

# **The Ethical and Lawful Board of Trustees California Community Colleges**

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# Chapter 1. Overview of Ethics and Laws

The title of “trustee” assumes a moral, ethical, and legal obligation to fulfill a duty to protect the community college district and serve the public good. The public and the college must be able to trust the members of the governing board to do what is legal and ethical to ensure the success of the institution in meeting the needs of students and the community.

Being legal means complying with the laws and regulations that apply to college boards and elected officials. Ethics refers to moral responsibilities and may go beyond legal considerations. Ethics are standards of right and wrong, good and bad. Ethics address what one ought to do to fulfill one’s moral duty.

Being ethical and legal involves more than understanding what the right thing is to do; it means that one must perform in ethical and legal ways – one must actively “walk the talk.” First, one determines what is right or wrong, good or bad. Then, one does what is legal, right, good.

## Ethical Values

The ethical values described below are from the Josephson Institute, and are called the “Six Pillars of Character”(see [www.josephsoninstitute.org](http://www.josephsoninstitute.org)). The pillars are trustworthiness, respect, responsibility, fairness, caring and citizenship.

**Trustworthiness.** When we are trustworthy, people believe in us. Being trustworthy requires honesty, integrity, reliability, and loyalty.

Being honest means we are sincere, truthful, straightforward, and that we avoid deception. It means not violating confidentiality, being uncivil, or making promises that one might not be able to keep.

Integrity refers to “wholeness.” A person who has integrity is consistent in decision-making and behavior, and bases his or her behavior on a core set of ethics or values.

Reliability means we keep our promises. If we commit to a task, we follow through. Ethical trustees spend the hours each week that are required to perform the job well.

Loyalty means protecting and promoting the interests of people, a group or organization. As a trustee, the primary loyalty is to the college and the public good—loyalty to friends and interest groups is subordinate regarding college business.

**Respect.** The second “pillar of character” is respect. It includes civility, courtesy, decency, autonomy, and tolerance.

Civility and courtesy are particularly important when engaging in discussions with others with whom we disagree. Autonomy means that we do not try to live others’ lives for them. Tolerance means we

### Four Questions

To help determine ethical behavior, ask:

- Am I doing to others what I would want done to me?
- Would I mind seeing what I am doing on the front page of a newspaper?
- Am I comfortable with members of my family knowing what I am doing?
- Do I want my behavior to be a model for employees and students?

accept others' perspectives and judge others only on their core ethical values.

**Responsibility.** Responsibility means being willing to make decisions and choices and to be accountable for their actions and words. Responsible people do not shift the blame to others.

Responsibility means doing the best one can, and being diligent, careful, prepared, and informed. It means persevering, following through, and finishing tasks that one has promised to do.

Responsibility also involves self-restraint, prudence, and recognizing the importance to set a good example. Responsible trustees recognize that there are some limits on saying or doing whatever one wants to, because people look to them as representatives of the college.

**Fairness.** The fourth pillar, fairness, involves equality, impartiality, openness and using due process. Exhibiting fairness involves using open and impartial processes for gathering and evaluating information, so that even those who disagree with a decision can understand how it was made. It means seeking equity and avoiding favoritism or prejudice.

**Caring.** Caring means that we are genuinely concerned about the welfare of others. As public officials, we care about the common good and welfare of the community. Public education is a benevolent act and expresses caring for the public well-being.

Trustees are often asked to care about many different people—community members, students, faculty, and others. Benevolence as a trustee involves seeking the well-being of the entire community. Challenges arise when decisions must be made for the benefit of the public welfare that may not meet the needs of specific groups. Caring trustees understand those challenges, and realize that their role requires focusing on the public good.

Because we care about other people, we care about being ethical, about being respectful, responsible, and trustworthy. Being unethical is easier if we do not care about others.

**Citizenship.** The final “pillar” is citizenship, which involves how we behave as part of a community. Ethical citizens obey laws, contribute to the community through service and leadership, and protect the environment.

Citizenship is concerned with the future health and welfare of society. Trusteeship is an expression of civic leadership, and the ethics of trusteeship reflect good citizenship practices.

## Codes of Ethics

Virtually all boards of trustees in California Community Colleges have had a code of ethics (or standard of practice) as policy. These rules of conduct or standards of practice are based on above ethical values.

Having and living by such a code is good practice, and has been a standard of the Accrediting Commission for Community and Junior Colleges since the early 1990's. Chapter 2 in this resource guide covers more on developing and maintaining a useful, effective ethical code for boards.

## Legal Responsibilities

There are many laws and regulations that affect what the board does and how it conducts itself. The statutes that designate board responsibilities are covered in chapter 7 of the League's *Trustee Handbook*; other chapters refer to many relevant laws and regulations. Three major sets of laws that affect trustees directly are highlighted below: conflicts of interest, open and public meetings, and personal use of public resources.

### Conflicts of Interest

California has two sets of laws governing conflicts of interest of public officers and employees. The first, most restrictive statutes, are in Government Code sections 1090, *et seq.* The second is found in the Political Reform Act, at Government Code sections 81000, *et seq.* The basic intent of both sets of statutes is to avoid even the appearance of impropriety.

The statutes address personal interests that may be affected by the trustee's exercise of his or her official duties, including personal investments and businesses, and the employment of trustees and family members as college employees.

In addition to the laws, trustees should be aware of activities that create the perception of favoritism or personal gain. Examples of potential problem areas are preferential treatment of other trustees or college staff, selectively sharing information with only certain people, or informally steering business to or seeking to have friends hired.

Public perceptions that board members are furthering their own interests rather than those of the district harm the college. Being sensitive to situations for potential conflicts, and seeking legal advice when necessary will help avoid problems.

It is important that all public officers and employees be aware of these laws and their implications, which include criminal prosecutions and bars from holding further public office. Conflict of interest training (ethics training) is required every two years for many locally elected officials. The training is available on line at the FPPC site <https://oag.ca.gov/ethics/course> and the Institute for Local Government site <http://www.ca-ilg.org/post/institutes-self-study-program-and-fppc-online-alternative>. In person training is offered by the Community College League at the: Effective Trusteeship Workshop, Annual Trustees Conference and Annual Convention every year. Further information on conflict of interest laws is published in *Ethics Law Principles for Public Servants: Key Things to Know*, available from the Institute for Local Government.

### Open and Public Meetings

State law requires that public boards do their work in public. Public service requires that issues affecting the public are shared and debated openly. Doing so promotes trustworthiness and reliability.

The Brown Act created the primary set of statutes (Government Code 54950-54961) that governs the legislative bodies of local agencies. Community college governing boards, academic senates, and associated student governing bodies are among the groups to whom the Act applies. The laws cover board meetings and agendas, public participation, and limits on how boards may meet. They provide for holding executive or closed sessions on a number of matters, including personnel, contract negotiations, and lawsuits. Closed sessions protect the rights of personnel and the college, and it is unlawful to reveal information discussed in these sessions.

Details on Brown Act provisions are covered in *Open and Public IV*, available from the League of California Cities.

## Use of Public Resources

Both the law and ethical considerations prohibit the use of public resources for personal benefit and political activity. Therefore, boards usually have clear policies on, and trustees adhere to travel budgets and expense reimbursement provisions, and the prohibition on using college equipment, e-mail networks, supplies, and other resources for personal reasons.

Legal references include Education Code 7054, 7056, 72423; Government Code 8314, and Penal Code 424.

## Other Laws

There are many other complex laws and regulations that affect the district and board responsibilities.

Key areas include:

- elections and campaigns,
- lawsuits,
- auxiliary organizations,
- fiscal management,
- confidentiality of records,
- bonds and construction, and
- personnel.

Boards and CEOs should seek legal advice when they have questions.

## Legal Advice

While a few districts have an attorney on staff, most districts rely on county counsel or retain a law firm or attorney to be available to answer questions. No matter whether they are on staff or on contract, college attorneys are there to advise the district. He or she is a resource that provides valuable information, but is not the decision-maker. Attorneys are often present in closed sessions of the board, and should always be there when discussing issues with legal implications.

Attorneys are not there to serve individual trustees. Trustees who have legal questions should work through the CEO and/or board chair in seeking an answer.

When boards seek legal advice, they should:

- Plan ahead: give attorneys sufficient lead time to provide advice on a question.
- Ask about legal implications prior to making certain decisions: it is easier to prevent problems than solve them.
- Be open about all of the facts of a situation, both good and bad.
- Accept and expect realistic assessments of the legal position, including options and the risk involved in various alternatives.
- Understand that legal advice to public institutions is usually conservative, in order to protect the public trust.
- Get legal advice in writing to avoid misunderstandings.
- Avoid entering into adversarial situations, if possible: look for long-term solutions to problems.

## Summary

To protect the district and fulfill the trust, boards must first ensure that trustees and the college are aware of and adhere to laws and regulations. Three major legal concerns for trustees are conflicts of interest, open and public meetings, and personal use of public resources. Legal advice may be necessary from time to time in order to ensure compliance with a myriad of laws and regulations.

Ethical public service is based on a desire to do good for the community. Ethical behavior by trustees enhances the value of the college and sets a high standard for the rest of the college. Ethical leadership by trustees makes it more likely that the college will fulfill its mission to the community. Codes of ethics define in more detail for board members how public service is best expressed, and are covered in the next chapter.

## Chapter 2. Codes of Ethics

Trusteeship brings with it certain responsibilities and expectations, many of which are related to being an elected public official. The public expects and deserves that its representatives strive to uphold high standards in the performance of their duties.

Codes of ethics (or “standards of practice” as they are sometimes called) define specific expectations for board members. It is important for boards to clarify for themselves, the college, and the community, what behavior they think is appropriate. It is not enough to assume that because something is legal, that it is ethical. Nor can anyone assume that trustees know how they are supposed to act as board members the minute they are elected or appointed to the position. Codes of ethics put in writing what the “oughts” are of trusteeship. They address board roles and responsibilities, and trustee conduct.

Codes of ethics are policies that state how boards and trustees should perform their responsibilities. They are used as references when there are questions about specific situations or behaviors. They are useful tools to orient new trustees to their responsibilities. The policies and practices in a code may also be used as criteria for board self-evaluations.

Accreditation Standard IV.C.11 states, in part: *“The governing board upholds a code of ethics and conflict of interest policy, and individual board members adhere to the code. The board has a clearly defined policy for dealing with behavior that violates its code and implements it when necessary.”*

### Codes of Ethics Address Board Roles

At a minimum, codes of ethics address the following:

**Represent common good.** Trusteeship is an expression of civic leadership and citizenship. Governing boards derive their authority from and are accountable to the community as a whole. As public officials, trustees fulfill the core value of responsibility to society by acting on behalf of the entire community. They express the value of benevolence by seeking the well-being of the entire community. They represent the interests of the larger community in their board decisions.

**Student success.** The college’s purpose is to educate students and do everything possible to ensure they meet their goals. Boards should expect their members to uphold the welfare and success of students as a primary concern. They should have as the highest priority promoting the mission and goals of the college as they pertain to student success and the college’s benefit to the community.

**Board as a unit.** One of the most basic tenets of effective trusteeship is the recognition that governing authority rests with the entire board, not with any individual trustee. As individuals, trustees have no authority to direct staff, determine programs and procedures, or represent the college, and ethical trustees do not try to do so.

The board’s voice is expressed through the policies and actions it takes in its official meetings. Once the board has decided on a policy or position, a trustee must be prepared to support it publicly. It is unethical to try to use authority independently from the board, to speak out against, or to try to sabotage a board decision.

**Making decisions.** Making ethical decisions means applying defining and applying core policy values. It means studying and asking questions to clarify board agenda materials. Making good decisions means asking for and using data and considering all available facts and perspectives. Boards are ethical when they model a spirit of inquiry and value a culture of evidence for decision-making.

Being ethical and responsible to the public means not making any promises about how one will vote prior to discussions at open meetings.

**Board and CEO Relations.** The Chief Executive Officer (Chancellor or Superintendent/President) is the only employee the board has. To be ethical and effective, boards promote a healthy working relationship with the CEO through setting expectations, clearly delegating authority, ensuring open and honest communication, providing ongoing and public support, and conducting regular evaluations in a professional manner.

Respect, reliability, trustworthiness and justice are all key values in the board/CEO relationship. Specific ethical concepts include committing to thoughtful, thorough CEO search processes; fair and attractive contracts; “no surprises,” and clear differentiation of roles.

**Special interests.** Single and special interest groups play an important part in representing various segments of our diverse society, such as political parties, racial and ethnic groups, employee associations, religious groups, neighborhood associations, and taxpayer groups. While all of these interests are important, trustees must remember that the first and foremost obligation of every trustee is to represent the general interests of the college’s service area. Ethical behavior involves being aware of a wide variety of public and community needs, and integrating them into the interests of the whole.

**Policy-making.** Board responsibilities include establishing policies that direct the operations of the college and assuring that the college performs according to policies. Ethical trustees engage wisely in policy making and respect the delegation of authority to the chief executive to administer the college. Problems occur when boards and trustees become involved in the day- to-day operations and try to second guess or direct staff activities. Although often well intentioned, these acts are disrespectful of the college and chief executive.

**Continuous Improvement.** Ethical and effective boards are dedicated to continuous improvement of their performance. They engage in regular self-evaluation, and support trustee orientation and on-going education.

## Codes of Ethics Address Trustee Conduct

**Commitment.** Ethical trustees are committed to doing the job well. They spend the time needed to ensure they are well-informed, attend college events, and represent the district in the community and in advocacy roles. They align their behavior with the needs of the college, and are committed to doing what is needed to protect the district’s reputation.

**Civility, decorum, and consideration for others.** Remaining courteous and open-minded and treating others with honesty, decency, and respect are characteristic of ethical trustees. Ethical trustees practice responsible self-restraint and set a good example for others by communicating thoughtfully. They avoid attacks and use courteous, non-inflammatory language at board meetings.

Consideration for others means speaking well of others in public. Criticizing or belittling other trustees, college staff, or community members hurts the reputation of the entire board.

**Board/CEO relationship.** Ethical behavior includes honoring the CEO's role as the leader of the institution, and not undermining his or her leadership and authority. Ethical trustees support the CEO publicly and raise any concerns privately directly to the CEO or through the CEO evaluation process. They honor board-established protocols for communication and seeking information from college staff.

**Open communication.** All board members, as well as the CEO, are responsible for maintaining an open, cooperative environment and promoting a free exchange of information at the board meetings. Trustee deliberations should be characterized by fairness, and open and impartial processes for gathering and evaluating information. Trustees are honest and straightforward in civil and respectful ways.

**Communicating with staff and students.** The board and CEO should discuss and reach agreement on protocols for trustee contact with other college administrators, faculty, and classified staff members. Ethical trustees support the authority of the CEO position and respect established lines of communication.

Student and employee complaints to trustees should be referred directly through appropriate channels or to the chief executive officer. Every community college has, or should have, policies and procedures that provide for fair and ethical treatment of students and employees.

**Communicating with community members and media.** A code of ethics may include statements about protocols for communicating with community members and media personnel. The protocols usually state that individual trustees do not speak for the board unless specifically delegated to do so, and refer and/or follow up with community members through appropriate channels, almost always through the CEO's office. These protocols ensure reliability of information, and respect the board as a unit and the roles of those designated as spokespeople for the college.

**Function as a team member.** Being a good board member requires the ability to function as part of a team. Board members differ in personality, motivation, knowledge, attitude, experience, background, community stature, and capability. Differing points of view help develop alternatives, stimulate the imagination, and lead to creative solutions. Being open to and respectful of other members' viewpoints are skills that are necessary to reach consensus.

Trustees often bring specialized knowledge to the board by virtue of their backgrounds and professions. However, trustees are not on the board to be "experts" in their fields – they are there to represent broad community interests.

**Maintaining confidentiality.** While most of what the board does is public, an important aspect of trustee ethics is maintaining confidentiality about issues discussed in closed session. Violating confidentiality occurs when individuals share closed session information, such as informing the union of the collective bargaining positions, leaking information to the media, or discussing private personnel information.

**Compensation and expenses.** Trustees should follow laws and local procedures about receiving compensation of any kind. Boards and colleges should have reimbursement criteria and procedures

that define fair reimbursement for trustee expenses. Ethical trustees accurately account for their expenses, and always ask themselves if their expenses are authorized, legitimate, and reasonable.

## Reviewing and Updating Codes of Ethics

Since the early 1990's, virtually all boards have adopted a code of ethics or standards of practice as a board policy. Developing such a document ideally engaged all trustees and the CEO in discussions of ethical values as they sought consensus about what should be in their policy.

Since that time, good practice has meant that boards periodically review and affirm their code of ethics. Best practice is that the board periodically engages in a deep discussion about each of the statements in the code. The discussion helps clarify the values inherent in the code and explores trustees' interpretation of the standards. It may result in revisions and additions to the code of ethics, thereby ensuring that the policy is current, useful, and relevant to the board.

Such a review might include comparing the board's current ethics policy to the board roles and trustee conduct defined above. Does the code sufficiently address all the issues? Are trustees clear about the expectations for their role?

In addition to the periodic review, discussion of the code of conduct should be an integral part of new trustees' orientation to their role. It is extremely helpful for new trustees to understand what the expectations are for legal and ethical performance as a member of the board.

## Sample Codes

The Association of Community College Trustees has published a model code of ethics, included below. Boards may also collect examples from other colleges, usually by going to the board policies posted on community college district websites.

However, much of the benefit of a code derives from the discussion involved that fits the board. Therefore, effective boards engage in discussions about ethical practices for themselves, instead of simply adopting a sample statement. The discussion usually takes place in a retreat format allowing for open discussion of ethical values and different scenarios.

## Association of Community College Trustees Model Code of Ethics

As a governing board member, I am responsible to:

- devote time, thought, and study to the duties and responsibilities of a community college board member so that I may render effective and creditable service;
- work with my fellow board members in a spirit of harmony and cooperation in spite of differences of opinion that arise during vigorous debates of points of issue;
- base my personal decision upon all available facts in each situation; vote my honest conviction in every case, unswayed by partisan bias of any kind, and to abide by and uphold the final majority decision to the board;
- remember at all times that as an individual I have no legal authority outside the meetings of the board, and to conduct my relationships with the community college staff, the local

citizenry, and all media of the community on the basis of this fact;

- resist every temptation and outside pressure to use my position as a community college board member to benefit myself or any other individual or agency apart from the total interest of the community college district;
- recognize that it is as important for the board to understand and evaluate the educational program of the community college as it is to plan for the business of college operation;
- welcome and encourage active cooperation by citizens, organizations, and the media of communication in the district with respect to establishing policy on current college operations and proposed future developments;
- Speak with one voice as a board member once a board decision is made.
- Support the state and national community college trustees' associations;
- Strive step by step toward ideal conditions for the most effective community college board service to my community, in a spirit of teamwork and devotion to public education as the greatest instrument for the preservation and the perpetuation of our representative democracy.

## Chapter 3 Upholding Board Ethics

*"I care about, serve, and respect the community, the college and its employees, and our students."*

*"I am law-abiding, trustworthy, and fair."*

Virtually all community college trustees believe these important ethical values. The public and college employees expect community college trustees to uphold these high standards in the performance of their duties. Governing boards, which serve the public and provide leadership for the campus community, must live up to these expectations. Ethical behavior fosters confidence in the colleges and its governing board and promotes the public good. Being ethical means upholding the values of trustworthiness, respect, responsibility, fairness, caring, and citizenship.

However, living by ethical standards is not always easy. Boards may face ethical dilemmas, when honoring one ethical value may mean violating another. In addition, people face challenges to uphold ethical values when they conflict with self-interest, the desire to promote single interests or a personal agenda, and the difficulty of fully respecting those with whom one disagrees.

When ethical dilemmas occur, one ethical course of action may mean that another value is violated. Making a decision to do what is right for the college may result in significant personal cost to trustees, to other persons, or to a group of constituents. In other cases, making a decision that upholds one ethical set of values may be at odds with another. For instance, supporting a regional or state initiative that benefits community colleges as a whole may mean that a local need might not be met as fully.

Resolving ethical dilemmas requires board members to engage in often very difficult discussions to determine which ethical values are most important in a specific situation. The criteria for decision-making include what upholds the public good and what is best for the community and college as a whole.

Unethical trustee behavior often occurs when personal interests override trustee responsibilities; examples include independently pursuing pet projects, breaking confidentiality, or not devoting time to the role. These activities hurt the college. Unethical trustee behavior can lead to loss of public support for the entire institution. It has caused problems in the re-accreditation process. Community members and legislators lose faith in the college, and may be more reluctant to support funding for the institution. Trustees who act unethically fail to fulfill their fiduciary responsibility to protect the value of the college.

### Ethical Violations Cause Harm

Trustees who violate the board's code of ethics harm the board and the college in a number of ways. Violating ethics laws may subject the board and college to legal action, which can involve penalties and significant costs. Not addressing ethical and legal violations may cause the public and college employees to lose respect for and trust in the board, which may lead to loss of trust in the college and district. Unethical behavior may reduce support for community college issues from community leaders and the state legislature. Bond issues are less likely to pass. Collective bargaining processes are more difficult. Significant violations have caused colleges to risk their accreditation status.

Boards cannot afford to ignore “bad behavior” and violations of the code of ethics. It is difficult to approach a fellow trustee about perceived violations, but it must be done for the sake of the college and its students. The strategy a board uses to address ethical breaches depends on whether the behavior violates related laws or the board’s own code of ethics.

## Types of Violations

### Violating Ethical Laws

There are three major categories of laws that address ethical behavior by public officials. All boards should have policies that address the issues in these laws.

Financial Interests. Conflicts of interest laws prohibit trustees from financially benefiting from board decisions, or acting on matters that benefit family members.

Fair and Open Decision-Making. California’s open and public meetings laws (the Brown Act) require that the public’s business be done in public. Examples of violations include making decisions in private that should be made in public meetings, discussing items that have not been noticed to the public, and violating provisions that closed session information be kept confidential.

Use of Public Funds. It is a felony to misuse public funds. Examples include claiming expenses that they did not incur and using college resources for personal or political purposes.

Further information on ethics law, steps to take, and the consequences of violating them is in *Walking the Line: What to Do When You Suspect an Ethics Problem*, by the Institute for Local Government (2005). See [www.ca-ilg.org/ethics-and-public-confidence](http://www.ca-ilg.org/ethics-and-public-confidence).

Actual or perceived violations of the law must be dealt with expeditiously and legal advice should be sought. A study session or workshop may be appropriate for the entire board if it appears that trustees may be unaware of the law.

## Upholding Ethics

Prevention is the best cure in promoting ethical behavior. The best prevention consists of adopting a code of ethics and conflict of interest policy, educating board members about laws and ethical expectations, and making an ongoing and public commitment to behaving legally and ethically.

Effective boards periodically review their policies on ethics and conflicts of interest to be sure they continue to be effective guides for board behavior. They foster awareness of ethical expectations by:

- Ensuring that all trustees are aware of the board’s ethical expectations by providing it to all trustees and having it available at board meetings.
- Including the code of ethics and conflicts of interest when orienting new trustees and CEOs.
- Using the standards in the code as criteria in the board self-evaluation process.
- Identifying consequences for violations of the code of ethics, since violations negatively impact the board and the college.

## Policy on Ethical Violations

Accreditation Standard IV.C.11 states that boards must have a policy that addresses violations of the code of ethics. The statement should address steps to address potential or actual violations of ethics

laws (open meetings, conflict of interest and use of public resources), as well as the board's own expectations for behavior.

Following are three statements found in many codes of ethics and examples of behaviors that violate the statement.

- *"We recognize that a trustee is a member of a legal entity and shall abide by majority decisions of the board. We work with fellow board members in a spirit of harmony while respecting differences of opinion."* Examples of violations include attacking other trustees or the president in public, publicly advocating against board decisions after they are made, or sabotaging the work of the board. Trustees must find ethical ways to express their individual opinions that don't violate the all-important principle that the board is a unit.
- *"We clearly delegate to and support the CEO in the performance of his or her responsibilities."* Examples of violations include ongoing and substantial attempts by trustees to administer, rather than govern the college, which violate the separation of CEO and board roles. Examples include ignoring local decision-making process and communication protocols by working directly with staff members, telling college staff whom they should hire, and attempting to direct the day-to-day duties of staff members.
- *"We represent the District as a whole, but recognize the unique needs of the individual colleges and local communities. We are not advocates for special interest groups."* Trustees who persistently advocate a single interest instead of the common public good may be violating this statement. Examples include trustees who ignore the broad range of public needs in community college education in their decision-making and appear to be agents of a union, a specific community group, or a business interest. All interests are important and should be considered; but solely representing single interests does not serve the greater good for the college and community.

## Steps in Addressing Legal and Ethical Violations

The board of trustees has responsibility for monitoring itself, and the chair plays a key role in ensuring that laws and codes of ethics are followed. While CEOs help ensure the board is knowledgeable by providing information about ethics laws and the board's code of ethics, they should not be put in the position of enforcing trustees' ethical behavior.

Boards and CEOs should seek advice from legal counsel regarding violations that may have legal ramifications. A presentation by an attorney about legal constraints and standards expectations may be all that is needed to prevent further violations of law and regulations. The CEO can be very helpful in ensuring that board members (particularly new ones) have the information they need to be aware of legal expectations and alerting the board to its legal responsibilities.

Ethical dilemmas are not uncommon, where people are faced with decisions where they must balance two conflicting ethical values, or where doing the ethical thing comes at great personal cost. Good people may disagree on whether or not certain behavior is unethical.

Therefore, a first step in addressing a perceived violation of an ethical code or law is to examine the various perspectives about and interpretations of the behavior. Look both at the intention and motives of the trustee in question and those making the charge. Was the action or decision based

on an ethical dilemma? Is the decision open to interpretation? Does the perceived violation betray the public trust? Do those expressing the concern have a particular interest that may influence their perception?

Accusations of unethical behavior can do as much harm to an institution as the behavior under question—care must be taken that misguided righteousness does not do more harm than good. Unfortunately, some accusations may be based on retribution, personal benefit or the desire to embarrass someone. Therefore, when considering charges that an ethical code has been violated, one should take into account the motives of the parties involved. Are they to benefit the college and its mission, are they to benefit or protect a certain group of people or the trustee, or are there other possible motives?

Also think about whether addressing the behavior will foster confidence in the district and its governing board. Take into account what will happen if this issue is not addressed. When considering possible responses, choose the one(s) that are most likely to uphold the public trust and that most closely reflect ethical values.

Addressing ethical issues is the responsibility of the board chair or other trustees identified by the board. Following are some possible courses of action:

- The board chair or designee talks to the person about the implications of the perceived violation, including the negative impact the behavior will have on the college, the board, and the individual trustee. An opportunity should be provided for the person to explain his or her perspective and motives and to set matters straight. Good human relations and communication skills are helpful in handling these difficult situations—charging someone with unethical behavior often leads to defensiveness.
- An ad hoc committee may be appointed to look into the allegations and make a recommendation to the board chair or the board as a whole. Be aware of the implications of the Brown Act when establishing a committee.
- The board may hold a workshop or retreat on codes of ethics and the importance of upholding them. All trustees discuss interpretations of the code and reinforce expected behavior.
- The board may, in a meeting, make a public statement of expected board behavior, adopt a board resolution about what expected behavior is, and/or publicly reaffirm the ethics policy. This course of action alerts the public that individual violations are not condoned by the board.
- The board may issue a public statement in which it expresses concern with an individual trustee's behavior. The statement would be made at a board meeting.
- A last resort is a board vote to censure the trustee's behavior. Censure distances the board from the unethical behavior of one of its members and is a clear, public statement that unethical behavior is not condoned or tolerated. However, censure officially divides the board, which may lead to additional problems.

If illegal or unethical behavior occurs during a board meeting, the chair can state what the expectations and standards are of board behavior, recess the meeting, and/or state that the

behavior is not the policy and practice of the board. Examples of possible ethical violations include the trustee remaining at the board table when he or she has a conflict of interest, engaging in debate or discussion with audience members on topics not on the agenda, attacking a speaker, or not following the board's meeting procedures.

## Policy Statements

Effective boards have a process to deal with violations of the board code of ethics. In 2002, the Accrediting Commission for Community and Junior Colleges adopted standards that require that the board's code of ethics include a "clearly defined policy for dealing with behavior that violates its code."

Concepts that may be addressed in such a policy include who on the board is responsible to address charges or perceptions of violations, what steps will be taken to examine and address both legal and ethical violations, and possible consequences of violations.

The following sample statements are provided as starting places for board discussion. Boards should change, delete or add additional detail to the suggested language to reflect their own procedures.

### Sample 1

*The CEO and board chair are authorized to consult with legal counsel when they become aware of or are informed about actual or perceived violations of pertinent laws and regulations, including but not limited to conflict of interest, open and public meetings, confidentiality of closed session information, and use of public resources. Violations of law may be referred to the District Attorney or Attorney General as provided for in law.*

*Violations of the board's policy code of ethics will be addressed by the president of the board, who will first discuss the violation with the trustee to reach a resolution. If resolution is not achieved and further action is deemed necessary, the president may appoint an ad hoc committee to examine the matter and recommend further courses of action to the board. Sanctions will be determined by the board officers [or committee] and may include a recommendation to the board to censure of the trustee. If the president of the board is perceived to have violated the code, the vice president of the board is authorized to pursue resolution.*

### Sample 2

*Charges by any person that a board member has violated laws and regulations governing board behavior or the board's code of ethics shall be directed to the board president or the board of trustees. The board chair may establish an ad hoc committee to examine the charges and recommend further courses of action to the board.*

*Possible courses of action include:*

- If alleged behavior violates laws governing board behavior, legal counsel may be sought and the violations referred to the District Attorney or Attorney General as provided for in law.*
- If the alleged behavior violates board policy on ethical conduct, the chair of the board shall alert the board member in question regarding the violation of policy, the board may discuss the violation at a board meeting and affirm its policy*

*expectation, and/or the board may move to censure the trustee.*

### **Sample 3**

*All board members are expected to maintain the highest standards of conduct and ethical behavior and to adhere to the Board Code of Ethics. The board will be prepared to investigate the factual basis behind any charge or complaint of trustee misconduct. A board member may be subject to a resolution of censure by the governing board should it be determined that trustee misconduct has occurred. Censure is an official expression of disapproval passed by the governing board.*

*A complaint of trustee misconduct will be referred to an ad hoc committee composed of two trustees not subject to the complaint. In a manner deemed appropriate by the committee, a fact-finding process shall be initiated and completed within a reasonable period of time to determine the validity of the complaint. The committee shall be guided in its inquiry by the standards set forth in the Code of Ethics as defined in policy. The trustee subject to the charge of misconduct shall not be precluded from presenting information to the committee. The committee shall, within a reasonable period of time, make a report of its findings to the governing board for action.*

### **Summary**

It is not enough to have policies on code of ethics and conflict of interests. Effective boards understand and abide by the concepts in these policies, and are willing to address violations of these policies. Such boards go a long way of justifying the trust the public has placed in them to protect their community colleges.

## Chapter 4: Resources and References

### Community College League of California

The League helps all new trustees learn about their roles and responsibilities by providing each new trustee with *Trustee Handbook, Ethics Law Principles for Public Servants: Key Things to Know* (published by the Institute for Local Government) and *Open and Public IV, A User's Guide to the Ralph M. Brown Act*. These materials and others are distributed at the annual Effective Trusteeship Workshop, designed for new trustees and others interested in improving board effectiveness.

### Institute for Local Government

The Institute is the nonprofit research arm of the League of California Cities, is an outstanding source of research and information for California's local officials. The Institute has extensive resources on ethics for local officials, most of which are available on the web, [www.ca-ilg.org](http://www.ca-ilg.org).

Other outstanding resources for materials and training on ethics are:

- Josephson Institute of Ethics, Los Angeles, <http://www.josephsoninstitute.org>.
- Markkula Center for Applied Ethics at Santa Clara University, <http://www.scu.edu/ethics>.
- International City/County Management Association, [www.icma.org](http://www.icma.org).

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