

Issue Brief: Communication and Support to the Board

Meeting: Board

Date: April 11, 2019

Agenda Item # 3.3.1

Recommended Committee Action(s):

- That the Board receive the monitoring report for information and accept by formal motion.

Issue Summary:

The CEO feels the report is largely complete and will ask the Board to accept. This report is scheduled to go directly to the Board without first going through a committee.

Background:

Monitoring Reports are a key Policy Governance tool to assess organizational/CEO performance in achieving Ends (1.0) within Executive Limitations (2.0). A Policy-Governance-consistent Monitoring Process is:

1. CEO sends Monitoring Report to all board members
2. All board members look particularly for two things in the Monitoring Report:
 - a. A reasonable interpretation of the policy
 - b. Evidence of compliance with the reasonable interpretation
3. Committee reviews and develops recommendation to accept/not accept the Monitoring Report
4. At Board meeting, board accepts Monitoring Report through majority vote (or if not acceptable, determines next steps)

Impacts of Recommended Action(s): Governance: perform key Policy Governance process

Attachments: Monitoring Report: 2.11 Communication and Support to the Board

Author: MC/BS/JM

Reviewed by: MC

Approved by: MC

2.11 Communication and Support to the Board

Monitoring Report for the Period: June 1, 2018 to March 30, 2019

Date of Report: Thursday, April 11, 2019

Board Survey due: ---- NA

Board Meeting: Thursday, April 18, 2019

AAATA board;

In accordance with the Board's Policy Manual; I present the Monitoring report on **Executive Limitation Policy 2.11 Communication and Support to the Board**. This report consists of internal report information from staff. This report is scheduled to go directly to the Board without first going through a committee.

I believe that the agency is in compliance, with the exception of policies 2.11.1.3 which has not yet been interpreted. Otherwise, I certify that the information is true and complete.

Matt Carpenter,
CEO
Ann Arbor Area Transportation Authority

POLICY TITLE: <i>Communication and Support to the Board</i>	
2.11 The CEO will not permit the Board to be uninformed or unsupported in its work. Further, without limiting the scope of the foregoing by this enumeration, the CEO shall not:	
2.11.1	Withhold, impede, or confound information relevant to the Board’s informed accomplishment of its job.
2.11.1.1	Neglect to submit monitoring data required by the Board in Board-Management Delegation policy “Monitoring CEO Performance” in a timely, accurate and understandable fashion, directly addressing provisions of Board policies being monitored, and including CEO interpretations consistent with Board-Management Delegation policy “Delegation to the CEO,” as well as relevant data.
2.11.1.2	Allow the Board to be unaware of any actual or anticipated noncompliance with any Ends or Executive Limitations policy, regardless of the Board’s monitoring schedule.
2.11.1.3	Allow the Board to be without decision information required periodically by the Board, including the agency and situational context and implications for a decision.
2.11.1.4	Present information in unnecessarily complex or lengthy form or in a form that fails to differentiate among information of three types: monitoring, decision preparation, and other.

2.11.1.5	<p>Let the Board be unaware of material internal changes, including changes in policy interpretation, significant reputational, legal, political, or financial risks, developments that have significant negative implications for the budget, threatened or pending lawsuits, relevant trends and any other incidental information requested by the Board. Incidental information includes:</p> <ul style="list-style-type: none"> A. operational and financial performance metrics B. customer satisfaction metrics, C. updates on capital improvement projects, D. quarterly budget to actual financial reports, E. timely notification of execution of budgeted items over \$250,000 and grant requests or awards over \$100,000. F. unbiased information on industry norms for CEO compensation at least every two years. G. advance notification of intended changes to staff rules (unionized or non-unionized), procurement manual, benefits, or compensation structure. H. CEO’s personal expense report to the Governance Committee of the Board at least quarterly, with explicit notation of the expenses of any other employee which benefited the CEO, aside from group expenses where the CEO’s participation was incidental.
2.11.1.6	<p>Fail to provide Board education on the business of the agency relevant to the public at the request of the Board or in anticipation of the Board’s need to be responsive to community concerns.</p>
2.11.1.6.1	<p>- Fail to periodically update the Board regarding the longer-term strategic context in which delegated decisions are being made.</p>
2.11.1.7	<p>Let the Board be unaware if, in the CEO's professional opinion, the Board or individual Board members may not be in compliance with the Board’s own policies on Governance Process and Board-Management Delegation, particularly in the case of Board behavior that could be detrimental to the agency’s reputation or the working relationship between the Board and the CEO.</p>
2.11.2	<p>Withhold from the Board and its processes logistical and clerical assistance.</p>
2.11.2.1	<p>Allow the Board to be deprived of a legal, workable, user-friendly mechanism for official Board, officer, or committee communications.</p>
2.11.2.2	<p>Allow the Board to be deprived of pleasant, productive and efficient settings and arrangements for Board and committee meetings.</p>

2.11.2.3	Hinder access to the Board for any person who alleges unethical or unlawful action or circumstance in the organization or by its representatives.
2.11.2.4	Neglect to transfer policy updates to the official record of the Board's Policy Manual in a timely manner.

Executive Limitations Policy 2.11

The CEO will not permit the Board to be uninformed or unsupported in its work.

Compliance: In compliance.

Current Interpretation & Rationale:

This policy is fully interpreted in the sub-policies below.

Evidence:

Evidence of compliance with sub policies below provides evidence of compliance with this policy.

Executive Limitations Policy 2.11.1

...The CEO shall not...Withhold, impede, or confound information relevant to the Board's informed accomplishment of its job.

Compliance: In compliance.

Current Interpretation & Rationale:

I interpret this policy to mean that staff are to provide the Board with whatever data, context, background, or other information it may need in order to meet its duties as identified in section 3.0 and 4.0 of the Board's Policy Manual. This includes whatever information the *full Board* requests or requires, and whatever information I perceive would be helpful to them in their work. I further interpret this policy to refer to the *full Board*, although staff can and will assist individual Board members as much as possible (policy 4.1.2), and will support established delegations (i.e. policies 3.5, 3.7.1, Bylaws Article V).

Furthermore, I interpret this policy to require the CEO and staff to always provide accurate, honest, timely information that provides the context necessary for the Board to understand the fundamental issues at hand. The CEO is not to knowingly allow omission or obstruction of important information.

Should the Board (or their agents) wish to directly gather information, for example by direct inspection, the CEO will ensure complete support for the Board.

As evidence, I will cite the number of times the Board itself has raised concerns that their ability to complete responsibilities outlined in policies 3.0 and 4.0 was somehow impeded by staff.

Evidence:

The CEO is not aware of any statement or action by the Board suggesting a perception that their ability to conduct their work has been impeded by staff. There is no record of such perception in meeting notes for Board or committee meetings.

Executive Limitations Policy 2.11.1.1

...The CEO shall not...Neglect to submit monitoring data required by the Board in Board-Management Delegation policy “Monitoring CEO Performance” in a timely, accurate and understandable fashion, directly addressing provisions of Board policies being monitored, and including CEO interpretations consistent with Board-Management Delegation policy “Delegation to the CEO,” as well as relevant data.

Compliance: In compliance.

Current Interpretation & Rationale: I interpret this policy to mean that draft monitoring reports will:

- Be provided to the board and/or committees by the due dates established in the Policy Manual’s Appendix A,
- Be complete (e.g. Have an operational interpretation and evidence for each policy), and
- Be judged as acceptable to the board.

Evidence:

All monitoring reports to the Board are available on the AAATA website at

<<http://www.theride.org/AboutUs/Board-Governance/Board-Monitoring-Reports>>.

In the first year of using Policy Governance, many monitoring reports were incomplete, and the CEO did not ask the Board to formally accept the reports. In the second year, the quality and content of the reports has continued to improve. All monitoring reports submitted during this monitoring period were as shown below. The table below illustrates the scoring for each monitoring reports required during the monitoring period up to date.

Monitoring Report	On Schedule?	Interpretation Accepted?	Evidence Accepted?	Board Conclusion
2.2	YES	YES	YES	B. In Compliance, except for item(s) noted.
2.3	YES	YES	YES	B. In Compliance, except for item(s) noted.
2.4	YES	YES	YES	B. In Compliance, except for item(s) noted.
2.5	YES	YES	YES, more detail desired.	B. In Compliance, except for item(s) noted
2.6	April 2019	TBD	TBD	TBD
2.7	YES	YES	YES	B. In Compliance, except for item(s) noted
2.8	YES	YES, where provided.	YES, where provided.	B. In Compliance, except for item(s) noted.
2.11	April 2019	TBD	TBD	TBD

Executive Limitations Policy 2.11.1.2

...The CEO shall not...Allow the Board to be unaware of any actual or anticipated noncompliance with any Ends or Executive Limitations policy, regardless of the Board's monitoring schedule.

Compliance: In compliance

Current Interpretation & Rationale:

I interpret this policy to mean that once the CEO becomes aware that the agency is not, or likely will not, comply with an existing Ends or Executive Limitation policy, they will make the Board or the Governance Committee aware in a constructive and timely manner (regardless of the schedule for Monitoring Reports). The CEO will need to exercise sound judgment and discretion in how they make the Board aware. Certain notifications may go to the Governance Committee if the CEO feels the communication requires privacy.

Evidence of compliance would include formal notices of non-compliance in written monitoring report or via other written reports.

Evidence:

During the monitoring period I have noted several instances on non-compliance in written monitoring reports. Those monitoring reports are available on the AAATA website.

Executive Limitations Policy 2.11.1.3

...The CEO shall not...Allow the Board to be without decision information required periodically by the Board, including the agency and situational context and implications for a decision.

Compliance: TBD

Current Interpretation & Rationale:

TBD

Evidence:

TBD

Executive Limitations Policy 2.11.1.4

...The CEO shall not... Present information in unnecessarily complex or lengthy form or in a form that fails to differentiate among information of three types: monitoring, decision preparation, and other.

Compliance: In compliance.

Current Interpretation & Rationale:

I interpret this policy to mean that all items on Board or committee agendas must be summarized and contextualized effectively and must be clearly identified with the typologies listed above. Agendas should clearly list the typology of each item.

As evidence, agenda items must have Issue Briefs. These summaries must be judged to be effective by the Board. Agendas should also classify each item by typology.

Evidence:

- Most agenda items contained in board and committee packets had summary Issue Briefs. I estimate that more than 95% of agenda items included Issue Briefs.
- The CEO has received no complaints from Board members suggesting the presented information was unclear, inadequately contextualized or otherwise ineffective. The quality of ensuing Board discussions suggests that basic contextual information has been clearly communicated.
- Starting in November 2018, meeting agendas began classifying each item using the typology listed in the policy.

Executive Limitations Policy 2.11.1.5

...The CEO shall not... Let the Board be unaware of material internal changes, including changes in policy interpretation, significant reputational, legal, political, or financial risks, developments that have significant negative implications for the budget, threatened or pending lawsuits, relevant trends and any other incidental information requested by the Board. Incidental information includes:

- A. *operational and financial performance metrics*
- B. *customer satisfaction metrics,*
- C. *updates on capital improvement projects,*
- D. *quarterly budget to actual financial reports,*
- E. *timely notification of execution of budgeted items over \$250,000 and grant requests or awards over \$100,000.*
- F. *unbiased information on industry norms for CEO compensation at least every two years.*
- G. *advance notification of intended changes to staff rules (unionized or non-unionized), procurement manual, benefits, or compensation structure.*
- H. *CEO's personal expense report to the Governance Committee of the Board at least quarterly, with explicit notation of the expenses of any other employee which benefited the CEO, aside from group expenses where the CEO's participation was incidental.*

Compliance: In Compliance

Current Interpretation & Rationale:

I interpret this policy to mean that the CEO must, in a timely manner, make the Board aware of important developments, either internally or in the external environment, that can or may jeopardize the agency's ability to achieve the Board's Ends or comply with any Means policy, and that require a meaningful change. Examples of such changes include emergent threats to public perception, financial stability, or political support. I further interpret this policy to mean that, even though the CEO may adjust their interpretation as circumstances warrant, they should communicate any significant changes to the Board in a timely manner. This policy is informally known as part of the "no surprises" clause.

I further interpret this policy to mean that the Board has already identified specific pieces of information that it would like to routinely receive.

Reasonable evidence would include citations from Board and committee packets during the monitoring period. These packets are already in the possession of Board members but can be provided again as needed. Evidence would also include timely submission of: Quarterly Financial and Operational reports, updates on major capital projects (e.g. fleet purchases or construction) with a value greater than \$500,000; notification of budgeted expenditures on single large items (>\$249,999), CEO compensation information starting in 2018, advanced notifications, and CEO expenses.

Evidence:

Throughout the past year I have brought information to the attention of the Board or committees, evidence of which can be found in agenda packets available on-line or in the possession of Board members. Specifically requested information is provided via a set of regular reports:

- A. **Operational performance metrics** – Provided via quarterly Service Reports to the Board in August 2018 (FY 2018 Q3), November 2018 (FY 2018 Q4), February 2019 (FY 2019 Q1).
- B. **Quarterly budget to actual financial reports & financial performance metrics** – Provided via Quarterly Financial Reports to the Board in August 2018 (FY 2018 Q3), November 2018 (FY 2018 Q4), February 2019 (FY 2019 Q1).
- C. **Capital Project Updates (>\$500,000)** –The only major capital project ongoing during the monitoring period was a contract for replacement buses. The purchased was approved by the Board in the 2019 budget and should be awarded in summer 2019. However, the CEO has not yet brought an official update. Non-Compliant.
- D. **Notification of award and payment for budgeted items over \$250,000** – The board has been made aware of all budgeted items in FY 2019 through the 2019 Budget Plan. There has been no notice of award and/or payment for a single budgeted item over \$249,999 to be reported.
- E. **Notification of Grant awards over \$100,000** – [The AAATA does not make grants.]
- F. **CEO Compensation** – A report was provided to the Governance Committee by the CEO in August 2018.
- G. **Advance notice of intended changes** –
 - o **Procurement Manual:** The CEO initially noted that the AAATA’s procurement manual was out of date in the February 2018 monitoring report on policy 2.5. At that time his intention to update the manual. Completion of the new manual was noted in the written CEO’s Report to the Board in December 2018.
 - o **Staff Rules, Compensation and Benefits:** The CEO initially noted that staff rules for non-unionized employees were out of date, as were compensation and benefit structures; and that all would need to be updated in the monitoring report on policy 2.3 in January 2018, and again in Mary 2019. He stated his intention to do so in those same reports. This work is ongoing.
- H. **CEO Expenses** – During the monitoring period, three Quarterly CEO expense reports were scheduled for July 2018, October 2018, and January 2019. These were provided to Governance Committee on following dates: October 2018, January 2019. There is no documentations that a report was submitted for the July date. This appears to have been an oversight. As the Expense Reports are cumulative, the October report would have included expenses that would otherwise have been reported in July. Partial compliance.

Executive Limitations Policy 2.11.1.6

...The CEO shall not... Fail to provide Board education on the business of the agency relevant to the public at the request of the Board or in anticipation of the Board's need to be responsive to community concerns.

Compliance: In compliance

Current Interpretation & Rationale

I interpret this Policy to mean that staff are to assist the Board is being knowledgeable about how the agency works (management, operations, and administrative practices) and pursues its goals, either by request of the Board or because staff believe the knowledge will aid the Board in being prepared for public questions. While there may be overlap with education related to the Board's policy-development work, this policy is specific to a perceived need to be prepared for public questions regarding Means issues that have been delegated.

As evidence, I will work to ensure that the Board is aware of significant decisions or changes before they are publicly announced, and work to help the Board understand the operational rationale when appropriate.

Evidence:

Throughout the monitoring period, I have attempted to make the Board and Committees aware of many issues in advance through presentations, verbal updates and written CEO Reports. A list of specific agenda items discussed with the Board or Committees during the monitoring period is below:

1. **Internal Business Processes:** Strategic Business Plan, 2019 Budget, Long-Range Planning Process, FTA Triennial Review process.
2. **Initiative Updates:** Washtenaw Ave BRT planning
3. **Board Education:** Emerging Technology, Transportation and Land Use, Transit Oriented Development
4. **Confidential Matters:** Closed Session meetings have been held to discuss matters specifically permitted under the Open Meetings Act.

These items can be confirmed with review of Board and Committee agendas from the monitoring period.

Executive Limitations Policy 2.11.1.6.1

...The CEO shall not... Fail to periodically update the Board regarding the longer-term strategic context in which delegated decisions are being made.

Compliance: In compliance.

Current Interpretation & Rationale

I interpret this policy to mean that the CEO will help the Board to understand why and how staff decisions are being made by providing a transparent context that helps to illustrate how delegated decisions advance compliance with Board policies.

As evidence, I will present a multi-year corporate planning document annually that describes the situational context of the agency, relevant background and considerations, and provides a broad explanation for how the agency will pursue compliance with the Board's policies. In addition, I will provide updates as circumstances evolve throughout the year and will attempt to frame individual decisions in the larger context as they emerge.

Evidence:

A five year (2019-2023) Strategic Business Plan was created in summer 2018 and is available on the website. It includes situational analysis (pages 26-27), as well as a multi-year work plan of initiatives and actions intended to advance the pursuit of the Board's Ends.

Executive Limitations Policy 2.11.1.7

...The CEO shall not... Let the Board be unaware if, in the CEO's professional opinion, the Board or individual Board members may not be in compliance with the Board's own policies on Governance Process and Board Management Delegation, particularly in the case of Board behavior that could be detrimental to the agency's reputation or the working relationship between the Board and the CEO.

Compliance: In compliance.

Current Interpretation & Rationale:

I interpret this policy to mean that, since the CEO cannot hold Board members accountable for compliance with Board policies, the CEO is to consistently report incidents of significant non-compliance with sections 3.0 or 4.0 to the Governance Committee for their decision as per policy 3.7.1. If the CEO has concerns with the Chair or Governance committee themselves, under 3.1.7 they are to share those concerns with the full Board. I further interpret this policy to be referring to incidents of more than passing or inconsequential non-compliance.

As evidence, I would report the number of times that I needed to report on this policy to the Board or Governance Committee.

Evidence:

During the monitoring period the CEO brought no formal concerns of non-compliance to the attention of the Governance Committee or the Board.

Executive Limitations Policy 2.11.2

...The CEO shall not... Withhold from the Board and its processes logistical and clerical assistance.

Compliance: In compliance.

Current Interpretation & Rationale:

I interpret this policy to mean that the CEO is to help the Board procure: general counsel and board training and facilitation services. In addition, this includes making staff assistance available for managing paperwork and documentation, and making meeting arrangements for all formal and emergent meetings.

Evidence:

During the monitoring period, two Board members were involved in the selection of the new corporate general counsel (i.e. lawyer).

During the monitoring period, the contract for board training and facilitations services was renewed.

During the monitoring period agency staff took minutes and documented decisions at all Board and committee meetings.

Executive Limitations Policy 2.11.2.1

...The CEO shall not... Allow the Board to be deprived of a legal, workable, user-friendly mechanism for official Board, officer, or committee communications.

Compliance: In compliance.

Current Interpretation & Rationale:

I interpret this policy to mean that staff will administratively coordinate monthly board and committee meetings, including creating and disseminating agendas and information packets. Further, staff will ensure that all board meeting information meets the requirements of the Open Meetings Act: that agenda and packets are posted at least 18 hours before a meeting, are publicly available, and that minutes are kept. A similar process will be provided for confidential committee meetings.

I further interpret this policy to mean that staff will assist the Board in arranging their annual Retreat.

As evidence, I will provide information on how staff has administratively supported the Board and committee meetings. Additionally, I will present the average time provided between when the agendas were sent out to when the meeting occurred.

Evidence:

During the monitoring period all scheduled Board meetings occurred, and all agenda packets have been publicly available at least three days before the meeting.

In all committee and board meetings in the monitoring period, staff supported the board by taking meeting minutes, disseminating agendas, and uploading public packets on the website in a timely manner. However, there has been some errors and not all packets included complete information.

Executive Limitations Policy 2.11.2.2

...The CEO shall not...Allow the Board to be deprived of pleasant, productive and efficient settings and arrangements for Board and committee meetings.

Compliance: In compliance.

Current Interpretation & Rationale:

I interpret this policy to mean that, subject to further Board requirements, monthly Board meetings will be held in a publicly accessible, centrally located facility that is accessible by public transit. Typically, this is the downtown Ann Arbor Library or the Dawn Gabay Operations Center (DGOC) at 2700 S. Industrial Highway. The Blake Transit Center is occasionally used. At times, other compliant locations are used for off-site retreats.

Meeting spaces will be conducive to a productive meeting and will include whatever furniture and Audio/Visual and presentation equipment is needed. Light refreshments may be provided.

As evidence, I will describe Board meeting locations and note if they meet the set criteria (i.e. held in a publicly accessible and centrally located facility that is accessible by public transit).

Evidence:

All Board meetings during the last year were held at the downtown library and met the above criteria. I am not aware of any concerns with this space. A half-day retreat was held on March 11, 2018, also in the downtown library. Committee meetings were held at the DGOC Board room which meets the set criteria. I am not aware of any concerns with this space. Task Force meetings have typically been held at the DGOC. Occasional, ad-hoc meeting have been held at the Blake Transit Center, which is compliant.

Executive Limitations Policy 2.11.2.3

...The CEO shall not... Hinder access to the Board for any person who alleges unethical or unlawful action or circumstance in the organization or by its representatives.

Compliance: In compliance.

Current Interpretation & Rationale:

I interpret this policy to mean that I may not withhold public comment time or discourage a person from participating lawfully in public comment time.

As evidence, I will reference provision of time to the public in board meetings.

Evidence:

All Board meetings during the monitoring period have allowed for public comments at beginning and closing.

At no time during the monitoring period was the CEO aware that anyone wished to allege unethical or unlawful behavior to the Board, nor was any such desire hindered.

Executive Limitations Policy 2.11.2.4

...The CEO shall not... Neglect to transfer policy updates to the official record of the Board’s Policy Manual in a timely manner.

Compliance:

In compliance.

Current Interpretation & Rationale:

I interpret this policy to mean that staff will re-publish an updated Policy Manual on theride.org and send an electronic copy to board members in a timely manner after a Board motion amending the Policy Manual. Amendments will be recorded in Policy Manual Appendix E.

Paper copies will be available upon request. As evidence, I will present board policy amendments made this monitoring period and their policy change dates as published on the website.

Evidence:

During the monitoring period, the Board made eight edits to the policy manual on two separate dates. These changes were documented on Appendix E: History of Policy Changes of the Policy Manual. In both cases the website version was updated within three weeks, electronic copies sent to the Board within two weeks. Hardcopies were distributed within two months. The table below summarizes the policy changes and dates.

Changes made this period by policy #	Policy change date
2.1	10/18/2018
2.4.5	10/18/2018
Appendix A	10/18/2018
1.0	11/29/2018
2.4	11/29/2018
3.8	11/29/2018
2.5	11/29/2018

CEO Notes on Monitoring Report and policies

- **Policy 2.11.1.3** – The CEO is still considering how this policy interpretation would differ from 2.11.1.6.
- **Policy 2.11.1.5 E** – The second part of this sentence deals with grant making. The AAATA does not make grant awards. This matter was previously discussed by the Board in policy 2.7.

(To be filled in based on Board action after submission)

Policy: 2.11 Communication and Support

Date Submitted: April 11, 2019

Date of Board Response: April 18, 2019

The Board has received and reviewed the CEO's Monitoring Report references above. Following the Board's review and discussion with the CEO, the Board makes the following conclusions:

Executive Limitations Report (select one)

The Board finds that the CEO:

- A. ~~Is in compliance~~
- B. Is in compliance, except for item(s) noted.
- C. ~~Is making reasonable progress toward compliance.~~
- D. ~~Is **not** in compliance or is **not** making reasonable progress toward compliance~~
- E. ~~Cannot be determined.~~

Board notes:

- The Board accepted the report as option B.
- The Board notes that policy 2.11.1.3 has not yet been interpreted.
- The CEO was urged to further clarify the interpretation of 2.11.1.3 by one board member.