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Whose Rules? A Comparative Review of SLAC Bylaws

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by Antonia Dosik

Editor's Note

Bylaws are not aspirational language. They are a nonprofit corporation's own rules for exercising its fiduciary duties, and courts reviewing nonprofit governance disputes treat them as the operative standard. A board action taken outside the process the bylaws describe, or by a body the bylaws did not authorize to act, can support a claim that the board or its officers breached their fiduciary duty.

In Ohio, the Attorney General's Charitable Law Section has this authority directly and has used it against trustees of other Ohio nonprofit colleges, naming them as individuals in lawsuits. A bylaws provision that is silent on a question, such as who appoints the president, does not leave the question unregulated. It means the default rules of Ohio nonprofit corporation law govern instead.

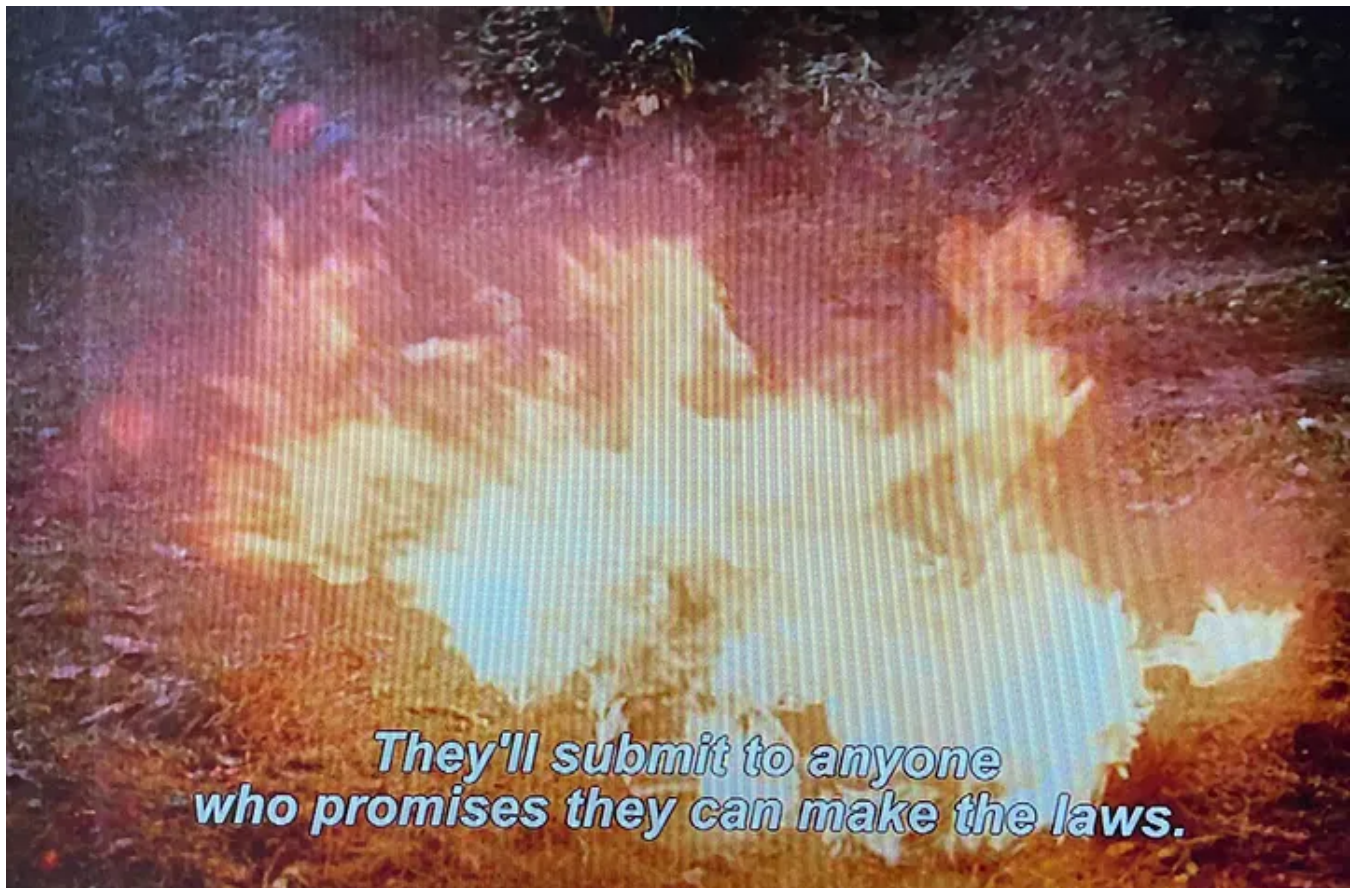
The following comparison, prepared by Toni Dosik, reviews how eleven small liberal arts colleges, including Antioch, address three questions in their bylaws: the general powers and duties of trustees, the appointment and removal of the president, and the scope of Executive Committee authority. Bylaws for nine of the eleven colleges are published online and linked inline below on first mention. Reed College's bylaws are referenced by Dosik but were not part of the published source list and are not linked here. Antioch College's bylaws are not published publicly; Dosik obtained them from a member of the Board of Trustees.

What changed in Antioch's bylaws, 2019 to 2024

Antioch's current governing document is the Amended and Restated Code of Regulations, adopted effective October 24, 2019, as amended June 25, 2021 and September 19, 2024. The 2019 restatement is the version Dosik's comparison describes: no explicit statement of trustee powers and duties, no clause naming who appoints the president, and an Executive Committee empowered to exercise "all authority of the Board of Trustees" between meetings except for increasing the number of trustees or filling board vacancies, with no bylaws requirement that Executive Committee minutes be kept or distributed.

Two amendments followed. The June 25, 2021 amendment added the Community Manager as an ex officio trustee and increased the number of student trustees from one to two, both additions to the board rather than reductions.

The September 19, 2024 amendment eliminated the Alumni Board President's automatic ex officio trustee seat and replaced it with an "Alumni Recommended Trustee," selected under Section 2.5 of the Code. Under that section, the College Secretary solicits alumni recommendations for the seat, but the trustees then in office elect who fills it. The seat that had gone automatically to whoever the Antioch College Alumni Association elected as its own president became a seat the sitting board chooses among alumni nominees. The amendment removed one of the board's few remaining automatic outside voices and replaced it with one subject to board approval. After September 19, 2024, no future ACAA president automatically sits on the Antioch board, and alumni representation on the board runs instead through a seat the trustees themselves control.



Godard, Weekend (1967)

How Other Small Liberal Arts Colleges Manage the President: A Review of Bylaws

All colleges and universities have three governing documents.

Articles of Incorporation

This document is submitted to the state in which the college/university operates and gives them nonprofit corporation status. Among other things, this allows the organization to be exempt from state taxes.

Form 1023

This document is submitted to the Federal Government as the application for tax exempt status under the Federal statute, 501c3. This allows donors to claim an exemption for donations on the Federal and State taxes.

The Bylaws or Code of Regulation

This document governs the role of the Board of Trustees and often spells out the roles of other important positions, such as the President, Deans, etc. These must be

submitted to both the state and the federal government with the application for incorporation and tax exempt status.

Everyday operations of a college or university (or any organization) are spelled out in internal documents called Policies and Procedures.

I reviewed the By Laws or Code of Regulations of the Trustees of eleven colleges. I chose these eleven for the following reasons: with the exception of Antioch College, they were published online, they are all small liberal arts colleges (SLACs), and at least two others are in the State of Ohio and thus governed by the same laws and regulations, as is Antioch College.

The colleges are: Antioch College, Carleton College, Colby College, Grinnell College, Macalester College, Miami University of Ohio, Middlebury College, Oberlin College, Occidental College, Prescott College, and Reed College

I looked specifically at the language in the Bylaws/Code that refers to three things: Powers and Duties of Trustees, Appointment of the President and, if there is an Executive Committee and what are its duties.

Summary

With the exception of Antioch, Colby, and Grinnell, all have very specific clauses in their bylaws/codes that refer to the appointment of the President.

Appointment of President

With the sole exception of Antioch College, all have provisions that state that the Board of Trustees appoints the President.

Executive Committee

Sections about the Executive Committee are more complicated. Some are explicit about what the EC can do related to the President (Carleton, Colby, Prescott) and the others do not mention anything about either the specific duties or exclusions.

Powers and Duties of Trustees

Antioch College. No explicit statement of the powers or duties of the Trustees.

Carleton College. There are two small sections about power and duties.

Colby College. There is no explicit statement of the powers or duties of the Trustees.

Grinnell College. No explicit statement of the powers or duties of the Trustees.

Macalester College. There is a section in the Bylaws that describes the Powers and Duties of the Trustees.

Miami University. There is a description of the General Powers and Duties .

Middlebury College. There is a statement of the Powers and Duties of the Trustees.

Oberlin College. There is a section of Power and Duties of the Board.

Occidental College. There is a section outlining the Responsibility and Authority of the Board of Trustees.

Prescott College. There is a section outlining the Responsibilities of the Trustees

Reed College. There is a section called Key regulations governing the trustees.

Appointment of President

Antioch College. The description of the role of the President in Article IV Section 4.7c does not include any statement about what body appoints the president. Thus, there is no clear statement of how the President of the College is appointed, reviewed, contracted, etc.

Carleton College. On the webpage under College Governance, Board of Trustees is the following sentence: It [the Board of Trustees] is ultimately responsible for the selection and replacement of the President of the College, although at Carlton faculty, staff, students and alumni traditionally play a part of presidential selection.

Colby College. Section 2, Article V states that “There shall be a president of the College, elected by the Board of Trustees, who shall serve at the pleasure of the Board.

Grinnell College. Article VII. Section 7.1. “The President of the College shall be elected by the Board of Trustees . . . The President shall serve at the pleasure of the Board. The President may be removed from office only by a two-thirds (2/3) majority of voting members of the Board then in office, provided that notice is sent to all Board members in accordance with Section 3.6.”

Macalester College. Section 4.3. The Board of Trustees has the following major powers and responsibilities: b). To select, evaluate, and determine the term of office and conditions of employment of the President.”

Miami University. In Section 2, it states “The President of Miami University shall be appointed by the Board of Trustees. . .” It also states, “The Chair of the Board has the authority to enter into a contract of employment for the President following consultation with the Board.”

Middlebury College. “In exercising its powers, the Board of Trustees shall: appoint, advise and evaluate Middlebury’s President . . .”

Oberlin College. Section 3. That the Board of Trustee (sic) shall, from time to time, appoint a President and other officers and instructors, and also agents of the institution as may be necessary; and shall have power to displace and remove any or either of them for good and sufficient reason. . .”

Occidental College. In the section on roles and responsibilities of the Trustees there is this sentence: “Appoint the President of the College . . .”

Prescott College. The Roles and Responsibilities section includes the sentence, “b) select, appoint, and remove the president of the College, determine the president’s terms and conditions of employment, and support and periodically assess the performance of the president;”

Reed College. The Section on Roles and Responsibilities includes the following: “Responsibilities include selecting the college president . . .”

Role of Executive Committee

Antioch College. “The Executive Committee shall act only in intervals between meetings of the Board of Trustees and shall, except to the extent otherwise provided herein or by the Board of Trustees (*italics mine*), have all authority of the Board of Trustees other than the authority to increase the number of trustees or to fill vacancies in the Board of Trustees.”

Author note: Because there are no explicit statements of the powers or duties of the Trustees — “otherwise provided herein”, this leaves a very wide opening for the Executive Committee to act as it wishes.

There is no mention of requirements of Executive Committee minutes.

Carleton College. Section 6b states the following: “Between meetings of the Board of Trustees, the Executive Committee shall have general supervision of the administration and property of the College except that unless specifically empowered by the Board of trustees, [*italics mine*] alter bylaws, remove or appoint the President of the College, or take any action which has been reserved for the Board. The Executive Committee shall conduct an annual performance review of the President and set the terms of his or her compensation.”

Minutes of the meetings shall be taken and be distributed promptly to each member of the Board following each Executive Committee meeting.

Colby College. There is no Executive Committee as such. There is a Board Affairs Committee which seems to function similarly. There is the following sentence in the description of the responsibilities of this Committee: “The Board Affairs Committee shall have general supervision of the administration and property of the College, except that it may not alter the charter or by-laws of the corporation, hire or dismiss the president, or undertake any other actions prohibited by state law.” [*Italics mine*]

Grinnell College. In the section about the duties of the Executive Committee there is a statement that the EC has the authority of the Board in between meetings. There is nothing about distribution of minutes.

Macalester College. There is no description of the duties of the Executive Committee.

Miami University. There is no section about an Executive Committee.

Middlebury College. There is no Executive Committee. There is a Prudential Committee whose duties include advising the Board on all matters related to presidential succession. There is also a Compensation Committee that “will review and approve the President’s employment contract and set total compensation for the President. . .”

Oberlin College. There is an Executive Committee. “Subject to the direction of the Board of Trustees, in the intervals between meetings of the Board the Executive Committee shall have the full powers of the Board of Trustees, except those involving the amendment or suspension of the Bylaws.” “The Executive Committee shall have an Executive Review & Compensation Subcommittee, whose role shall be to organize and conduct the presidential review and to make recommendations to the Executive Committee and the Board concerning the compensation of the president and officers and key employees.”

Occidental College. There is an Executive Committee. In the list of its powers and duties is “Shall be responsible for approving the compensation by the College to the President. . .”

Prescott College. There is an Executive Committee. It has limited power. “The Executive Committee shall have the authority of the Board in the interval between Board meetings only to the extent necessary when the Board cannot act in a timely manner, when the health, safety, and security of the College or individuals associated with it are immediately threatened, or when otherwise specifically authorized by the Board.

References

Antioch College. The Bylaws are not published publically. Ms.Dosik obtained them from a member of the Trustees.

Carleton College.

https://cdn.carleton.edu/uploads/sites/514/2020/08/Board_authority_to_Pres.pdf

Colby College. <https://www.colby.edu/people/offices-directory/general-counsel/colby-policy-library/board-of-trustees-bylaws/>

Grinnell College. <https://www.grinnell.edu/sites/default/files/docs/2023-09/2023%20May%20Grinnell%20Board%20By-laws%20Accessible%20Final.pdf>
Macalester College. <https://www.macalester.edu/trustees/wp-content/uploads/sites/240/AmendedandApprovedBylaws-2025-02-28.pdf>
Miami University. <https://miamioh.edu/policy-library/governance/bot-regulations.html>
Middlebury College. https://www.middlebury.edu/sites/default/files/2022-08/middlebury_bylaws_revised_may_14_2022_-_final.pdf
Oberlin College. <https://www.oberlin.edu/media/36679/download?inline>
Occidental College. https://www.oxy.edu/sites/default/files/Occidental-College-Bylaws_Amended-6.6.2024.pdf
Prescott College. <https://prescott.edu/wp-content/uploads/2023/10/Prescott-College-Bylaws-Revised-and-Approved-08-26-23.pdf>

Antonia Dosik is a 1967 graduate of Antioch College. She holds a Masters in Public Administration from University of Texas, Austin. She has 40 years of experience as the Executive Director of nonprofits and 20 years consulting on issues of governance, organizational development, and strategic planning. She spent six terms on the Antioch College Alumni Board (ACAB), one term as President of the ACAB and one term on the Antioch College Board of Trustees.

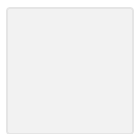
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Written by Liz Flyntz

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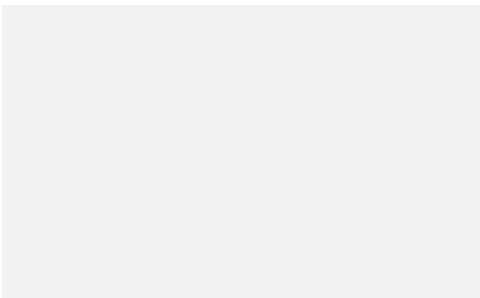
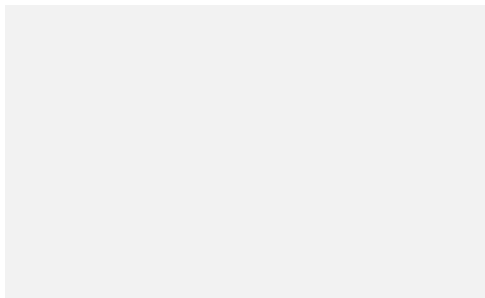
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