

SECTION VI: COMMON BOARD PROBLEMS AND SOLUTIONS

Summary

There are a number of common board problems that may develop in the early years of an organization's life cycle, but become counterproductive to organizations that are operating at a larger scale and need a different style of governance. Organizations often struggle to manage this shift in expectations without offending long-time board members and community members. Board development and strategic planning are best practices because they can keep the organization from these common board problems.

This section will discuss:

- Conflicts of Interest
- Founder's Syndrome
- Unengaged Board Members
- Fear of Finances and Fundraising
- Micro-Management Instead of Strategic Monitoring
- Lack of Investment in Organizational Development to Support Growth
- Mission Creep

Conflicts of Interest

Potential conflicts of interest include a board member related to an employee, an employee or board member with a relationship to an outside vendor, or a familial relationship between employees. All nonprofit organizations incorporated in New York State are now legally obligated to adopt a conflict of interest policy to guide decision making when such a conflict exists.

The consequences of conflicts can be severe, as they expose an organization's assets to significant risk. For example, an investigation of a nonprofit organization in Brooklyn found that the Fiscal Director and the Information and Technology Director were sisters. The computer consultant for the nonprofit and the Fiscal Director were also close friends. Moreover, the wife of the nonprofit's Chairman of the Board was a consultant to the nonprofit for fundraising events. These individuals colluded in fiscal improprieties arising from their close relationships, which resulted in criminal convictions and the defunding of the organization.

Best practices that can ensure decisions are made in the best interest of the organization and prevent employee mistrust, collusion, and theft, include the following:

- Establish a disclosure policy requiring that all conflicts of interest be disclosed to an independent committee of the board of directors and any transaction that is being considered with a related party (any salary decision or award of a vendor contract) must be voted on by all independent members of the board after a thorough discussion and consideration based on comparable options and the board's independent determination that the transaction is in the best interest of the organization without the participation or vote of the interested board member.

- Require written job descriptions for all positions. The qualifications written into these job descriptions must be fulfilled when making hiring, retention, and promotion decisions.
- Conduct regular performance evaluations of all employees, and establish a clear written policy and procedure for the consequences of both positive and negative employee performances.
- Do not allow employees to manage their relatives, and if there is a board member who is related to an employee, they should not participate in salary decisions or performance evaluations. (City contracts prohibit nonprofit vendors from hiring the relatives of board members.)

Founder's Syndrome

Founders that remain involved with a nonprofit exert an enormous amount of control over the organization. They may be the chief staff person who recruited their friends and family to make up the board, or they may be the board chair of a group of officers who were there from the beginning. Other board members often defer to the founder or founders on strategic decisions about the future of the organization and trust their judgment and vision to carry the organization forward. This is not a sustainable way to govern and leads to problems when the organization gets larger than is possible for one person to manage and nurture by themselves.

For example, an organization providing senior services in Queens and the Bronx had grown to manage seven centers, and the founder had been the chief staff officer for over 30 years. She had not built a strong independent board but instead recruited community members who supported and trusted her, and she didn't ask her board to take on a leadership role. This lack of balance with the management function led to allegation of impropriety and an investigation that found the board was not monitoring the organization and its founder appropriately. Financial health has suffered with several years of late audits, delayed contracts, and cash flow difficulties. The best-case scenario is a merger with a larger organization, so services can continue.

Best practices to ensure sustainability and a healthy balance of responsibilities between leadership and management include:

- Regular, written evaluations of the chief staff person.
- Transition planning to envision a future without the founder and plan to fill the position in a way that best serves the organization.
- Develop leadership of the board so members provide an adequate level of oversight and can act as a counterpoint to the founder.
- Support staff professional development and pay attention to the leadership pipeline.

Unengaged Board Members

Board members who do not come to meetings, return calls, or give a significant donation give no indication they want to serve on the board. This is toxic to board culture and should be addressed by the board chair with a conversation or in writing if the person cannot make time to speak. If one member is chronically absent with no consequences, others may do the same. It is important to develop a set of expectations that board members can agree to and then be accountable to their peers for fulfilling. If board members are not willing to meet those expectations then they should

be shown the gap between their actions and the expectations and potentially asked to resign from the board if they are not willing to improve.

If board members are only partially disengaged but have valuable assets to contribute (time, talent, and treasure), other leaders in the organization should try to learn why board members are not participating. It may be that the group doesn't have a great dynamic and perhaps needs more opportunities for social engagement. It may be that the meetings are boring—an agenda that is disconnected from the mission and doesn't provide stories of the organization's impact will not be very engaging. It may be that the board is not being asked to take responsibility for decision-making and fundraising efforts. If there is no expectation of the board's participation, then human nature will lead board members to think they are not needed.

For example, the chief staff person of a large senior services organization invited people to join the board who lacked the required expertise to provide oversight of a large, complex organization. They were paid to attend board meetings and signed whatever the founder asked them to sign, including approvals of large raises for the executive staff. The raises triggered an investigation, which uncovered fraud and malfeasance. Many of the board members were ultimately removed by the organization's government funders and the executive director was convicted of criminal contempt charges.

Best practices to engage board members:

- Set expectations for board members when they join the board, such as meeting attendance, committee membership, time commitment, and financial commitment, and annually reiterate those expectations. The board chair should hold members accountable for meeting board expectations.
- When recruiting new board members, let them know from the start that they will be expected to volunteer their time on behalf of the organization outside of meetings.
- When a board member is not meeting expectations, the board chair should reach out to the member to identify any problems and ask the member to resign if necessary.
- Provide training and other board development activities to the board so they understand their fiduciary duties and are prepared to fulfill them.
- Create a board development plan to identify the needs of the board and how to fulfill them, such as training, adding new members, or instituting term limits.

Fear of Finances and Fundraising

There are many board members who have an aversion to the financial oversight and resource development responsibilities of board service. Organizations should provide a lot of support for board members who are intimidated by numbers, including external training and coaching by another board member who has more experience. Fundraising is something that board members can ease into with support from staff and other board members. The board should practice describing the work of the organization in a succinct elevator pitch. Board members can come along to meetings with existing funders and listen to others pitch.

For example, the board of a community based organization with several City contracts was relying on the fiscal director's analysis of the organization's financial condition, as neither the board nor the executive director had the expertise to do their own analysis. The fiscal director did

not have an adequate understanding of nonprofit finances and funding restrictions, and as a result, the organization was misallocating revenues and underspending on its contracts and faced both negative cash flow and potentially a deficit if money is recouped. The board accepted the fiscal director's assurances that the financial condition was fine and did not understand the severity of the auditor's going concern note in the audit. The organization continues to face financial difficulties because the board does not understand the precariousness of the organization's financial position.

Best practices to overcome fear of finances and fundraising:

- Provide training in fiscal oversight and fundraising for the board.
- Create a financial dashboard for board members with easy-to-understand reports on the organization's finances. The dashboard should be the same for each board meeting and include at least a budget vs. actual report, profit and loss statement, and cash flow projection.
- Conduct a needs assessment for the organization and connect those needs to the mission.
- Create a fundraising plan and obtain board commitment to implement the plan.

Micro-Management Instead of Strategic Monitoring

Some boards are used to having a dominant role and spending their meetings dealing with staff issues and budget minutiae. While this situation may not be the worst problem to have, the risk to the organization is that the micro-managing board will handle an HR issue badly, exposing the organization to risk, and there are certainly opportunity costs to using the board's time in this way. If boards are not doing the strategic visioning for the organization then no one else is. If the organization doesn't have a vision for its role in the world, it is very likely that bumps in the road will be difficult to navigate.

Many day care sponsor boards have difficulty delegating management to staff. The board initially organized to provide a community based day care, and even though the organization has been running well for many years, they are unable to step back from management to play a more strategic role. The board meets monthly, and the meetings are dominated by discussions of contract requirements, personnel issues, and other day-to-day minutiae, instead of bigger-picture discussions of finances, organizational development, and plans for the future. This is a missed opportunity to have an engaged staff person developing a vision and plan for the organization's future.

Best practices to move the board into a more strategic role:

- Send written reports in advance of meetings to inform board members of the details and spend meetings discussing strategic questions for the organization.
- Evaluate current policies and discuss them with the board. Engage a committee of the board to address policy development so that the board can delegate implementation to the staff.
- Embark on a strategic planning process.

Lack of Investment in Organizational Development to Support Growth

Boards that do not fundraise and invest in organizational development and infrastructure as an organization grows are creating hollow organizations that will not be able to sustain their operations. Systems for managing records, accounting systems to track restricted revenues and report on those revenues, IT networking to support communication, human resources staff to adhere to personnel policies, the appropriate level of legal resources, and client outcome tracking are all critical systems for an impactful organization.

For example, a family-serving organization in Upper Manhattan that grew from being a small, community based organization to a large, multi-service organization with a \$250 million annual budget took on large government programs without the infrastructure to support them. They also created several related companies and merged with other organizations to grow, but did not end these relationships when they began losing money. The organization's accounting systems did not adequately track their finances, and they did not realize how large their debts were until it was too late. The organization ultimately ceased operating and their programs were transferred to other providers.

Best practices to invest in infrastructure as your organization grows:

- The board should decide when and how the organization should grow, if at all.
- Evaluate programs regularly to ensure they are effective and fully funded. If they are not fully funded, the board should decide if they are effective, needed, and central to the organization's core mission, and, if so, should ensure there are adequate direct and indirect funds secured to continue the program.
- If IT or accounting systems are not serving the organization's needs, the organization should invest in them. This can be expensive, so the board should raise money for new systems or consider temporarily halting growth to divert resources to infrastructure. This may mean serving fewer clients in the short term, but in the long term, the organization will serve more clients more effectively.
- More staff can lead to more personnel issues. Hire a director of human resources and evaluate HR policies to keep them current with the changing staff profile.

Mission Creep

Part of the board's fiduciary duty is to ensure that assets are used in service of the mission that the organization exists to pursue (stated in the organization's incorporation papers). While some new programs may be within the legal bounds of an organization's certificate of incorporation, they may divert resources to a program that the organization doesn't have expertise in or that doesn't connect to the programs that are core to the mission. Mission creep generally happens in an organization that has not done strategic planning and doesn't have a set of values to use to evaluate program decisions.

For example, after Hurricane Sandy, many organizations jumped into action to help their communities. They provided food, shelter, and other services to people who had lost their homes to flooding. In many cases, however, providing these services was not in the scope of the

organization's purpose as stated in their certificate of incorporation. As a result, FEMA refused to reimburse them for the expenses incurred during the relief efforts.

Best practices to avoid mission creep:

- Review the organization's corporate documents before adding new programs and discuss expansion with the board.
- If the board wants to add a new program that is not in line with the corporate documents, file a change with the authorities.
- Evaluate decisions to add, cut, grow, or shrink operations with a decision tree and knowledge of the full cost of running a successful program.