



Alliance for Higher Education & Democracy
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Penn AHEAD Working Paper

An International Visitor's Guide to Understanding University Governing Boards in the United States of America

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Synopsis

This document describes the structure and forms of governing boards in the United States. It provides an overview of the related higher education context and then describes board structure, composition, leadership, and scope of work.

Suggested Citation

Eckel, P.D. (2019). *An International Visitor's Guide to Understanding University Governing Boards in the United States of America*. Philadelphia, PA: Alliance for Higher Education and Democracy (Penn AHEAD), University of Pennsylvania Graduate School of Education.

Higher Education Context

University governance occurs in a national context. Two key elements necessary to understand that context are the shape and structure of the higher education system and the governance policy context. We draw on Burton Clark's triangle of coordination (Clark, 1984) in which he identifies the state, academe (or universities collectively), and the market as three factors that describe the context for higher education; university systems have the potential for all three factors shaping the context more or less.

Shape and Structure of Higher Education

Higher education in the United States is a large and diverse system of colleges and universities. The number of universities that grant degrees (at the associate's, baccalaureate, master's and doctoral levels) is 4,360 (in 2016-2017) (U.S. Department of Education, 2018). The number of students enrolled (2016-17) is 19,841,014.

The colleges and universities are classified according to mission and the types of degrees awarded. These include the following, presented by number of institutions and enrollments (U.S. Department of Education, 2018).

Table 1. Institutional Diversity by Numbers and Enrollments

	Number of Institutions	Enrollment
Research university, very high and high research activity ¹	219	5,122,515
Doctoral/research university ²	109	1,390,806
Master's	741	4,390,258
Baccalaureate	855	2,170,451
Special Focus (4-year)	907	668,739
2-Year (Associate's)	1,527	609,0245

Research universities are those that award a full complement of degrees from the baccalaureate to the doctoral and professional degrees across a range of fields and disciplines. Doctoral/research universities in contrast offer doctoral degrees in very limited numbers but do not have high levels of research activity in terms of research grant activity and peer-reviewed publications. These universities award baccalaureate and master's degrees. Master's universities are those that offer at least 50 Master's degrees each year (and fewer than 20 doctoral degrees annually). Baccalaureate institutions focus predominantly on undergraduate education and do not offer graduate degrees. Special Focus institutions are those that offer

1 A distinction exists that separates research universities with very high from those with high research activity, which have been combined here for simplicity.

2 Institutions that award at least 20 research/scholarship doctor's degrees per year, but did not have a high level of research activity.

degrees in a single course of study, such as psychology, law, business, education. 2-Year are those colleges that offer associate’s degrees and are mostly what in the U.S. are called community colleges ³.

Further, higher education institutions vary by their ownership, what in the U.S. is called control. There are three types of control - public universities (such as the University of Michigan or Cal Tech University); private, nonprofit universities (such as The University of Pennsylvania, Stanford University, and Williams College); and private, for-profit institutions (such as the University of Phoenix and American Public University). The for-profit universities can be publicly traded corporations or privately held companies. The profile is as follows (U.S. Department of Education, 2018):

Table 2. Institutional Control by Number and Enrollments

	Number of Institutions	Enrollment
Public	2,963	14,582,972
Private, nonprofit	1,682	4,077,797
Private, for-profit	1,055	1,180,245

Finally, 33 of 50 states have organized their public universities into systems. State systems have a single governing body for the public universities and operate as a policy collective even though each system institution holds its own accreditation. Twenty-six states have one system for all of their public four-year universities, such as Wisconsin and Maryland. The other seven states have multiple systems. Texas has the most with the Texas A & M System, the University of Texas System, The Texas State University System, the Texas Tech University System, the University of Houston System and the University of North Texas System. California has three.

Governance Policy Context

The U.S. has a long history of higher education. The first institution, Harvard College (a private, nonprofit), was established in 1636, over 100 years before the establishment of the country. From that beginning American higher education developed as a diversified sector (Geiger, 2016) as the current profile described above illustrates. Thus, the size and diversity of U.S. make it challenging to make general statements about the governing context. However, in the U.S., the pull is firmly toward Clark’s market (Bok, 2003; Geiger, 2004; Kirp, 2003), while the other two elements do exist depending on university mission and type of control.

For private universities, the market is significant. Private nonprofit and for-profit universities and colleges generate their own revenues through a variety of sources, including tuition, grants and contracts, philanthropic gifts and auxiliary services in which they sell services

3 The word “college” can mean either a full institution (The College of William and Mary) or it can refer to an academic unit within a university (The College of Education at the University of Michigan). There is no distinguishable quality or status hierarchy between institutions that use the word college or university.

and products (like health care) directly to consumers (Kirshstein & Hurlburt, 2011). Some do receive state government appropriations, but the percentage of overall revenue is very small. These universities do benefit from Federal government dollars. Research universities rely on research grants, and colleges and universities of all missions benefit from government provided student loans and grants in which the student receives the aid (bursaries) directly. Because the student aid (bursaries can be used at an accredited college or university (portable aid)), this factor contributes to heightened market forces as universities compete for students supported by Federal dollars.

Furthermore, for public universities the market rather than government also plays a significant role. For example, nationally 46.4% of public university educational revenues came from tuition fees paid directly by students, and more than half of all states relied more heavily on tuition fees than on governmental appropriations (SHEEO, 2018). Only public 2-year institutions (community colleges) receive more revenue from state appropriations than tuition (Kirshstein & Hurlburt, 2011), mostly because of a firm commitment to comparatively low tuition fees as their mission is increase access to higher education and focus on career preparation (Riley, Bahr & Gross, 2016). Public universities also compete for students using Federal loan and grant dollars.

The government does play a role, most meaningfully in public higher education, at the state level as they try to strike a “delicate balance between institutional autonomy and public accountability” (McGuinness, 2016, p. 250). States are responsible for governing public higher education, as will be discussed below, as well as providing some appropriations and underwriting construction and infrastructure projects. They may mediate between public universities seeking to offer competing degree programs or operate in overlapping geographic areas. They also drive accountability and monitor institutional performance. In some states, government may regulate procurement and contracts and require that some or all employees fall under their staffing and civil service policies (McGuinness, 2016). The Federal role of higher education is limited, but still important. It plays a significant role in directly (research grants) and indirectly (student aid) financing higher education, regulating some aspects of universities (such as around issues of anti-discrimination, environmental protection, occupational and student safety) , and accountability for the provided moneys (Mumper, Gladieux, King, & Corrigan, 2016).

Universities both public and private undertake change to respond to emerging market pressures (Baker & Baldwin, 2015), such as create new degree programs or open new campuses. Some even change their names from college to university to position themselves more strongly in a highly competitive marketplace (Morphew, 2002). In contrast to other countries' higher education systems in which the government dictates which programs to offer, and the numbers of students to enroll and their qualifications, U.S. universities control these factors themselves to compete for students and respond to market and educational needs. Some states may incentivize particular new degree programs or enrolling students from certain backgrounds or geographic locations, but the primary level is financial incentive rather than policy directive.

Furthermore, quality assurance is accomplished through a voluntary structure in which private, nonprofit organizations carry out this function. The government recognizes accreditation providers but is not directly involved in quality assurance (Eaton, 2015). Even accreditation in the U.S. is a nongovernmental enterprise.

Governing Body Profile

The diversity of U.S. higher education is reflected in the structure, scope and function of governing bodies. A key factor is control: if a university is public or private (Association of Governing Boards, 2016). Therefore, this profile addresses each group separately. Even within public and private universities much variation exists ⁴.

This profile focuses on the primary governing board of each university, college or state system. Some church related universities have a two-tiered board that includes both a college or university board and a governing body of the sponsoring religious order, which hold what are called “reserve powers” related to dictating mission, hiring the president, and owning property. Some states also have dual governing structures that include governing boards as well as coordinating boards. This profile addresses governing boards and not the higher-level bodies, which function more like buffer bodies. In many instances, coordinating boards are more closely connected to, if not extensions of, state government rather than independent institutional-focused boards (McGuinness, 2016).

Governing Board Structure ⁵

Two key structural elements are board size and the number and focus of committees. Tremendous variety exists across size of governing board structures.

Table 3. Average Size of Governing Boards by Control.

	Public	Private, Nonprofit
Research/Doctoral	13	40
Master’s	12	30
Baccalaureate	12	30
2-Year	8	21
Special Focus	12	20
State Systems	14	NA
Average	12	29

4 This profile excludes private, for-profit boards. That sector only serves approximately 10% of enrolled students and has tremendously diverse governance and management structures depending on if the university is privately held or publicly traded. Furthermore, data about the governance of this sector is not readily available.

5 The data presented here comes from the Association of Governing Boards’ Policies, Practices and Composition of Governing and Foundation Boards 2016.

The variation in size within and across different types of institutions does not reflect the size or complexity of the universities governed. Harvard University has a small board (called the Corporation) with 13 members. In contrast similar universities such as the University of Pennsylvania (also a private, doctoral research university) has 59 members. Both include the university president as a voting member. The California State University System board that governs 23 universities and 484,000 students has a 25-member board.

Governing boards of U.S. universities have committees, through which much governance work is conducted. Committees focus on strategic as well as routine matters and make recommendations to the full board for a final vote.

Public Boards: 5 committees on average

Private Boards: 8 committees on average

Although the specific structures of board committees vary, they tend to focus on the following issues:

- Finance/budget
- Audit
- Academic Affairs/Academic Policy
- Building and Grounds
- Governance (internal board activities)
- Executive
- Advancement

Depending on university mission and priorities, other committees include:

- Government/External Affairs
- Technology
- Health Sciences
- Diversity and Equity
- Economic Development/Community Engagement
- Enrollment

Membership⁶

Board membership includes the mix and proportion of representation and affiliation among board members including the share of internal and external members; and if the rector/president is a voting member of the board (Saint, 2009).

In the U.S. membership of governing boards is predominately composed of individuals not

⁶ The data presented here comes from the Association of Governing Boards' Policies, Practices and Composition of Governing and Foundation Boards 2016.

employed by the university. Governing boards are external bodies made up of university outsiders. The most common backgrounds are business and professional services, such as law and medicine.

Some boards have representative members, often one person from each category. Thus, these university insiders are in the minority among board members. It is much more likely for public universities to have a student serving on the board than it is a paid university employee.

Table 4. Stakeholder Voting Membership

	Faculty/Staff Voting	Students Voting
Public	16%	45%
Private, Nonprofit	35%	10%

The following share of boards have individual representatives in attendance at meetings, but they are unable to vote on board decisions.

Table 5. Stakeholder Non -Voting Membership

	Faculty/Staff Non-voting	Students Non-voting
Public	11%	26%
Private, Nonprofit	26%	13%

A small number (12% voting and 4% non-voting) of public boards have the state’s top elected official (the governor) serve as a member of the board.

The university president (rector) in some cases serves on the board in either a voting or non-voting capacity. Presidents are much more likely to be voting members of private, nonprofit university boards.

Table 6. Presidents as Board Members

	Voting	Non-voting
Public	6%	26%
Private, Nonprofit	57%	22%

Member Appointment Processes

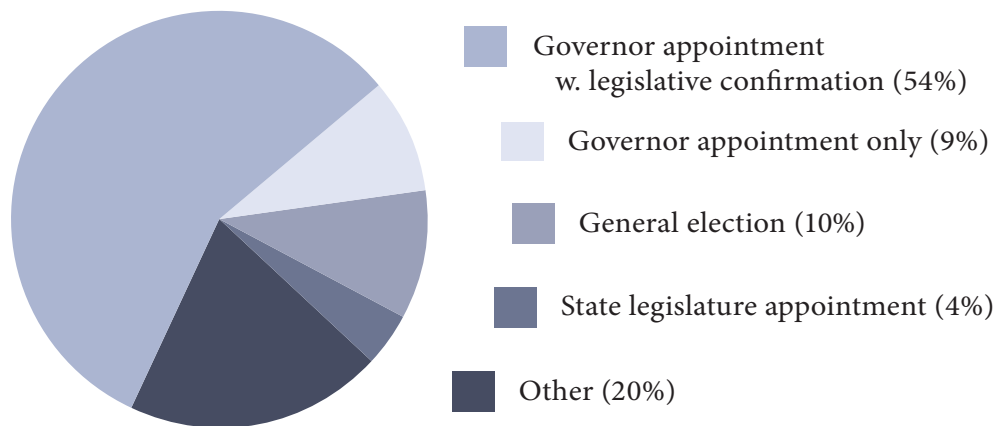
An important element to understanding governing boards is the means through which board members are identified and appointed or selected

In the U.S. private university boards are “self-perpetuating” in that they identify and recruit their own members. This work is often the responsibility of the Governance Committee of

the board, per the above discussion on committee structures. At a small number of boards, individuals are elected through a limited voting capacity, such as alumni representatives as elected by members of the alumni association. Some religiously affiliated private universities have a few board members (often less than 25% and frequently much less) appointed by the religious sponsoring order.

Public university board members are identified by a range of processes varying across the 50 States (AGB, 2016).

Figure 1. Board Members Selection



Chair Appointment Processes

The chairs of the majority of public university boards are selected by the board itself (92%). In approximately 2% of public boards the Governor appoints the board chair. For private, nonprofit boards, the board as a whole elects its chair from within its current members (72%). In 10% of situations, a smaller group of trustees, who serve on the leadership body of the board, its Executive Committee, select its member. The remaining share of both public and private universities use a variety of approaches (AGB, 2016).

Board Accountability

Governing bodies are accountable for the institutions they govern (UCU, 2014; AGB, 2007). The question is to whom are the boards accountable?

- Ministry or other governmental entity;
- Buffer body; or
- Independent (such as US private institutions).

In most states boards are held to a legal fiduciary standard that encompasses three aspects (AGB, 2015):

- The duty of care which requires trustees to carry out their responsibilities in good faith for the best interest of the university;
- The duty of loyalty which requires board members to put the interests of the institution first and to act in ways consistent with the institution's public purposes; and
- The duty of obedience which obliges a board member to advance the mission of the college or university consistent with its stated purpose and within the boundaries of the law.

Violations may trigger an investigation by a State's top legal officer, the Attorney General or legal proceedings may be brought against the university board. There is no direct, regular external review of boards or evaluation of their performance. Board accountability is complex.

That said, governance is reviewed as part of accreditation. Also, the university's finances are audited independently by an outside auditor, which also provides some degree of accountability for the board. Furthermore, University public accountability in some ways is akin to government agencies answering to the electorate and businesses answering to stockholders. While, university stakeholders lack direct levers of influence - they cannot vote out board members at the ballot box or use the tools of activist investors in the corporate setting. However, the faculty can vote no confidence in the board.

Finally, the press plays an important external role in board ethics serving to call public attention to potential ethical violations. It often is the court of public opinion in which boards' ethical and unethical practices are judged and may be judged most harshly.

Scope of Work

Esterman and Nokkala's four types of autonomy (2009, p. 7) provide a useful framework for understanding governing body work:

- Organizational structures and institutional governance – in particular, the ability to establish structures and governing bodies, university leadership and who is accountable to whom; the hiring. To this we can add the hiring, review, and termination of the chief executive.
- Financial issues – in particular the different forms of acquiring and allocating funding, the ability to charge tuition fees, to accumulate surplus, to borrow and raise money from different sources, the ability to own land and buildings and reporting procedures as accountability tool
- Staffing matters – in particular the capacity to recruit staff, the responsibility for terms of employment such as salaries and issues relating to employment contracts such as civil servant status
- Academic matters – in particular the capacity to define the academic profile, to introduce or terminate degree programs, to define the structure and content of degree

programs, roles and responsibilities with regard to the quality assurance of programs and degrees and the extent of control over student admissions.

Because US boards of trustees are the ultimate legally recognized authority, they have responsibility and authority across the four autonomy domains. However, some differences exist for public and private university boards. For example, most but not all public boards have the ability to set tuition for their respective campuses (Pingel, 2018). Alabama in the past six years repealed the ability of boards to set tuition (Pingel, 2018). Additionally, 14 states have policy to either cap or freeze tuition that their residents pay for higher education (Kelchen & Pingel, 2018), effectively having policy makers control a significant portion of university revenue. Private university boards are able to set tuition and fees.

Some public universities have to adhere to state procurement and capital project policies; and in a few states some, but often not all, human resources fall under public employee policies (McGuinness, 2016).

The final element is that new degree program approval might be done at the state level rather than the board level. Maryland is one such example with the Maryland Higher Education Commission, a coordinating board, approving new degree programs.

Private universities have greater autonomy than public universities across all four domains. They set tuition and budgets. They own and are responsible for property; including purchasing and selling real estate. They can take out loans and issue bonds. They create and execute their own hiring policies and determine the needed positions and the qualifications for those positions. They are responsible for the development and stewardship of the academic enterprise, but delegate most of the work and responsibility to academic and administrative staff, which in turn develop academic degree programs and determine admissions standards.

However, even private universities do not have complete autonomy. In some states, such as New York, the state coordinating board also has some limited jurisdiction over private universities. Private universities are also subject to Federal and State laws and statues as discussed above.

Both public and private university boards have the authority to hire, review, and, if necessary, terminate the university president. Most hiring processes (called searches) are conducted by a stakeholder-driven representative body, charged by the board. This body, often working with an external consultant, screens candidates and recommends often three candidates (in an unranked order) to the board for final decision. Boards make the final hiring decision. There are some notable differences. In some religiously affiliated universities, the university board makes a recommendation to the sponsoring order board for final approval (one of the traditional reserve powers). In some state systems, the system head, with input from the board may hire and review university presidents. Boards work in conjunction with the president to set performance goals and metrics. Boards review annual progress toward these goals. Boards also have the power to terminate a president for poor performance. Boards tend to also set presidential compensation, although a few states have guidelines to which boards must adhere or are strongly recommended to adhere.

The Nature of Work

Optimally the work of board in the U.S. spans three areas – oversight, problem solving and strategy (Eckel & Trower, 2019). (See Table 7). This means that boards develop multiple capacities and structure their work to address these three areas. They may not address all three areas equally, but effective boards are able to adjust their work to meet the demands placed upon them and their universities or state systems.

Table 7. Three Dimensions of Board Work

Function	Oversight/ Accountability	Problem-solving	Strategy/ Problem- finding
Mind-set	Analytic	Inquisitive	Exploratory
Sample questions boards ask	How did our actual performance compare with our budget projections? How well is our investment strategy working? Did the president have a successful year?	What is the cost of the new tuition and financial aid policy? Are we confident that students are learning? What are we doing about the academic performance of athletes?	What might X mean for our campus? What are the emerging trends in the economy to which we should respond?

The oversight work of boards looks back at past performance. How well did the institution do regarding budget or enrollment projections? How well is the investment strategy working? What have been the returns? Accountability and oversight are essential functions for boards. This work has the board looking in the rear view mirror.

Boards also work in the present, particularly related to their problem-solving role. Here they partner with management and sometimes with faculty to jointly address pressing institutional issues. That said, boards must be careful to understand when they risk crossing the line from governance to management related to problem solving. They may not actually solve the problems but offer advice and counsel and serve as a sounding board to administrators responsible for acting. For example, they may ask questions such as “What is the cost of the proposed new financial aid policy” or “What are the factors contributing to enrollment downturns?” are tied to the present, as are issues like understanding institutional responses to student protests. The present is where problems are solved and where questions surface regarding forthcoming decisions.

Finally, boards must look well into the future. This is where the strategic and generative work is done in conjunction with administrators. In this work, boards are not problem-solvers, but problem-seekers, working to find and frame issues for better understanding. This work

is essential, yet too often overlooked by boards as they focus mostly on the past and present. Asking inquisitive and curious questions about topics such as what demographic changes might mean for the university, how the economy is changing in ways to which the university might better respond, or what a new type of technology might mean for creating a competitive advantage helps focus boards on the future. This work has the board collectively looking out the windshield—over the horizon, if not around the corner.

Each point in time requires boards to adopt different mindsets or ways of thinking. The more different ways boards can think in the boardroom the better. The accountability/oversight role is, fundamentally, analytic. What are the facts and what do they suggest? How do we evaluate the evidence? The problem-solving role requires an inquisitive perspective. Questions such as “What?” and “Why?” are inquisitive. The strategy/problem-finding role asks boards to be exploratory and get at the “So what?” questions like “What sense do we make of this or that?” and “What are the potential consequences of . . . ?”

Conclusion

Governing boards of U.S. universities are complex. They are complex in their diversity, membership and structures. They are also complex in the work they do and the value they add. Not all boards are effective. In fact, many have been labeled as mediocre (Eckel & Trower, 2019). The better boards are those that continually assess and reassess their contributions, do the work necessary to be prepared and up to date on key developments, ask informed questions, and invest the time to be appropriately engaged.

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