Duty of Fidelity
  - Duty of Good Faith

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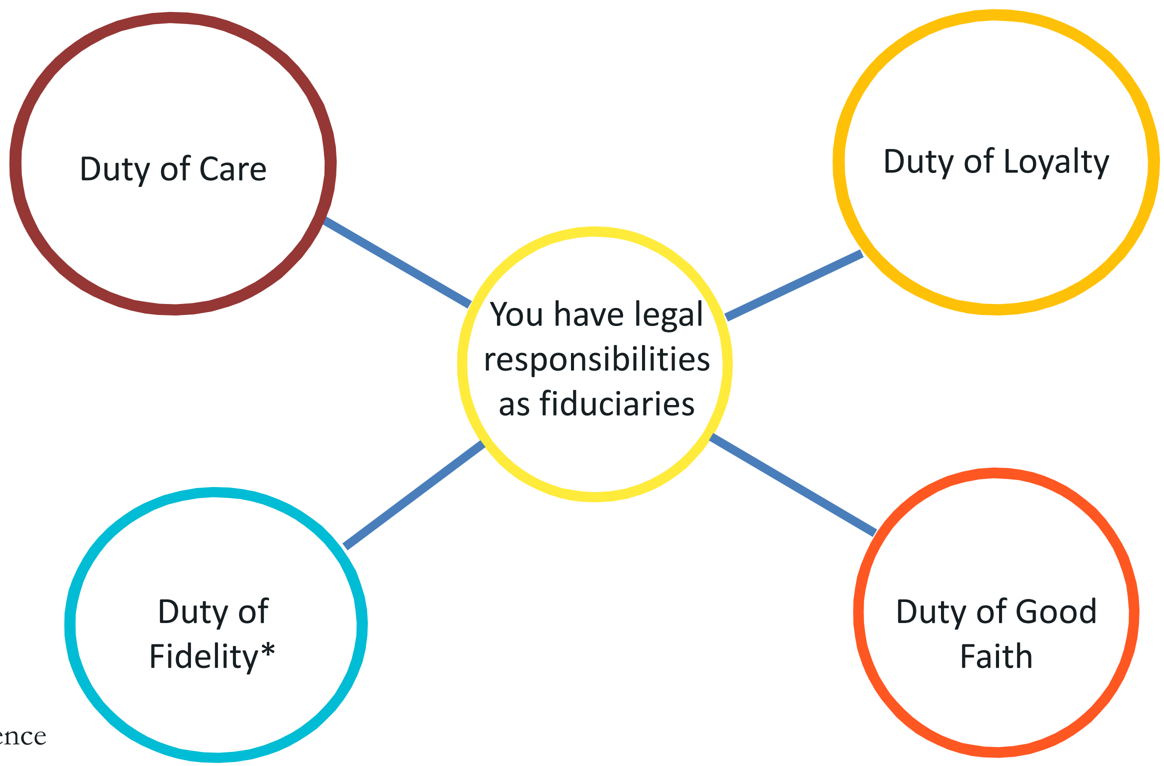
Fiduciary Responsibilities



*AKA Duty of Obedience

Duty of Care

Be reasonably acquainted with matters demanding attention	• Attend meetings, actively participate • Understand the association mission statement • Receive sufficient information. Review and understand it.
Requires reasonable inquiry	• Ask questions • Question assumptions • If something does not make sense, inquire
Act with common sense and informed judgement	• Use own judgement • Balance risks and rewards of each action • Board actions: Don’t agree if you don’t agree
Exercise oversight	• Hold other board members accountable • Monitor association activities • Monitor finances and review audit reports

Act as a Prudent Person

Acting as a prudent person requires:

- Attendance
- Inquiry
- Skill
- Caution
- Use of best judgment
- Reliance on experts (as necessary)

Duty of Loyalty

Board members must always place the interests of the association ahead of their own interests. This requires publicly disclosing conflicts of interests and not using board services or information as a means of personal gain or for the benefit of other associations.

Steps to Help Fulfill the Duty of Loyalty

- Have a written conflict of interest policy
- Don't get involved in transactions that harm the association
- Don't get involved in transactions that compete with the association interests
- Keep strategic planning decisions, other sensitive matters and executive sessions confidential
- Exercise caution when entering into business relationships between the association and board members, board member's families or businesses
- Avoid diverting opportunities meant for the association for personal gains

Source: Buckingham, Doolittle & Burroughs, LLP – Fiduciary Duties of Nonprofit Board Members

Duty of Loyalty

- Act on behalf of the good of the organization
- Do not act on behalf of your:
  - Personal interests
  - Professional interests
  - Special constituency interests
- Comply with the organizations conflict of interest policy
- Make the interests of the association primary focus
- Commitment in your board work

Duty of Loyalty (cont.)

LOYALTY ISN'T GREY
IT'S BLACK & WHITE.
YOU ARE EITHER
COMPLETELY LOYAL,
OR NOT LOYAL AT ALL.

PEOPLE NEED TO
UNDERSTAND THAT
YOU CAN'T BE LOYAL
ONLY WHEN IT SERVES YOU.

Executive Session (Duty of Loyalty)

Executive sessions serve three core purposes:

- It assures confidentiality
- It creates a mechanism for board independence and oversight
- It enhances relationships among board members and with the executive director and other professional advisors

Governance Policy on Executive Session

- BOARD OF DIRECTORS – EXECUTIVE SESSION PROCEDURES

1. The presiding officer or another member of the board can make a motion to go into executive session. The motion must state the purpose, and which guests are invited into executive session.
2. This can be accomplished by a majority vote or unanimous consent.
3. Once the meeting is closed, board members will be asked to remain. The President will ask any other individuals who need to remain in the session to stay for the discussion.
4. Materials shared in executive session will remain in executive session by the authority of the presiding officer.
5. Conversations that occur in executive session and materials are not to be shared outside of the confidence of the executive session.
6. A motion to move out of executive session must also be made and seconded with a vote.
7. All other motions are made outside of the executive session.

Executive Session Participants

- Determined by the purpose of the meeting
- Often is private for the Board only
- Can include staff named in the purpose of the meeting

Only participants of the Executive Session are entitled to know what occurred while in Executive Session!

Executive Session Effectiveness

- Establish a board policy that specifies the process for calling and conducting an executive session
- Ensure that all executive sessions are held for their determined purpose only
- If the chief executive is not in attendance, the board chair should inform the chief executive soon after, of any specific conclusions or recommendations that surfaced during the meeting
- Keep a written record of the proceedings according to policy – separate set of minutes not shared with anyone not participating in the Executive Session

Duties of Fidelity & Good Faith

Board members have a duty to:

- Follow the association's bylaws and other governing documents as well as laws related to nonprofits
- Transact honestly without a deliberate intention to defraud the association

Steps to Help Fulfill the Duties of Fidelity & Good Faith

- Annually review the association bylaws, mission and major policies
- Create a committee responsible for reviewing compliance with association's policies
- Adopt the NEA/NCSEA Financial & Operational Standards
- Be familiar with state and federal laws applying to not-for-profit organizations
- Develop a strategic plan that supports the association's mission, vision and goals
- Include a discussion of the strategic plan and budget during board of director's meetings

Source: Buckingham, Doolittle & Burroughs, LLP – Fiduciary Duties of Nonprofit Board Members

Duty of Fidelity*

- Make decisions that conform to your associations mission
- Comply with applicable federal, state, and local laws
- Adhere to your organization's bylaws and other governing documents

*Duty of Obedience

Duty of Good Faith

- Act honestly in all dealings
- Faithful performance of duties
- Observance of fair dealing standards
- Absence of fraudulent intent

IRS Form 990 and Tax-Exempt Status

IRS Form 990:

Reports the association's financial information

Is publicly available to your members and outside parties

It is important the information is accurate and complete

The review process by the board:

Ensures transparency and accountability

Encourages proper stewardship of association resources

Ensures association is compliant with laws and regulations

The Importance of Board Review

The IRS has concluded that those nonprofits with a process for the board to review IRS Form 990 are more likely to be following tax laws and regulations

CEA 990-specific pages are in your packet

- How do you feel about the summary/statement of program service accomplishments?
- What duty does a written conflict of interest fall under? What other policies do you see in page 6? Where would you find them?
- Under Part VII, Section A, next three pages, what do you see?
- Schedule I, page 23 & 24, Grants & Other Assistance to Organizations-why is this important?
- Schedule O, what do you notice?

Public Disclosure of Financial Information

- How will this appear to the membership and the broader community?
- What duties does this fall under?
- Is this a good idea?

Guidestar.org

GUIDESTAR IS A FREE WEBSITE DEVOTED TO ADVANCING THE TRANSPARENCY OF NONPROFIT ORGANIZATIONS

WWW.GUIDESTAR.ORG

Consider this a financial press release.
How do you want to be recognized?

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Contact Information

Stephanie Wanzer

CEA Treasurer

stephaniew@cea.org

860-682-4884

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