

### 3.2.4 External Influence

The governing board is free from undue influence from political, religious, or other external bodies, and protects the institution from such influence.

Compliance       Partial Compliance       Not in Compliance

### SACSCOC COMPLIANCE ASSESSMENT

*This standard expects an institution's governing board to be free from undue influence from political, religious, or other external bodies and to protect the institution from such influence.*

*The Governor's executive order to abolish the board, and subsequently make new appointments, are inconsistent with SACSCOC expectations that institutions be able to operate without undue political influence in institutional governance. There appears to be an inconsistency between the institution's policies regarding board dismissal and the Governor's actions, which follow his assertion that dismissal procedures and protections do not apply under board reorganization. Any changes to legislation, Board governing documents, and institutional policies need to include appropriate provisions to ensure the protection of the institution's governing Board from future instances of undue political pressure*

## **UNIVERSITY RESPONSE**

The University of Louisville (UofL) is in compliance with Comprehensive Standard 3.2.4. The University of Louisville submits the following information in response to SACSCOC compliance assessment for Standard 3.2.4:

1. Background on UofL Governance Board Changes
  - Senate Bill 12
  - Senate Bill 107
2. Controls over External Influence
  - Kentucky Revised Statutes that Limit External Influence
  - Senate Bill 12 and Senate Bill 107 Limits to External Influence
  - University of Louisville Policies that Limit External Influence
3. Independent Function of the UofL Board of Trustees
4. Summary

The UofL Board of Trustees operates as a free and independent entity and is not controlled by external governmental and nongovernmental agencies or entities. Since its appointment in January of 2017, the Board has independently conducted its assigned administrative, academic, and fiduciary duties.

New legislation (SB 12 and SB 107) passed by the Kentucky General Assembly in Spring of 2017 limits undue external influence upon the ability of the board to conduct university business. The new legislation clarified the gubernatorial appointment and removal process related to higher education boards. UofL also has institutional policies and procedures that work to limit external influence.

## **1. Background on UofL Governance Board Changes**

On June 17, 2016, by executive order, the Governor of the Commonwealth of Kentucky dissolved the University of Louisville Board of Trustees, citing his authority under the Kentucky Constitution and Kentucky Revised Statute (KRS) 12.028 [1], which states:

- (1) *Recognizing the necessity for grouping related functions of organizational units and administrative bodies in order to promote greater economy, efficiency and improved administration, the Governor, the Kentucky Economic Development Partnership as created in KRS 154.10-010, and other elected state executive officers may propose to the General Assembly, for its approval, changes in the state government organizational structure which may include the creation, alteration or abolition of any organizational unit or administrative body and the transfer of functions, personnel, funds, equipment, facilities, and records from one (1) organizational unit or administrative body to another.*

The action of the Governor to reorganize the UofL Board based on KRS 12.028 led to legal action by the Kentucky Attorney General contesting the use of this particular state statute for that

purpose. The judge who ruled over the litigation determined that KRS 12.028 was not applicable to postsecondary education [2].

On January 7, 2017, the Kentucky General Assembly passed Senate Bill 12 [3] (signed into law by the Governor on January 9, 2017), and on March 15, 2017, the Kentucky General Assembly passed Senate Bill 107 (signed into law by the Governor on March 21, 2017) [4]. The passage of these two important pieces of legislation amended several Board-related state statutes [5] and clarified the process for making gubernatorial appointments not only at the University of Louisville (SB12) but for all of higher education in Kentucky (SB 107).

#### Senate Bill 12:

- gave authority for the appointment of a new Board of Trustees for the University of Louisville [6] compliant with state law as provided in KRS 164.830 (Powers of the Board) [7] and KRS 164.821 (Membership—Terms) [8].
- reduced the number of University of Louisville Board of Trustees appointed by the Governor from seventeen to ten [SB 12, Section 1(1)] [9].
- transferred to the newly appointed board all authority, duties, functions, responsibilities, records, equipment, staff, and supporting budgets along with all rights, powers, duties, and obligations as set forth in the Kentucky Revised Statutes and other relevant provisions

of the law vested in the former Board of Trustees of the University of Louisville (SB 12, Section 5) [10].

- provided that nominations to the Board of Trustees be submitted to the Governor by the Governor’s Postsecondary Education Nominating Committee: *“Upon the effective date of this Act and in accordance with KRS 164.005 [11], the Governor's Postsecondary Education Nominating Committee shall as soon as practicable submit thirty nominations from which the Governor shall select ten for appointment to a newly established board of trustees”* [SB 12, Section 3] [12].
- required that the Governor-appointed Board members be confirmed by the Kentucky State Senate. *“The ten appointees shall be subject to confirmation by the Senate”* [SB 12, Section 3] [13].

Senate Bill 107:

- addressed the applicability of KRS 12.028 to higher education related to the Governor’s executive orders using KRS 12.028.
- amended several state statutes related to the appointment to the Board of Trustees for the University of Kentucky and the University of Louisville; the Board of Regents at the Kentucky regional post-secondary education institutions (Eastern Kentucky University, Western Kentucky University, Morehead State University, Kentucky State University,

Northern Kentucky University, Murray State University, and the Kentucky Community and Technical College System); the Kentucky Board of Education; and the Kentucky Council on Postsecondary Education.

- established processes for the appointment and dismissal of individual board members or an entire board [SB 107, Section 1] [14].

Choosing from a list of nominees submitted by the Governor's Postsecondary Education Nominating Committee and following the revised state statute, on January 17, 2017, the Governor of Kentucky appointed ten new members to the UofL Board of Trustees. These ten new members joined three continuing members (the chair of the university's faculty senate, the chair of the staff senate, and the student body president) to form a new Board of Trustees with thirteen members [15]. More information about the UofL Board of Trustees is available online at <http://louisville.edu/president/board-of-trustees>.

A timeline outlining the reorganization of the UofL Board of Trustees is provided [16].

The passage of these two important pieces of legislation clarified the process of making gubernatorial appointments not only at the University of Louisville (SB12) but for all institutions of higher education in Kentucky (SB107). These state laws have also amended the process for the dismissal of individual Board members and have established a new process for the dismissal of entire Boards for Kentucky higher education institutions. The processes delineated in SB 107 address the legal issues associated with the Governor's executive orders using KRS 12.028 and

establish processes based on the state laws applicable to higher education in Kentucky. The enactment of SB 12 and SB 107 have created clearer protections from undue influence, which are discussed below in the university's response to SACSCOC.

## **2. Controls over External Influence**

The University of Louisville is in compliance with Kentucky state laws and SACSCOC requirements that require the university's Board of Trustees to be free to act independently and to protect the Board and institution from external influences.

On February 16, 2017, the university's Board of Trustees appointed an *ad hoc* committee on Governance to review university governance policies and procedures and to research best practices of university boards [17]. Based upon its research, the *ad hoc* committee revised the UofL Board of Trustees Bylaws and chapter 1 of *The Redbook* ("Organization and Operation of the Board of Trustees"), the university's governance document, also updating the documents to align with the revised state statutes.

Several existing Kentucky Revised Statutes provide protection against conflict of interest and external influence. As well, SB 12 and SB 107 set safeguards in place that limit the influence of the Governor of Kentucky in making appointments to the Board, both for the current Board appointments and for future appointments. SB 107 provided guidelines to be followed for dismissal of individual Board members or entire Boards. For transparency and as a check to external influence, the Board conducts its meetings in compliance with the Kentucky Open

Meetings and Open Records Laws [18]. The university also has internal controls related to conflict of interest and external influence.

### **Kentucky Revised Statutes that Limit External Influence**

Kentucky Revised Statutes provide checks on external influence of the Board of Trustees for state institutions.

- KRS 164.335 specifies that members of the General Assembly cannot serve on university governing Boards [19].
- KRS 164.830 (1)(a) states that “*No relative of a board of trustee member shall be employed by the university.*” [20]
- KRS 164.830 (2) states that “*Board members shall receive no compensation for serving on the board, but shall be reimbursed for travel expenses for attending meetings and performing other official functions, consistent with the reimbursement policy for state employees. Board members who reside outside the Commonwealth shall not be reimbursed for out-of-state travel expenses*” [21].
- KRS 45A.340 states that a Trustee may not have an interest in any contract with the university unless the contract has been subject to competitive bidding and the Trustee is the lowest bidder and the trustee in advance of submitting the bid has notified in



writing the remaining members of the Board and the newspaper with the largest circulation in the county where the university is located of the intention to bid [22].

- KRS 61.800 states the policy of KRS 61.805 to 61.850 regarding open meetings of public agencies [23]. Board of Trustees meetings are subject to the *Kentucky Open Meetings Act*, which includes a prohibition on taking a final action in a closed session. This requirement holds the Board of Trustees accountable to the public and helps to minimize external influence.
- KRS 61.871 establishes the policy of KRS 61.870 to 61.884 regarding open records of public agencies [24].
- KRS 164.830 states that “*A majority of the voting members of the board shall constitute a quorum for the transaction of business*” [25].

### **Senate Bill 12 and Senate Bill 107 Limits to External Influence**

The protections that have been enacted under SB 12 and SB 107 to protect against external influence include:

- State Senate Confirmation of Governor-Appointed Board Members: SB 12, Section 1 [26], and SB 107, Section 8(1) [27] amended KRS 164.821 [28] to say, “*The members appointed by the Governor shall be subject to confirmation by the Senate.*”

This requirement that the Kentucky State Senate confirm Board appointees mitigates the influence of the Governor on the Board. On March 30, 2017, the Kentucky State Senate confirmed the current UofL Board members [29].

- Staggered Terms: SB 12, Section 1(4) amended KRS 164.821 to state: “*The gubernatorial appointments shall serve a term of six (6) years and until their successors are appointed and qualified, except the initial terms shall be as follows:*
  - (a) *Two (2) members shall serve one (1) year terms;*
  - (b) *Two (2) members shall serve two (2) year terms;*
  - (c) *Two (2) members shall serve three (3) year terms;*
  - (d) *Two (2) members shall serve four (4) year terms;*
  - (e) *One (1) member shall serve a five (5) year term;*
  - (f) *One (1) member shall serve a six (6) year term.”* [30]

The 2017 appointment by the Governor of the new UofL Board followed this staggered appointment (see Table 1), which limits influence on the part of the Governor over time.

**Table 1. Staggered Terms of Governor Appointees to University of Louisville Board of Trustees**

<u>Board Appointee</u>	<u>Term Expires</u>	<u>Length of Term</u>
J. David Grissom	1/13/2023	6 years

John Schnatter	1/13/2022	5 years
Sandra Frazier	1/13/2021	4 years
Nitin Sahney	1/13/2021	4 years
Bonita K. Black	1/13/2020	3 years
Brian A. Cromer	1/13/2020	3 years
Raymond Burse (appointed 7/13/17 to replace Ulysses Lee Bridgeman, who resigned February 10, 2017 [31])	1/13/2019	2 years
Ronald L. Wright, MD	1/13/2019	2 years
James M. Rogers	1/13/2018	1 year
Diane B. Medley	1/13/2018	1 year

- Term Limits: SB 12, Section 1(1)(c) left in place the KRS 164.821(1)(c) requirement that “*New appointees to the board shall not serve more than two (2) consecutive terms*” [32].
- Proportional Representation: SB 12, Section 1(5) [33] and SB 107, Section 8(5) [34] amended KRS 164.821 to call for the Governor to make his appointments to the Board to reflect the proportional representation of the two leading political parties in the state based on voter registration and the minority racial composition of the Commonwealth of Kentucky. The political makeup of the UofL Board appointed by the Governor in January 2017 was four Democrats, four Republicans, and two Independents.

*“The Governor shall make his at-large appointments so as to divide the appointed representation upon the board to reflect: (a) The proportional representation of the two*

*(2) leading political parties in the Commonwealth based on the state's voter registration; and (b) No less than the proportional representation of the minority racial composition of the Commonwealth based on the total minority racial population using the most recent census or estimate data from the United States Census Bureau. If the determination of proportional minority representation does not result in a whole number of minority members, it shall be rounded up to the next whole number” [35].*

- Nominating Committee. The Governor’s Postsecondary Education Nominating Committee (GPENC) prepares a slate of names for consideration by the Governor in making appointments to Boards. KRS 164.005 specifies the guidelines to be used by the GPENC when identifying individuals recommended to the Governor for service on the various Boards. Section 6 of the statute says: *“In making its nominations, the committee shall consider the needs of the respective institutions, locate potential appointees, review candidates' qualifications and references, conduct interviews, and carry out other search and screening activities as necessary” [36]*. The GPENC collects conflict of interest information on nominees before forwarding nominees’ names to the Governor. The role of the GPENC is another protection against undue external influence.
- Board Orientation. SB 12, Section 1(1)(a) [37] and SB 107, Section 3(25)(a) [38] continued the state requirement under KRS 164.020(25) that Board members of state institutions undergo orientation to their duties. SB 12 amended KRS 164.821 to say, *“All appointed and elected persons shall be required to attend and complete an orientation*

*and education program prescribed by the council under KRS 164.020(25), as a condition of their service and eligibility for appointment or election to a second term” [39].*

The Board orientation provided by the Kentucky Council on Postsecondary Education is comprehensive in that it provides training on important and specific operational aspects of the business functions of the university, as well as the responsibilities of the Board and conflict of interest.

SB 107, Section 3 (25)(a)(1) amended KRS 164.020 (25)(a)(1) to read as follows:

*The Council on Postsecondary Education in Kentucky shall:*

*1. Ensure that the orientation and education program comprises six (6) hours of instruction time and includes but is not limited to information concerning the roles of the council and governing board members, the strategic agenda and the strategic implementation plan, and the respective institution's mission, budget and finances, strategic plans and priorities, institutional policies and procedures, board fiduciary responsibilities, legal considerations including open records and open meetings requirements, [and] ethical considerations arising from board membership, and the board member removal and replacement provisions of Section 1 of this Act. [40]*

An hour of orientation by CPE president Robert King for the current UofL Board of Trustees took place at the May 18, 2017, Board meeting [41].

CPE also hosts a biennial Governor’s Conference on Postsecondary Education Trusteeship [42] that provides Board members the opportunity to engage with state and national experts on the latest postsecondary issues and trends and to network with Board colleagues from other campuses. The mandatory state-level orientation program for Board members is offered at the conference. The 2017 conference is scheduled for September 11-12. Online orientation modules are also available.

On June 15, 2017, CPE approved the university’s comprehensive Board of Trustees Orientation Agenda [43], which will be incorporated into UofL Board meetings throughout the year. Orientation on the Board’s fiduciary responsibilities was conducted by Board member Bonita Black at the Board’s Annual Meeting on July 20, 2017 [44].

- Controls over UofL Faculty and Staff Members of the Board of Trustees. SB 12 Section 1 (7) states, “*Unless specifically approved by the board of trustees under the provisions of KRS 164.367, no member of the teaching or administrative staff of the university shall be directly or indirectly interested in any contract with the university for the sale of property, materials, supplies, equipment, or services, with the exception of compensation to the faculty, staff, and student members.*” [45]
- Removal of Board Members Appointed by the Governor. SB 107, Section 1 [46] amends KRS 63.080 [47] to read as follows:

***KRS 63.080 Officers appointed by Governor may be removed without cause --***

***Exceptions -- Removal of university or KCTCS board members for cause or to comply with proportional representation requirements.***

[Removal of Individual Members]

*(1) Except as provided in subsection (2) of this section and otherwise provided by law, any person appointed by the Governor, either with or without the advice and consent of the Senate, may be removed from office by the Governor for any cause the Governor deems sufficient, by an order of the Governor entered in the executive journal removing the officer.*

*(2) (a) Except as provided in subsections (3) and (4) of this section, members of the board of trustees of the University of Kentucky, the board of trustees of the University of Louisville, members of the board of regents respectively of Eastern Kentucky University, Western Kentucky University, Morehead State University, Kentucky State University, Northern Kentucky University, Murray State University, and the Kentucky Community and Technical College System shall not be removed except for cause.*

*(b) Members of the Kentucky Board of Education and the Council on Postsecondary Education shall not be removed except for cause.*

*(c) A member of a board of trustees or board of regents specified in paragraph (a) of this subsection may be removed for cause as follows:*

*1. The Governor or the board of trustees or board of regents, as applicable, shall notify, in writing, the member and the Council on Postsecondary Education that*

*the member should be removed for cause and shall specify the conduct warranting removal;*

- 2. The member shall have seven (7) days to voluntarily resign or to provide evidence to the Council on Postsecondary Education that the member's conduct does not warrant removal;*
- 3. Within thirty (30) days after receipt of notice from the Governor or the board, the Council on Postsecondary Education shall review the written notice, investigate the member and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed, a copy of which shall also be provided to the Legislative Research Commission;*
- 4. The Governor shall then make a determination, in writing, whether the member should be removed and shall notify the member, the applicable board, the Council on Postsecondary Education, and the Legislative Research Commission of the determination; and*
- 5. If the Governor's determination is to remove the member, the Governor shall remove the member by executive order, and shall replace the member with a new appointment according to the applicable statutes for the board of trustees or board of regents.*

*(d) For the purposes of this subsection, a member may be removed for cause for conduct including but not limited to malfeasance, misfeasance, incompetence, or gross neglect of duty.*



*(3) For a board specified in subsection (2)(a) of this section that is required by law to have proportional representation in its membership based on residence, political affiliation, gender, minority racial composition, or professional qualifications, the Governor or other appointing authority may remove any member of the board and replace him or her with another individual in order to bring the membership into compliance with the statutory proportional representation requirement for the board, provided that the Governor or other appointing authority shall:*

- (a) Only exercise the removal authority granted in this subsection if appointment at the end of the next expiring term of a member, or at the end of the next expiring term of members if two (2) or more members' terms expire at the same time, cannot cure the deficiency in the proportional representation requirement;*
- (b) Remove the fewest number of members necessary to bring the membership into compliance with the proportional representation requirement for the board;*
- (c) Identify the order in which the members were appointed to their current terms on the board and, beginning with the most recently appointed member who may be removed and replaced to bring the membership into compliance with the proportional representation requirement, remove the member or members according to the length of their tenure on the board, without taking into account any prior term of service on the board by the member;*
- (d) Provide any member proposed to be removed with the following:*
  - 1. Written notice, at least seven (7) days prior to the member's removal from the board, stating the statutory proportional representation requirement that the member does not satisfy; and*

2. *An opportunity during the seven (7) day notice period for the member to voluntarily resign or to provide evidence to the Governor or other appointing authority that the member does satisfy the proportional representation requirement or that another member on the board who also does not satisfy the requirement has a shorter tenure than the member proposed to be removed;*
- (e) *Replace any removed member with only those individuals who will bring the board into compliance with the proportional representation requirement; and*
- (f) *Appoint any new member in the same manner as provided by law for the member being removed and to fill the remainder of the removed member's unexpired term.*

[Removal of Entire Board]

- (4) *For a board of trustees or board of regents specified in subsection (2)(a) of this section, the Governor may remove for cause all appointed members of the board and replace the entire appointed membership as follows:*
- (a) *The Governor shall notify, in writing, the board and the Council on Postsecondary Education that the entire appointed membership of the board should be removed for cause and shall specify the conduct warranting removal;*
- (b) *The board or its members shall have seven (7) days to voluntarily resign or to provide evidence to the Council on Postsecondary Education that the conduct of the board or of individual members does not warrant removal;*
- (c) *Within thirty (30) days after receipt of notice from the Governor, the Council on Postsecondary Education shall review the written notice, investigate the board and the conduct alleged to support removal, and make a nonbinding*

*recommendation, in writing, to the Governor as to whether the appointed board membership should be removed, a copy of which shall also be provided to the Legislative Research Commission;*

*(d) The Governor shall then make a determination, in writing, whether the entire appointed board membership should be removed and shall notify the members, the Council on Postsecondary Education, and the Legislative Research Commission of the determination; and*

*(e) If the Governor's determination is to remove the entire appointed membership of the board, the Governor shall remove the members by executive order, and shall replace the members with new appointments according to the applicable statutes for the board of trustees or board or regents.*

*For the purposes of this subsection, the entire appointed membership of a board of trustees or board of regents may be removed for cause if the board is no longer functioning according to its statutory mandate as specified in the enabling statutes applicable to the board, or if the board membership's conduct as a whole constitutes malfeasance, misfeasance, incompetence, or gross neglect of duty, such that the conduct cannot be attributed to any single member or members.*

SB 107, Section 2(25)(a)1 amended KRS 164.020 to include that orientation is to cover the Board member removal and replacement provisions outlined in Section 1 of SB 107 [48].

## **University of Louisville Policies that Limit External Influence**

In addition to the SB 12 and SB 107 revisions and other state statutes, the university has existing institutional protections against conflict of interest and external influence that are applicable to the UofL Board.

On February 16, 2017, the Board of Trustees appointed an *ad hoc* Committee on Governance [49] to review SB 12 and SB 107 and propose revisions to the Board Bylaws [50] and chapter 1 of *The Redbook* [51] to align with best practices and revised state requirements implemented by SB 12 and SB 107. The excerpts from the Bylaws and *Redbook* provided below reflect these revisions.

- New Trustee Welcome Packet. When new Board members are appointed, the Board liaison sends them a New Trustee Welcome Packet that includes, among other items, the Board Bylaws, a conflict of interest letter from the university's General Counsel, the university's Institutional Conflict of Interest Policy, information on the Kentucky Open Records and Open Meetings Acts (*Your Duty Under the Law & Managing Government Records*), Oath of Office, Conflict of Interest Statement, Proof of Receipt, and UofL Board of Trustee Conflict of Interest Certification acknowledging that the Trustee has read the UofL Conflict of Interest Policy and certifying that the Trustee's completed and signed Conflict of Interest Statement is complete and accurate. The Trustee is to sign and date the Oath of Office, Conflict of Interest Statement, Proof of Receipt, and the Conflict of Interest Certification [52].

- University of Louisville Board of Trustees Bylaws, Policy Statement 1.3, Freedom from Undue External Influence (established in 2007).

*“The Board of Trustees is free of undue influence from political, religious, or other external bodies and is committed to protecting the institution from any such influence. In support of this commitment, the Board will maintain a robust policy on conflict of interest in adherence with applicable state law, will educate Trustees through various means on their obligations in responding to an actual or perceived conflict of interest, and will review Board conflict of interest policies periodically to ensure that they remain up-to-date. In addition, as noted in Operational Guideline 2.1 below, all Trustees will attend orientation organized through the Kentucky Council on Postsecondary Education that will highlight, among other matters, the University's strategic agenda and the strategic implementation plan, its mission, its policies, procedures, and priorities, board fiduciary responsibilities, legal considerations including open records and open meetings requirements, and ethical considerations arising from Board membership. The Board will also maintain membership in the Association of Governing Boards so that it has ready access to information regarding best practices for board governance. As noted in Article 3 of the By-Laws, the Board has in place a detailed policy by which individual Trustees can be dismissed or, in compelling circumstances, the entire Board of Trustees removed for limited and appropriate reasons and by a fair process that provides for notice and the right to be heard.” [53]*

Board members receive the Board of Trustees Bylaws in their new Board member materials [54], which includes the Freedom from Undue External Influence policy statement.

- Removal of Board Members. UofL Board of Trustees Bylaws have been revised to reflect the SB 107 policy and procedures for removing Board members. Section 3.1 covers the dismissal of individual members. Section 3.2 covers dismissal in order to meet the requirements of proportional representation as required by Kentucky Revised Statutes. Section 3.3 covers dismissal of the entire Board [55]. *The Redbook*, Sec. 1.1.7, Removal of Board of Trustees, has been revised to say, “Pursuant to state law and Article 3 of the Board’s By-Laws, individual trustees can be dismissed or, in compelling circumstances, the entire Board of Trustees removed for limited and appropriate reasons and by a fair process that provides for notice and the right to be heard” [56].
- Proportional Representation. Article 3.2 [57] of the Board Bylaws covers the SB 107 proportional representation requirement:

*“If the Board of Trustees is required by law to have proportional representation in its membership based on residence, political affiliation, gender, minority racial composition or professional qualifications, the Governor may remove any Trustee and replace him or her with another individual in order to bring the membership into*

*compliance with the proportional representation requirement for the Board of Trustees, provided that the Governor shall:*

*Only exercise the removal authority granted in this Section 3.2 if appointment at the end of the next expiring term of a Trustee, or at the end of the next expiring term of Trustees if two (2) or more Trustees' terms expire at the same time, cannot cure the deficiency in the proportional representation requirement;*

*Remove the fewest number of Trustees necessary to bring the membership into compliance with the proportional representation requirement for the Board of Trustees;*

*Identify the order in which the Trustees were appointed to their current terms on the Board of Trustees and, beginning with the most recently appointed Trustee who may be removed and replaced to bring the membership into compliance with the proportional representation requirement, remove the Trustee or Trustees according to the length of their tenure on the Board of Trustees, without taking into account any prior term of service on the Board of Trustees by the Trustee;*

*Provide any Trustee proposed to be removed with the following:*

*Written notice, at least seven (7) days prior to the Trustee’s removal from the Board of Trustees, stating the proportional representation requirement that the Trustee does not satisfy; and*

*An opportunity during the seven (7) day notice period for the Trustee to voluntarily resign or to provide evidence to the Governor that the Trustee does satisfy the proportional representation requirement or that another Trustee on the Board of Trustees who also does not satisfy the requirement has a shorter tenure than the Trustee proposed to be removed;*

*Replace any removed Trustee with only those individuals who will bring the Board of Trustees into compliance with the proportional representation requirement; and*

*Appoint any new Trustee in the same manner as provided by law for the Trustee being removed and to fill the remainder of the removed Trustee’s unexpired term.”*

- **Board Orientation.** In adhering with state laws, the members of the Board of Trustees will attend orientation covering statutory authority, conflict of interest, fiduciary responsibilities, and other knowledge crucial to their governance roles. The Board Bylaws Operational Guideline 2.1 states: “*All new Trustees will attend a formal orientation as soon as practicable after being appointed to the Board*” [58].



The revised Bylaws also contain the following Policy Statement 1.3: “*all Trustees will attend orientation organized through the Kentucky Council on Postsecondary Education that will highlight, among other matters, the University’s Strategic Agenda and the strategic implementation plan, its mission, its policies, procedures, and priorities, board fiduciary responsibilities, legal considerations including open records and open meetings requirements, and ethical considerations arising from Board membership*” [59] .

An hour of CPE orientation by CPE president Robert King for the current UofL Board of Trustees took place at the May 18, 2017, Board meeting [60]. Orientation on the Board’s fiduciary responsibilities was conducted by Board member Bonita Black at the Board’s Annual Meeting on July 20, 2017 [61]. New Trustees will also either attend the Governor’s Conference on Postsecondary Education Trusteeship in September, which will include CPE orientation, or will complete online CPE orientation modules. In addition, the university’s CPE-approved orientation agenda will be incorporated into Board meetings throughout the year [62].

- Board of Trustees Member Voting. *The Redbook*, Section 1.1.3, states: “*Each member of the Board of Trustees shall have a full and independent right to vote upon matters coming before the Board, pursuant to the procedures set out in the Board’s By-Laws* [63]. The Board of Trustees Bylaws, Section 2.4, states: A *majority of all the Trustees constitute a quorum of the board, which will act by a majority of those present at a meeting at which a quorum is present*” [64].

- Conflict of Interest. The university’s Institutional Conflict of Interest Policy applies to Board members and requires that they disclose any known conflict of interest [65]. Board members receive the university’s Institutional Conflict of Interest Policy and the Conflict of Interest Disclosure Statement in their New Trustee Welcome Packet, and Trustees are required to sign, date, and return the Conflict of Interest Disclosure Statement and a certification that the information submitted is accurate. The policy and Conflict of Interest Disclosure Statement are also provided to members at the Board’s Annual Meeting. State-mandated Board orientation provided by the institution and the Kentucky Council on Postsecondary Education also covers conflict of interest.

Conflict of Interest statements for the current Board are provided [66].

The Board Bylaws and *The Redbook* also provide policies and procedures related to conflict of interest:

- Board of Trustees Bylaws, Section 5.1, Conflict of Interest. Section 5.1 of the Board's Bylaws outlines the guidelines for Board members regarding known conflicts of interest.

*“All Trustees shall disclose any known conflict of interest and shall avoid participating in any decision or advocating any subject matter before the*

*Board in which the Trustee, a business in which the Trustee is an owner or an employee, or a member of the immediate family of a Trustee has a conflict of interest. When a Trustee learns that a business transaction presents a conflict of interest, that Trustee must make an immediate, full disclosure to the Board of his or her interest in the subject. The Trustee shall not participate in any discussion of or decision on the issue. Disclosures are necessary for business transactions which would result in conflict of interest. Failure of a Trustee to make a disclosure shall void any resulting agreement at the option of the University. University remuneration to a faculty or staff Trustee and financial aid to a student Trustee shall not be considered a financial or other conflict of interest. Conflicts of interest shall be dealt with in accordance with state statutes.” [67]*

- *The Redbook, Section 1.1.3, has been revised to require the Chair of the Board of Trustees to remind all Trustees that it is their responsibility to avoid conflicts of interest and to make any conflicts of interest known before involvement in the voting of the Board on any items related to the conflict.*

*The Redbook revisions were approved by the Board on June 15, 2017.*

*The Chair of the Board of Trustees shall begin each meeting of the Board with the following statement: “As Chair, it is my responsibility to remind all members of the Board of their responsibility to avoid conflicts of interest and appearances of conflict of interest. Each member has received the*

*agenda and related information for this Board of Trustees' meeting. If any Board member knows of any conflict of interest or appearance of conflict of interest with respect to any matter coming before the Board of Trustees at this meeting, please identify the conflict or appearance of conflict at this time."*

*All trustee conflict of interest statements or similar disclosure documents and any conflict of interest or appearance of a conflict of interest identified by a trustee, whether at a meeting or otherwise, shall be referred to the Board's governance committee for review. If a determination is made that further action is needed, a recommendation for further action will be communicated to the involved trustee(s) and to the Board Chair. If a member of the governance committee has a substantial interest in the matter that has been disclosed, then the matter may instead be referred for review and recommendation to the Board's Executive Committee or to an ad hoc committee of no less than three members of the Board of Trustees" [68].*

- University of Louisville Board of Trustees Bylaws, Ethics Statement (Policy Statement 1.1). The Board's Ethics statement, originally adopted in 2005, has been revised to read:

*"In all matters entrusted to the Board of Trustees of the University of Louisville, the Board, individually and collectively, is committed: to carry out its responsibilities in*

*accordance with the laws of the Commonwealth; to act with care and make informed decisions; to comply with University policies applicable to the Board of Trustees; to refrain from actions which put a Trustee's personal or professional interests in conflict with that of the University and to abstain from any action or vote where appropriate; and, to avoid the use of Trustee appointment to obtain any private benefit. Further, neither the Chair of the Board nor a majority of Trustees shall have a contractual, employment, or personal financial interest in the University” [69].*

- UofL Code of Conduct. Effective November 2009, the Board approved and adopted the university's Code of Conduct [70], which applies to the institution, its Board members, and all other university community members. The code addresses guiding principles and standards of conduct, including transparency, integrity, ethical considerations, objectivity, and impartiality in decision-making.

The UofL Code of Conduct holds all members of the university, including the Board of Trustees, to the following standards of conduct:

- Act ethically and with integrity
- Be fair and respectful to others
- Manage responsibly
- Protect and preserve university resources
- Promote a culture of compliance
- Preserve academic freedom and meet academic responsibilities

- Ethically conduct teaching and research
- Avoid conflicts of interest and commitment
- Carefully manage public, private, and confidential information
- Promote health and safety in the workplace

### **3. Independent Function of the UofL Board of Trustees**

The Board works independently to exercise its mandated authority over the institution. The Board approves personnel actions, promotion and tenure decisions, and the granting of degrees; receives reports from university constituencies; evaluates the president; approves the university's operating budget; and guides, supports, and evaluates the university's efforts toward its strategic agenda; among many other tasks. A summary of regular Board activities is provided [71].

The Board of Trustees and its various committees [72] meet regularly [73] to carry out the Board's governance function and to receive reports and information from the president and other administrators. The current Board has met regularly since its appointment and has diligently performed its state-mandated responsibilities in exercising independent control of the institution [74].

The Governor does not attend Board meetings or have a role in setting the Board's agenda. UofL Board members are regularly informed of their conflict of interest responsibilities and, per *The Redbook* revisions approved on June 15, 2017, the chair of the Board at each meeting reminds the membership by stating, "*As Chair, it is my responsibility to remind all members of the Board*

*of their responsibility to avoid conflicts of interest and appearances of conflict of interest. Each member has received the agenda and related information for this Board of Trustees' meeting. If any Board member knows of any conflict of interest or appearance of conflict of interest with respect to any matter coming before the Board of Trustees at this meeting, please identify the conflict or appearance of conflict at this time” [75].* This policy reminds all Trustees that it is their responsibility to guard against external influences or any situation that would result in a conflict of interest.

#### **4. Summary**

The University of Louisville is in compliance with Comprehensive Standard 3.2.4, and the UofL Board policies are in alignment with state laws and regulations. The Board operates as a free and independent entity that is focused on the well-being of the university and is not controlled by external governmental and nongovernmental agencies or entities. As Board meeting minutes document, the Board has independently conducted its assigned administrative, academic, and fiduciary duties.

Protections have been set in place by the Kentucky General Assembly that limit undue external influence upon the ability of the Board to conduct university business. The new legislation of SB 12 and SB 107 enacted by the General Assembly in spring 2017 clarified the gubernatorial appointment and removal process related to higher education Boards and required Kentucky State Senate confirmation for all future Board appointments. In doing so, the General Assembly better defined the Governor's role and identified the basis upon which entire Boards and

individual members for all Kentucky public institutions could be dismissed. Board of Trustees members are to be given written notice by the Governor and have the opportunity to provide evidence to the Kentucky Council on Postsecondary Education, who is to investigate and make an independent recommendation to the Governor regarding the merits of the dismissal. This legislation has reinforced the separation of powers between the state and the institutions of higher education.

UofL also has institutional policies and procedures that work to limit external influence. The university's Board of Trustees has updated its Bylaws and chapter 1 of *The Redbook* ("Organization and Operation of the Board of Trustees") to align with best practices and state statute. The university Board undergoes mandated orientation to its responsibilities from both the Council on Postsecondary Education and within the university. As well, the Board follows the university's Institutional Conflict of Interest Policy.

The legislative changes enacted by the Kentucky General Assembly and the steps taken by the university to update its policies and procedures foster proper Board function in the provision of a sound educational program at the University of Louisville.

[1] KRS 12.028, Reorganization of Boards  
3\_2\_4\_fn01.pdf

[2] Judge's Ruling on Attorney General Lawsuit  
3\_2\_4\_fn02.pdf

[3] Senate Bill 12, An Act Relating to Postsecondary Education Governance  
3\_2\_4\_fn03.pdf



- [4] Senate Bill 107, An Act Relating to Gubernatorial Appointments  
3\_2\_4\_fn04.pdf
- [5] KRS Legislation Amended by Senate Bills 12 and 107  
3\_2\_4\_fn05.pdf
- [6] Senate Bill 12, Section 3  
3\_2\_4\_fn06.pdf
- [7] KRS 164.830, Powers of the Board  
3\_2\_4\_fn07.pdf
- [8] KRS 164.821, Membership—Terms  
3\_2\_4\_fn08.pdf
- [9] SB 12, Section 1(1), Membership of University of Louisville Board  
3\_2\_4\_fn09.pdf
- [10] SB 12, Section 5, Transfer of All Authority to new Board of Trustees  
3\_2\_4\_fn10.pdf
- [11] KRS 164.005, Governor's Postsecondary Education Nominating Committee  
3\_2\_4\_fn11.pdf
- [12] SB 12, Section 3, Governor's Postsecondary Education Nominating Committee  
3\_2\_4\_fn12.pdf
- [13] SB 12, Section 3, Confirmation by the Senate  
3\_2\_4\_fn13.pdf
- [14] Senate Bill 107, Section 1  
3\_2\_4\_fn14.pdf
- [15] Roster of UofL Board of Trustees Members, January 17, 2017  
3\_2\_4\_fn15.pdf
- [16] Timeline on UofL Board of Trustees Reorganization  
3\_2\_4\_fn16.pdf
- [17] Board of Trustees *Ad Hoc* Committee on Governance Charge  
3\_2\_4\_fn17.pdf
- [18] Kentucky Open Meetings and Open Records Laws  
3\_2\_4\_fn18.pdf

- [19] KRS.164.335, General Assembly Member Cannot Serve  
3\_2\_4\_fn19.pdf
- [20] KRS 164.830, No Relative of Board of Trustees Members Employed by University  
3\_2\_4\_fn20.pdf
- [21] KRS 164.830 (1)(a), No Compensation for Board of Trustees Members  
3\_2\_4\_fn21.pdf
- [22] KRS 45A.340, No Interest in Contracts with University  
3\_2\_4\_fn22.pdf
- [23] KRS 61.800, Open Meetings  
3\_2\_4\_fn23.pdf
- [24] KRS 61.871, Open Records of Pubic Agencies  
3\_2\_4\_fn24.pdf
- [25] KRS 164.830, Quorum of the Board  
3\_2\_4\_fn25.pdf
- [26] SB 12, Section 1, State Senate Confirmation of Board Appointees  
3\_2\_4\_fn26.pdf
- [27] SB 107, Section 8(1), State Senate Confirmation of Board Appointees  
3\_2\_4\_fn27.pdf
- [28] KRS 164.821, Senate Confirmation of Governor Appointed Board members  
3\_2\_4\_fn28.pdf
- [29] Senate Confirmation of University of Louisville Board Members Appointed January 17,  
2017  
3\_2\_4\_fn29.pdf
- [30] KRS 164.821, Staggered Terms for UofL Board of Trustees Appointments  
3\_2\_4\_fn30.pdf
- [31] Resignation of Ulysses Lee Bridgeman from Board, February 10, 2017  
3\_2\_4\_fn31.pdf
- [32] KRS 164.821(1)(c), Board Term Limits  
3\_2\_4\_fn32.pdf
- [33] SB 12, Section 1(5), Amendment of KRS 164.821 Related to Proportional Representation  
3\_2\_4\_fn33.pdf

- [34] SB 107, Section 8(5), Amendment of KRS 164.821 Related to Proportional Representation  
3\_2\_4\_fn34.pdf
- [35] KRS 164.821, Proportional Representation of Board of Trustees  
3\_2\_4\_fn35.pdf
- [36] KRS 164.005, Governor's Postsecondary Education Nominating Committee  
3\_2\_4\_fn36.pdf
- [37] SB 12, Section 1(1)(a), Board Orientation  
3\_2\_4\_fn37.pdf
- [38] SB 107, Section 3(25)(a), Board Orientation  
3\_2\_4\_fn38.pdf
- [39] KRS 164.821, Board Orientation  
3\_2\_4\_fn39.pdf
- [40] KRS 164.020(25)(a)(1), Kentucky Council on Postsecondary Education Orientation for Board of Trustees  
3\_2\_4\_fn40.pdf
- [41] Board of Trustees Minutes Meeting Minutes, May 18, 2017, Board Orientation by the Kentucky Council on Postsecondary Education  
3\_2\_4\_fn41.pdf
- [42] Governor's Conference on Postsecondary Education Trusteeship  
3\_2\_4\_fn42.pdf
- [43] CPE-Approved UofL Board of Trustees Orientation Agenda  
3\_2\_4\_fn43.pdf
- [44] BOT Fiduciary Responsibility Presentation, 7-20-2017  
3\_2\_4\_fn44.pdf
- [45] SB 12, Section 1(7), Limits of University Board of Trustees Members  
3\_2\_4\_fn45.pdf
- [46] SB 107, Section 1, Removal of Board Members and Entire Boards  
3\_2\_4\_fn46.pdf
- [47] KRS 63.080, Dismissal of Board Members  
3\_2\_4\_fn47.pdf
- [48] KRS 164.020, CPE Orientation to Cover Removal and Replacement of Board Members  
3\_2\_4\_fn48.pdf

- [49] Board of Trustees, *Ad Hoc* Committee on Governance Charge  
3\_2\_4\_fn49.pdf
- [50] Revisions to Board of Trustees Bylaws  
3\_2\_4\_fn50.pdf
- [51] Revisions to *The Redbook*, Chapter 1  
3\_2\_4\_fn51.pdf
- [52] New Trustee Welcome Packet Example  
3\_2\_4\_fn52.pdf
- [53] UofL Board of Trustees Bylaws, Policy Statement 1.3, Freedom from Undue External Influence  
3\_2\_4\_fn53.pdf
- [54] Board of Trustees New Member Packet Checklist  
3\_2\_4\_fn54.pdf
- [55] Board of Trustees Bylaws, Article 3, Removal of Trustees  
3\_2\_4\_fn55.pdf
- [56] *The Redbook*, Section 1.1.7, Removal of Trustees  
3\_2\_4\_fn56.pdf
- [57] Board of Trustees Bylaws, Article 3.2, Proportional Representation  
3\_2\_4\_fn57.pdf
- [58] Board of Trustees Bylaws, Operational Guideline 2.1, Board Orientation  
3\_2\_4\_fn58.pdf
- [59] Board of Trustees Bylaws, Policy Statement 1.3, Board Orientation  
3\_2\_4\_fn59.pdf
- [60] Board of Trustees Minutes, May 18, 2017, CPE Orientation  
3\_2\_4\_fn60.pdf
- [61] BOT Fiduciary Responsibility Presentation, 7-20-2017  
3\_2\_4\_fn61.pdf
- [62] CPE-Approved UofL Board of Trustees Orientation Agenda  
3\_2\_4\_fn62.pdf
- [63] *The Redbook*, Section 1.1.3, BOT Independent Right to Vote  
3\_2\_4\_fn63.pdf

- [64] Board of Trustees Bylaws, Section 2.4, Quorum  
3\_2\_4\_fn64.pdf
- [65] University of Louisville Institutional Conflict of Interest Policy  
3\_2\_4\_fn65.pdf
- [66] Board of Trustees Signed Conflict of Interest Statements  
3\_2\_4\_fn66.pdf
- [67] Board of Trustees Bylaws, Section 5.1, Conflict of Interest  
3\_2\_4\_fn67.pdf
- [68] *The Redbook*, Section 1.1.3, Conflict of Interest  
3\_2\_4\_fn68.pdf
- [69] Board of Trustees Bylaws Policy Statement 1.1, Ethics Statement  
3\_2\_4\_fn69.pdf
- [70] UofL Code of Conduct  
3\_2\_4\_fn70.pdf
- [71] Summary of Board of Trustees Activities  
3\_2\_4\_fn71.pdf
- [72] Board of Trustees Committees  
3\_2\_4\_fn72.pdf
- [73] Board of Trustees 2017-18 Meeting Schedule  
3\_2\_4\_fn73.pdf
- [74] Actions of Current Board of Trustees  
3\_2\_4\_fn74.pdf
- [75] *The Redbook*, Section 1.1.3, Conflict of Interest  
3\_2\_4\_fn75.pdf