10-2006

2006 Beyond Regulation: Tools for Promoting Ethical Action in Nonprofit Organizations

The Nonprofit Institute at University of San Diego

Appendix A

Nonprofit Breakfast Discussion Topics and Key Questions

December 8, 2005: **Is total transparency a prerequisite for ethical behavior? What differentiates propriety versus open/shared information?**

Key Questions:

- When pursuing fiduciary responsibilities, whose interests should be kept in mind?
- Should governance documents be openly shared with other nonprofit corporations (for example, copies of my personnel policy manual, by-laws, salary charts, etc).
- Should board meetings be open to the public?
- Do foundations, large nonprofit charities and smaller nonprofits have the same transparency requirements?
- If a nonprofit distributes assets, does it have an obligation to distribute them equally among rich and poorer communities?

January 12, 2006: **What obligations does tax-exempt status create for serving local communities?**

Key Questions:

- Do we have a responsibility to use best practices when we serve our clients?
- Does tax-exempt status give us an ethical responsibility to provide affordable services?
- What is our ethical responsibility to advocate broad based policy changes on behalf of our clients?
- Do locally-based foundations have an obligation to give locally?

February 9, 2006: What are the ethical responsibilities of our governing boards?

Key Questions:

- When is it appropriate to breach confidentiality?
- What are the ethical responsibilities and boundaries between board and staff – i.e., when is it appropriate for board to interact with staff other than the Executive Director?
- How does the board ensure that the organization's core values are operational throughout?
- When is it appropriate for Board members to apply for staff positions?

March 9, 2006: How do we ensure ethical financial management? Is following the law enough?

Key Questions:

- Do all senior staff and board members have an ethical responsibility to understand how to read the organization's financial statements?
- How much financial detail is it appropriate to provide the board in order to keep them informed but not overwhelmed?

April 13, 2006: What are nonprofits ethical responsibilities to their employees?

Key Questions:

- Is there an ethical responsibility to provide a living wage even if it causes an apparent decrease in services to clients?
- Is there an ethical responsibility to provide health insurance and retirement benefits?
- How do we determine an equitable ratio of administration versus program expenses?
- Should nonprofit salaries be comparable to private sector salaries?
- Is it our responsibility to develop leadership, succession plans, and transition plans?
- What is our ethical responsibility to hire clients and how do we safeguard against potential problems in this arena?

May 11, 2006: How do charities and funders define their ethical responsibilities to each other?

Key Questions:

- When should a nonprofit turn down a donation?
- Do funders have an obligation to disclose why they choose not to fund a project/organization?
- Do foundations have an obligation to reach beyond the organizations they already fund – to give broader access?
- Do foundations need to disclose their application review criteria?
- Do charities need to have clear evaluation benchmarks?
- Do foundations have a responsibility to limit compensation to board members?
- How do nonprofits convey their infrastructure needs to funders and the general public?
- How transparent do nonprofits need to be when raising funds?

Appendix B

**TOOL # 1: DISCUSSION GUIDE FOR REVIEWING THE
ETHICS-RELATED ASPECTS OF A NONPROFIT ORGANIZATION'S
CULTURE
Version 1**

About this Tool

The ideas generated during the breakfast discussions described above, have been translated here into a series of questions that staff and board members, either separately or together, can use to guide discussion and decision making about the ethics-related aspects of their organization. Ideally, the questions asked in this document should be revisited periodically, since organizational cultures and the conditions affecting the environment in which nonprofits work often change.

How This Tool Could Be Used

The questions in this discussion guide might be addressed in a number of ways. This guide might be used, for example, during a weekend board and/or staff retreat. Alternately, the questions might be divvied up and discussed over a series of staff and/or board meetings.

In addition, discussions might be led by one of the members of the group or by an outside facilitator hired for this purpose. The latter strategy, though more costly, might be preferable in organizations in which there tend to be barriers to free-flowing communication.

**The Relationship between the Discussion Guide and the
Two Other Tools in this Document**

We recommend that, when appropriate, the following discussion guide be used in combination with the two other tools that are included in this document. The second tool is a survey instrument that can be used in larger organizations to gather data to inform the discussion process. The data would tell discussion participants whether members of the organization, regardless of whether or not they are participating in the conversation, agree or disagree with the working group's perceptions of how the organization operates in the ethics domain.

The third instrument, the policy creation template, can be used if the discussion and/or survey suggest that the ethics-related aspects of an organization are problematic. To be sure, establishing formal policies is, in and of itself, unlikely to correct problems that might have been revealed, since informal cultural beliefs and norms frequently trump what is written down. Establishing formal policies, however, can be a helpful first step in efforts to transform an organizational culture, and the policy template tool is designed to help an organization's members take this first step, should the discussion generated by

Tool # 1 and/or the results of the survey instrument that makes up Tool # 2 indicate(s) that action is required.

Part 1:

Questions About
THE CLARITY OF AND COMMITMENT TO
THE ORGANIZATION'S MISSION

One way for an organization to stay on the ethical high road is to have a clearly defined and easy-to-articulate mission that is seriously considered and reflected upon when key decisions are made. Here are some questions to guide a discussion about the role that mission plays in your organization.

  1.1 Can all members of your organization provide a brief (ideally a one or two sentence) description of your organization's mission in a manner that someone unfamiliar with the organization would understand? Would everyone articulate the same mission?

  1.2 Is the organization's mission referred to frequently when making decisions? Has your organization turned down projects because they are inconsistent with your organization's mission? Has your organization turned down gifts that seem, in some way, inconsistent with your organization's mission? Is there other evidence that your mission matters? If the answer to the above questions appears to be *no*, what might be done to encourage greater attention to mission in the future?

Part 2:

Questions About
ORGANIZATIONAL TRANSPARENCY

Ensuring the decision making process is transparent and making key information available to everyone, is one way of insuring that members of an organization behave in ethical ways. Transparency seems especially important in the nonprofit sector because the sector receives tax exemption, donations provided by individuals and public funds. Here are questions to discuss related to the degree of transparency within your organization.

2.1 What evidence can you point to that suggests that what happens within the organization is transparent to organizational members? What evidence can you point to that suggests that what happens within the organization is not transparent to organizational members?

2.2 What evidence can you point to that suggests that what happens within the organization is transparent to those the organization serves and interested members of the public in general? What evidence can you point to that suggests that what happens within the organization is not transparent to those the organization serves and interested members of the general public?

2.3 Does your organization use the Internet to promote transparency? For example, does your organization have a website? If so, does your organization either post its 990s on it or provide a link to GuideStar or to the website of the state Attorney General's office? Are evaluation reports, minutes of board meetings and annual reports posted on the site or readily available to the public upon request? Does your website provide clear contact information? Is there evidence that staff responds in a straight-forward and timely fashion when contacted?

2.4 Are there legitimate reasons to keep certain information and certain aspects of the organization non-transparent? If so, what mechanisms can help insure that those in power behave ethically even when their actions are not on public display?

2.5 If you conclude that all decisions may not lend themselves to complete transparency, is the process by which decisions get made clear and transparent? What evidence can you point to that all stakeholders (staff, clients, donors and funders, concerned members of the general public) know how to have input on decisions that concern them?

Part 3:

Questions About
OPEN COMMUNICATION

Organization transparency can be relatively useless unless members of an organization feel free to raise critical questions without fear of reprisal. Indeed, organizations that lack open communication run the risk of having ethical lapses exposed by the media, which can make matters worse. Here are some questions to guide a discussion about the communication climate within your organization and the extent to which people feel free to discuss potential problems.

   3.1 Can you think of times when ethical issues were discussed in your organization, either formally or informally? If you can, what were the issues and what prompted the discussion? If not, what might the absence of discussion mean?

   3.2 What evidence can you point to that suggests that people in the organization raise—and feel free to raise—potentially unpopular issues?

   3.3 What evidence can you point to that suggests that people in the organization at times feel silenced and do not raise critical issues?

   3.4 What happens to those who criticize the organization? Can you think of specific people who have done this? If so, what happened to them? If not, what might the lack of examples mean for your organization's communication norms?

   3.5 Can you think of times when you or one of your colleagues were asked to do something you considered unethical? If so, did you feel free to speak about it? Can you describe the situation now?

   3.6 Are there limits to communication, especially when communicating to external audiences? For instance, once the board makes a decision, are all participants expected to refrain from criticizing the decision publicly, even if they disagree with the decision?

Part 4:

Questions About
BASING DECISIONS ON DATA AND REASONING

To insure an ethical (and an effective) organization, decision making must be structured in such a way that the best ideas are the ones that get implemented. This means attending carefully to data and the soundness of arguments and listening openly to a variety of perspectives. If this is not done, an organization can end up squandering resources.

4.1 When new programs or policies are adopted, is someone in the organization assigned the task of studying best practices and, if so, what evidence can you point to that signals that your organization gives (or does not give) the information this person provides serious consideration during decision-making?

4.2 What evidence can you point to that signals that your organization eliminates duplication and waste so resources are always used responsibly in the service of your organization's mission?

4.3 Are needs assessments and formal evaluations conducted and, if so, are the results given serious consideration during decision making?

4.4 Do assessments tap the perspectives of all stakeholders including funders, staff, and clients? If so, are minority points of view attended to and used as a potential source of organizational learning, even if they reflect criticism of the organization?

4.5 Do you solicit information from potential funders who have turned down your requests in a way that is not defensive and is likely to yield useful feedback? If so, do you use this information to improve, when appropriate?

4.6 What other evidence can you point to that indicates that your organization is (or is not) a learning organization in which people do not ignore or cover-up problems but, rather, learn from them and engage in continuous improvement? If the evidence about your organization being a learning organization is either negative or exceedingly thin, what could you do in the future to transform your nonprofit into a real learning organization?

Part 5:

Questions About
GOVERNANCE PROCEDURES

In the end, the board is not only responsible for insuring that your organization complies with the law. It also normally plays a major role in establishing the sort of cultural norms and standard operating procedures that determine whether those affiliated with the organization are not merely legal but also ethical.

5.1 Are the roles and expectations of board members clearly defined, and does everyone on the board agree about what these are? Are board and staff responsibilities clearly and appropriately differentiated, and, if so, is practice consistent with established policy? What evidence supports your answers?

5.2 Are board members asked to sign a memorandum of agreement that spells out what the expectations for board members are (e.g., regular attendance at meetings, expected donations, etc.) and indicates that Board members have a responsibility to resign if they can no longer meet expectations? Are the board and board members evaluated periodically? If not, should an evaluation process be established?

5.3 Has your board developed a clear statement/policy on what constitutes conflicts of interest? Does your organization have a formal policy—or, at least, well established cultural norms—addressing nepotism? Does your board have a clear policy for determining when board members receive compensation for services and for those situations when board members decide to apply for a staff position?

5.4 Are board members given the information required to provide appropriate oversight? For instance, are agendas and packets of supporting information provided in advance of meetings so that board members can be prepared? If so, do board members review the material prior to the meeting?

5.6 In what other areas do board members either receive or fail to receive the necessary information required to adequately fulfill their legal and ethical oversight responsibilities, and, if board members receive appropriate information, do board members review the information and use it in appropriate ways. In particular, do board members have sufficient information to fulfill their fiduciary responsibilities in the fiscal domain? Specifically:

5.7 Can board members articulate their legal responsibilities in the fiscal area? Do they understand the potential consequences of not fulfilling these responsibilities?

5.8 Do board members receive an adequately detailed, financial statement regularly (e.g., at each board meeting), and, if so, have they been trained to understand the statement and do they, in fact, review the material and raise appropriate questions

when questions are called for (e.g., when an expenditure might, appear to be fodder for a newspaper story about illegal and/or unethical practices within your organization)? What evidence supports your answers?

5.9   Does your organization's financial auditor present reports to the entire board periodically in a comprehensive and understandable way? If not, would such reports be cost-effective?

5.10   Is there more than one keeper of your organization's fiscal knowledge? Does at least one member of the board have expertise in fiscal matters and does he or she use this expertise to help the board, as a whole, fulfill its fiscal oversight function?

5.11 Does your board attempt to balance the need to use limited resources to serve clients with the need to attract and keep high-quality staff or, at a more basic level, to insure that staff can live comfortably and are treated fairly? Are salary decisions always based on performance rather than on personal relationships? Is salary range information available to the staff and are salary ranges determined through compensation surveys? Are benefit packages reviewed regularly to ensure that basic needs, such as health care, are provided to the best of the organization's ability? Are executive benefits and compensation reviewed regularly to ensure they are fair but not excessive?

5.12 Are board and staff members proactive about ethics and do they act in ways that signal that compliance with legal requirements is a floor not a ceiling? Has your board designated a board and/or staff member to monitor, and, when appropriate, raise ethics concerns? What are the costs and benefits of this strategy: e.g., if ethics becomes one or two people's responsibility, will ethical concerns be off other people's radar screens; alternately, if ethics is everyone's responsibility, might it end up being nobody's responsibility? What other strategies might be employed to keep ethical considerations front and center in your organization's culture?

Part 6:

Questions About
EDUCATION/TRAINING

Undoubtedly, much of what you have discussed in response to the questions above is dependent on education. While a good deal of education from a cultural perspective occurs informally and even unconsciously, formal education efforts are also important, especially if some current cultural norms are dysfunctional and need to be changed.

6.1 Are there standard operating procedures for educating new board and staff members? If so, what are they and what evidence exists that they are helpful and adequate?

6.2 Is there ample opportunity—e.g., at board or staff retreats—for board and staff members to update their knowledge and skills?

6.3 Are education initiatives formally assessed and, if so, what evidence exists that assessment data are used in planning subsequent initiatives?

6.4 Since nonprofits have the right (and some would argue the responsibility), within legal limits, to advocate for their clients (especially if, as often is the case, clients cannot effectively advocate for themselves), does the organization provide staff and volunteers with knowledge about (a) effective advocacy strategies and (b) the legal parameters for employing advocacy strategies? Do you advocate for broader issues that effect your constituent community as a whole?

6.5 Prior to using this discussion guide, have education initiatives focused at least partially on ethical matters? How will your organization build on the discussion generated by this discussion guide? What are the next steps your organization will pursue and what plans do you plan to implement at a subsequent time. Who has responsibility for monitoring whether both relatively immediate and longer term plans get implemented? What procedures will be used to insure that plans are, indeed, implemented and, if necessary, modified in response to feedback of earlier interventions or changing circumstances? BE SPECIFIC IN RESPONDING TO THESE POINTS!