The Freeh Report – A Tick-Box Chart

Governance Lessons For Nonprofit Organizations

Introduction

The Freeh Report was issued in July 2012. Although the report was a response to tragic events at a single university, its underlying investigation was questioned, and the merits of the report itself were debated, it does provide an opportunity for boards of directors to step back from strategic, operating and administrative matters to look at *how* it carries out its fiduciary and oversight responsibilities.

Background

The 144 pages (not including endnotes, appendices and exhibits) contain 120 recommendations in eight areas. Chapter six of the report is directed to boards of trustees and criticizes the board for weaknesses in leadership and culture, lack of compliance processes, inattention to governance protocols and a general failure to exercise its oversight responsibilities. Chapter 10 lists recommendations; section 10.3 is devoted to the board of trustees and identifies 21 specific suggestions. Universities, and other organizations that have relationships with minor children, should review all 120 recommendations and the board of trustees should require that management prepare a report and present the findings at a board of trustees meeting. The Freeh Report is available at www.thefreehreportonpsu.com.

What organizations might learn about board governance

Boards have a duty of care, duty of loyalty and duty of good faith. This GSG reference tool, using the recommendations in the Freeh report as a guide, will help trustees more effectively carry-out their fiduciary responsibilities. The Freeh Report highlighted many issues and particularly criticized the board of trustees when it wrote, "the Board of Trustees failed to exercise its oversight and reasonable inquiry responsibilities." It went on to say, "The Board did not create a "Tone at the Top" environment wherein … officials believed they were accountable to it." Asking thoughtful questions (and requiring useful answers) is a key demonstrator of board effectiveness. Courts (and the media) hold boards accountable for having asked reasonable questions to verify the reliability of management reports and the competence of managers.

Trustees of universities and other nonprofit organizations generally accept the nonpaid position because they care about the institution and its mission, and they want to "give back." However, honorable intentions do not exempt a board from liability or excuse them from good governance practices. Trustees intuitively understand their work is about long-term value creation, but sometimes get too busy "rowing," and don't spend enough time "steering the boat." It is easy to get caught up in a single operating or fundraising issue, and to spend too much time on administrative tasks. But the true value of a board of trustees, not unlike a public company board of directors, is in the governing – the "steering," and the counsel given to management. All boards can get better at getting better.

Application: use of the tick-box chart

The following tick-box chart references key ideas from the Freeh Report's recommendations to the board of trustees and adds "best practice" commentary. Boards can use the chart as a self-audit of its governance practices. For every check in the "No" column, ask why the practice isn't, and whether or not it should be, a standard best practice at your organization. There is not a single right governance model, but boards should understand the principles behind both regulations and the best practices of others so that it can build the right governance framework for its organization. The questions will not cover every governance "best practice," but will provide a framework for knowing where to focus more board attention, and for ensuring your institution has sound policies that are documented and enforced.

Takeaway

✓ **Ask trustees to answer the questions individually.**

✓ **Is there agreement among board members?**

✓ **List the subject matter of "no" answers.**

✓ **Add these topics to the board's next agenda.**

✓ **Discuss the topics and decide the right practice for your organization.**

The Governance Solutions Group serves boards of directors by facilitating the annual board and committee assessments, helping board members to better understand their fiduciary responsibilities, mentoring new directors, and CEOs new to boardroom protocols, developing orientation and education plans and sharing practical guidance to help directors establish key governance processes.

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The Freeh Report – A Tick-Box Governance Education Reference Chart

GSG	Freeh Report Reference	Report Recommendation	GSG Comment and Question	YES	NO	User's Comments
1	3.1	Review board structure, composition, eligibility requirements, term limits, independence. Consult with stakeholders, education and governance experts.	Every board should periodically review its board structure, make-up, skills matrix & board succession plan. Nonprofit board size is an easy target for many organizations. *Within the past year, the board has examined board size and structure.*			
2	3.2	Adopt an ethics and conflict of interest policy for the board. Include guidelines for conflict management.	An ethical culture starts with the board. *The board recently affirmed its adherence to the ethics policy and completed a conflict of interest survey.*			
3	3.2.1	Board orientation should include training on: (a) ethics; (b) oversight responsibilities in a regulatory environment.	New director orientations help trustees get "up-to-speed" and introduce the organization's business, culture and governance processes. *We have a formal orientation protocol.*			
4	3.2.2	Require the board to disclose financial relationships with the university between themselves & their businesses.	Intercompany relationships should be minimal and always disclosed. *We proactively address potential conflict of interest situations.*			

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5	3.3	Implement BOT recommended revised committee structure which includes a committee on Risk, Compliance, Legal and Audit; and subcommittees on Audit-Legal and Human Resources.	Periodically examine committee structure, including the executive comm. Minimum: audit-risk, comp-development and nominating-governance. Each should have updated charters. Consider the authority vested in the exec committee. *We have the right committees and the charters are clear.*			
6	3.3.1	Rotate committee chairs every five years, or sooner.	*Our board periodically rotates committee chairs.*			
7	3.4	Increase and improve communications between the board and administrators.	The mgt team should be comfortable with the BOT. Two-way communication helps clarify lines of authority. *Mgt talks with, and is comfortable w/BOT.*			
8	3.4.1	Ensure the BOT is thoroughly briefed at each meeting on significant issues facing the university.	Directors should be fully informed and must ask relevant questions. *Directors constructively challenge mgt about significant issues.*			
9	3.4.2	Require risk mgt, compliance and internal audit reports to the BOT. Include risk assessment, pndg investigations, compliance with federal & state regs – and mitigation efforts.	Organizations must embrace an active enterprise risk mgt program and determine a protocol for regular reporting. *The board receives ERM reports at each meeting incldg risk assessment, mitigation efforts and C&E updates.*			

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10	3.4.3	Require regular reports on potential problem areas - unusual or significant severance, faculty and staff appointments, gov inquiries, litigation and whistleblower complaints.	Boards should be informed of any unusual recurring or material matters. *The board has created an environment where senior officials understand they are accountable to the board and reporting on material risks is not "optional."*			
11	3.4.4	Use the board's executive sessions to make relevant inquiries into substantive matters.	Board meetings often end with two exec sessions. First, mgt leaves, and then the president. *Our board has two exec sessions, before or after, each meeting.*			
12	3.4.5	Annually, review the university's Form 990, Clery Act reports, and the compensation and performance of senior executives.	Whether it's the 990, or other significant filings, the board should be knowledgeable about the how & why of the contents. *Directors have the opportunity to ask questions before filings.*			
13	3.4.6	Conduct an informational seminar for the board on the Clery Act compliance and reporting procedures.	Trustees should be aware of industry specific compliance and reporting issues (particularly if serving youth). *The board is knowledgeable about unique industry issues.*			
14	3.4.7	Provide the BOT w/regular reports of local, nat'l and media coverage of the university.	An important board responsibility is to stay informed. *Our board receives press clips & other updates.*			

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15	3.5	Increase and improve the channels of communication between the board and the university community.	It is important that the president not be the sole information source for the BOT. *Directors receive unfiltered organization perspectives.*			
16	3.5.1	Establish and enforce rules regarding public and press statements made by the BOT regarding confidential university matters.	Directors often deal with confidential and private matters. Point-of-contact and protocols should be established. *During board discussions, confidential matters are always identified and there is a protocol reminder.*			
17	3.5.2	Increase and publicize ways in which individuals can convey messages and concerns to the board.	There should be a procedure for board receipt of stakeholder comments. *In the past year, the board has received verbatim stakeholder comments.*			
18	3.5.2.1	Provide board members individual university email addresses and make the addresses known to the public.	This was one of the most controversial comments in the Freeh Report. *Stakeholders know how to get unfiltered commentary to the board.*			
19	3.5.2.2	Use social media communications tools to communicate with the public on various board matters.	Boards should ask how the organization uses social media and how effectiveness is measured. *Use of social media was a recent board agenda item.*			

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20	3.6	Develop a critical incident management plan, including training and exercises, for the board and university administrators.	Every organization should have a crisis management plan that is periodically reviewed. *The board reviewed the organization's crisis management plan in the past year.*			
21	3.7	Conduct and publicize periodic internal and external self assessments of board performance.	The board evaluation can be a "pause" button that enables boards to take stock, check reference points and adjust its governance framework as necessary. Vary the tools. Discuss the analysis. Record board goals. *The board periodically reviews its performance and its board objectives.*			
22	N/A		*Most corporate boards are mandated to "check" the board evaluation box. For other organizations it is a widely accepted "best practice."* *The best board evaluations are those done in a meaningful way and are unique to the individual organization. Make your next board evaluation a "deep dive" that reviews the board's governance practices, increases board effectiveness and the success of your organization.*			
Total No ✔						

Source: GSG:The Governance Solutions Group