Outdated Policies, Overlooked Mandates

Oversights Can Spell Trouble for Institutions

BY WILLIAM KIRWAN

▼
▼

IN TODAY'S POLITICAL AND ECONOMIC ENVIRON-
ment, universities are being forced to grapple with
significant contemporary challenges, including
uneven public support, surging enrollments, cost
containment, and increased demands to serve as
engines of economic growth. Against this difficult
and fast-changing backdrop, boards, presidents,
and chancellors can occasionally overlook

TAKEAWAYS

1 Recent examples of institutions' non-
compliance with board mandates or state
policies underline the importance of
systematic, regular reviews of governance
documents.

2 Regularly evaluating and updating poli-
cies will help ensure that institutional
practices comply with board and state
regulations; allow for greater administra-
tive efficiency; and avoid embarrassment
and headaches for the institution.

3 Mechanisms for monitoring compliance
on an ongoing basis—rather than rely-
ing on "institutional memory"—will help
maintain public faith in the integrity of
colleges' operations.

governance policies and legislative statutes and mandates adopted in previous years. Such oversights can prove to be embarrassing, even damaging, to the institution.

For example, in the early 1990s, following controversy about compensation of top administrators, the governing board of a large and prominent university system adopted policies and procedures designed to promote fiscal transparency and to prevent any future abuse. The board's 1992 policy required that all compensation arrangements—including not just salaries but also any deferred compensation, additional pension contributions, housing and car allowances, and other similar benefits—for hundreds of senior institutional administrators be identified and presented to the university's regents as part of their action agenda

In 2005, several media outlets discovered large-scale irregularities in the salaries and compensation awarded to high-level administrators without formal board approval.

when they approved these administrators' appointments.

As time moved on, institutional memory waned. In scores of instances over a number of years, total compensation for these administrators was not systematically included in the requests made to the regents to approve the administrators' appointments. In 2005, several media outlets discovered large-scale irregularities in the salaries and compensation awarded to high-level administrators without formal board approval. Cumulatively, tens of millions of dollars were involved.

As a result, the state government and the university system initiated inquiries. The chairman of the board of regents appointed a task force—comprised of respected elected officials, internal and external higher-education leaders, and representatives from business and journalism—to conduct an independent review of policies and practices on executive compensation. Audits were

conducted by both the state legislature and an external auditor. The inquiries, reports, and audits revealed numerous failures in reporting and violations of established university policies, resulting in legislative reprimands and public criticism of the university system and its top leaders.

Although it ultimately was determined that the deviations from the regents' 1992 policy were unintentional and that the university system did not deliberately depart from the regents' requirements and expectations, the actions taken were, nevertheless, clearly not in compliance with the 1992 policy. Furthermore, while it was discovered that in numerous instances the total compensation packages were, in fact, reported to the board, they were reported in background documents on what amounted to a case-by-case basis, rather than in the regents' action agenda as the policy required.

Several factors contributed to this over-

sight. First, "institutional memory," including knowledge of the 1992 policy, was lost over time as regents and senior university officers changed. Second, the existing internal audit system failed to screen administrative actions against existing regents' policies and did not flag deviations for the regents and the university system's president. Third, there was no systematic review of materials submitted to the regents by the people specifically charged with verifying adherence to established policies. Fourth, there was no universally accessible system for reporting personnel records, including compensation records.

Although not intentional, the actions of this university system were significantly in violation of the established requirements. Adding to the level of exasperation of everyone concerned in this incident was the fact that the vast majority of these unreported compensation packages were completely in line with the compensation approved by the board for other comparable positions within the university system. But—because institutional memory had faded and the board policies were not strictly followed—the violations were reported in the media as major mismanagement and resulted in a significant black eye for the system. Remedying the oversights has required numerous committees and commissions—involving scores of people and voluminous reports—all aimed at creating comprehensive processes and procedures to assure that policies adopted at any level within the organization are preserved and understood by persons responsible for implementing them.

A second example involves a major east coast university. The university's hospital, long affiliated with the institution, was separated into a 501(c) 3 entity with its own board by state lawmakers several decades ago. The original statute mandated that the university's board of regents continue to have a significant role in the governance of the hospital in areas ranging from budget requests to leadership appointments. This was done to ensure that the hospital would continue to serve as the clinical arm of a major medical school. Over time, as new regents were

appointed, the hospital board's membership turned over, and university presidents departed, these policies, intended to ensure a close working relationship, were forgotten and the collaborative relationship began to deteriorate.

The hospital grew into a more independent system with the addition of several community hospitals around the state. The focus on the original partnership between a teaching hospital and a major medical school was diluted all because the policies that were intended to prevent such a drift were "forgotten." The recent "rediscovery" of the governing statute gives the university an opportunity to try and reestablish its role in the hospital's operations and restore the collaborative approach that was intended. While this is certainly a positive development, the situation could have been avoided by simply adhering to policies that were already "on the books."

going over every policy and identifying specific responsibilities to determine exactly who is responsible for ensuring compliance. Thus far, for the most part, the system is in compliance with all substantive requirements, but some issues have emerged. These problematic areas fall into two basic categories.

First, there are a number of minor, "technical" violations of established USM policy, such as position titles that are no longer operative, institutional names that have been changed, or required-reporting policies that are no longer necessary. For example, there is a USM policy that requires the "Vice Chancellor for Agriculture and Natural Resources" to approve certificate of merit awards in agriculture. There is no such vice chancellor and no such award any more. In addition, there are dozens of policies requiring the institutions to submit procedures, internal policies, and reports to the chancellor,

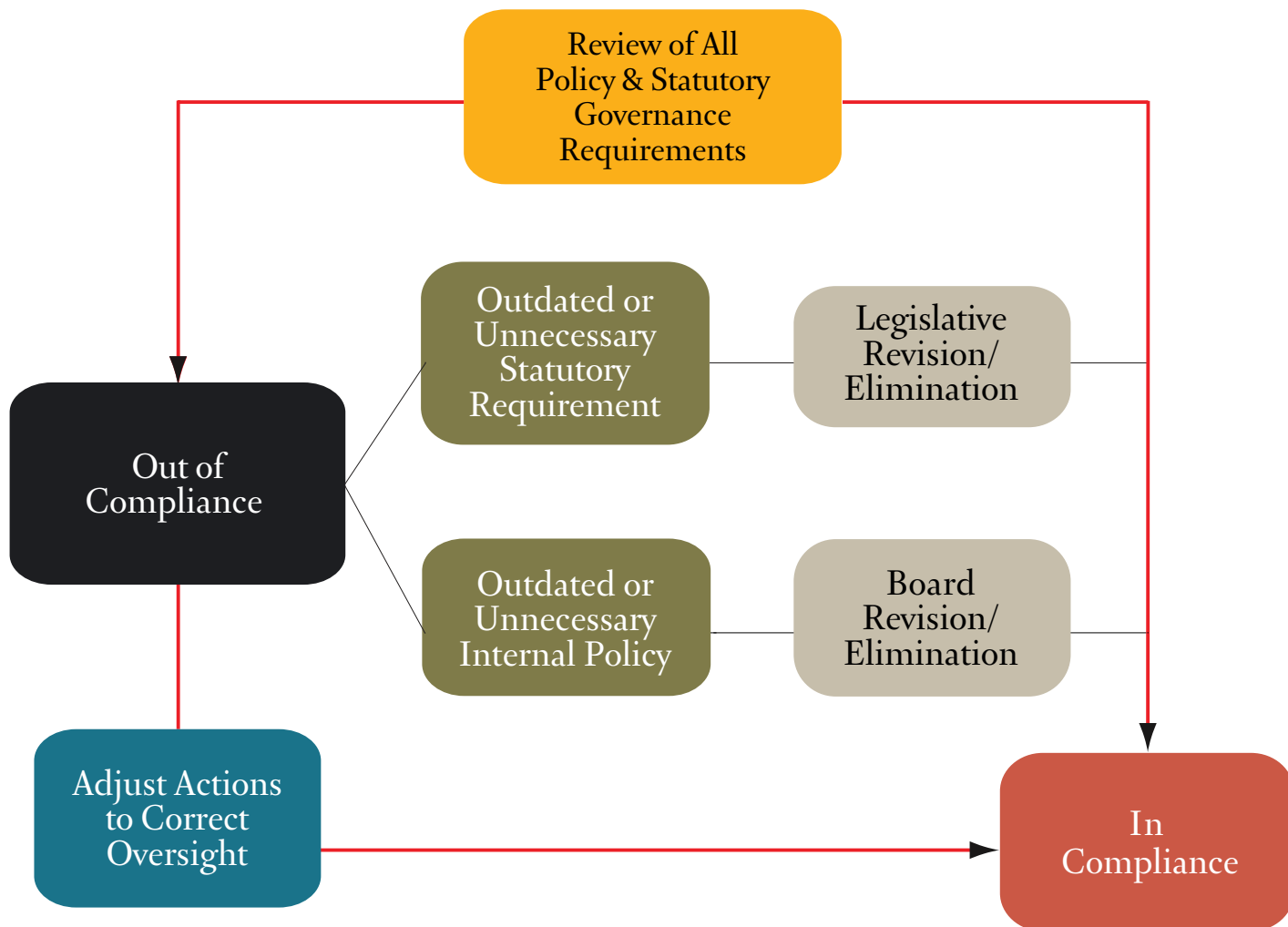who serves as head of the system, to be kept on file.

These policies pre-date routine electronic communications, and we're looking at streamlining the flow of paper with a new or amended policy that will allow for submission of Web links, rather than reams of paper, to meet these requirements. Later this year, the compliance-review team will take these internal issues to the board of regents in order to make the technical revisions necessary to bring USM into compliance or to remove outdated requirements.

Second, along with these minor concerns, there are a few substantive areas where the passage of time and changes in leadership—on the board of regents, in the system office, on our campuses, and in the state legislature—have resulted in a lapse in compliance. For example, the compliance team has discovered a USM policy that mandated creation of a system-wide intellectual-property committee five years ago. However, the individual who proposed this policy and championed its approval departed the system shortly thereafter, with no committee having been established. In this instance, we must either eliminate the requirement or establish such a committee.

Another example that came to light is the fact that some years ago, our system's board of regents issued a mandate that required our institutions to publish plans that projected an entering student's tuition over four years. However, over the last several years state support for the system, which plays a key role—if not *the* key role—in determining tuition levels, has been very uneven. A half-dozen years ago, state support was being reduced significantly, leading to double-digit tuition increases. For the last three years, however, we have received state support at a level that has allowed us to keep tuition flat. Given this level of uncertain state support, the idea of four-year published tuition projections was deemed impractical. The requirement, nevertheless, remains in place, meaning we must either respond to it, revise it, or remove it.

> We have established a team to begin a systematic examination of hundreds of specific policy requirements and statutory obligations on the books…

While these may seem somewhat extreme examples, I fear they may be symptomatic of potential problems that lie just beneath the surface at many universities. At the very least, they underscore the importance of having a process in place to systematically and regularly review and update governance policies.

This is precisely the effort we have launched within the University System of Maryland (USM). Working with our partners in the Office of the Attorney General (AG), we have established a team to begin a systematic examination of hundreds of specific policy requirements and statutory obligations on the books governing the operations of the system. This was launched as a year-long process to review, identify, and correct any instances in which the system is failing to adhere to existing board policies and state-reporting obligations.

With the support of the USM Board of Regents, this process was initiated in January. A joint USM-AG team is currently

Next year, the team will work through the appropriate channels (the Board of Regents for internal requirements and the Maryland General Assembly for statutory requirements) to modernize or revise these mandates and bring us into strict compliance. The flow chart above captures the essence of our process.

While the initial review will be time-consuming and difficult, this step will position the university system's leadership to regularly and systematically maintain alignment between board policies and administrative actions. The benefits of this effort (both initiating it and maintaining it) are threefold:

● First and foremost, we will have confidence that our policies and practices are in compliance with board policies and state mandates. If this were the only benefit, the effort would be worthwhile.

● Second, the review affords us the opportunity to streamline operations, eliminate duplicative efforts, and redirect our precious human resources to more productive activities.

● Finally, finding and reporting the areas of non-compliance ourselves, as opposed to having them revealed in the media, puts us in a far better position to initiate corrective action and avoid potentially embarrassing public criticism.

Obviously, once the initial review process is complete and the necessary internal and external changes have been made, it is simply common sense to implement a mechanism that monitors these issues on an ongoing basis. USM is considering options ranging from a computerized database that houses all policies pertaining to the USM, to the establishment of a standing committee that meets on a regular basis to analyze requirements and compliance. In either case—high-tech or low-tech—the reliance on "institutional memory," which has proven itself to be an ineffective method for regulating compliance, will no longer be necessary.

Higher education today faces several significant—and interwoven—issues, from the twin challenges of access and affordability, to questions of how to enhance quality in a time of constrained resources, to the increasing expectations for public accountability. As we address these vital issues, it is imperative that we maintain the public's trust in the integrity of our operations. Few things can do more to damage that trust than when we fail, even if inadvertently, to adhere to our established policies and practices. We have an obligation to take the steps necessary to make certain the public support for—and trust in—higher education is well placed. Maintaining, monitoring, and updating our governance policies are important ways to sustain recognition of higher education as a "*public good*" worthy of public investment. ■

AUTHOR: William Kirwan is chancellor of the University System of Maryland.
E-MAIL: bkirwan@usmd.edu

Web-Based System at Catholic University Ensures Review of University Policies

In the mid-1990s, as the drumbeat of federal regulations affecting higher education seemed to beat "faster and faster," recalls Craig Parker, Catholic University's general counsel, he found himself getting stopped more and more often on campus by colleagues wanting to speak with him about new laws. At times caught off guard, Parker was in the uncomfortable position of scrambling to keep up with the developments. His office being a one-man-show, though, it was an uphill battle.

The decision to hire an associate general counsel for policy and compliance in 1996 and to embrace developing Internet technology turned the tide for Parker's office. The path Catholic University subsequently charted has streamlined its operations, reduced legal costs and, along the way, become an "industry" standard for ensuring compliance with federal regulations. The experience with federal regulations, in turn, led the university to use a similar Web-based approach to monitor its compliance with directives from its board of trustees and other university policies.

To keep on top of federal regulations, Parker and Margaret O'Connell, the associate general counsel hired a dozen years ago, worked out a partnership with the American Council on Education, which already had a legal Web page, to track federal policies and regulations and post them on Catholic U's rapidly developing general counsel Web site.

The Web site focusing on university policies was not far behind. The two sites have turned into models for other institutions of higher education, a free resource that Parker says he hopes will keep other schools from "reinventing the wheel."

> **The experience with federal regulations... led the university to use a similar Web-based approach to monitor its compliance with directives from its board of trustees and other university policies.**

Catholic University now is in the second year of a three-year rolling review process that will result in every university policy being reviewed during that period. Then the process will start over again. Vice presidents receive lists of all policies under their purview and, equally important, of each employee responsible for carrying out those policies. Those employees, in turn, have Web-based compliance pages that are individually tailored to their jobs, spelling out what they must do to comply with the relevant policies. This offers protection not only to the institution, but also to employees.

"How would you explain to the chairman of the board that you didn't do something?" Parker asks. "The Web page tells you in black and white what you have to do."

A policy coordinating committee, whose 11 members include representatives from campus ministry, human resources, and planned giving, as well as Parker and O'Donnell, meets monthly, discussing everything from policies that need tweaking to policies that don't exist but should.

"It works well for our office to be deeply involved in the policy process. We're the office that's at the top of the funnel, collecting the information," Parker says.

Of the system in place for ensuring both review of university policies and compliance with federal regulations, Parker adds, "We don't guarantee that it's perfect, but I'm not aware of any complaints that we've missed anything huge."

For further information, visit *http://policies.cua.edu* and *http://counsel.cua.edu*.

—Julie Bourbon, AGB Editor