Solving the Disconnect Between Planning and Evaluation, and the Prevention of Liability: How to Implement Successful Assessment Mechanisms in Law and Policy Initiatives

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Disconnect #1

Failure to Recognize the University as an Institution that Serves Many Roles and Constituencies Simultaneously
Government

Employees

Faculty

Public

Contractors

Students

Other

• Parents
• Alumni
• Trustees
• Bondholders

Stakeholders
Disconnect #2

Failure to Recognize the Various Interests of the Many Stakeholders of the University
Educational Institution

Stakeholder Interests

- Faculty
  - Employee Interests – PLUS
  - Tenure
  - Academic Freedom
  - Intellectual Capital
  - Constitutional rights

- Students
  - Education
  - Safe Environments
  - Residence
  - Privacy
  - Student Groups
  - No Discrimination
  - Reasonable Accommodation
  - Health Services
  - Athletics
  - Constitutional rights

- Government
  - “Deliverables”
  - Safe Environment
  - Contract Compliance
  - Statute Compliance
  - Contract Compliance
  - Use of Funding
  - Conflict of Interest
  - Reporting

- Contractors
  - “Deliverables”
  - Safe Environment
  - Contract Compliance

- Public
  - “Deliverables”
  - Safe Environment
  - No Discrimination
  - Reasonable Accommodation

- Employees
  - Compensation
  - Livelihood
  - Safe Environment
  - Privacy
  - No Discrimination
  - Reasonable Accommodation

- Other
  - Financial Security
  - Reputation
  - Disclosures
Disconnect #3

Failure to Recognize that Legal Liability Takes on a Variety of Forms and Arises from Multiple Sources
Sources of Legal Liability

• Statutory Violations
  – Federal, state and local statutes and regulations
  – Claims by multiple stakeholders (student, government, employee, etc.)

• Breach of Contract
  – Written or implied contract
  – Failure to follow policies and handbooks

• Tort
  – Negligence
  – Defamation, slander, libel
  – Invasion of privacy
  – Misappropriation
  – Infliction of emotional distress
Disconnect #4

Failure to Consult, Involve and Coordinate with the Stakeholder’s Representatives

- Deans, HR, EEO Officer, Managers, etc.
- Legal Counsel
- Experts (mental health, security, scientists, etc.)
Disconnect #5

Creating Broad Policies in Reaction to Specific Situations:

Was the Policy Needed in the First Place?
Disconnect #6

Failure to Disseminate Policies
Failure to Train
Failure to Update Policies
Disconnect #7

Failure to Implement the Correct Policy
Disconnect #8

Failure to Assess the Effectiveness of the Policy
Conclusion

To be effective in preventing liability:
• Identify purpose and goal of policy
• Identify liabilities policy is to avoid (and possibly may create)
• Develop the policy with intended (and potentially unintended) impacted stakeholders in mind
• Develop the policy with input from stakeholder representatives, legal counsel and experts
• Disseminate policy
• Train
• Follow policy
• Update policy to reflect changes in laws, university environment and stakeholder interests
• Assess policy to determine if it is preventing liabilities
• Get leadership support for policy in drafting, implementation and assessment stages
Case Example
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• Provost of a large public university has learned about a jury verdict entered against a neighboring college in a sexual harassment case. The verdict included $25,000 in lost wages, $225,000 in emotional distress damages and $750,000 in punitive damages.

• Provost is aware of the facts of the case from a friend and cannot understand the jury’s verdict.

• Provost’s friend tells him she believes the jurors hit the college with punitive damages because they found the college’s policy ineffective.

• Although the university has not been sued for sexual harassment, Provost is aware of some internal complaints in a graduate department. Provost wants to make sure his university’s policies will not be subject to attack if it is ever sued for sexual harassment. Provost wants to appoint a committee for this purpose.
Step 1: Who should be on the committee?

- Dean of Faculty?
- Director of Human Resources?
- Dean of Students?
- EEO Officer?
- Loss Prevention Manager?
- Other?
Step 2: Examine scope of complaints

- Different offices aware of different complaints
- No centralization of complaints
- Based on the limited data available, they find:
  - Majority of complaints by women students against male faculty, both at undergraduate and graduate levels
  - Several staff complaints against supervisors (both faculty and non-faculty)
  - Some student on student complaints
  - A few complaints regarding consensual relationships and their impact on work environment
  - A committee member notes that one recent sexual harassment complaint also had racial undertones
Step 3: Review existing policies and procedures

- Separate student policy
- Separate faculty policy formed by faculty committee
- Separate policy for all other (non-faculty) employees
- Broad statements in handbooks and university publications regarding university’s commitment to EEO policies
- Statement in staff handbook about individuals cannot supervise other individuals with whom they have a romantic relationship
- Statement about where to report complaints is open-ended (i.e., “any person who is subjected to sexual harassment should feel free to go to supervisor, department head, HR, EEO officer”)
- Procedure states that every complaint is to be investigated
- Many complaints handled informally by person to whom complaint is made (for e.g., complaint is made to supervisor and supervisor coaches individual on handling problem)
- Inconsistent training efforts within faculty groups
- Training of managers by HR office several years ago
- No other formal training
What’s the next step?
Committee calls legal counsel for guidance.
Legal counsel observes:

- Student on student complaints need a separate policy
- Faculty should not have a separate policy
- Need to examine possible overlaps among roles (i.e., staff member may teach a course as an adjunct faculty member, etc)
- Need to examine possible overlaps within complaints (i.e., complaints of both sexual harassment and racial discrimination)
- Need to centralize
  - Knowledge of complaints
  - Knowledge of investigation process
  - Knowledge of disciplinary actions
  - Need to direct those persons who learn of report of sexual harassment to bring it to the attention of investigators identified in policy
- Train investigators
- Train those impacted by the policy
- Prompt investigation is key
- Build in some kind of assessment
What’s the next step?
Committee calls expert for guidance on assessment mechanisms.