

BOARD OF HIGHER EDUCATION

REQUEST FOR BOARD ACTION

NO.: BHE 21-32

BOARD DATE: October 20, 2020

APPROVAL OF TRUSTEE TRAINING IMPLEMENTATION GUIDELINES AND FRAMEWORK

MOVED: The Board of Higher Education (BHE) hereby approves the attached Trustee Training Implementation Guidelines and Framework (*Attachment A*), which establish minimum expectations and requirements in furtherance of the Commonwealth’s trustee training program, as required pursuant to M.G.L. c. 15A, § 45 for members of boards of trustees of public higher education institutions, and as required pursuant to c. M.G.L. c. 69, § 31B(e) for members of boards of trustees for private higher education institutions.

The BHE delegates to the Commissioner the authority to move forward with implementing the Commonwealth’s mandatory trustee training program as substantially set forth in the Trustee Training Implementation Guidelines and Framework (*Attachment A*). The Commissioner shall provide periodic updates on the status of implementation.

VOTED: Motion adopted by BHE 10/20/2020.

Authority: M.G.L. c. 15A, §§ 9 and 45; and M.G.L. c. 69, § 31B (as amended by Chapter 113 of the Acts of 2019)

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BACKGROUND

Through an amendment to the Board of Higher Education's (BHE) enabling legislation, recently enacted state law¹ has created mandatory trustee training requirements for members of the boards of trustees of both public and private higher education institutions. This law is integral to ensuring boards' success in actively monitoring and engaging with campus leadership, as it will enable trustees to receive the information necessary for exemplar postsecondary education governance in Massachusetts.² As set forth below and in the attachment, while the new legislation mandates different minimum statutory requirements for public institution trustees and private institution trustees, the BHE is authorized to establish any necessary rules, regulations and processes to implement and enforce the requirements for both groups.

❖ Public Higher Education Trustees

The law requires that the BHE establish and implement a comprehensive training program for members of the boards of trustees of public institutions of higher education on the proper governance of an institution of public higher education. For public higher education trustee training, the new law is very prescriptive and requires that:

- the BHE shall establish, implement and provide the instruction and training program;
- the instruction and training program shall be developed by the BHE, in consultation with the Office of the Attorney General (AGO) and Office of the Inspector General (IGO), and shall include at a minimum seven modules, in the following areas:
 - Open meeting law; public records law; conflict of interest law; state procurement laws; state finance provisions under chapter 29; fraud prevention; and fiduciary responsibilities.
- all members of a board of a public higher education institution must complete the BHE instruction and training program at least once every 4 years;

¹ *An Act to Support Improved Financial Stability in Higher Education*, [St. 2019 c. 113](#).

² Our Commonwealth is not alone: Arkansas, Oklahoma, Texas, Virginia, and West Virginia also have minimum, mandatory trustee training requirements. A.C.A. § 6-61-202(a)(1); Okla. Stat. tit. 70, § 3228; Tex. Educ. Code § 61.084; Va. Code Ann. § 23.1-1304(A); and W. Va. Code § 18B-1D-9(b)(1). In these states, trustees are required to be trained within a reasonable period of time after their appointment, usually within 1 year, with the exception of Oklahoma and Virginia (2 years). In addition, Arkansas requires trustees to be re-trained annually as a condition of their continued appointment; and West Virginia requires re-training every two years.

- the BHE must affirmatively establish an implementation schedule for the new law to ensure that all appointed or elected trustees complete the program; and
- board of trustee membership shall terminate, and the member's seat shall be deemed vacant, if the member fails to complete the training program within the BHE's established schedule.

M.G.L. c. 15A, § 45.³ Department staff, in consultation with representatives of the IGO and AGO, have been actively engaged in developing the content and modality for the required training program. The Department expects to formally launch the program in late October/early November and will offer the program online, free of charge, in both synchronous and asynchronous formats. Synchronous sessions will be offered multiple times throughout the year (for example, quarterly), and the asynchronous components can be completed by trustees on their own time, at their own pace.

Under the new law, the BHE must, at a minimum, establish an implementation schedule which ensures that all sitting trustees, as well as all newly appointed trustees, receive the required instruction and training within a reasonable timeframe. As reflected in the attached Implementation Guidelines and Framework (*Attachment A*), Department staff recommend that, for the implementation year (FY2021), all sitting trustees complete the full training by November 1, 2021, provided that the Commissioner will allow for limited extensions due to exigent circumstances. Thereafter, consistent with the recommendations of the AGO and the IGO, Department staff recommend that newly appointed trustees complete the training program within six months of appointment. Department staff will track and annually certify trustee completion of the program and compliance with the statutory requirements.

❖ Private Higher Education Trustees

With regard to trustees of private institutions of higher education, the law requires that "each member of an institution's governing body shall receive instruction and training in higher education financial metrics, legal and fiduciary responsibilities and applicable standards for accreditation at least once every 4 years." M.G.L. c. 69, § 31B(e). The law further authorizes and directs the BHE to establish the rules necessary to implement and enforce this law. M.G.L. c. 69, § 31B(g).

Unlike the training for trustees of public institutions, which will be developed and offered by the Department at periodic intervals free of charge, the private institution trustee trainings must be arranged for and funded by the private institutions

³ The second column in the attached chart (*Attachment A*) includes a listing of these statutory requirements.

themselves. Therefore, to all allow private institutions time to develop and secure the necessary instruction, as reflected in the attached Implementation Guidelines and Framework (*Attachment A*), Department staff recommend that:

- All sitting trustees (i.e., all trustees appointed by October 20, 2020) must receive training within four years of the enactment date of the statute (November 14, 2019).
- sitting trustees in key leadership roles, such as board chairs, vice chairs and chairs of key committees, including audit and finance committees, must receive training within a shorter timeframe, specifically by November 1, 2021.
- all newly appointed trustees (appointed after October 20, 2020) must receive training within six to twelve months of appointment.

In the first year of the implementation of the private institution trustee training requirement (FY2021), Department staff will focus on technical support and data collection and analysis. To that end, the Department has created an annual institutional certification process through an online portal. Private institutions will be required to:

- annually report progress in meeting trustee training requirements, including the BHE timeframes, for their respective trustees; and
- submit as part of the certification process their proposed training agenda/curriculum.

Completion of the annual certification process will be a condition of renewing the private institution's agreement with the Office of Student Financial Assistance (OSFA) to participate in state financial aid programs.

The proposed Year 1 (FY2021) process will allow Department staff to assess the availability and sufficiency of private institution trustee training programs and to gather data on private institution trustees' progress in voluntarily complying with this timetable. The Department will report its Year 1 findings back to the BHE, along with any recommended amendments or enhancements to the Implementation Guidelines and Framework.

Recommended BHE Action

Department staff recommend that the BHE approve the proposed Trustee Training Implementation Guidelines and Framework and direct the Commissioner to move forward with implementing the Commonwealth's mandatory trustee training program as substantially set forth guidelines and framework document (*Attachment A*). The

Commissioner shall provide the BHE with periodic updates on the implementation of the program, along with any recommended amendments as may be warranted from time to time.