

Risk Management and Higher Education

Peter Lake

Professor of Law, Charles A. Dana Chair, Director of the
Center for Excellence in Higher Education Law and Policy
Stetson University College of Law

Risk Management

A Brief Overview

Brief History of Risk Management

- An Origin in Business Operations
 - “Risk Managers” Focused on Insurance Primarily
 - Risk Management in Greek Culture
 - Texas A&M Bonfire Incident in 1999 → Overt Risk Management Connection to Student Affairs
 - *The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life?* Published in 1999
 - Insurers Seek to Adapt Business Risk Management Principles to Higher Ed. → Enterprise Risk Management (ERM)
 - Penn State
 - Title IX
- MAJOR PLAYERS: URMIA, AGB AND UE**

Risk Management Is Everyone's Job!

- Board of Trustees/Overseers
(see P. Lake, *Welcome to Compliance U: The Board's Role in the Regulatory Era*, Trusteeship Magazine)
- President
- Chief Compliance Officer
- General Counsel
- VPSAs
- SSAOs
- Faculty
- Staff
- Student Workers
- Students
- Parents
- Visitors

Risk/Opportunities

- Risk: “Any impediment to accomplishing institutional goals.” – UE/AGB 2009
- “Opportunity” → Risk also has an upside
- What is the correlative opportunity of a risk?

Risk Management...

- Science/data driven, not incident driven
- No silos//teams
- Candor/sincerity/caring

Dimensions of Risk

- Risk Spreading
- Risk Resource Allocation
- Risk Transfer
- Risk Mitigation
- Risk Aversion/Tolerance
- Waivers//Insurance//Outsourcing (Risks not subject to insurance or waiver.)
- Risk Alchemy

Enterprise Risk Management

Enterprise Risk Management (ERM) is:

“...a **process**, effected by an entity’s board of directors, management and other personnel, applied in **strategy** setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its **risk appetite**, to provide reasonable assurance regarding the achievement of entity **objectives**.”

AGB and NACUBO, *Meeting the Challenges of Enterprise Risk Management in Higher Education* (2007).

Major Risk Areas - Defined by....

AGB/UE

NACUBO

- Operational Risk Areas
 - Facilities
 - Academic Affairs
 - External Relations
 - Human Resources
 - Information Technology
 - Research
 - Student Affairs
- Financial Risk Areas
- Compliance Risk Areas
- **Board Governance Risk Areas**

- Operational
- Financial
- Compliance
- **Strategic**
- **Reputational**

Best Practices

- Define Risk Broadly//Recognize Educational Value in Risk Where Present
- Recognize Both Opportunities and Downsides
- Develop a Culture of Evaluating and Identifying Risk at Multiple Levels
- Look at the Total Cost of Risk
- Boards and Presidents Should Collaborate
- Focus on No More Than 15 Priorities at a Time

AGB and UE, *The State of Enterprise Risk Management at Colleges and Universities Today* (2009).

Action Steps

1. Develop a disciplined process to consider risk in strategic discussions.
2. Designate an owner of the risk identification process.
3. Require all top administrators to prioritize risk.
4. Sift through the prioritized risks to decide which ones warrant attention at the highest level.
5. Require annual written reports on each high-priority risk being monitored.
6. Re-assess priority risks at the board level at least once a year.
7. Look for blind spots.
8. Move risk identification deeper into the institution each year.
9. Repeat the process.

AGB and UE, *The State of Enterprise Risk Management at Colleges and Universities Today* (2009).

Do Colleges Engage in ERM?

A 2009 White Paper Reported the Following Survey Data:

- 60% of respondents said their institution does not engage in comprehensive, strategic risk assessment
- Less than half said they “mostly agreed” with this statement: “Board members and senior administrators actively engage in discussions regarding institutional risks.”
- Only 5% of respondents said their institutions had exemplary practices for management of major risks to mission success.
- 41% “mostly agreed” that risk management is a priority at their institution.

AGB, The State of Enterprise Risk Management at Colleges and Universities Today (2009).

Critical Areas of Risk Management and Regulatory Compliance...

- Title IX guidance, investigations, White House Task Force to Protect Students from Sexual Assault (*Not Alone*), resolution agreements with DOE, OCR (Montana, Yale, SUNY, UNC Chapel Hill, etc.)
- Clery Act, VAWA, SaVE Act
- Privacy – FERPA, HIPAA data management
- Title II and direct threat
- ADA – “disability”/“differences”
- Fair Housing Act, Comfort/service animals

Critical Areas of Risk Management and Regulatory Compliance Cont'd...

- Multiculturalism – *Fisher v. Texas*, LGBTQ
- Alcohol and other drug abuse/wellness (Safe and Drug-Free Schools and Communities Act)
- Higher Education Act of 1965, amended by the Higher Education Opportunity Act of 2008 (HEOA) (Consumer Information)
- Employment - EEOC/Fair Labor Standards
- Core Mission Delivery
- First Amendment

Bridging the Academic and Student Affairs Divide

Addressing the Whole Student <-> Risk Management to a Unit of One

Bridging the Gap...

- Eastern Michigan Univ. “Division of Academic and Student Affairs”
- Held a retreat in Aug. 2013 where all academic deans attended a “theater-in-the-round” and viewed a mock CARE team meeting with two different scenarios. Licensed health care providers would occasionally stop the scenario and explain how they could process information without sharing confidential information.

Bridging the Gap...

- Title IX teaches us that trauma affects learning.
- Emphasis on *multiculturalism* (LGBTQ, abilities, veterans, international students, etc.)
- The student as a “visitor.” (Whole-life learning, not just first job!)
- Increasing accountability for core mission delivery.
- Professionalization of student affairs. (Is student affairs the new “sociology?”)

Risk Management and the Evolution of Student Affairs into a Discipline!

Student Affairs as a Discipline

- Get your terminal degree and attend “badging” programs like the NASPA Certificate Program!
- Educating students outside the classroom (*CLS v. Martinez*)
- Classic tenure metrics—teaching, service and scholarship
- Challenging issues in higher education increasingly fall to student affairs to resolve—safety, cost and affordability, regulatory compliance, etc.
- See Peter F. Lake, *Time for Tenure for SSAOs*, Leadership Exchange (Winter 2013).
- *Garcetti*//Issues of public importance