

GOVERNANCE MATTERS

A Practical Guide

for University Trustees

*ILLINOIS PUBLIC UNIVERSITY TRUSTEES
ANNUAL TRAINING CONFERENCE
ILLINOIS BOARD OF HIGHER EDUCATION
SEPTEMBER, 2019*

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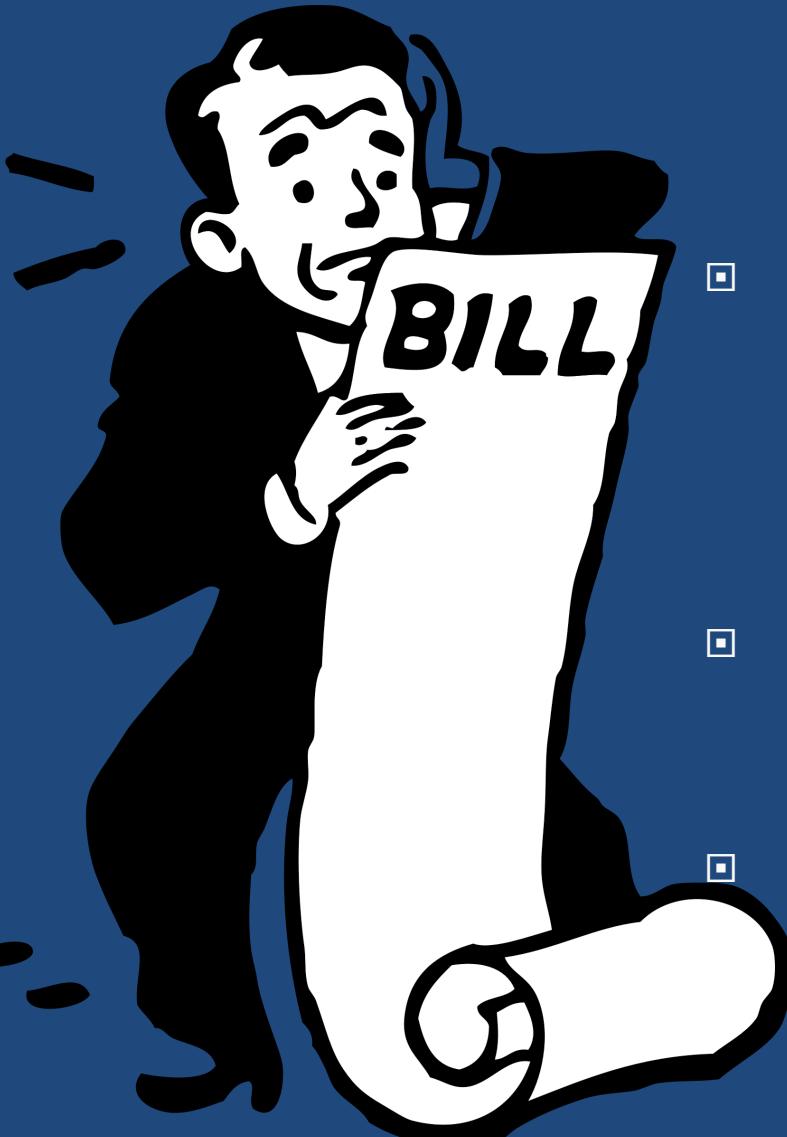
“Life short, art long, opportunity fleeting, experience misleading, judgment difficult.”

Hippocrates 460-270 B.C.

Illinois trustees are required to govern in a complex,
increasingly uncertain and risky environment.

Stakes are high....

Rewards are few

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- In 2016, the Illinois General Assembly enacted amendments to the Board of Higher Education Act recognizing the importance of governance training for University Boards of Trustees.
 - Effective as of January 1, 2017, each voting member of a governing board of a public university must complete a minimum of 4 hours of professional development leadership training.
 - Training must occur within 2 years of beginning service and within every 2 years of service thereafter.
 - Topics include training on various matters including ethics, sexual violence on campus, financial oversight and accountability, and fiduciary responsibilities.

Good governance is critically important for University Trustees to achieve optimal performance and maintain the confidence of their constituencies.

“The selection, assessment, and support of the President are the most important exercises of strategic responsibility by the Board. Boards should bear in mind that Board and Presidential effectiveness are interdependent.”

--*The Association of Governing Boards of Universities and Colleges Statement on Board Responsibility for Institutional Governance*

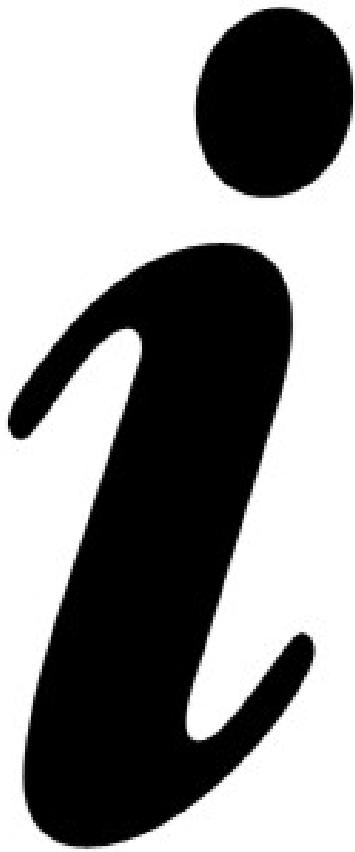
Good governance principles require the Board to ensure that correct procedures are in place to administer and oversee the vital function of the leadership of the President’s office.

Goal of today's presentation is to provide an overview of some of the Illinois laws that you as Trustees are required to follow and some of the pitfalls that have occurred as a result of trustees and other public employees failing to follow **good governance** principles.

The 4 “I”s of Good Governance



- Informed
- Integrity
- Impact
- Independent



Informed

Boards of Trustees need to be informed and knowledgeable of state laws that impact a Trustee's decision-making process.

- 1) The Freedom of Information Act
- 2) The Open Meetings Act
- 3) The State Employees' & Officers' Ethics Act
- 4) The Governmental Ethics Act
- 5) The Gubernatorial Boards & Commissions Act
- 6) Sexual Harassment Laws (Title VII, Title IX, Public Act 101-0221)
- 7) Individual University Acts & University Policies



SIRKRESS

*"My desire to be well-informed is currently
at odds with my desire to remain sane."*

FOIA Landscape

- Illinois was the last state to enact a law permitting access to public records (*See* Public Act 83-1013, effective July 1, 1984).
- The Public Access Counselor's office ("PAC") responsible for overseeing the administration of FOIA has significantly grown since its inception in 2009:
 - 13 full-time lawyers; 3 supervisors; 4 support staff
 - In 2018, the PAC received 3,372 requests for review under FOIA.
- PAC found that between 2010-2018 many public bodies failed to even respond to FOIA requests:
 - The Chicago Police Department (672)
 - The Illinois Department of Corrections (519)
 - The Illinois State Police (200)
 - Chicago Public Schools (199)
- Failure to respond could result in civil penalty of between \$2,500 and \$5,000 per violation.

- When public bodies did respond to FOIA requests between 2010-2018, the PAC found that several public bodies incorrectly applied exemptions under the law to deny FOIA requests. Several public bodies were found to have incorrectly applied exemptions in 40%-100% of their responses.
- During the Emanuel administration, the City of Chicago faced in excess of 55 lawsuits involving FOIA matters.
- In 2016, the City of Chicago shelled out \$670,000 in 27 settlements alleging officials violated open records laws—almost five times what it paid in the previous eight years combined.



Chicago Tribune



What is a Public Record?

- Section 2(c) of FOIA (5 ILCS 140/2(c)) provides that “public records” are: “[a]ll records *** and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, 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.”
- The presumption is that all public documents are open to inspection as noted in Section 1.2 of FOIA (5 ILCS 140/1.2): “[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.”

Statutory Exemptions Related to Higher Education

- Sec. 7.5 (z) *Information about students exempted from disclosure under Sections 10-20.38 or 34-18.29 of the School Code, and information about undergraduate students enrolled at an institution of higher education exempted from disclosure under Section 25 of the Illinois Credit Card Marketing Act of 2009.*
- Sec. 7.5 (ll) *Information that is exempt from disclosure under Section 70 of the Higher Education Student Assistance Act.*

- Compensation & Bonuses: In 2016, the Illinois AG held that the Housing Authority of the City of Freeport must disclose records relating to employee compensation and bonuses because such records relate to the use of public funds.
- Facebook/Skype: In 2016, the Illinois AG found that a public body must disclose Facebook and Skype account names because such names are akin to or derived from the individual's legal name, which is subject to disclosure.
- Student Records: In 2017, a Kentucky Court held that the Family Educational Rights and Privacy Act ("FERPA") protected University of Kentucky student information in a sexual assault case as educational records exempt from disclosure under FOIA laws. The Court also held that the records could not be disclosed in redacted form because redaction would not offer adequate protection from identifying the students.

College of DuPage:

- In 2017, the Chicago Tribune filed a lawsuit contending that the College and Foundation violated FOIA by refusing to produce records held by the foundation including documents relating to a foundation account that paid expenses for the College's President.
- The Illinois appellate court ultimately held that the Foundation's records were subject to FOIA because it found that while the Foundation is not technically a public body, it was contracted to perform a duty that "directly relates to the government" function of the College of DuPage.
- The Foundation and College turned over records showing how the-then College President used foundation money (nearly \$102,000) on high-end restaurants, trustees' bar bills, a rifle for a departing foundation officer, and other expenses.
- The College fired the President and rescinded his \$763,000 severance package amid growing public scrutiny.

Daily Herald: Watchdogs file lawsuit against COD for withholding public records

April 2, 2015 09:46 PM

(not rated)

Original Article, [click here](#).



By: Melissa Silverberg

A group of government watchdogs filed a lawsuit against College of DuPage on Thursday alleging numerous violations of the Illinois Freedom of Information Act.



DuPage prosecutors sue College of DuPage board over Breuder contract vote

DuPage County | updated: 4/29/2016 5:17 PM

College of DuPage may admit Open Meetings Act violations on Breuder's contract



News / Watchdog / College of DuPage

CHICAGO SUNTIMES

TRENDING

Chicago Tribune

News

CHICAGO NEWS 10/20/2015, 08:16pm

College of DuPage board fires president

Sun-Times Staff
Email

SATURDAY, MAY 16, 2015

COLLEGE OF DUPAGE SCANDAL THREATENS SCHOOL'S ACCREDITATION



GLEN ELLYN, IL - College of DuPage is facing further scrutiny for its spending following decisions by the state and the accreditation agency that oversees the school.

The Illinois Attorney General's office has held that a public body responding to a FOIA request must conduct an adequate search of personal e-mail accounts and personal devices when email communications and text messages concern the business of the public agency.



- Governor Pritzker's first executive action was passing Executive Order #1 requiring State agencies to hold themselves to the highest standards of transparency and accountability.
- Prior administration emphasized a "zero-tolerance policy" on the use of personal e-mail accounts for State business.

Open Meetings Act

- The Open Meetings Act is designed to prohibit secret deliberations and action on matters which, due to their potential impact on the public, properly should be discussed in a public forum. *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 202 (1980).
- PAC had 376 requests for review involving the Open Meetings Act in 2018.
- What is a “meeting” under the Open Meetings Act?
 - “Meeting” is defined as “any gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business.” 5 ILCS 120/1.02.

- ❑ Under OMA requirements, a public body cannot add an item to the meeting agenda on which action will be taken less than 48 hours before the meeting.
- ❑ While a public body can discuss items that are not on the agenda of a regular meeting, the public body cannot take action or make any decision with respect to items or topics not on the agenda of a regular meeting.
- ❑ Unlike a regular meeting, a public body cannot even discuss items that did not appear on the agenda for a special or emergency meeting.



MANKOFF

CN
COLLECTION

*"Let's never forget that the public's desire for transparency
has to be balanced by our need for concealment."*

Western Illinois University:

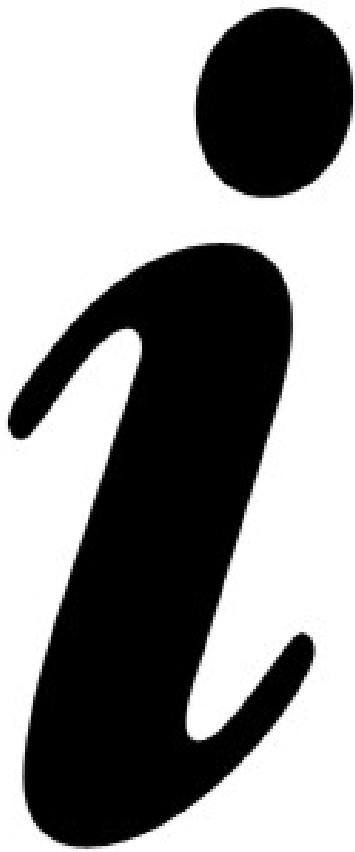
- In 2018, the PAC concluded that the Board of Trustees of Western Illinois University improperly entered executive session to discuss budget, layoffs and related matters.
- The Board asserted that its executive session discussion was authorized by the Section 2(c)(1) exception permitting public bodies to discuss the appointment, employment, compensation, discipline, performance or dismissal of specific employees.
- The PAC office reviewed the recording of the executive session and concluded that the Board mostly discussed budgetary matters and considerations applicable to categories of employees rather than the merits or conduct of specific employees.

Maine Township Board of Supervisors:

- In 2018, the PAC concluded that the Board of Supervisors of Maine Township improperly held a “meeting” for purposes of the OMA without properly posting an agenda in advance of the meeting as required under OMA.
- The Board argued that its pre-meeting gatherings were not subject to the requirements of OMA because the Board did not discuss public business; rather, the Trustees met to individually review the Township’s bills, without deliberation or discussion, in order to save time at the public meeting.
- In finding that the Board violated the OMA, the PAC focused on the fact that a “meeting” includes collective discussion and the exchange of facts preliminary to an ultimate decision.
- Because the gatherings were intended to obtain information in anticipation of voting on the payment of bills at a subsequent regularly scheduled meeting, the PAC said those informal gatherings involved the collective inquiry phase of deliberation constituting a “meeting” for purposes of the OMA.

Northern Illinois University:

- Following an OEIG report that alleged improper spending at NIU, the former NIU President resigned and was awarded a \$617,500 severance package by the NIU Board of Trustees.
- A member of the public sued the NIU Board alleging the Board violated OMA by : (1) failing to provide proper notice of the meeting; (2) failing to provide a full description of the agenda item involving Baker's severance award; and (2) failing to make a required performance review of the President publicly available.
- The Complaint cited to a new State law that requires State Universities to consider the performance review in any employment compensation and to make that review available to the public on the respective University's website at least 48 hours prior to the Board approving a bonus incentive-based compensation, raise or severance agreement for the president or all chancellors of the University.



Integrity

Good governance requires Trustees to act with integrity in all University decisions.

Boards of Trustees need to operate within the ethical requirements of state laws including the State Officials' and Employees' Ethics Act ("Ethics Act"). All public institutions of Higher Education are considered "state agencies" for purposes of the Ethics Act.

Gift Ban

- The Illinois Gift Ban, codified in the Ethics Act, applies to all Board Members (and Staff) and prohibits Board Members (and their respective spouses/immediate family members) from submitting or accepting any “gift” from a prohibited source.



A “prohibited source” are people or entities that fit one or more of the following categories:

- (1) do or seek to do business with the respective University;
- (2) conduct activities regulated by the respective University;
- (3) have interests that may be substantially affected by the University’s official duties; or
- (4) are registered or required to be registered as lobbyists.

Gifts from prohibited sources do not violate the Gift Ban if they fall under one or more of the following exceptions:

- Gifts available to the public under the same conditions;
- Gifts for which the recipient paid market value;
- Gifts received from a relative;
- Foods or refreshments not exceeding \$75 per day;
- Gifts from one prohibited source with a cumulative value of less than \$100 during any calendar year.

Gift Ban Violations

- OEIG Illinois Department of Transportation Case: An IDOT Office Administrator violated the Illinois Gift Ban Act by accepting payment for a flight ticket for her daughter from the owner of a IDOT official testing station.
- OEIG University of Illinois at Chicago Case: OEIG Investigation found that Midwest Foods and its co-owner gave prohibited gifts to University of Illinois Associate Athletic Director and other UIC employees and officials. The illicit gifts included Chicago Bulls and White Sox games as well as use of a rental apartment in California. Midwest Foods was considered a prohibited source because it did business with UIC and sought to do additional business.

Political Activity

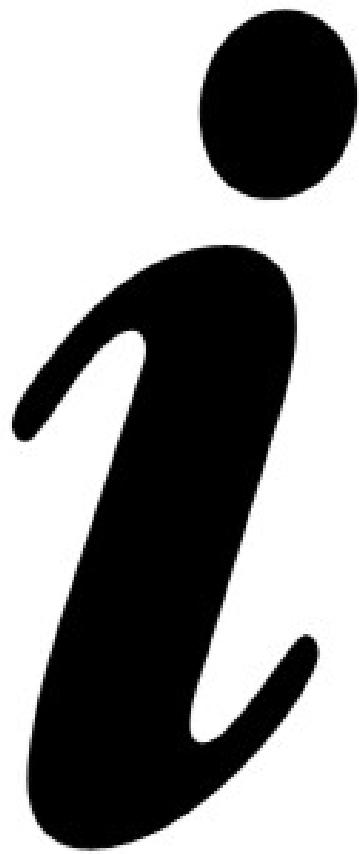
- Ethics Act strictly prohibits employees and Board Members from using State resources for prohibited political activity. 5 ILCS 430/5-15(a).
- OEIG has concluded that the Ethics Act does not permit any exception for anyone to engage in *de minimis* use of University property for political campaign activities even if the employee:
 - is a tenured faculty or professor of a State University;
 - did not think about what they were doing (or not doing) i.e. no intent to use their personal e-mail as opposed to their State e-mail;
 - describes their conduct as an error that was “minuscule”; or
 - used State resources that only represented a fraction of their overall e-mail use.

University of Illinois:

- Tenured University professors exchanged seemingly innocuous, limited e-mails using both their State University email accounts and their personal e-mail accounts to communicate about a fellow Professor's campaign for Congress. E-mails included:
 - A request and response regarding drafting an introductory speech for the Professor in preparation for a campaign meeting;
 - A list of contact information in order to assist the Professor in sending invitations for a campaign meet and greet; and
 - A request and response regarding distributing the Professor's campaign materials at a meeting in Washington D.C.
- OEIG concluded that the University professors involved were in violation of the State Ethics Act.
 - “[a] violation of State law is not a trivial matter. In addition, what is also similarly not trivial, is that a tenured professor, who said she completed ethics training each fall and said she was familiar with the training related to prohibited political activity, nevertheless either intentionally disregarded or simply ignored her annual training.”

- Illinois Gaming Board:

- In 2019, OEIG found that former Illinois Gaming Board Chair engaged in prohibited political activity.
- OEIG found that Chair made “loans and contributions either directly, or through his wife, to political committees” in violation of State law.
- In his OEIG interview, the Chair maintained that his wife made all of the political contributions herself, and he did not give her any direction to do so.
- The OEIG confirmed that the Act does not prohibit spouse from engaging in political activity.
- The evidence provided that the Chair’s wife had made virtually no political contributions prior to her husband’s appointment as the Gaming Board Chair. As such, the OEIG concluded that it was not credible that she suddenly made 26 political contributions without any direction from her husband and that such contributions were “joint decisions” resulting in the finding that the Chair participated in prohibited political activity.



Impact

Good governance requires Trustees to be knowledgeable of the existence of risks and ensure that proper procedures and processes are developed in advance to address such risks. Ensuring that proper procedures and processes are followed will result in a lasting **impact** on the University's governance.

“Leadership is an action, not a position.”

University Presidential Severance

Why this issue?

- In 2015, a former Illinois State University was paid at least \$480,418 to leave after serving just 10 months as president.
- In 2016, the President of the College of DuPage got a \$763,000 severance package after being booted as the President.
- In 2016, the President of Chicago State University got a \$600,000 severance package after just nine months as the President.
- In 2016, the then-Chancellor at the University of Illinois at Urbana-Champaign, was set to receive a \$400,000 payout and a tenured professorship at \$300,000 a year in exchange for stepping down. The offer was rescinded when the media raised an issue.
- In 2017, NIU gave its outgoing President a severance package worth more than \$600,000, though he was resigning over a scandal involving misspent funds.
- In 2018, SIU paid \$215,000 to its outgoing President and offered him a position as a visiting professor, at an annual salary of \$100,000.
- In 2019, Western Illinois University paid in excess of \$550,000 over two years as part of an “administrative leave” package to its outgoing President. Western also provided him a position as a tenured professor at an annual salary of not less than \$300,000, with the right to also receive outside compensation equal to or less than \$350,000.

The Response

- In 2016, the Illinois General Assembly passed new legislation impacting employment contracts and severance packages for University Presidents and Chancellors (Public Act 99-0694).
- The 2016 legislation revised each respective University Act and contains nearly identical language in each University Act.
- The 2016 legislation applies to employment contracts entered into, amended, renewed, or extended with University Presidents and Chancellors after January 1, 2017.
- Requires the Board of Trustees to complete an annual performance review of the President and any Chancellors of the University.

- Specifically, the 2016 legislation requires the following with respect to employment contracts with University Presidents and Chancellors:
 - Severance may not exceed one year salary and applicable benefits;
 - The employment contract may not exceed 4 years;
 - The employment contract may not include any automatic rollover clauses;
 - Final action on the formation, renewal, extension or termination of the employment contract must be made during an open meeting of the Board of Trustees. Prior to the meeting, documentation must be provided to the public providing a description of the proposed principal financial components of the proposed action.
 - Any performance-based bonus must be approved by the Board in an open meeting and criteria must be made available to public 48 hours in advance.
 - Board minutes, packets and annual performance reviews concerning the President/Chancellor must be made available on the University website.

- In 2018, the Illinois General Assembly passed new legislation further limiting the amount of severance that can be paid to public agency employees (Public Act 100-895) (the “Government Severance Pay Act”).
- Applies to all contract or employment agreements or renewal or renegotiation of an existing contract or employment agreement after January 1, 2019.
- Under the Government Severance Pay Act, severance pay is limited to 20 weeks of compensation.
- Severance pay is specifically prohibited if the employee has been fired for misconduct.
- “Severance pay” means the actual or constructive compensation, including salary, benefits or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated.

What's Next?

- On August 27, 2019, the Senate Higher Education Committee held a public hearing on public University severance agreements.
- Questions from Senators focused on:
 - How are Board Members made familiar with (a) relevant statutes; (b) national best practices; (c) tenure laws and policies impacting severance agreements? Is there a mechanism for consistent training?
 - How are Presidential employment agreements negotiated?
 - What are the separate elements of Presidential employment agreements, e.g. length of sabbatical; outside employment; relocation allowance; tenure; severance; continuation of benefits?
- On September 19th, Senate staffers followed up with requests for (i) bonuses paid to University Presidents; and (ii) criteria (e.g. performance reviews) for those bonuses.

02/28/2018, 04:39pm

City Council closes gaping hole in sexual harassment ordinance

 Harvard Magazine

Harvard Reviews Sexual Harassment Reporting
In the wake of the charges of persistent sexual harassment against ... professor of constitutional law at New York University School of Law and ...
2 weeks ago



 Michigan Radio

MSU suspends business dept. leader after sexual harassment ...

Sexual Harassment

Sexual Harassment Becomes Hot Topic In Springfield

 NBCNews.com

College is starting again, and with it the threat of campus sexual assault. A lawyer offers advice.

Most college sexual violence is committed in a private residence by ...
Despite a university's best efforts, not all harassment and sexual violence ...
3 weeks ago



 BBC News

Universities 'failing' victims of sexual misconduct
Freedom of Information responses obtained by File on 4 from 81 UK universities found more than 110 complaints of sexual assault and 80 ...
6 days ago

The New York Times



Illinois Takes On Sexual Harassment

- In response to the allegations of sexual harassment in Springfield, Speaker Madigan filed an amendment to Senate Bill 402 revising the Ethics Act.
- The revision to the Ethics Act requires annual in-person training regarding sexual harassment for all officers, members and employees subject to the Ethics Act.
- On November 7, 2017, Senate Bill 402 passed and was sent to the Governor for signature and became law on November 16, 2017.
- As a University governing Board, you are subject to the sexual harassment training requirements of the Ethics Act.
- New Board members are required to complete the sexual harassment training within 30 days following the commencement of their office.

Illinois Law

*Sexual
Harassment
Involving
Employment*

Title IX

*Sexual
Harassment
Involving
Educational
Institutions*

Illinois Law

- Under the Illinois Human Rights Act, sexual harassment is defined as: any unwelcome sexual advances, requests for sexual favors or any conduct of a sexual nature when:
 - Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's *employment*;
 - Submission to or rejection of such conduct by an individual is used as the basis for *employment decisions* affecting such individual; or
 - Such conduct has the purpose or effect of substantially interfering with an individual's *work performance* or creating an intimidating, hostile or offensive *working environment*.
- **Under Illinois law, sexual harassment involves employment.**
- The courts have determined that sexual harassment under the Illinois Human Rights Act is a form of discrimination under Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991.

Title IX

- Title IX of the U.S. Civil Rights Act of 1964 prohibits all forms of sexual discrimination and misconduct *in educational institutions*. Title IX requires gender equity in any program receiving federal financial assistance.
- Importantly, the current Title IX definition of sexual harassment mirrors the Illinois Human Rights Act.
- In November, 2018, Secretary of Education Betsy Devos released revisions to Title IX rule that would have the force of law if codified.
- DeVos's proposed rule redefines sexual harassment as conduct that is both "severe and pervasive". This is a shift from the current definition of sexual harassment as "unwelcome conduct of a sexual nature that includes requests for sexual favors, and other verbal, non-verbal or physical conduct of a sexual nature."
- The proposed rule also mandates that Title IX investigations include live hearings with cross-examinations and makes all evidence in investigative proceedings available to both parties.
- The Department of Education received more than 124,000 comments on the proposed rule.

Considerations for Whether Conduct is Sexual Harassment

- Gender is Irrelevant.
- Sexual Harassment & Third Parties. Victim does not need to be the person the behavior is directed towards.
- Behavior is Unwelcome. Challenged behavior may be unwelcome in sense that the victim did not solicit or invite it and considered the conduct offensive.
- Intent vs. Impact. Intent is NOT relevant.
- Physical Environment. Behavior may extend to other locations, off-site or electronic messages (emails/texts).
- Sexual Harassment is Not limited to Co-Workers and Supervisors. Patrons and vendors may violate sexual harassment laws and they may be victims of sexual harassment.

- ❑ Under Illinois law and the Illinois Human Rights Act, there are two categories of employer liability involving sexual harassment:
 - Vicarious liability
 - Strict liability

- Vicarious liability --an employer may be liable for the sexual harassment of an employee by a co-worker.
 - It is not automatic liability.
 - Under the Illinois Human Rights Act, an employer is only vicariously liable for the sexual harassment of an employee by a co-worker if it knew or should have known of the harassment and failed to take immediate and appropriate action to stop the harassment.
- Strict liability -an employer is liable for the sexual harassment of an employee by a supervisor.
 - Automatic liability.
 - An employer is strictly liable for any supervisor's actionable harassment, regardless of whether the employer took immediate and appropriate action.

- In 2009, the Illinois Supreme Court expanded the range of cases where an employer can be held strictly liable for the conduct of a supervisory employee.
 - *Sangamon Cty Sheriff's Dept v. The Illinois Human Rights Comm'n*, Nos. 105517 (Ill. Apr. 16, 2009): The IL Supreme Court found that an employer is responsible for sexual harassment by a supervisor, regardless of the supervisor's actual authority over the victim.
- This was a significant departure from federal caselaw interpreting Title VII of the Civil Rights Act. Under Title VII, an individual is not a “supervisor” for purposes of imposing strict liability unless he or she has the authority to affect the victim’s employment directly.

- Under landmark U.S. Supreme Court decisions, the Supreme Court held that employers have an affirmative defense for liability involving the harassing conduct between co-workers when:
 - (1) no tangible job action (such as demotion or a termination) occurred;
 - (2) the employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior; and
 - (3) the employee unreasonably failed to take advantage of the preventative/corrective opportunities provided by the employer or to otherwise avoid harm.
- Employers will be looked on more favorably in the event of a charge of sexual harassment if the company: (i) has a strong, well-published sexual harassment policy that is consistently and promptly applied and (ii) active programs to assure employees understand the policy.

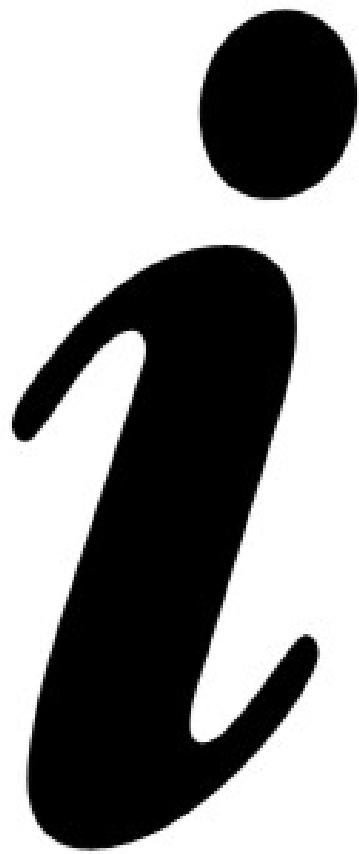
Southern Illinois University:

- In 2012, a SIU student worker in the SIU student employment program sued SIU under Title VII and Title IX for creating a hostile work and educational environment and for retaliating against him for complaining about the professor's harassment.
- Allegations involved three encounters with a former SIU professor and substantial donor, in which the former professor touched the student inappropriately and complimented him on what he believed to be his feminine features.
- SIU's response to the harassment was held by the court to be reasonable because of the following:
 - 2 SIU officials were "quite helpful in shepherding the [student] through the complaint process...and the officials encouraged the [student] to pursue a formal complaint."
 - SIU took corrective action such as assigning the Professor to another area of the University, issuing a formal reprimand, requiring sexual harassment training, and making a good faith effort to minimize his contact with the student.

- Allegations of sexual harassment have profound repercussions for Universities.
- United Educators—a member-owned insurance cooperative that insures hundreds of universities--issued a report in 2017 examining a 5-year period of sexual assault claims of its member institutions. On average, those 100 universities paid out approximately \$350,000 per case.
- Universities impacted by recent sexual harassment allegations include:
 - Penn State University
 - Michigan State University
 - Dartmouth College
 - University of Virginia
 - University of Connecticut
- Michigan State University recently agreed to pay sexual assault victims nearly \$500 million dollars in the Larry Nassar case.

"In addition to meeting clear legal obligations, institutions have an obligation to examine aspects of campus culture that might contribute to sexual misconduct."--American Governing Board Advisory Statement on Sexual Misconduct.

- University Boards must pay attention to the coming federal rule changes regarding Title IX and ask questions to ensure the President and Staff are reviewing adequate policies and processes for compliance.
- Institutions will also need to grapple with issues related to how the new rules will reconcile with state laws.
- Boards should also confirm that the campus has proper training on a regular basis for students, faculty members, and other employees to identify, report and respond to sexual misconduct.



Independent

Good governance requires that Trustees are independent decision-makers acting in the sole interest of their respective University. Trustees are required to comply with conflicts of interest prohibitions in the Illinois Governmental Ethics Act and individual policies of their respective Universities.

When identifying whether a conflict of interest exists impacting his/her ability to be an independent decision-maker, a Trustee should consider the following stages:

- Identifying the conflict; and
- Managing the conflict.

Identifying Conflicts of Interest

- A conflict of interest arises when a Trustee is required to make a decision where:
 - 1) the Trustee is obliged to act in the best interests of his/her University constituencies; and
 - 2) at the same time, the Trustee has or may have either: (i) a separate personal interest or (ii) another duty owed to a different beneficiary in relation to that decision, giving rise to a possible conflict with the Trustee's duty as a Trustee of the University Board.
- Conflicts may be classified as real conflicts or potential conflicts.

Managing Conflicts of Interest

- Board Members should disclose any actual or potential conflicts of interest immediately upon discovery.
- Paramount importance because avoiding appearances of conflicts maintains public confidence in the University's institutional integrity as a prudently managed University operated for the sole and exclusive benefit of its members.
- When managing a conflict, the role of a legal adviser is important to consider how the conflict may affect (or appear to affect) the independence of the Trustee's decision making.
- A decision taken by a Trustee with a conflict may be invalidated if the Trustee did not take proper steps to manage the conflict.

- Constituency Interests. Elected or appointed Trustees often have responsibilities toward his or her constituency.
- *Identify the conflict*: A Trustee's interest in his or her responsibilities to his or her constituency may cause a conflict of interest on a particular matter. Trustees must recognize at all times that the Trustee's obligation is to act in the best interest of the University as a whole and not to a particular constituency that he or she has been elected or appointed to represent.
- *Manage the conflict*: If a Trustee believes that an interest to his or her constituency may create a conflict, the Trustee is encouraged to seek legal advise before participating in the discussion or vote at issue and disclose the conflict to the Board. Trustees must recognize at all times that the Trustee's duty is to act in the best interest of the University as a whole and not to a particular constituency that he or she has been elected or appointed to represent.

- Personal and Financial Interests. Trustees (and his or her spouse and/or immediate family member) are prohibited from having a financial or personal interest in contracts or business operations that affect or appear to affect that party's independence, objectivity or loyalty to the University.
- *Identify the conflict:* possible conflicts include (i) referring any prospective vendor to the University for a specific transaction without Board approval; (ii) engaging in outside employment with any University vendor; (iii) using his or her prestige as a Board Member to encourage the hiring of family members at vendors of the University; (iv) engaging in activities that are incompatible with his or her duties as a Board Member such as using his or her prestige, influence or position with the University to receive any private gain or advantage or divulging confidential or non-public information to any unauthorized person which he or she gains by reasons of his or her role as a Trustee.
- *Manage the conflict:* The Trustee should notify the Board as soon as possible about the conflict and should seek legal advice regarding appropriate responses to managing the conflict.

Illinois State Board of Education

- Chairman violated the agency's conflicts of interest policy by participating in discussions and a Board vote relating to Illinois' No Child Left Behind Act waiver application without disclosing his wife's ownership of a supplemental educational services provider to the entities subject to ISBE jurisdiction.
- The agency's conflict of interest policy specifically prohibited the following types of behavior: (1) using public office for direct or indirect private gain; (2) giving preferential treatment to any organization or person; (3) losing independent or impartiality of action; (4) making a Board decision outside official channels; or (5) adversely affecting the confidence of the public in the integrity of the Board.
- OEIG concluded that the Chairman's wife's ownership could "reasonably create the appearance of [the Chairman]'s loss of independence or impartiality. ... Thus, [the Chairman] was required to disclose this interest to the Board when he participated in the Board discussions and vote."



*"It's an amazing coincidence, isn't it, that we all
served on the same board of directors?"*