



Anne D. Neal
President

MEMORANDUM

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DATE: July 30, 2007
FROM: Anne D. Neal, President
American Council of Trustees and Alumni
TO: Executive Committee, Dartmouth Association of Alumni
c/o Dr. Frank Gado, Second Vice President
RE: **Dartmouth's Governance and Best Practices**

Jerry L. Martin
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Richard D. Lamm
Vice Chairman

We are pleased to respond to your request for an evaluation of the Governance Review process currently underway at Dartmouth, drawing upon ACTA's expertise in best practices in this area. Over the last decade, ACTA has been involved in numerous matters concerning higher education governance at both the state and federal levels.

Most recently, ACTA spoke out in favor of good governance and best practices at a 2006 Senate Finance Committee roundtable regarding American University, whose president was found to have used massive amounts of university funds for personal reasons with little or no board oversight. AU now has a new president and, following ACTA's recommendations, he no longer serves on the governance committee, is a non-voting member of the board, and receives regular, comprehensive performance reviews by the board, which must participate in regular orientation programs. We have advocated similar governance practices before the Commission on the Future of Higher Education and in other high-profile venues.

On the basis of our review of Dartmouth's current practices, we believe both trustees and alumni should be concerned by the President's deep involvement in the Governance Review—and, more generally, in his selecting those who are responsible for reviewing his performance. The role currently afforded Dartmouth's President in governance does not comport with best practices in the non-profit or for-profit sectors, especially in the wake of Sarbanes-Oxley, and it also raises questions under Dartmouth's own conflict of interest policies.

Background

The Governance Committee of the Dartmouth Board of Trustees is currently reviewing the process by which Trustees are selected—a process in place with only minor changes since the 1890s. Currently, eight members of Dartmouth’s 18-member Board are Alumni Trustees, nominated by the Alumni Council’s Nominating and Trustee Search Committee or by petition and voted on by all Dartmouth alumni; eight are Charter Trustees, selected by the Governance Committee and ratified by the Board; and two are *ex officio* members: the President of Dartmouth and the Governor of New Hampshire. The members of the Governance Committee consist of one Charter Trustee (the Chairman of the Board), three Alumni Trustees (none of whom ran by petition) and the President.

On May 30, your Committee wrote the Board seeking assurance that “the agreement alumni have with the Board, established in 1891 and historically evolved since then, whereby alumni effectively elect half of the non-*ex-officio* members of the Board” would remain intact. While the Board has not responded formally, a “Q and A” document posted on the Dartmouth website regarding the Governance Review takes great pains to dispute the concept of “alumni parity” and argues, “If you read the [1891] resolution, you won’t even find the word or concept of parity in it. It only provided for the alumni to nominate the next five trustees for the Board to then elect.” To our knowledge, the Committee has given no indication that it has ruled out the possibility of changing the procedures so that petition candidates—who, in Dartmouth’s recent past, have been those most critical of the current administration—cannot be elected, or of eliminating alumni voting altogether.

Both Charter and Alumni Trustees are eligible to serve two consecutive four-year terms. Since 1990, the decision as to whether a Charter or Alumni Trustee will serve a second four-year term has been determined at the discretion of the Board. (Alumni Trustees had formerly faced all-alumni votes before both terms.) We understand that the Governance Committee performs an assessment of the Trustee’s performance and contribution to the Board during his or her first term, after which a confidential evaluation process results in a recommendation by the Governance Committee to the entire Board for action.

Discussion

The President’s involvement in a governance committee is not uncommon at private colleges. Princeton, Cornell, Caltech, MIT, the University of Chicago, Johns Hopkins, and Vanderbilt all permit the president to serve on committees that oversee the selection of trustees. However, such involvement is at odds with the governance practices of public universities, which generally do not have presidents serving as voting board members. It also does not comport well with Dartmouth’s own policies, or with best practices in both the corporate world and the non-profit sector writ large.

First, the President’s service on the Governance Committee would appear to violate Dartmouth’s existing standards regarding conflicts of interest and ethics. Those policies

make clear that “[i]f an individual’s personal interests might lead an independent observer reasonably to question whether the individual’s actions or decisions on behalf of the College are influenced by those personal interests, the individual should recuse himself or herself from the decision making process.” The President has a clear professional and personal interest in the manner by which Trustees are selected since they are the ones who ultimately hire, fire and evaluate him. A memorandum outlining existing ethics standards is attached.

Relevant guidelines and best practices—in both the corporate and nonprofit worlds—would lead to the same conclusion. In the corporate world, CEOs are usually barred from being on governance committees. In fact, the New York Stock Exchange requires that companies traded on its floor “have a nominating/corporate governance committee composed entirely of independent directors” so the president is not nominating and selecting directors who will end up evaluating him. NASDAQ likewise mandates that directors are nominated by either “a majority of the independent directors” or “a nominations committee comprised solely of independent directors.” These requirements, adopted in the wake of Sarbanes-Oxley, ensure more ethical governance.

Although Sarbanes-Oxley only applies to publicly-traded companies, its implications for nonprofits and higher education institutions are evident. In 2005—at the urging of the Senate Finance Committee—Independent Sector, a coalition of leading nonprofits and foundations, released a report recommending best practices for nonprofit organizations. The report advocated for strong governance, audit, conflict of interest, travel, and whistleblower policies. According to the report, “[f]ailures by boards of directors in fulfilling their fiduciary responsibilities may arise when a board leaves governing responsibility to a small number of people, some of whom may have conflicts of interest that mar their judgment.”

A just-released study by the Urban Institute on nonprofit governance, *Nonprofit Governance in the United States*, found that “having the CEO/executive director serve as a voting board member was negatively related to board activity level in financial oversight, setting policy, community relations, and trying to influence public policy, and [not] positively related to [any roles].” Similarly, an independent panel (including former Harvard president Derek Bok) advising the Nature Conservancy after adverse publicity regarding governance practices, recommended that the president/CEO not serve on the governance or any other committee. The Conservancy adopted the recommendation and its website notes that major strategic issues are now managed not by committees but by the full board.

Finally, the problems inherent in Dartmouth’s Governance Committee, as currently composed, do not simply affect the current Governance Review. They relate to the entire process of Trustee selection, given that (as discussed above) the Governance Committee is largely responsible for choosing all Charter Trustees and determining which Trustees serve a second term.

As noted, the President sits on the Governance Committee, and there is no evidence that he is anything other than a full participant in its votes, and those of the full Board, on the selection of Trustees. This process turns good governance on its head: Rather than the President owing his continued employment to the Trustees, they owe their continued service in large part to his vote. Such a practice is certain to affect the independence of Board members and to interfere with the performance of their duties.

Conclusion

The stated purpose of the Dartmouth Governance Review is to examine best practices in the field. However, the Dartmouth governance structure—and, particularly, the conduct of the review itself—would appear to constitute a case study in “worst practices.”

According to best practices, the President’s prominent role in the governance review process would be unacceptable at major corporations in America and most public universities. Moreover, the President’s substantial involvement in the Committee appears to be in clear violation of Dartmouth’s own conflict of interest policies.

The direction of the current Governance Committee “study” raises serious concerns. Already exerting *de facto* control over the appointment of Charter Trustees and the reappointment of all Trustees to a second term, the Governance Committee may now be considering eliminating the one source of independent oversight of the Board: the longstanding ability of the alumni to vote on half its membership. And far from being disinterested, the Governance Review is being sustained by the one person who stands to gain the most—the President—who will potentially hold the power to pick and choose every Trustee to whom he ostensibly reports.

Far from modeling best practices, Dartmouth’s possible interest in creating a self-perpetuating board runs counter to growing federal and regulatory calls for transparency and independence—not to mention the desires of the thousands of alumni who have voted for independent oversight in the last four elections.

Rather than focusing on how to select Trustees, the Board should initiate an extended and honest examination of its own governance practices. The following reforms would be in order—and can be undertaken, since Dartmouth recently gained the ability to amend its Charter without the permission of New Hampshire’s legislature:

- Removal of the President from the Governance Committee;
- Changing the President’s role on the Board to that of a non-voting member, as is the case at American University; and
- Issuance of a public statement that the historic role of alumni in selecting the Board will be preserved.

We note that many other non-profit organizations—including American University but also the American Red Cross and the Smithsonian Institution—have made headlines in recent years due to poor governance practices. Dartmouth’s current governance model regrettably bears more resemblance to these cases than to the best practices to which it claims to aspire. Persisting in maintaining such a flawed governance structure will invite scrutiny and criticism of the board and risk doing damage to Dartmouth’s reputation.