The Role of the Board of Trustees of a Struggling Not-for-Profit Institution

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Educational institutions in New York State face dramatic declines in enrollment. Nonprofit hospitals are experiencing increased labor costs due to contract labor and labor shortages. Declining donor support and higher costs negatively impact all charitable organizations.

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The federal COVID-19 funding that helped many of these organizations during the pandemic has ended.

Against this backdrop, many organizations are confronting significant budget deficits, increased cash flow challenges, and potential defaults under their debt obligations.

As fiduciaries, board members have a key role in overseeing the financial health of these organizations and adherence to their educational, health care or charitable purposes. In fact, oversight of institutional finances is a significant part of a board's role.

At the earliest stages of financial challenges, board members should consider taking the following steps:

- Regularly avail themselves of material information about the finances and operations of the institution and use this information to make decisions. Decisions should be documented.
- The executive committee should meet regularly, in between board meetings, to monitor the financial health of the institution. Committee members should question financial performance and make sure their questions are being adequately answered.
- Evaluate whether all of the institution's programs, support services and administrative functions are sustainable at current revenue levels and staffing structures. While closing programs or reducing staff is a difficult decision, for institutions with budget deficits, these changes may help improve their financial health. Board members should make sure that the institution's management is consulting with labor (and, if necessary, regulatory) counsel on the legal requirements for closing programs and reducing staff.
- Make sure management and board members are aware of the institution's obligations under its bond or loan documents and the risk of default.
- Actively monitor the institution's efforts to improve revenues. Be skeptical of costly programs promising significant and fast increases in revenue.
- Ensure that the institution is avoiding incurring new liabilities other than those necessary for carrying out its mission. The institution should delay capital expenditures and halt discretionary, non-essential spending. Board members should make sure that an institution's finances do not worsen by incurring new obligations.
- Centralize purchasing approval in one department.
- Consider whether hiring freezes and salary increase freezes should and can be implemented.
- Avoid invading endowed and donor-restricted funds. Endowed funds must be spent in accordance with the donor's stated restrictions and New York State law. Donor-restricted funds may only be used in accordance with the donor's specified purposes and not for general creditors. Restrictions on donor contributions may be removed or modified provided certain legal requirements are met.
- Consider engaging a financial consultant which specializes in financially troubled not-for-profit institutions to assist in identifying areas for improved efficiencies and negotiating with creditors for restructuring debt.
- Begin exploring whether merging or consolidating with another institution could result in more efficient service delivery and improved financial performance resulting from economies of scale and cost savings.

While there is no single solution to an institution's financial challenges, active board engagement and oversight is critical to improving financial health.

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