

# It's Time for Nonprofit Boards to Have a Conversation about Sexual Misconduct

Nonprofits are not immune to instances of sexual misconduct, as recent high-profile cases of abuse in the orchestra field have shown. Passive commitment to solid policy is no longer enough, as BoardSource President and CEO **Anne Wallestad** writes, and boards of directors should be proactive in preventing and responding to sexual misconduct.

By Anne Wallestad

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As countless individuals come forward to share their stories of sexual harassment and assault, they are exposing the intolerable behaviors that have been tolerated for far too long, and—along with them—the institutions and institutional cultures that have allowed such behavior to go unchecked. Recent headlines about Oxfam, American Red Cross, USA Gymnastics, and the Humane Society of the United States have revealed that the nonprofit sector is not immune either to the presence of sexual misconduct or to its mishandling by organizational leaders:

- International aid organization Oxfam is reeling after news that leaders all the way up to the chief executive failed to act on allegations that several of its leaders paid Haitian earthquake victims for sex while working there.
- The American Red Cross has come under fire for providing a glowing

reference to a senior leader who resigned after allegations of sexual harassment from a subordinate.

- USA Gymnastics' entire board was forced to resign by the United States Olympic Committee in an effort to clean house after the shocking revelations about years of abuse by Dr. Lawrence Nassar, a long-time USAG doctor.
- Despite public defense from the board, allegations of sexual harassment from several employees resulted in the resignation of Wayne Pacelle, CEO of the Humane Society of the United States.

When it comes to the board's role in staff oversight, many like to point out that the board has exactly one employee: the chief executive. While true in many ways, this sentiment obscures the fact that the board has a very important role in providing leadership and oversight of the entire organization, including protecting

one of its most important resources: its people. That is a serious responsibility that calls on boards to go beyond compliance-driven policies and think more deeply about how to cultivate an organizational culture that refuses to tolerate harassment or exploitation of any kind.

**The nonprofit board has a very important role in providing leadership and oversight of the entire organization, including protecting one of its most important resources: its people.**

Boards should ask themselves:

**1. Are we doing enough to provide leadership and guidance to the staff about organizational values, policies, and expectations?**

Through organizational policies and thoughtful oversight of the chief executive, the board has a responsibility for ensuring that the organization treats

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employees fairly and appropriately, is in compliance with all relevant laws, and that issues of harassment or assault are being dealt with appropriately. More broadly, boards should also set the expectation that the organization has equitable practices with regard to all of its people—that efforts are made to build and retain a diverse workforce and that all team members are valued and treated with fairness and respect as it relates to compensation, performance, and advancement. A culture where the contributions of women—or any subgroup—are treated as “less than” is unacceptable and may also contribute to a culture where harassment and abuse can more easily go unchecked.

This means that the board should be working in partnership with the chief executive, the organization’s human resources team, and outside legal counsel to codify organizational expectations on the following:

- **Hiring and references:** At both the American Red Cross and Oxfam, employees who had histories of sexual misconduct went on to hold leadership roles at other nonprofits. This underscores the importance of policies and practices related to hiring and references.

#### **Boards should ask:**

- Does the demographic makeup of our staff or leadership create any “red flags” as it relates to the hiring practices of the organization? Is there any evidence that women, or any other subgroup, are being overlooked for positions, whether in initial hiring or advancement opportunities?

- Based on the work that we do, are we required to conduct criminal background checks on all potential employees (and/or volunteers)? Even if it’s not legally required, should we adopt that practice? What other mechanisms do we have in place to vet potential employees and volunteers?

#### **Boards should set the expectation that the organization has equitable practices with regard to all of its people—that efforts are made to build and retain a diverse workforce**

- What are our policies related to reference checks? Do we have a mechanism for preventing a current employee from providing a positive reference for a former employee who was involved in sexual misconduct at our organization?
- **Reporting, investigation, and consequences:** Each of the organizations highlighted seems to have faltered in its response to reports of sexual misconduct. Addressing sexual harassment and assault requires that victims or witnesses have a mechanism for reporting misconduct and confidence that the organization will take the allegations seriously.

#### **Boards should ask:**

- Are there reporting mechanisms that encourage victims of sexual harassment and assault to come forward, regardless of who the perpetrator

was? What expectation should be set about when and how the board will be notified about allegations and/or investigations?

- Is there an expectation that every reported incident will be investigated? In which scenarios should that be an external—versus internal—investigation? When should allegations be reported to law enforcement?
- What general guidelines should be set about the consequences for sexual misconduct? How should those guidelines apply to non-staff stakeholders, such as volunteers, donors, or even board members themselves?

- **Communications and accountability:**

The way that organizations communicate with staff and external stakeholders after an incident of sexual misconduct sends a signal about their values. One now-former board member of the Humane Society of the United States sent a clear message about her priorities when she commented, “We’re not an association that investigates sexual harassment. We raise funds for animals.” Organizational responses should be rooted in the organization’s values, should prioritize accountability and corrective action, and be communicated through a designated spokesperson empowered to speak on the organization’s behalf.

#### **Boards should ask:**

- If faced with a situation of sexual

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misconduct by someone affiliated with our organization, how will we demonstrate accountability?

- In what circumstances would we err on the side or more (or less) transparency in our communications?
- Do we have clear policies about who is empowered to serve as a spokesperson for our organization?

## 2. What do we know about how our chief executive is leading the staff, and how do we know it?

Given the fact that boards do not typically see the chief executive's leadership and work on a daily basis, it can be difficult for them to have the full picture on how a chief executive officer or executive director is actually leading. And it can be very easy for boards to have a false sense

of security about the chief executive's leadership based on what they see in the context of board meetings or other direct engagement.

In keeping with the mantra of "trust, but verify," boards should consider ways to get a more well-rounded view of the chief executive's performance, as well as create mechanisms for reporting wrongdoing that are outside of the chief executive's reporting line. Specifically:

- Solicit feedback from all of the chief executive's direct reports as a part of his or her annual performance review. In addition to questions about leadership of the organization and team, consider including a question that asks them to share if they know of (or suspect) any issues of legal or ethical wrongdoing, or if they have experienced bias in the way that the

chief executive leads the staff.

- As a part of the organization's whistleblower policy, include a reporting line that goes directly to a board member or an outside ombudsman to ensure that complaints about the chief executive can be reported in a way that he or she could not block or cover.
- Consider mechanisms for better understanding the organization's leadership culture. This could be through staff engagement surveys, tracking staff retention rates (including by demographic subcategory), or general observation of how the chief executive is interacting with his or her team.

## 3. How are we—as a board—ensuring that we are not part of the problem?

The board must also be willing to contemplate how they themselves might be contributing to a culture that enables sexual misconduct, whether directly or indirectly. Some areas worthy of reflection include:

- **Board misconduct:** The November 2017 [Inside Philanthropy article](#), "Sexual Harassment Is Common in the Fundraising World—and Often Goes Unpunished," highlighted that, when it comes to sexual misconduct, board members themselves are sometimes the problem, propositioning or otherwise harassing nonprofit employees. Boards should ensure that there is a mechanism for reporting and addressing sexual misconduct by a board member and that there are protections in place

## #MeToo and Classical Music

The classical-music world has not been exempt from the accusations of sexual harassment that have made headlines in the fields of entertainment, manufacturing, journalism, and government. In early December, conductor James Levine was accused by four men of sexual abuse; subsequent reports detailed a decades-long pattern with them and others. Levine has denied the allegations, and in March he sued the Metropolitan Opera, where he was music director for many years, for defamation and breach of contract when it dismissed him. In December, conductor Charles Dutoit was accused by several women of sexual predation; he has denied the allegations. Orchestras and musical organizations associated with the two conductors have denounced sexual misconduct and severed their relationships with them. Charges of inappropriate behavior have also roiled conservatories and music departments at universities.

The League of American Orchestras has stated that there should be no tolerance of harassment of any kind. Find resources from the League on the prevention and reporting of allegations of sexual harassment at [americanorchestras.org/shprevention](http://americanorchestras.org/shprevention).

to assure a chief executive and other staff members that they won't face retaliation if they report the board member's bad behavior. As a part of this discussion, boards should also consider if there are other behaviors or activities that would be considered sexual misconduct by a board member, even if they are not sexual harassment or assault (e.g., dating or having an intimate relationship with a staff member), and how they would handle it if such an issue arose.

- ***Perverse incentives or expectations:*** Boards should reflect on the way that they manage organizational or chief executive performance to mitigate the risk that they could be creating perverse incentives to ignore or silence allegations of sexual harassment or assault. According to the same *Inside Philanthropy* article, "One reason charities look the other way when wealthy donors and trustees harass fundraising staff is doubtless the money and influence such people wield, critical support that organizations stand to lose in correcting problematic behavior." Illustrating this point, *Politico* reported that another senior leader at the Humane Society allegedly encouraged a fundraiser to "take one for the team" by sleeping with a donor. No employee should be asked to tolerate harmful or inappropriate situations "for the good of the organization," and boards should make sure that they are not incentivizing dysfunction by emphasizing metrics such as fundraising performance or staff retention in such a way that it disregards a healthy organizational environment for employees.
- ***Board composition and leadership:*** Who constitutes the board impacts the way that boards lead their organizations. Boards are wise to consider how their own composition may create blind spots or vulnerabilities as it relates to addressing sexual

harassment and assault. For example, a female victim may be less likely to report a male chief executive's sexual misconduct to an all-male board.

Or a board may have definitions of what is—or isn't—sexual misconduct that are out of step with current

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social mores and expectations. For example, the same former Humane Society board member defended Pacelle's actions to a reporter with the comment, "Which red-blooded

male hasn't sexually harassed somebody? Women should be able to take care of themselves."

There is no question that it is an abdication of responsibility for a board to ignore allegations or instances of sexual harassment or assault, particularly when the perpetrator is the chief executive. But it is not enough for boards to passively commit the organization to addressing allegations when they arise. Boards need to proactively examine how their organization's own culture may be contributing to an environment where sexual harassment and abuse goes unchecked. And if they don't like what they see, they need to do something about it. Now. **S**

<https://nonprofitquarterly.org/2018/02/22/time-nonprofit-boards-conversation-sexual-misconduct/>

## Resources: Sexual Harassment Prevention

The League of American Orchestras is deeply disturbed by the allegations of sexual harassment across various industries, including the classical music world. There should be no tolerance for harassment of any kind. The League encourages its members to collaborate with musicians and all key constituents to promote healthy workplaces. To that end, the League has posted resources for harassment prevention and response in the orchestral workplace at [americanorchestras.org/shprevention](http://americanorchestras.org/shprevention).

At the site, you will find information and links to evidence-based methods for preventing harassment, practices from the Society for Human Resources Management, and a comprehensive set of guidelines from the U.S. Equal Employment Opportunity Commission. In a private discussion group at the League of American Orchestras' online League 360 platform, executive directors, human resources personnel, and finance staff can share questions, ideas, and resources. (League member password required; email [member@americanorchestras.org](mailto:member@americanorchestras.org) for help.) Plus, find regularly updated articles and reporting on sexual harassment in the classical music world at The Hub <https://hub.americanorchestras.org/>, the League's searchable online news aggregator. (League member password required; email [member@americanorchestras.org](mailto:member@americanorchestras.org) for help.)

At the League's 2018 National Conference, June 13-15 in Chicago, the [#MeToo and #TimesUp: Finding a Path Forward](https://americanorchestras.org/conference2018/sessions/metoo-and-timesup-finding-a-path-forward/) <https://americanorchestras.org/conference2018/sessions/metoo-and-timesup-finding-a-path-forward/> session will explore the power dynamics and structural hierarchies that create hostile work environments, and suggest strategies for building a culture of appropriate and respectful behavior within the orchestra community. Click here <https://americanorchestras.org/conference2018/sessions/metoo-and-timesup-finding-a-path-forward/> to learn more and to register for the Conference.