

WILLIAM & MARY Board of Visitors

JULY 2022 ANNUAL RETREAT BOARD BOOK

JULY 26-28, 2022 | DC BAR BUILDING – WASHINGTON, DC

WILLIAM & MARY

BOARD OF VISITORS
ANNUAL RETREAT
JULY 26-28, 2022

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¹ Higher Education Governing Boards: An Introductory Guide for Members of College, University, and System Boards (pgs. 31-37)



WILLIAM & MARY

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2022 BOARD OF VISITORS RETREAT
JULY 26-28, 2022
WASHINGTON, D.C.
WILLIAM & MARY WASHINGTON CENTER

TUESDAY, JULY 26

6:30 – 8:00 p.m.

New Member Dinner

Rasika West End
1190 New Hampshire Ave, NW

WEDNESDAY, JULY 27

9:30 - 10:30 a.m.

Welcome and Retreat Overview

Charles E. Poston
Barbara L. Johnson

10:30 - 10:45 a.m.

Introduction to the Washington Center

Erin Battle

10:45 - 11:45 a.m.

Session I: Board Fiduciary Roles

Charles E. Poston
Cynthia E. Hudson

11:45 a.m.

Break

Noon – 1:00 p.m.

Working Lunch, Vision 2026

Katherine A. Rowe

1:00 – 1:15 p.m.

Break

1:15 – 2:30 p.m.

Session II: W&M Fundamentals

Katherine A. Rowe
Amy S. Sebring
Jeremy P. Martin

2:30 – 3:30 p.m.

Session III: W&M Academic Landscape

Katherine A. Rowe
Peggy Agouris

3:30 - 3:45 p.m.

Break

3:45 - 4:45 p.m.

Session IV: VIMS

D. Derek Aday
Amy S. Sebring

5:45 p.m.

Reception

Private Residence
640 Q Street, NW

7:00 p.m.

Dinner

Dacha Loft
1600 7th Street, NW

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JULY 26-28, 2022

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THURSDAY, JULY 28

DC Bar Building

9:00 - 10:15 a.m.

Session V: RBC 2025, Enrollment, Finances,
Diversity, and Athletics

Debbie L. Sydow
Kim Boyd
Jeffery Brown
Mark Jacobson

10:15 a.m.

Break

10:30 a.m. - 12:15 p.m.

Closed Session

12:15 p.m.

Break

12:30 – 2:00 p.m.

Working Lunch, Board Member Training

Ardine Williams
Carrie S. Nee
Ramona Taylor



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VISION 2026

TOOLKIT

For the sake of what ...

Our nation — our world — is at a crossroads. At a time when trust in institutions is wavering, technological change is accelerating and great challenges are becoming more urgent, William & Mary is ideally positioned to be a solution-seeking, knowledge-advancing, world-transforming innovator, convener and leader.

The issues facing humankind, from deepening ideological divides to climate change and global conflicts, are both extraordinary and daunting.

Today is a moment for all of us to act swiftly and with purpose. William & Mary's new strategic plan, Vision 2026, will enable us to do just that.

William & Mary has led in powerful ways during the most challenging times. The key to that success has been understanding the moment that we are in while seeing the possibilities ahead. At this juncture, W&M has particular power to unite our community and to prepare tomorrow's leaders to think boldly and act humanely, to defy perceived limits and to advance the ideals that will profoundly impact our future.

Building on our success will require a collective execution of vision, risk-taking, critical thinking and creative collaboration. It will require us to do what we have done for centuries: convene great minds and hearts to meet the most pressing needs of our time.

After all, our people are our greatest asset, and it is our people who will enable William & Mary to be an engine of ingenuity, a source of great pride and a beacon of hope for all times coming.

Education is the bedrock of our nation — of our society as a whole. A William & Mary education is key to a brighter, more inclusive and prosperous tomorrow.

Goals

Our strategic framework rests on the following goals:



- **Expand William & Mary's Reach**, in which the university will:
 - » Address global challenges, forge dynamic partnerships to fuel positive change and model democratic ideals to extend its influence in the world.



- **Educate for Impact**, in which the university will:
 - » Reimagine the liberal arts and professional education in the 21st century to ensure the lifelong success of our graduates.

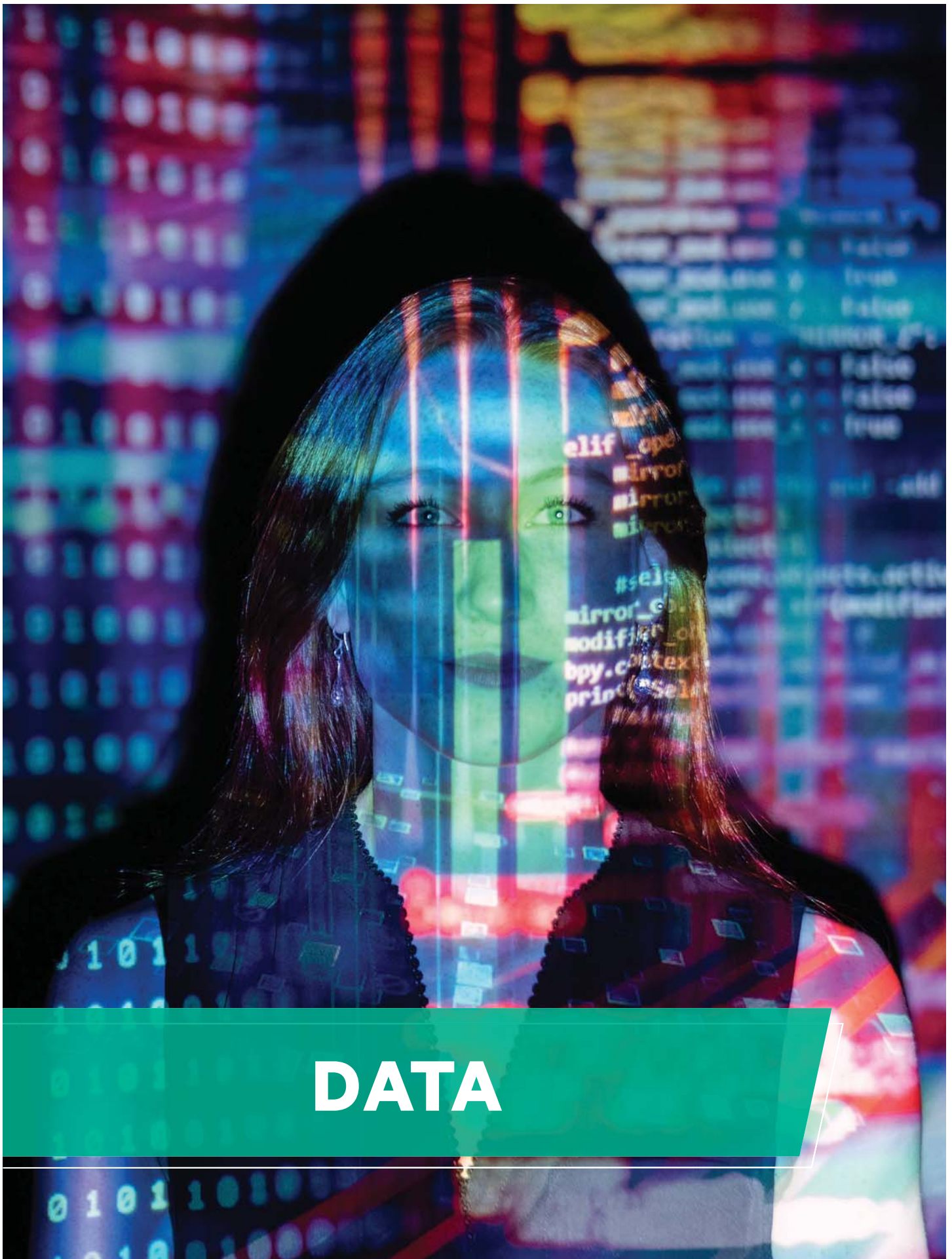


- **Evolve to Excel**, in which the university will:
 - » Embrace change to achieve our full potential in environmental and financial sustainability; in diversity, equity and inclusion; and in operational excellence.

Initiatives

In the next five years, we will build on our strengths and focus efforts on four cornerstone initiatives — that are pan-university and transcend all of the goals — of significant national and global impact:

Data | Water | Democracy | Careers



DATA

DATA

A recent report examined the technologies transforming the world and considered to be major factors in the Fourth Industrial Revolution.



“Overall, the internet of things — which connects the digital and physical worlds by collecting, measuring and analyzing data to predict and automate business processes — is viewed as the technology expected to have the most profound impact on organizations. Artificial intelligence technologies — which perform and/or augment tasks that have traditionally required human intelligence — and cloud were close behind, followed by big data/analytics. It’s perhaps no surprise that these ‘big four’ technologies were the top technologies selected. These bedrock technologies all work together to connect organizations, generate data and drive more intelligent operations.”

- Deloitte Report on the Fourth Industrial Revolution

William & Mary will lead the evolution of the liberal arts and sciences by integrating computational thinking and data fluency into a bold and dynamic learning experience that advances inquiry, discovery and innovation.

CHALLENGE:

- Approximately 85 million jobs will be displaced by 2025, and 97 million new jobs will be created. The top growing jobs will be data analysts and scientists, artificial intelligence, machine learning and big data specialists, according to the World Economic Forum’s Future of Jobs Report.
- Nine out of 10 jobs will require digital skills, according to the World Economic Forum.
- Eighty-nine percent of companies say that building data fluency is a priority for their business, according to a DataCamp survey.
- Experts are forecasting a tenfold increase in worldwide data by 2025, and data is now regularly discussed as the driver of the Fourth Industrial Revolution and referred to by some as the second language of business, according to the Pew Research Center.
- More than 1 billion jobs, a third of all global jobs, will be transformed by technology over the next 10 years, according to the Organisation for Economic Cooperation and Development. This will require 1 billion people to retrain and reskill by 2030.
- G20 countries could be putting \$11.5 trillion of potential GDP growth at risk over the next decade if the skills demand is not met, according to Accenture.

OPPORTUNITY:

For centuries, William & Mary has trained critical thinkers to tackle complex challenges of broad social relevance. As the world becomes increasingly immersed in data, and to ensure our graduates will thrive in data-rich environments, the university is advancing its distinctive excellence — as befits a well-rounded education — by accelerating the integration of data and computational sciences across fields. William & Mary graduates will be distinguished by the ways they combine quantitative and qualitative expertise with human understanding, enabling them to design innovative solutions to the pressing complex challenges facing society.

VISION 2026 WILL ENABLE WILLIAM & MARY TO ...

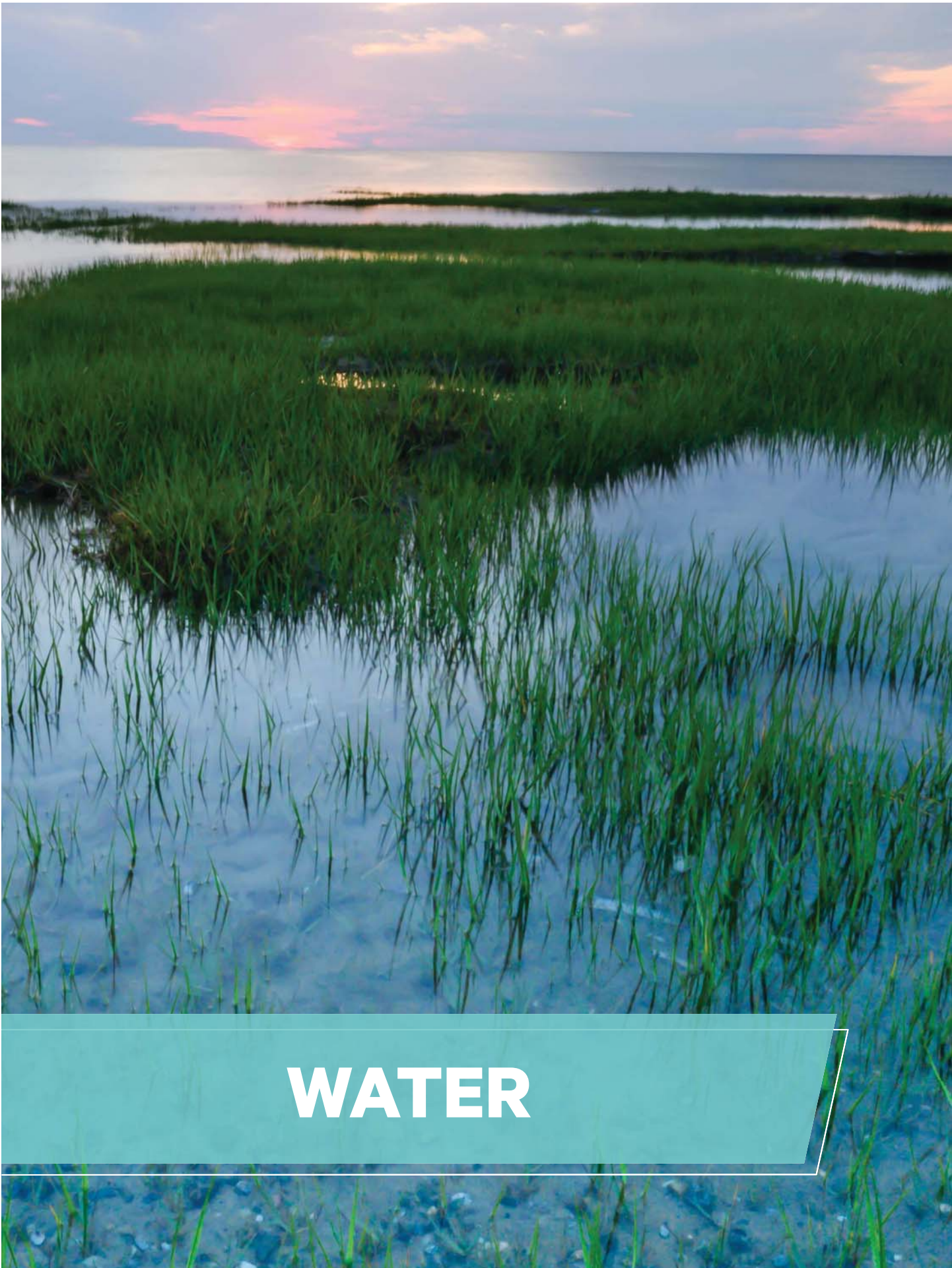
- Prepare our students to lead in a data-rich world.
- Become a thought leader at the intersection of computational and data sciences and the multitude of disciplines that study human societies, culture and experiences, including the humanities, social sciences, arts, education, law and business.
- Develop a research portfolio that builds upon the emerging confluence between data analysis and a broad range of liberal arts and sciences to advance discovery and innovative design.
- Foster an entrepreneurial mindset, priming our campus and region for data science innovations through stronger connections with commonwealth, federal and corporate partners.

WHY IT MATTERS:

Understanding data, when blended with core communication and analytical skills, spurs curiosity. Curiosity stimulates inquiry and drives problem solving, which helps cultivate an understanding of data-related outcomes and naturally leads learners to draw more complete conclusions, according to experts. Students who are immersed in data and have data fluency will be better prepared for a rapidly evolving workforce today and the future.

PRIDE POINTS:

- W&M graduates more students, per capita, with computer science degrees than most leading universities in Virginia.
- Data collection, synthesis and application to real-world issues are hallmarks of a William & Mary experience. For example:
 - » AidData, a research lab housed in W&M's Global Research Institute, recently issued a report detailing how China's spending patterns, debt levels and project implementation problems have changed over time. The project was a four-year effort by a team of faculty, analysts and more than 130 student research assistants who helped compile a massive granular dataset that captures 13,427 projects across 165 countries worth \$843 billion.
 - » William & Mary's Center for Geospatial Analysis focuses on analyzing data and mapping the results. In the past five years, students in the geoLab have partnered with NASA, the National Geospatial-Intelligence Agency and the Bill & Melinda Gates Foundation and have landed jobs at Intel Corp., Google, Capital One Financial Corp., Booz Allen Hamilton Inc. and Deloitte.
 - » The U.S. Environmental Protection Agency has chosen a computer model developed by researchers at William & Mary's Virginia Institute of Marine Science as its next-generation tool for managing Chesapeake Bay restoration in an era of rapid climate change. According to a VIMS faculty member, "We take data from the sensors and feed the information into our model, but we also use the sensors to validate the accuracy of our model after major storm surge events."



WATER

WATER



Global change “is causing alterations in ocean chemistry and many oceanic processes, and it is threatening many species of marine animals that cannot cope with higher temperatures. Overfishing is a serious problem in many parts of the world. ... Many pesticides and nutrients used in agriculture end up in the coastal waters, resulting in oxygen depletion that kills marine plants and shellfish. Factories and industrial plants discharge sewage and other runoff into the oceans. Invasive species such as poisonous algae, cholera, and countless plants and animals have entered harbor waters and disrupted the ecological balance.”

– National Geographic

William & Mary will lead in finding innovative solutions to ensure the resilience of the world’s oceans, coasts and waterways.

CHALLENGE:

- Around 74% of natural disasters between 2001 and 2018 were water-related, including droughts and floods. The frequency and intensity of such events are only expected to increase with climate change, according to UNICEF.
- Today in Virginia’s Hampton Roads region, water levels are a foot and a half higher than they were a century ago. They are expected to rise another 5 feet by the year 2100, while the land sinks as much as 7.5 inches, according to William & Mary’s School of Marine Science.
- More than one-third of the shellfish-growing waters of the United States are adversely affected by coastal pollution, according to the National Oceanic and Atmospheric Administration.
- Water is the primary medium through which we will feel the effects of climate change, according to UN-Water.

OPPORTUNITY:

Over the next 50 years, one of the world's most threatened and valuable resources will be water. Solving grand global issues related to water will require innovative approaches to conservation and strategies to increase resilience. Virginia's coastal systems — from the Chesapeake Bay and its tributaries and watershed to the outer coast — are vital to the commonwealth's ecological and economic future, yet they will face greater stress from rising temperature, increasing sea level, drought and storm-induced flooding over the next half century. As home to one of the world's preeminent marine science institutes — and outstanding conservation, law, policy and education programs — William & Mary is poised to be a leader in the development of solutions to these complex challenges. Our students will lead the next generation of scientists and industry professionals who steward the world's water resources.

VISION 2026 WILL ENABLE WILLIAM & MARY TO ...

- Lead the innovation of adaptation and conservation strategies and solutions that will enhance coastal Virginia's resilience — and the communities, economies and environments that rely on them — via research and analysis, education, advisory service and collaborative implementation efforts.
- Support and strengthen connections among W&M research, education, advisory service, external partnerships and community engagement to foster success and extend W&M's global impact.
- Enhance existing academic programs, develop new undergraduate programs and certificates, and grow enrollments in marine, conservation and environmental sciences.
- Develop a signature public science center and curriculum to create opportunities for current students and the next generation of global professionals and scientists.

WHY IT MATTERS:

William & Mary's Virginia Institute of Marine Science's mantra is Science for the Bay, Impact for the World. Professors, fellows and students embrace this mantra, collaborate across disciplines and with other schools and programs, including W&M Law School's Virginia Coastal Policy Center and the Institute for Integrative Conservation (IIC), to advance data and research and develop practical solutions for our waters, communities and economy. Not only are they taking the skills they learn while at W&M and applying them to help solve local, national and global water threats, they are also gaining experiences that reinforce the importance of taking risks, navigating ambiguity and nurturing curiosity that spurs disruption.

PRIDE POINTS:

- William & Mary's Virginia Institute of Marine Science (VIMS) is ranked among top institutions in the U.S. in the list of best schools with marine science degrees in America.
- W&M has one of the largest marine science centers in the U.S. and partners with top international, business and government organizations on their research endeavors.
- The Virginia Coastal Policy Center (VCPC) at William & Mary Law School provides science-based legal and policy analysis of ecological issues affecting the state's coastal resources, providing education and advice to a host of Virginia's decision-makers, from government officials and legal scholars to nonprofit and business leaders.
- W&M's IIC is at the forefront of transformational research and education to solve some of the most critical conservation issues our planet faces today and collaborates with top environmental organizations worldwide.



DEMOCRACY

DEMOCRACY



“In the urgent endeavors that lie before us, I have no doubt that the graduates and scholars of William & Mary have a special role, and a special obligation, to be part of solutions. It will require not only inclusivity, but mutual respect, open minds, the conviction that every person has intrinsic value, and as King William and Queen Mary declared so long ago, that each person is well-beloved.”

– Chancellor Robert M. Gates '65, L.H.D. '98

William & Mary will lead essential efforts to practice and promote democratic ideals in the pursuit of a more perfect union.

CHALLENGE:

- Sixty-four percent of people in the U.S. lack the ability to have constructive and civil debates about issues they disagree on, according to Edelman's 2022 Trust Barometer report.
- Sixty-nine percent of people trust our education institutions — up 3% from last year, according to the Edelman report.
- Trust in the government and media is at an all-time low. Concerns about fake news are at an all-time high. A deeply polarized U.S. does not believe that institutions are addressing existential challenges, according to the report.
- Sixty-four percent of Americans believe U.S. democracy is “in crisis and at risk of failing,” according to an NPR/Ipsos poll.

OPPORTUNITY:

At a time when our country is deeply divided, we have the opportunity to rediscover the ideals that make pluralistic democracies strong. W&M has played a pivotal role in shaping democracy since the founding of the United States. As we prepare for our country's 250th anniversary, W&M will ensure that our nation's origin stories are expansive, honest and unite us in a commitment to knowledge as a public good. By studying, teaching and illuminating the rights and obligations of 21st-century citizenship, the Alma Mater of the Nation is uniquely positioned to ensure that democratic ideals thrive for generations to come.

VISION 2026 WILL ENABLE WILLIAM & MARY TO ...

- Elevate W&M's voice in local, national and global conversations to uphold the democratic ideals and institutions in the 21st century.
- Generate and disseminate research that fosters reconciliation, produce inclusive histories, and models ways to engage local communities in this endeavor.
- Strengthen W&M academic offerings through better integration of civics education, American history, and worldwide democracy in the student experience, thereby attracting new and more diverse cohorts of students.
- Partner with Indigenous and Black descendant communities, and our entire W&M community, to create a model for a more inclusive and just society.

WHY IT MATTERS:

For centuries, William & Mary has cultivated a community of active and responsible citizens who do remarkable things for the common good. In pursuit of leading lives of purpose and profound impact, students and faculty, often in collaboration with public, private and academic partners on and off campus, convene to meet the greatest needs of our time. These powerful interactions and partnerships help us acknowledge, study and reconcile with our past to deepen understanding, broaden our diverse, inclusive and vibrant community and ensure our nation can flourish.

PRIDE POINTS:

- William & Mary's graduate program in U.S. Colonial history is the best in the country, according to U.S. News & World Report.
- William & Mary is located in Williamsburg, Virginia — the birthplace of our nation — and has close partnerships with Colonial Williamsburg and the Jamestown-Yorktown Foundation.
- The university has a robust presence in the nation's capital, with its Washington Center only a few blocks away from the U.S. Capitol. Students who learn there develop leadership skills and an astute understanding of the legislative, executive and judicial workings and history of our nation.
- William & Mary's partnership with the Colonial Williamsburg Foundation on the Williamsburg Bray School Project is uncovering a trove of African American history centered in education, faith, and striving for liberation. The partners will preserve, relocate, research and restore what is believed to be the only remaining Colonial-era building in the nation dedicated to the education of Black children. According to State Senator Monty Mason '89, this unique discovery "will position Williamsburg as a model for broadening and deepening nation-wide dialogue around the origins of our democracy, leading up to the 250th anniversary of our nation's founding in 2026."
- William & Mary educated key figures pivotal to the development of the United States, including the first president of the Continental Congress Peyton Randolph, the fourth U.S. Supreme Court Chief Justice John Marshall, four U.S. presidents, 16 members of the Continental Congress, four signers of the Declaration of Independence, among others. Many of our alumni today are serving at the local, state and federal levels.
- W&M is No. 1 for best schools making an impact and No. 7 for most engaged in community service, according to Princeton Review.



CAREERS

CAREERS



“W&M aspires to serve as every student’s and alumnus’ lifelong career partner. Along with guaranteeing funded internships as a core component of a W&M education, we will help students find their first job after graduation as well as their third, fifth and seventh jobs. We will mobilize our network of 100,000+ alumni to provide meaningful career pathways, and in turn graduates will pay it forward by helping the next generation. In the next five years and beyond, W&M will be known as the university that brings together an exceptional education with extraordinary experiential learning and provides connections that will support alumni throughout their professional lives.”

– President Katherine Rowe

William & Mary will lead in the preparation of lifelong learners equipped to navigate rapid change and thrive from their first job to their last.

CHALLENGE:

- More than one-third of internships are unpaid, making it difficult for students to afford accepting an internship opportunity if they don’t have the financial means to do so.
- Competition is very fierce to gain an internship experience, while research shows that nearly 60% of students who interned while pursuing a degree turned that experience into a full-time hire with the company.
- Women and minorities are overrepresented among unpaid interns and underrepresented among paid interns, according to data collected by NACE.
 - » Women account for 81% of unpaid internships and 68% of paid internships.
 - » Black students are more likely to be unpaid interns.
 - » Hispanic American students are more likely to never have an internship than an unpaid or paid internship.
 - » Multiracial Americans are more likely to be unpaid.

OPPORTUNITY:

At a moment when work is transforming at extraordinary speed in every profession and industry, employees who can learn continually, think critically and adapt quickly are powerful assets. W&M will provide the best preparation for principled success. The fluent integration of work and learning that will last a lifetime must begin in college — and it will be the hallmark of a W&M education. This evolution of the liberal arts to include internships and other work-integrated experiences will span every discipline. Building on distinctive excellence in research, athletics and study abroad, along with a strong global network, W&M is well positioned to deliver on this promise. W&M will be known as the university that brings together an exceptional education with extraordinary experiential learning and that provides connections to support alumni throughout their professional lives.

VISION 2026 WILL ENABLE WILLIAM & MARY TO ...

- Lead the nation's selective liberal arts & sciences institutions in applied learning opportunities for every student.
- Cultivate and retain exceptional talent for our commonwealth and nation.
- Mobilize W&M's worldwide network of alumni, employer and parent partners to broaden learning experiences and career pathways for graduates and support a lifetime of professional success.
- Create innovative curricular pathways to credentials in high demand skills and fields, such as summer "jump-start" minors.
- Guarantee a funded internship opportunity or other applied learning experience for every undergraduate.

WHY IT MATTERS:

High quality experiential learning opportunities — including internships — that allow students to develop as professionals and leaders in their fields are integral to the academic experience. They serve to cultivate cognitive capacities, refine human competencies, synthesize lessons learned and enhance communications skills. They promote mastery and holistic integration of skills that are necessary to navigate our rapidly changing world. Students need more partners to invest in their future and afford them opportunities that encourage them to take risks, persevere through failure and be resilient in the face of adversity.

PRIDE POINTS:

- William & Mary is ranked No. 1 in the U.S. for internships, according to Princeton Review, and has a strong alumni network that provides mentoring, career development and experiential learning opportunities during college and after graduation.
- Eighty-three percent of W&M's Class of 2020 reported positive career outcomes — employed or attending graduate/professional school — within six months of graduation. Knowledge rate for the Class of 2020 is 79% compared to the national average, which is 65%.
- Ninety-four percent of those who are employed reported their career interests align very well/somewhat well with their work.
- W&M is ranked No. 7 among public universities with the highest 40-year return on investments for low-income students.
- More than 80% of undergraduates have participated in mentored research with faculty.
- William & Mary is the No. 4 public university for study abroad. Nearly 60% of all undergraduates study abroad in their W&M careers.
- Our graduating classes are hired, on average, by 300 to 400 different organizations annually.

Please visit wm.edu/vision2026 for more information about Vision 2026.

What are the fiduciary responsibilities of board members?

Members of the governing boards of colleges and universities hold a unique position with regard to stewardship of the institutions they serve, a position not shared with students, faculty, alumni, donors, regulators, or others in the community. Governing board members are fiduciaries.

The concept and practice of being a fiduciary cannot and should not be reduced to a legal principle with no real-world impact on a board member's behavior. Fiduciary principles and duties are at the heart of good governance. The fiduciary duties described here may seem, at first glance, to be a matter of common sense. What could be more essential for a board member than to act with good faith and care, with loyalty to the institution, and in compliance with its mission and the law? And yet, behind nearly every failure of governance and leadership at higher education institutions is a breach of the principles of fiduciary duty.

Upon whom do fiduciary responsibilities fall?

Fiduciary duties are defined in law as the personal responsibilities of board members.

While governing boards act as a body, the fiduciary duties applied by law and best practice fall on individual board members. Each has a personal responsibility to ensure that he or she is up to the task and fulfilling his or her obligations. Board members must be more than names on a masthead. They must be fully engaged. They must attend meetings, read and evaluate the materials, ask questions and get answers, honor confidentiality, avoid conflicts of interest, demonstrate loyalty, understand and uphold mission, and ensure legal and ethical compliance. Those who cannot do so must step down and allow others to take their place. The success and sustainability of the institution and the protection of board members from personal liability require nothing less.

What is a fiduciary?

A fiduciary is a person who has special duties of care, loyalty, and obedience in connection with the administration, investment, monitoring, and distribution of property.

Under state statutory and common law, officers and board members of corporations—including nonprofit corporations and public bodies that operate colleges and universities—are fiduciaries and must act in accordance with the fiduciary duties of care, loyalty, and obedience. Legally, a fiduciary relationship is one of trust or confidence between parties. A fiduciary is someone who has special responsibilities in connection with the administration, investment, monitoring, and distribution of property—in this case, the charitable or public assets of the institution. These assets include not just the buildings and grounds and endowment, but also intangibles, such as the reputation of the institution and its role in the community. A college or university board member or officer has duties to the institution under the law that a faculty member, a student, or an administrator does not.

What duties are owed by a fiduciary?

The particular duties owed by a fiduciary to the institution he or she serves are commonly known, as described above, as the fiduciary duties of care, loyalty, and obedience. Taken together, they require board members to make careful, good-faith decisions in the best interest of the institution consistent with its public or charitable mission, independent of undue influence from any party or from financial interests. These duties may be described in and imposed by a college or university's bylaws, governing board policies, standards of conduct, or code of ethics. In the case of a public institution, state law may describe or

[Answer continues...](#)

apply these standards of conduct differently (for example, under particular rules applicable to regents or public bodies). However, adherence to these principles remains a key governance best practice at both independent and public colleges and universities.

How are fiduciary duties held by board members?

Board members and officers must understand that while they hold fiduciary duties individually, they act collectively as a board. Absent a particular designation of authority by the board to an individual board member or officer (such as the authorization of a board chair to enter into an employment agreement with the president on behalf of the institution), no single board member or officer has authority to bind the institution or determine its course of action, even those who may be appointed by a state governor or through a political process.

What is the fiduciary duty of care?

The duty of care requires a board member to reasonably exercise his or her responsibilities in the best interests of his or her institution.

The **duty of care** generally requires officers and governing board members to carry out their responsibilities in good faith and to use the degree of diligence, care, and skill that ordinarily prudent persons would reasonably exercise under similar circumstances in like positions. Accordingly, a board member must act in a manner that he or she reasonably believes to be in the best interests of the institution.

Determining what is in the best interests of the institution is left to the governing board's sound judgment under the duty of care. It will necessarily involve a balancing of interests and priorities appropriate to the institution's mission and consistent with its strategic priorities. This should include explicit attention to the trade-offs inherent in achieving balance among employees' interests (maintaining quality of education and protecting the institution's assets), student interests (maintaining affordability), physical assets (buildings and grounds), fiscal assets (endowments and fund balances), consumer value of the degree (cost of degree attainment versus future job earnings), and community interests in the institution (jobs, economic development).

Under the duty of care, governing bodies of colleges and universities are responsible for both the short- and long-term financial health of the institution and the achievement of the goal of preserving the institution and its resources for future generations. At the same time, governing boards have the obligation to develop and protect the quality of the institution's academic programs and to become appropriately engaged in the oversight thereof.

What specific actions are required by the fiduciary duty of care?

There can be no single, succinct statement of specific actions required by the duty of care since different circumstances will inevitably require different acts. However, the proper exercise of the duty of care requires a board member to attend meetings regularly; to read and evaluate the meeting materials prepared for the board in advance of the meeting; to ask questions and participate actively in board discussions; and to be knowledgeable of the institution's purposes, operations, and environment.

What about the duty of care regarding confidentiality?

Also interwoven in the duty of care is the responsibility of board members to maintain the confidentiality of matters brought before the board, both during and after their board service. This is particularly the case with respect to personnel concerns and sensitive business matters. In some cases, board members may be asked to sign an oath of confidentiality or a binding agreement that sets forth their duties and responsibilities to the institution. Such instruments may be useful, but they may also seem heavy-handed to some, and the duties will apply to board members who have been duly elected and have consented to service whether or not an oath or agreement exists. At the same time, board members must balance their obligation to maintain confidentiality with the core governance principle and public policy objective of promoting transparency in board operations.

Does the duty of care require special expertise or knowledge?

Board members do not need to be experts or specialists. However, they must be reasonably well-informed concerning the business of the board.

The duty of care does not require professional expertise, extensive consideration, or full knowledge of the matter at hand by every board member. Instead, the duty generally requires board members to be reasonably well-informed of the relevant issues. Officers and board members may rely upon expert advice in making their determinations. For example, a board member may rely upon information, opinions, reports, or statements—including financial statements and other financial data—that are prepared or presented by

- a) one or more officers or employees of the institution whom the board reasonably believes to be reliable and competent in the matters presented;
- b) legal counsel, public accountants, or other persons as to matters the board reasonably believes are within the person's professional or expert competence; or
- c) a committee of the governing board of which he or she is not a member if the board member reasonably believes the committee's report merits confidence.

Any reliance on information provided by others must be reasonable under the circumstances, considering such factors as the source from which the information was obtained, whether the information relied upon is a brief summary or an extensive analysis, whether the matter is routine or exceptional, and the time frame in which a decision must be made.

What is the fiduciary duty of loyalty?

The duty of loyalty requires that board members consider only the good of their institutions in performing their duties, not their own interests or those of other individuals or organizations.

The **duty of loyalty** requires officers and board members to act in good faith and in a manner that is reasonably believed to be in the interests of the college or university and its nonprofit or public purposes, rather than their own interests or the interests of another person or organization. The fiduciary must not act out of expedience, avarice, or self-interest. The requirement that officers and board members discharge their duties in good faith is a subjective one that will vary depending on facts and circumstances.

Under this duty, a college or university board member must be loyal to the institution and not use the position of authority to obtain, directly or indirectly, a benefit for him or herself or for another organization in which the board member has an interest. Accordingly, when evaluating a board member's conduct, the duty of loyalty considers both a board member's financial interests and the governance or leadership positions he or she holds with other organizations.

How does the duty of loyalty define board member independence?

An independent board member is one who does not work for, does not do business with, and does not stand to materially gain in any other way from association with his or her institution.

Board member independence is increasingly sought after by regulators and key stakeholders to ensure adherence to the duty of loyalty. In this context, independence means that the board member is not employed by and does not do material business with the college or university. This information is reported on IRS Form 990 and in other public record filings. In addition, the board member acts independently of any personal relationship he or she may have with the president or senior leaders of the college or university or with other board members. It is not required that every member of the board be independent (for example, some ex officio board members may not be), but ideally, a majority of the board members should be independent.

In addition, it is incumbent on board members to retain their independence from external and internal stakeholders in the conduct of their oversight and policy responsibilities. This applies to boards of independent institutions and especially to public boards whose members are most often selected for their service through some form of political appointment. It also applies in cases in which board members are appointed or elected by internal constituent groups such as faculty or staff. Public and internally appointed board members may be respectful of the views of appointing authorities, but they must not allow such influence to be determinative of board action. Governing board members of public institutions, while serving the public interest, must still adhere to the fiduciary duty of loyalty to the institution and, in so doing, must prioritize the interests of the institution over any other. It is essential that board members avoid a conflict of loyalty in meeting their fiduciary responsibilities to act on behalf of the institution(s) they hold in trust.

What is the most critical implementation of the fiduciary duty of loyalty?

The most critical implementation of the duty of loyalty comes in a college or university's conflict-of-interest policy. Such a policy, when adhering to state law and best governance practices, requires that board members fully disclose financial interests and dual organizational relationships ("dualities of interest") that may affect their decision making on behalf of the institution. The policy will prohibit board members from participating in or unduly influencing decisions in which they have a material financial conflict of interest or an adverse duality of interest ("recusal") and may require the board member to eliminate the duality of interest.

What is the fiduciary duty of obedience?

The duty of obedience requires board members to ensure that their institutions operate according to stated purposes and according to the law.

A third fiduciary duty, which is arguably an element of the duties of care and loyalty, is the **duty of obedience**. This is the duty of board members to ensure that the college or university is operating in furtherance of its stated purposes, as set forth in its governing documents, and is operating in compliance with the law. The board should also periodically reevaluate its purposes and mission and must be prepared to amend or change them when it is necessary and appropriate to do so under the law and the institution's governing documents. A governing body of a college or university must make reasonable efforts to ensure that the institution is both legally and ethically compliant with the law and applicable internal and external rules (for example, accreditation, environmental, research, labor, or athletics requirements) and that it has instituted effective internal controls to achieve compliance and to identify and address problems.

To whom are fiduciary duties owed?

Fiduciary duties are owed by law to the institution. They may be extended by custom, circumstance, or necessity to a range of other stakeholders.

By law, the duties of care, loyalty, and obedience are owed to the institution by governing body members and officers. However, in the court of political and public opinion, fiduciary duties are commonly extended (erroneously) to other beneficiaries: students (and those who may pay the tuition for them), faculty, alumni, donors, and the community at large, particularly where the institution has a direct and material impact on the livelihood of its community and the beneficiaries of its research and scholarship. In a given case, governing board members may comply faithfully and with integrity with their legal fiduciary duties in overseeing their institutions and yet still run afoul of regulators, politicians, and stakeholders who believe a different result should ensue. It may even cost a board member his or her seat. Still, fidelity by board members and officers to their legal fiduciary duties is the essence of good governance.

May boards share fiduciary duties?

In the American higher education system of shared governance, governing boards share governance duties with the president and the faculty while respecting academic freedom and soliciting input from a broad campus constituency. However, under the law, only governing board members and officers hold fiduciary responsibility. Nevertheless, the governance principles ingrained in the fiduciary duties discussed here have clear application to the efforts of the administration and faculty as well. All participants in the system of shared governance would do well to adhere to these principles and practices.

Related Resources

Higher Education Governing Boards: An Introductory Guide for Members of College, University, and System Boards

AGB

Intended both to orient and to guide, *Higher Education Governing Boards* provides a detailed overview of the essential responsibilities of governing boards—public and independent—and the fiduciary duties of board members.

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Tom Hyatt

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Steve Dunham

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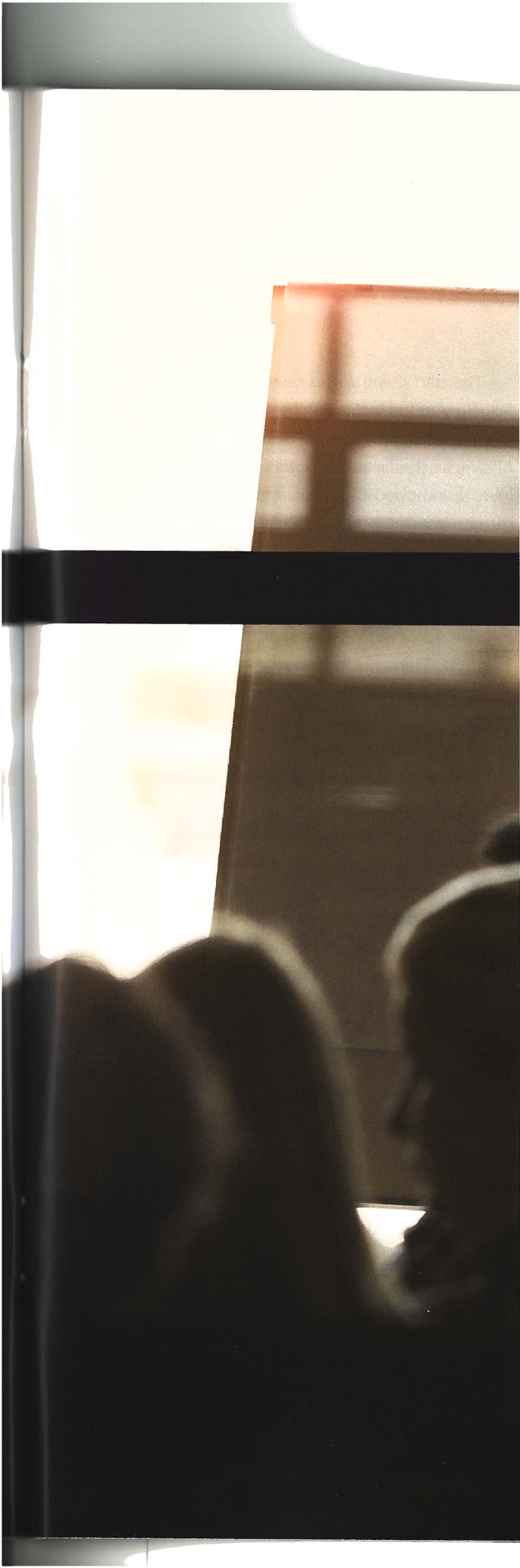
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AGB Board of Directors' Statement on the Fiduciary Duties of Governing Board Members

AGB

This AGB board statement is designed as a tool to orient board members to the elements of fiduciary duty and to recommend proven practices for translating those duties into effective board conduct.

2015 • 16 pages



MEMBERS OF THE GOVERNING BOARDS of colleges and universities hold a unique position with regard to stewardship of the institutions they serve, a position not shared with students, faculty, alumni, donors, regulators, or others in the community. Governing board members are fiduciaries.

The concept and practice of being a fiduciary cannot and should not be reduced to a legal principle with no real-world impact on a board member's behavior. Fiduciary principles and duties are at the heart of good governance. The fiduciary duties described here may seem, at first glance, to be a matter of common sense. What could be more essential for a board member than to act with good faith and care, with loyalty to the institution, and in compliance with its mission and the law? And yet, behind nearly every failure of governance and leadership at higher education institutions is a breach of the principles of fiduciary duty.

While governing boards act as a body, the fiduciary duties applied by law and best practice fall on individual board members. Each has a personal responsibility to ensure that he or she is up to the task and fulfilling his or her obligations. Board members must be more than names on a masthead. They must be fully engaged. They must attend meetings, read and evaluate the materials, ask questions and get answers, honor confidentiality, avoid conflicts of interest, demonstrate loyalty, understand and uphold mission, and ensure legal and

A college or university board member or officer has duties to the institution under the law that a faculty member, a student, or an administrator does not.

ethical compliance. Those who cannot do so must step down and allow others to take their place. The success and sustainability of the institution and the protection of board members from personal liability require nothing less.

This section provides a discussion of governing board members and officers as fiduciaries of their institutions and explains the three fiduciary duties that apply to them.

WHAT IS A FIDUCIARY?

Under state statutory and common law, officers and board members of corporations—including nonprofit corporations and public bodies that operate colleges and universities—are fiduciaries and must act in accordance with the fiduciary duties of care, loyalty, and obedience. Legally, a fiduciary relationship is one of trust or confidence between parties. A fiduciary is someone who has special responsibilities in connection with the administration, investment, monitoring, and distribution of property—in this case, the charitable or public assets of the institution. These assets include not just the buildings and grounds and endowment, but also intangibles, such as the reputation of the institution and its role in the community. A college or university board member or officer has duties to the institution under the law that a faculty member, a student, or an administrator does not.

The particular duties owed by a fiduciary to the institution he or she serves are commonly known, as described above, as the fiduciary duties of care, loyalty, and obedience. Taken together, they require board members to make careful, good-faith decisions in the best interest of the institution consistent with its public or charitable mission, independent of undue influence from any party or from financial interests. These duties may be described in and imposed by a college or university's bylaws, governing board policies, standards of conduct, or code of ethics. In the case of a public institution, state law may describe or apply these standards of conduct differently (for example, under particular rules applicable to regents or public bodies); however, adherence to these principles remains a key governance best practice at both independent and public colleges and universities.

Board members and officers must understand that while they hold fiduciary duties individually, they act collectively as a board. Absent a particular designation of authority by the board to an individual board member or officer (such as the authorization of a board chair to enter into an employment agreement with the president on behalf of the institution), no single board member or officer has authority to bind the institution or determine its course of action, even those who may be appointed by a state governor or through a political process.

THE DUTY OF CARE

The duty of care generally requires officers and governing board members to carry out their responsibilities in good faith and to use the degree of diligence, care, and skill that ordinarily prudent persons would reasonably exercise under similar circumstances in like positions. Accordingly, a board member must act in a manner that he or she reasonably believes to be in the best interests of the institution.

Determining what is in the best interests of the institution is left to the governing board's sound judgment under the duty of care. It will necessarily involve a balancing of interests and priorities appropriate to the institution's mission and consistent with its strategic priorities. This should include explicit attention to the tradeoffs inherent in achieving balance among employees' interests (maintaining quality of education and protecting the institution's assets), student interests (maintaining affordability), physical assets (buildings and grounds), fiscal assets (endowments and fund balances), consumer value of the degree (cost of degree attainment versus future job earnings), and community interests in the institution (jobs, economic development).

Under the duty of care, governing bodies of colleges and universities are responsible for both the short- and long-term financial health of the institution

and the achievement of the goal of preserving the institution and its resources for future generations. At the same time, governing boards have the obligation to develop and protect the quality of the institution's academic programs and to become appropriately engaged in the oversight thereof.

There can be no single, succinct statement of specific actions required by the duty of care, since different circumstances will inevitably require different acts. However, the proper exercise of the duty of care requires a board member to attend meetings regularly; to read and evaluate the meeting materials prepared for the board in advance of the meeting; to ask questions and participate actively in board discussions; and to be knowledgeable of the institution's purposes, operations, and environment.

Also interwoven in the duty of care is the responsibility of board members to maintain the confidentiality of matters brought before the board, both during and after their board service. This is particularly the case with respect to personnel concerns and sensitive business matters. In some cases, board members may be asked to sign an oath of confidentiality or a binding agreement that sets forth their duties and responsibilities to the institution. Such instruments may be useful, but they may also seem heavy-handed to some, and the duties will apply to board members who have been duly elected and have

consented to service whether or not an oath or agreement exists. At the same time, board members must balance their obligation to maintain confidentiality with the core governance principle and public policy objective of promoting transparency in board operations.

The duty of care does not require professional expertise, extensive consideration, or full knowledge of the matter at hand by every board member. Instead, the duty generally requires board members to be reasonably well informed of the relevant issues. Officers and board members may rely upon expert advice in making their determinations. For example, a board member may rely upon information, opinions, reports, or statements—including financial statements and other financial data—that are prepared or presented by (a) one or more officers or employees of the institution whom the board reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, public accountants, or other persons as to matters the board reasonably believes are within the person's professional or expert competence; or (c) a committee of the governing board of which he or she is not a member if the board member reasonably believes the committee's report merits confidence. Any reliance on information provided by others must be reasonable under the circumstances, considering such factors as the source from which the information was obtained, whether the

information relied upon is a brief summary or an extensive analysis, whether the matter is routine or exceptional, and the time frame in which a decision must be made.

THE DUTY OF LOYALTY

The duty of loyalty requires officers and board members to act in good faith and in a manner that is reasonably believed to be in the interests of the college or university and its nonprofit or public purposes, rather than their own interests or the interests of another person or organization. The fiduciary must not act out of expedience, avarice, or self-interest. The requirement that officers and board members discharge their duties in good faith is a subjective one that will vary depending on facts and circumstances.

Under this duty, a college or university board member must be loyal to the institution and not use the position of authority to obtain, directly or indirectly, a benefit for him or herself or for another organization in which the board member has an interest. Accordingly, when evaluating a board member's conduct, the duty of loyalty considers both a board member's financial interests and the governance or leadership positions he or she holds with other organizations.

Board member independence is increasingly sought after by regulators and key stakeholders to ensure adherence to the duty of loyalty. In this context, independence means that the board

It is incumbent on board members to retain their independence from external and internal stakeholders in the conduct of their oversight and policy responsibilities.



member is not employed by and does not do material business with the college or university. This information is reported on IRS Form 990 and in other public record filings. In addition, the board member acts independently of any personal relationship he or she may have with the president or senior leaders of the college or university or with other board members. It is not required that every member of the board be independent (for example, some ex officio board members may not be), but, ideally, a majority of the board members should be independent.

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responsibilities. This applies to boards of independent institutions and, especially, to public boards whose members are most often selected for their service through some form of political appointment. It also applies in cases in which board members are appointed or elected by internal constituent groups such as faculty or staff. Public and internally appointed board members may be respectful of the views of appointing authorities, but they must not allow such influence to be determinative of board action. Governing board members of public institutions, while serving the public interest, must still adhere to the fiduciary duty of loyalty to the institution and, in so doing, must prioritize the interests of the institution over any other. It is essential that board members

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avoid a conflict of loyalty in meeting their fiduciary responsibilities to act on behalf of the institution(s) they hold in trust.

The most critical implementation of the duty of loyalty comes in a college or university's conflict-of-interest policy. Such a policy, when adhering to state law and best governance practices, requires that board members fully disclose financial interests and dual organizational relationships ("dualities of interest") that may affect their decision making on behalf of the institution. The policy will prohibit board members from participating in or unduly influencing decisions in which they have a material financial conflict of interest or an adverse duality of interest ("recusal") and may require the board member to eliminate the duality of interest.

THE DUTY OF OBEDIENCE

A third fiduciary duty, which is arguably an element of the duties of care and loyalty, is the duty of obedience. This is the duty of board members to ensure that the college or university is operating in furtherance of its stated purposes, as set forth in its governing documents, and is operating in compliance with the law. The board should also periodically reevaluate its purposes and mission and must be prepared to amend or change them when it is necessary and appropriate to do so under the law and the institution's governing documents. A governing body of a college or university must make reasonable efforts to ensure

that the institution is both legally and ethically compliant with the law and applicable internal and external rules (for example, accreditation, environmental, research, labor, or athletics requirements) and that it has instituted effective internal controls to achieve compliance and to identify and address problems.

TO WHOM ARE FIDUCIARY DUTIES OWED?

By law, the duties of care, loyalty, and obedience are owed to the institution by governing body members and officers. However, in the court of political and public opinion, fiduciary duties are commonly extended (erroneously) to other beneficiaries: students (and those who may pay the tuition for them), faculty, alumni, donors, and the community at large, particularly where the institution has a direct and material impact on the livelihood of its community and the beneficiaries of its research and scholarship. In a given case, governing board members may comply faithfully and with integrity with their legal fiduciary duties in overseeing their institutions and yet still run afoul of regulators, politicians, and stakeholders who believe a different result should ensue. It may even cost a board member his or her seat. Still, fidelity by board members and officers to their legal fiduciary duties is the essence of good governance.

FIDUCIARIES WITHIN A SHARED GOVERNANCE SYSTEM

In the American higher education system of shared governance, governing boards share governance duties with the president and the faculty while respecting academic freedom and soliciting input from a broad campus constituency. However, under the law, only governing board members and officers hold fiduciary responsibility. Nevertheless, the governance principles ingrained in the fiduciary duties discussed here have clear application to the efforts of the administration and faculty, as well. All participants in the system of shared governance would do well to adhere to these principles and practices.

QUESTIONS TO CONSIDER

- Does the board understand the elements of the duty of care, the duty of loyalty, and the duty of obedience? How is the board educated about these duties?
- How does the board assess its own performance in fulfilling its fiduciary duties?
- Do board members understand the ways in which they could be exposed to personal liability for breaching their fiduciary duties? What areas of liability exposure are of greatest concern?
- How does the board involve experts to facilitate and enhance its understanding of matters before it?
- Does the board have a robust conflict-of-interest policy that also addresses dualities of interest? How and to whom do board members disclose conflicts and dualities? Whose responsibility is it to review board conflict-of-interest disclosures and to report on potential conflicts to the board? What does the board do when a conflict is identified?
- How does the board determine what matters before it are confidential, and how does it enforce confidentiality by board members?
- Has the board been impeded in fulfilling its fiduciary responsibilities by external influences such as government, corporate, political, social, athletic, or religious interests? How should the board respond under these circumstances?
- Do appointed public board members understand and abide by their fiduciary obligation to evaluate the matters before them objectively and to maintain their independent judgment, notwithstanding any potential effort by the appointing authority to influence their decisions?
- By what process does the board determine whether proposed board action is consistent with the institution's mission and purposes?
- How does the board oversee legal compliance in the institution? What internal controls are applied to prevent legal violations such as fraud, theft of intellectual property, embezzlement, athletics infractions, use of gifts in violation of donor intent, and employment discrimination? Are they effective?

The background of the slide is a close-up photograph of several interlocking metal gears. The gears are of different sizes and are heavily rusted and worn. In the background, partially obscured by the gears, are several US coins. A large copper coin on the left shows the words 'UNITED STATES OF AMERICA' and 'ONE DOLLAR'. A silver coin in the center shows the words 'UNITED STATES OF AMERICA' and 'ONE DOLLAR'. Another silver coin on the right shows the words 'UNITED STATES OF AMERICA' and 'ONE DOLLAR'. The overall image conveys a sense of mechanical complexity and financial systems.

ANDREW C. COMRIE

Like Nobody's Business

An Insider's Guide to How
US University Finances
Really Work

LIKE NOBODY'S BUSINESS

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An Insider's Guide to How
US University Finances Really Work

Andrew C. Comrie



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To Lee

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CLOSED MEETINGS

The Board of Visitors may consider in closed session certain matters, including those listed below. The Code is very specific as to how these matters will be described in public session and in closing the meeting the motion must be specific as to the matters to be considered in closed session. There may be no discussion in closed session of matters not identified in the original motion.

I move that the _____ Committee convene in Closed Session for the purpose of discussing _____, as provided for in Section 2.2-3711.A., ____ .

<u>Code Section</u>	<u>Topic</u>
2.2-3711.A.1.	Personnel matters involving identifiable college employees (i.e., appointments, performance evaluations, leaves, etc.) or discussion or interviews of prospective candidates for employment.
2.2-3711.A.2.	Matters concerning any identifiable student
2.2-3711.A.3.	Acquisition of real property for a public purpose or disposition of publicly held real property
2.2-3711.A.4.	Protection of individual privacy in personal matters not related to public business
2.2-3711.A.6.	Investment of public funds where bargaining or competition is involved
2.2-3711.A.7.	Consultation with legal counsel and briefings by staff members pertaining to <u>actual or probable litigation</u>
2.2-3711.A.8.	Consultation with legal counsel employed by a public body regarding specific legal matters requiring <u>legal advice by such counsel</u>
2.2-3711.A.9.	Gifts, bequests and fund-raising activities, or grants and contracts for services or work to be performed by the College
2.2-3711.A.11.	Honorary degrees or special awards
2.2-3711.A.19.	Reports or plans related to security of any College facility, building or structure, or safety of persons using such facility, building or structure
2.2-3711.A.29.	Public contracts involving the expenditure of public funds

§2.2-3712.D. - At the conclusion of any closed meeting, the Board of Visitors shall immediately reconvene in open meeting and shall take a roll call or other recorded vote to be included in the minutes, certifying that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of clauses (i) and (ii), shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.