

### **CS 3.2.5 (Board dismissal)**

The governing board has a policy whereby members can be dismissed only for appropriate reasons and by a fair process.

Compliance                       Partial Compliance                       Not in Compliance

### **SACSCOC COMPLIANCE ASSESSMENT**

*This standard expects an institution's governing board to have a policy whereby members can be dismissed only for appropriate reasons and by a fair process.*

*The Governor dismissed board members without adequate due process in accordance with existing Kentucky statutes and policies. Board reorganization efforts appear to have been used to circumvent the use of an adequate and fair process for the dismissal of board members.*

### **UNIVERSITY RESPONSE**

The University of Louisville (UofL) is in compliance with Comprehensive Standard 3.2.5. The UofL governing board has a policy whereby members can be dismissed only for appropriate reasons and by a fair process. The University of Louisville submits the following information in response to SACSCOC compliance assessment for Standard 3.2.5:

1. Background on UofL Governance Board Changes

- Senate Bill 12
- Senate Bill 107

Removal of Individual Members

Removal of Entire Boards

2. University of Louisville Board of Trustees Dismissal Policy

- Removal of Individual Members
- Removal of Entire Boards

3. Summary

**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:

- *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 application of this particular statute to institutions of higher education. 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 the Governor 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 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 postsecondary 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 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].

With the passage of these two important pieces of legislation, the state Senate has clarified the process for making gubernatorial appointments not only at the University of Louisville (SB 12) but for all institutions of higher education in Kentucky (SB 107).

SB 12, Section 1(1)(b) states that “*Board members may be removed by the Governor for cause, which shall include neglect of duty or malfeasance in office, after being afforded a hearing with counsel before the Council on Postsecondary Education and a finding of fact by the council.*”

SB 107 identified the basis upon which individual members or entire boards for all Kentucky public institutions of higher education could be dismissed and set in place procedures for the involvement of the Kentucky Council on Postsecondary Education (CPE) in board dismissal. Board of Trustees members are to be given written notice by the governor and have the opportunity to provide evidence to CPE. CPE is to investigate and make a recommendation to the governor regarding the merits of the dismissal.

SB 107, Section 1 amended KRS 63.080 [17] to provide for removal of individual Board members or for removal of an entire Board. The language from KRS 63.080 related to each is provided below.

***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.*

KRS 63.080 allows the Governor to remove an individual Board member “*for cause for conduct including but not limited to malfeasance, misfeasance, incompetence, or gross neglect of duty*” [Section 2(5)(d)]. The Governor may remove an entire appointed membership of a board “*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*” [Section 4].

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 [18].

## **2. University of Louisville Board of Trustees Dismissal Policy**

The University of Louisville's Board of Trustees' dismissal policy is aligned with the legislation established by SB 12 and SB 107 and makes provision for removal of Board members for appropriate cause and by due process. The university's dismissal policy is also in compliance with SACSCOC requirements related to Comprehensive Standard 3.2.5.

On February 16, 2017, the Board of Trustees appointed an *ad hoc* Committee on Board Governance to review SB 12 and SB 107 and propose revisions to the Board of Trustees Bylaws and Chapter 1 of *The Redbook* (the university's governance document) to align with revised state requirements implemented by SB 12 and SB 107. The UofL Board of Trustees approved the revisions to the Bylaws at its meeting on May 18, 2017 [19] [20]. *The Redbook* revisions were approved at the June 15, 2017, meeting of the Board of Trustees [21] [22]. The excerpts from the Bylaws and *The Redbook* provided below reflect these revisions.

- Article 3 of the revised UofL Board of Trustees Bylaws [23] states the UofL Board of Trustee's dismissal policy (provided below). 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.

**ARTICLE 3. REMOVAL OF BOARD OF TRUSTEES**

*Sections 3.1, 3.2, and 3.3 below set out the University's 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. This process is consistent with the state statutes and University policy.*

**Section 3.1 INDIVIDUAL MEMBERS**

- (a) *Except as provided in Sections 3.2 and 3.3, members of the Board of Trustees shall not be removed except for cause.*
  
- (b) *A Trustee may be removed for cause as follows:*
  - (1) *The Governor or the Board of Trustees shall notify, in writing, the Trustee and the Kentucky Council on Postsecondary Education (the "CPE") that the Trustee should be removed for cause and shall specify the conduct warranting removal;*
  
  - (2) *The Trustee shall have seven (7) days to voluntarily resign or to provide evidence to the CPE that the Trustee's conduct does not warrant removal;*
  
  - (3) *Within thirty (30) days after receipt of notice from the Governor or the Board of Trustees, the CPE shall review the written notice,*

*investigate the Trustee and the conduct alleged to support removal and make a nonbinding recommendation, in writing, to the Governor as to whether the Trustee should be removed, a copy of which shall also be provided to the Kentucky Legislative Research Commission (the “LRC”);*

- (4) The Governor shall then make a determination, in writing, whether the Trustee should be removed and shall notify the Trustee, the Board of Trustees, the CPE and the LRC of the determination; and*
- (5) If the Governor’s determination is to remove the Trustee, the Governor shall remove the Trustee by executive order, and shall replace the Trustee with a new appointment according to the applicable statutes for the Board of Trustees.*

- (c) For the purposes of this Section 3.1, a Trustee may be removed for cause for conduct including but not limited to malfeasance, misfeasance, incompetence or gross neglect of duty.*

**Section 3.2 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:*

- (a) 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;*
- (b) Remove the fewest number of Trustees necessary to bring the membership into compliance with the proportional representation requirement for the Board of Trustees;*
- (c) 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;*
- (d) Provide any Trustee proposed to be removed with the following:*
  - (1) 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*

- (2) *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;*
- (e) *Replace any removed Trustee with only those individuals who will bring the Board of Trustees into compliance with the proportional representation requirement; and*
- (f) *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.*

**Section 3.3 ENTIRE MEMBERSHIP**

*The Governor may remove for cause all appointed Trustees of the Board of Trustees and replace the entire appointed membership as follows:*

- (a) *The Governor shall notify, in writing, the Board of Trustees and the CPE that the entire appointed membership of the Board of Trustees should be removed for cause and shall specify the conduct warranting removal;*
- (b) *The Board or its Trustees shall have seven (7) days to voluntarily resign or to provide evidence to the CPE that the conduct of the Board of Trustees or of individual Trustees does not warrant removal;*



- (c) *Within thirty (30) days after receipt of notice from the Governor, the CPE shall review the written notice, investigate the Board of Trustees and the conduct alleged to support removal and make a nonbinding recommendation, in writing, to the Governor as to whether the appointed membership of the Board of Trustees should be removed a copy of which shall also be provided to the LRC;*
- (d) *The Governor shall then make a determination, in writing, whether the entire appointed membership of the Board of Trustees should be removed and shall notify the Trustees, the CPE and the LRC of the determination;*
- (e) *If the Governor's determination is to remove the entire appointed membership of the Board of Trustees, the Governor shall remove the Trustees by executive order, and shall replace the Trustees with new appointments according to the applicable statutes for the Board of Trustees; and*
- (f) *For the purposes of this Section 3.3, the entire appointed membership of the Board of Trustees may be removed for cause if the Board of Trustees is no longer functioning according to its statutory mandate as specified in the enabling statutes applicable to the Board of Trustees, or if the Board's conduct as a whole constitutes malfeasance, misfeasance, incompetence or gross neglect of duty, such that the conduct cannot be attributed to any single Trustee or Trustees. The inability of the Board of Trustees to hold regular meetings, to elect a chair annually, to establish a quorum, to adopt*

*an annual budget, to set tuition rates, to conduct an annual evaluation of the President, to carry out its primary function to periodically evaluate the University's progress in implementing its mission, goals, and objectives to conform to the strategic agenda or to otherwise perform its duties under Kentucky Revised Statutes Section 164.830 shall be cause for the Governor to remove all appointed Trustees and replace the entire appointed membership pursuant to this Section 3.3 and applicable law.*

- Sec. 1.1.7 of *The Redbook* 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” [24].

When new Trustees are appointed, the Board’s liaison sends them a New Trustee Welcome Packet that includes, among other items, a copy of the Board of Trustees Bylaws, which contains the board dismissal policy [25]. Board members are also notified about the dismissal policy in the state-mandated board orientation provided by the institution and CPE.

### **3. Summary**

In compliance with SACSCOC Comprehensive Standard 3.2.5, the University of Louisville’s governing board has a policy whereby members can be dismissed only for appropriate reasons and by a fair process. The Board of Trustees’ Bylaws have been revised to include the

university's Board dismissal policy (approved by the Board of Trustees on May 18, 2017), which is in alignment with Kentucky State Statutes as amended by SB 107.

Section 3.1 of the Bylaws 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. UofL's governance document, *The Redbook* (Section 1.1.7), has also been revised to reflect the existence of the Board of Trustees' dismissal policy as stated in Article 3 of the Board Bylaws (approved June 15, 2017).

Trustees are informed of the dismissal policy in their New Trustees Welcome Packet and on an ongoing basis through the state-mandated board orientation completed with the support and coordination of the Kentucky Council on Postsecondary Education. To date, no members of the Board of Trustees appointed by the Governor in January 2017 have been dismissed.

[1] KRS 12.028, Reorganization of Boards  
3\_2\_5\_fn01.pdf

[2] Judge's Ruling on Attorney General Lawsuit  
3\_2\_5\_fn02.pdf

[3] Senate Bill 12, An Act Relating to Postsecondary Education Governance  
3\_2\_5\_fn03.pdf

[4] Senate Bill 107, An Act Relating to Gubernatorial Appointments  
3\_2\_5\_fn04.pdf

[5] KRS Legislation Amended by Senate Bills 12 and 107  
3\_2\_5\_fn05.pdf

[6] Senate Bill 12, Section 3  
3\_2\_5\_fn06.pdf

- [7] KRS 164.830, Powers of the Board  
3\_2\_5\_fn07.pdf
- [8] KRS 164.821, Membership—Terms  
3\_2\_5\_fn08.pdf
- [9] SB 12, Section 1(1), Membership of University of Louisville Board  
3\_2\_5\_fn09.pdf
- [10] SB 12, Section 5, Transfer of All Authority to new Board of Trustees  
3\_2\_5\_fn10.pdf
- [11] KRS 164.005, Governor's Postsecondary Education Nominating Committee  
3\_2\_5\_fn11.pdf
- [12] SB 12, Section 3, Governor's Postsecondary Education Nominating Committee  
3\_2\_5\_fn12.pdf
- [13] SB 12, Section 3, Confirmation by the Senate  
3\_2\_5\_fn13.pdf
- [14] SB 107, Section 1, Appointment and Dismissal of Board of Trustees  
3\_2\_5\_fn14.pdf
- [15] Roster of UofL Board of Trustees  
3\_2\_5\_fn15.pdf
- [16] Timeline on UofL Board of Trustees Reorganization  
3\_2\_5\_fn16.pdf
- [17] 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  
3\_2\_5\_fn17.pdf
- [18] KRS 164.020 (25) (a.1.), Board Orientation Coverage--Board Removal and Provisions  
3\_2\_5\_fn18.pdf
- [19] UofL Board Bylaws Revisions Approved by Board of Trustees on May 18, 2017  
3\_2\_5\_fn19.pdf
- [20] Revised UofL Board of Trustees Bylaws Showing Changes  
3\_2\_5\_fn20.pdf

[21] *The Redbook*, Chapter One Revisions Approved by Board of Trustees on June 15, 2017  
3\_2\_5\_fn21.pdf

[22] *The Redbook* Chapter 1 Revisions Showing Changes  
3\_2\_5\_fn22.pdf

[23] Article 3 of Revised UofL Board of Trustees Bylaws  
3\_2\_5\_fn23.pdf

[24] *The Redbook*, Sec. 1.1.7, Removal of Board of Trustees  
3\_2\_5\_fn24.pdf

[25] New Trustee Welcome Packet Checklist  
3\_2\_5\_fn25.pdf