

# URMIA Journal

2011



Portland

UNIVERSITY  
RISK MANAGEMENT  
AND INSURANCE  
ASSOCIATION

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**Life is either a daring adventure or nothing. Security is mostly  
a superstition. It does not exist in nature.**

—HELEN KELLER (1880-1968),

AMERICAN AUTHOR AND EDUCATOR WHO WAS BLIND AND DEAF

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Front cover: Join us in Portland for  
the adventure at URMIA's 42nd Annual  
Conference, *Expedition Risk!*,  
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# URMIA Journal

2011

University Risk Management and Insurance Association



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**Learning would be exceedingly laborious, not to mention hazardous, if people had to rely solely on the effects of their own actions to inform them what to do.**

—ALBERT BANDURA (1925– ), PSYCHOLOGIST AND  
PROFESSOR EMERITUS AT STANFORD UNIVERSITY

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The purpose of learning is growth, and our minds, unlike our bodies,  
can continue growing as long as we live.

—MORTIMER ADLER (1902–2001),

AMERICAN PHILOSOPHER, EDUCATOR, AND AUTHOR

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## From the President

Many of us can remember thinking, if not saying out loud, “I am so tired of school. I can hardly wait until graduation.” And yet our feelings and perspectives about continuing education seem to run in cycles throughout our lives. I was recently reminded by my young granddaughter of how excited we were as children to learn new things and how we could hardly wait to start school. Then somewhere along the way the importance of learning seemed to wane. As we approached those last few years of school, whether it was high school or a post graduate degree, the idea of continuing our education became a little stale in our minds.

Once we graduated and were thrown into the real world, though, the importance of continuing our education once again became clear. For some, graduating and entering the work force may be the first time the real significance of education became a reality. For risk management professionals, that reality certainly is evident as we zip through this exciting world of continual change and progress.

Fortunately, there are numerous resources to consult while increasing our knowledge and understanding of the fast changing world around us. The *URMIA Journal* continues to be an excellent resource for continuing our education in the field of higher education risk management and insurance. One of the reasons the *Journal* continues to be a valued resource is the fact that its articles are written by professionals living and practicing what they write every day of their professional lives.

This year, URMIA received an unprecedented number of *Journal* article submissions for consideration, and I think you will be delighted with the variety and depth of the articles selected. The number and quality of the articles submitted made it unusually difficult for the URMIA Communications Committee to make its selections. I want to thank those who participated in the research, submission, and review of articles for all of their hard work. On behalf of those who submitted articles, the URMIA Communications Committee, the Board of Directors, and the National Office, I proudly present to you the 2011 *URMIA Journal* and hope you never grow weary of continuing your own education.

**J. Michael Bale, ARM, CRM, DRM**

Director of Risk Management, Oklahoma State University

URMIA President, 2010-2011

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**Law enforcement officers are never “off duty.”**

**They are dedicated public servants who are sworn to protect public safety at any time and place that the peace is threatened. They need all the help that they can get.**

**—BARBARA BOXER (1940– ),**

**UNITED STATES SENATOR (D-CA)**

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# Arming Campus Police: Managing the Risk

| Robert F. Adams, Esq., Allison C. Ayer, Esq., and Laurie R. Bishop, Esq., Nelson Kinder + Mosseau PC

*Abstract: Following several high publicity campus shooting tragedies on college campuses in the United States, institutions of higher education have responded with sound risk management practices, including emergency response plans, new technologies to help notify stakeholders of potential threats, and behavioral threat assessment teams to identify potential issues before they escalate to violence. Another response to violent acts on campus could be to begin arming campus police forces. This article addresses some of the risk management questions an institution of higher education should ask in considering whether to arm its campus police force. It also addresses the various risks of both arming and not arming a campus police force.*

## Introduction

In the wake of several highly publicized campus shooting tragedies, institutions of higher learning have engaged in renewed self-assessment of the risks facing their communities and the best ways to manage those risks. Colleges and universities have responded with a number of risk management practices: emergency response plans, early identification of students at risk, mass notification procedures and technologies, and improvements to physical security, including surveillance cameras and electronic access controls in the event of an emergency. One risk management response that institutions frequently consider is whether to arm campus police, especially in recent months as college students and others seek to reduce restrictions of guns on campuses across the country. Because guns and law enforcement practices are lightning rods for political controversy in this country, the debate about arming campus police has frequently involved more heat than light. This article will examine the issue through the more

dispassionate lens of the actual risks involved and the potential legal consequences whether you decide to arm or not arm campus police officers.

**Do you want campus security to primarily protect the facilities from vandalism, unauthorized access, and to keep campus celebrations from getting out of control? Or do you want them to serve in a capacity similar to that of a municipal police force?**

## What Role Do You Want Campus Security Officers to Play?

Institutions of higher learning have traditionally had their own security forces in order to limit the need for the local police to come on campus. This has both minimized the potential for “town/gown” friction and reinforced the perception of the campus as a sanctuary of learning and research. Separate campus security forces typically begin with officers having limited authority and jurisdiction.<sup>1</sup> In response to changing needs, however, campus security officers at many schools have obtained expanded powers and jurisdiction. Today, many campus security forces include sworn law enforcement officers with full arrest powers granted by a state or local government identical to those of local municipal police officers. Campus security forces may also include proprietary security staff and contract security staff, all of whom may have varying degrees of training and experience.

Do you want campus security to primarily protect the facilities from vandalism, unauthorized access, and to keep campus celebrations or demonstrations from getting out of control? Do you want campus security to act as simply a detection or early warning system that calls in the local municipal police when more serious crimes are involved? Or do you want campus security officers to serve in a capacity similar to that of a municipal police force, where the institution’s own officers respond to and investigate crimes on campus?

What type of security officer a college or university’s administrators want and the role they play depends on the

security risks to which any particular campus is exposed. These risks may in turn suggest the extent to which campus security officers should be armed and with what types of protective gear.

What is clear is that there is no “one size fits all” solution in this area of campus risk management: “campus safety is not simple or universal; it requires analysis of each school’s unique situation, character, setting, population, and mission.”<sup>2</sup> The actual risks on each campus should guide any risk management program. College or university administrators must examine the additional risks posed by armed or unarmed campus security forces in light of these other identifiable, unique risks.

### What Are the Risks on *Your* Campus?

You can’t manage what you don’t measure, and once upon a time data regarding crime risks on campus was non-existent. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, or the Clery Act, changed that. The Clery Act requires institutions of higher learning to report crime statistics and campus security policies and practices. Colleges and universities now have access to a considerable amount of historic and current crime data about their own institutions and other institutions around the country. Institutions can analyze the data using a number of factors, allowing risk managers to select a perceived peer group and compare the empirical data with that of their own institution.

The most recent available data from the Clery Act reports shows that on-campus crime and related incidents have generally decreased during the period of 2007 to 2009.<sup>3</sup> The exception to this trend involved drug abuse violations (see Figure 1). It also demonstrates that drug- and alcohol-related incidents are the most prevalent problems, followed closely by burglary, that campus security forces

**FIGURE 1: NUMBER OF ON-CAMPUS ARRESTS BY YEAR AND TYPE OF VIOLATION**

LAW VIOLATION	2007	2008	2009
Weapons violations (carrying, possessing)	1,434	1,264	1,179
Drug abuse violations	14,667	15,572	16,343
Liquor law violations	36,153	35,422	34,412

*From The Campus Safety and Security Data Analysis Cutting Tool, US Department of Education, <http://ope.ed.gov/security/>.*

are likely to encounter. Murder and non-negligent manslaughter may garner media attention and drive reforms, but they are, in fact, blessedly rare (see Figure 2).

**FIGURE 2: NUMBER OF ON-CAMPUS CRIMINAL OFFENSES BY YEAR AND TYPE OF VIOLATION**

CRIMINAL OFFENSE	2007	2008	2009
Murder/non-negligent manslaughter	45	16	17
Negligent manslaughter	4	3	0
Sex offenses - Forcible	2,740	2,677	2,590
Sex offenses - Non-forcible	43	37	72
Robbery	1,966	1,966	1,865
Aggravated assault	2,784	2,719	2,675
Burglary	30,435	29,615	24,039
Motor vehicle theft	4,951	4,371	4,271
Arson	789	709	648

*From The Campus Safety and Security Data Analysis Cutting Tool, US Department of Education, <http://ope.ed.gov/security/>.*

Any decision with respect to arming campus security officers must first address the types of incidents those officers are likely to encounter and whether being armed would result in a net increase in campus safety.

The most often reported serious crime from 2007 to 2009 was burglary. An armed campus security officer might be able to more safely diffuse a burglary in progress, but police rarely discover burglaries in progress. Moreover, it would be extremely hard to justify the use of lethal force in the interdiction of a property crime like burglary.

Similarly, the other most often reported crimes on campus, including sex offenses, aggravated assault, motor vehicle theft, arson, and even negligent manslaughter, would rarely warrant the use of deadly force, even if the security officer encountered them in progress. Additionally, the most likely encountered security issues, drug- and alcohol-related violations, in most cases would not warrant the use of deadly force (see Figure 3).

If the ability to deploy deadly force will have limited impact on the most prevalent incidents of campus crime and violence, risk managers must ask if it is worth the additional risks. Does the *potential* ability to use deadly force have a deterrent effect? Does the need for deadly force in

**FIGURE 3: NUMBER OF PERSONS REFERRED FOR DISCIPLINARY ACTION IN ON-CAMPUS VIOLATIONS**

LAW VIOLATION	2007	2008	2009
Weapons violations (carrying, possessing, etc.)	1,790	1,610	1,418
Drug abuse violations	29,404	33,090	36,988
Liquor law violations	187,807	185,044	184,828

*From The Campus Safety and Security Data Analysis Cutting Tool, US Department of Education, <http://ope.ed.gov/security/>.*

the rare, but most deadly, campus crimes warrant arming campus police with lethal weapons?

### What Are the Risks of Arming?

In assessing whether an institution can better manage its crime risks through the use of armed security officers or unarmed security officers, administrators must also consider how the officers will be armed. Most unarmed campus security officers carry a variety of non-lethal weapons, including batons, pepper spray, and Tasers. Thus, when we talk about an “armed” campus security officer, we mean one armed with a lethal weapon, usually at least a personal side arm.<sup>4</sup> Even non-lethal weapons carry risk of abuse that the institution must manage through training and supervision. Generally, however, they do not create the potentially fatal risks of lethal weapons.

Frequently cited risks of arming campus police with side arms include unjustified or improper use by the officer, accidental discharge, loss of the weapon to a perpetrator, escalation of weaponry by perpetrators to match or exceed that of security officers, and collateral damage to bystanders in any of these situations.

Whether a campus security force is armed with sophisticated lethal weapons or non-lethal weapons, they must receive thorough training and regular recertification for the use of those weapons. To ensure and verify the success of this training is the very essence of risk management. Municipal and other law enforcement officers regularly train and recertify with respect to their weaponry because,

**The need for training and recertification among campus police is even greater since their on the job experience in firing their weapons is (hopefully) nearly non-existent.**

unlike their television counterparts, they infrequently discharge their weapons in the line of duty. The need for training and recertification among campus police is even greater since their on the job experience in firing their weapons is (hopefully) nearly non-existent. Training, however, cannot be limited to just the handling of the weapon; it must also include extensive education with respect to when the use of deadly force is justified and when it is not justified. Regular police encounter situations daily in which they must quickly assess the appropriateness of escalating the use of force, an experience which may be impossible to duplicate through mere training exercises and periodic recertification.

Training is also important in reducing many of the other risks of arming campus security forces. For example, accidental discharge resulting in injury to the officer or bystanders and loss of an officer’s weapon in a struggle with a perpetrator are very real risks a college or university must manage through repeated training. Failing to provide regular periodic firearms training is a drum which every plaintiff’s attorney will beat loudly and often if the incident results in litigation. In addition to regular training, specialized holsters can reduce the risk of accidental discharge or loss of a weapon to a perpetrator. As part of a total risk management program, such safety equipment in addition to protective vests merit

consideration.<sup>5</sup>

Regardless of the level of training, even experienced police officers suffer from significant inaccuracy in the real world use of handguns. Police in shooting incidents tend to miss their intended targets more than 50 percent of the time.<sup>6</sup> Adding laser sights to the weapons can improve accuracy and may reduce the risk of collateral damage. In some instances, merely “painting” the target with the laser beam may eliminate the need to discharge the weapon. Nevertheless, an institution cannot eliminate the risk of unintended collateral damage once an officer discharges a weapon.

Some campus security forces seek to be additionally equipped with more powerful rifles and shotguns.<sup>7</sup> These

weapons increase the risk of collateral damage because their greater power allows them to penetrate walls and travel further. A 2008 report to the Massachusetts Department of Higher Education, however, recommended that all campus police officers be armed and trained in the use of personal and specialized firearms, including tactical weapons and shotguns, stating, "The purpose of appropriate weaponry is to minimize injury and loss of life during a catastrophic incident. Because campus shooters often employ sophisticated weapons, campus police officers must have access to appropriate armament."<sup>8</sup> The general public apparently echoed the sentiment of wanting to be equally armed following the January 8, 2011, shooting in Tucson, Arizona, where the lone gunman used a powerful semi-automatic pistol to shoot 19 people without having to reload. Sales of guns similar to the Glock used in the shooting soared across the country in the weeks following the incident.<sup>9</sup> There is little evidence that perpetrators of crime on campus are engaged in a conscious "arms race" with campus police,<sup>10</sup> but at least the 2008 report to the Massachusetts Department of Higher Education reflected a view that campus police must increase the level of their weaponry to match or exceed that of a potential active shooter on campus.<sup>11</sup>

### **What Are the Risks of Not Arming?**

The risks of not arming campus security officers include danger to the officer, danger to students and faculty which an armed officer might have deterred or limited, and a lack of general deterrence which may embolden armed perpetrators to prey on students and others protected by unarmed campus police.

Unfortunately, there is little reliable empirical evidence regarding either general or specific deterrence as a result of arming campus police.<sup>12</sup> There are, however, several scenarios where an institution may benefit from having armed security officers and where the failure to have armed officers may result in risk and potential liability.

### ***The Active Shooter***

An active shooter on campus may be the actuarial equivalent of the 100-year flood, but it does warrant active risk management and planning. According to the 2008 report to the Massachusetts Department of Higher Education, "Although the risk for mass shootings and other incidents of extreme violence on college and university campuses is remote, it remains very real and the consequences are devastating to victims, families, and to the entire campus community."<sup>13</sup>

Some institutions will give weight to the potential consequences rather than just the actuarial risk in making a decision whether to arm campus security officers. In this light, the report to the Massachusetts Department of Higher Education concluded, "Given the enormous consequences of a campus shooting...coupled with the nationally recognized and proven best response requiring the first officers on the scene to neutralize the shooter aggressively, it is highly recommended that all [sworn] police officers on campus be armed and trained in the use of personal and specialized firearms."<sup>14</sup>

Additionally, fatal mass shootings on college campuses show a disproportionate involvement of graduate students. This suggests that "graduate admissions committees look beyond grades and test scores to discern evidence of possible academic or disciplinary problems in the backgrounds of recruits."<sup>15</sup> For both graduate and undergraduate students, institutions may be better served by developing a threat assessment team to monitor reports of threats and other aberrant behavior by students or others on campus. Information regarding the mental health status of students is subject to the privacy requirements of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA). However, institutions may find that this ounce of prevention is worth several pounds of cure in the form of heavily armed campus police.

**An active shooter on campus may be the actuarial equivalent of the 100-year flood, but it does warrant active risk management and planning.**

### The Armed Outsider

There is also a risk, particularly on urban campuses where the line between cloistered college campus and commercial city chaos may be blurred or totally non-existent, that city crime spills over into the college environs. These crimes can sometimes involve weapons, which can turn a routine traffic stop on a cross-campus street into a potentially deadly encounter for an unarmed campus security officer and any bystanders. At other institutions, the campus may be an island of refuge where fugitives can blend in and evade municipal police. In some circumstances, campus may also represent a “target rich” environment for certain crimes.

Given that drug-related incidents on campus have been on the rise, the risk that professional drug dealers and their associates may be on campus and interact with members of the college community has also likely increased. Because dealing in illicit drugs is a highly competitive, lucrative, and dangerous business, it is not unusual for individuals in this line of work to be armed. The presence and proximity of armed police may deter such individuals from plying their trade on campus or at least reduce the chances that they will resort to the more lethal aspects of their trade on campus. If drug dealers are able to operate on campus, the risk to unarmed campus police officers, who the perpetrators may assume to be armed, could be severe.

### The Armed Student

Many schools ban students from having guns on campus. The increased risk of allowing students who are living in close quarters with individuals not of their own choosing, who are under competitive academic stress, who may regularly engage in drug and alcohol abuse, and who are subject to no required firearms training to bring weapons on campus appears obvious. Nevertheless, many states are currently considering bills that would allow students to arm themselves as a

response to the type of campus and other mass shootings that have received so much media attention.<sup>16</sup> If the rarity of these tragedies requires careful consideration of the risks of arming campus police, then arming students for self-defense in such situations requires serious rethinking.

College administrators must weigh the deterrent effect of having armed campus police in armed student situations against the risks to *both* the officer and other students if the officer is not armed. A wrongful death action by the family of a slain unarmed officer may be every bit as costly as a similar action by the family of a student accidentally shot by an officer’s weapon. A lawsuit brought on behalf of a student killed or injured allegedly because the campus police were not armed would be no less costly. The real question may be whether the mere presence of armed security officers on campus deters the types of crimes that are most prevalent or at least makes the campus community *feel* safer. What is clear is that the risk to the officer in the above described situations is significantly greater if he is unarmed and unable to defend himself.

### What Are Other Institutions Doing?

The Department of Justice’s 10-year study comparing the 2004-2005 school year and the 1994-1995 school year (see Figure 4) found that for 2004-2005, 74 percent of the campus law enforcement bodies serving four-year institutions with more than 2,500 students employed sworn law

**FIGURE 4: SWORN, NON-SWORN, AND ARMED CAMPUS LAW ENFORCEMENT BY TYPE AND SIZE OF FOUR-YEAR CAMPUS, 2004-2005**

TYPE AND SIZE OF FOUR-YEAR CAMPUS	# OF AGENCIES	% AGENCIES USING SWORN POLICE		% AGENCIES USING NON-SWORN SECURITY ONLY	
		Total	Armed	Total	Armed
All campuses	750	74%	65%	26%	2%
<b>Public</b>	<b>465</b>	<b>93%</b>	<b>86%</b>	<b>7%</b>	<b>0%</b>
15,000 or more	152	98%	91%	2%	0%
10,000-14,999	82	93%	87%	7%	0%
5,000-9,999	144	93%	82%	7%	0%
2,500-4,999	87	86%	82%	14%	0%
<b>Private</b>	<b>285</b>	<b>42%</b>	<b>30%</b>	<b>58%</b>	<b>6%</b>
15,000 or more	20	65%	55%	35%	5%
10,000-14,999	29	66%	59%	34%	10%
5,000-9,999	74	42%	27%	58%	8%
2,500-4,999	162	35%	24%	65%	5%

From *Campus Law Enforcement, 2004-05*, US Department of Justice, <http://bjs.ojp.usdoj.gov/content/pub/pdf/cle0405.pdf>.

enforcement officers. The percentage of sworn law enforcement officers was significantly higher at public institutions (93 percent) than at private institutions (42 percent).<sup>17</sup> This suggests that at least the public institutions have ensured their campus security forces include sworn law enforcement officers with full police powers. The possible availability of a sovereign immunity defense, particularly for sworn law enforcement officers on public campuses, may fuel this disparity between public and private institutions.

Likewise, whether campus security officers were armed followed a similar pattern: 67 percent of all campuses armed their officers in 2004-2005. Eighty-six percent of the public institutions employed armed officers. Private institutions employed armed officers 30 percent of the time, but 60 percent of the largest private institutions employed armed officers.<sup>18</sup> The percentage of campuses employing armed but unsworn officers was only two percent.

From a risk management and legal defense perspective, colleges and universities should be in line with other institutions in their cohort or they may have some explaining to do in the event of legal action. There may be good and sound reasons why an institution differs, but administrators and risk managers must be prepared to demonstrate those reasons and show that the institution's leaders considered those differences in making a conscious decision to diverge.

### **Experts and the Standard of Care**

In making a determination whether to arm or not arm the campus security force, colleges and universities should get input from the many constituents and stakeholders on campus.<sup>19</sup> In addition to reviewing the decisions of your peers, you should consider consulting with a standard of care expert. If your institution becomes involved as a defendant in a lawsuit in which either the use of a firearm by campus police or the failure to use a firearm is an issue, your lawyer may retain a standard of care expert, as may the plaintiff's lawyer, to provide expert testimony as to whether the policies, procedures, practices, and execution of them by your campus police met the standard of care for such institutions. This will largely devolve into an argument about what is reasonable and prudent under the given circumstances and whether similar schools follow different policies and procedures to which you should have

adhered. Obviously, this process, albeit with the benefit of hindsight and in front of a jury, is essentially identical to the risk management analysis you did when you made a decision about arming your campus security force. Consulting with an expert first will likely make your institution's decision look more prudent and reasonable, and it will also provide an articulable basis for that decision before a catastrophic event occurs. However, a plaintiff's counsel will use any failure to heed the expert's advice to further demonstrate your negligence.

### **Excessive Force Claims**

Any institution of higher learning with its own security force faces the risk of lawsuits involving excessive force claims. When members of a campus police force are called on to control a crowd, respond to a potential crime, detain an intoxicated student, or make an arrest, they are required to make real time decisions regarding when and how much force to employ. A person against whom force is used may well bring claims that the campus officers deprived them of their constitutional rights, whether under federal or state Constitutions. These individuals may also bring intentional and negligent tort claims against the institution, including assault and battery, false imprisonment, intentional and negligent infliction of emotional distress, and negligence, among others. Certainly if a campus security force is armed, it increases the stakes in these lawsuits. Arming a police force may result in increased claims and increased liability.

### **Legal Defenses and Risk Management**

The doctrine of sovereign immunity is based on the ancient concept that "the King could do no wrong" and thus could not be sued by his subjects. While the doctrine still exists, most states have waived or limited it in certain circumstances. This is particularly true with respect to the conduct of police officers, including state and sometimes municipal officers, whose employment requires them to exercise subjective judgment, frequently in extreme situations. For public institutions, a sovereign immunity defense or limitation may be available in a lawsuit involving the conduct of campus police. The availability of this defense is more likely if security officers are sworn law enforcement officers with the same training and authority as the law enforcement officers of the state or municipal au-

thority which designated them. This may account in part for the high number of sworn officers employed at public institutions and the high percentage of armed officers at those institutions. If your campus security force includes armed but unsworn officers, you may want to reassess the risks this may pose.

Most institutions create campus security forces to avoid calling the state or local police on campus. An alternative to arming campus police, or at least a way to reduce the need for them to use those weapons, may be to develop increased cooperation with the local police, particularly in situations which carry a heightened risk of the use of lethal force. Entering into security compacts with the local police requiring them to respond promptly to certain calls may alleviate the need for unarmed, under-manned, and potentially less experienced campus police to handle a difficult situation. Ensuring that there is a local police sub-station adjacent to the campus or in the midst of campus in some urban environments could reduce response time so there is negligible difference between the response time of on-campus police and local police. It could also reduce the level of weaponry necessary for campus police to employ. A more rapid response from a trained and experienced local SWAT team, for instance, may provide a better solution from a risk management perspective, even in an active shooter scenario, than a campus police force armed with seldom used tactical weapons.

In addition to the doctrine of sovereign immunity, many states have by statute created “charitable immunity” for schools and other charitable institutions, which may serve to limit the liability of schools for the bad acts of their officers.<sup>20</sup> Like statutory immunity, a charitable immunity statute may limit an institution’s financial exposure in a lawsuit, but the institution would benefit greatly by managing the risk and mitigating the collateral damage of being found negligent in a case of the use or non-use of deadly force long before a lawsuit is filed.

## Managing Expectations

A decision of whether to arm campus police can be as much a matter of managing expectations as it is risk management. According to the 2008 report to the Massachusetts Department of Higher Education, “Given the special level of care that parents expect of colleges with regard to their sons and daughters, it is hardly wise or reasonable for college officials ever to ignore the risk, however limited.”<sup>21</sup>

What do parents and students expect of the level of security on campus? Do they know or expect that campus police are or are not armed? Do they expect that everyone in a uniform is armed? Do they expect them to be the equivalent of municipal police officers or of mall security officers? Have you adequately disclosed to them the role you have chosen and defined for your campus security force?

An institution’s website and student handbook undoubtedly have sections on security. Any statements made there could be seen by a court as creating a contract between the school and the students or parents and form the basis for a lawsuit if your security force does not live up to your promises. Are you addressing this question so that there will be no misunderstanding regarding the level of security that the institution will provide and the circumstances when it will rely on state and local police? Institutions of higher learning should seek input from these stakeholders and potential plaintiffs when deciding whether to arm campus police and informing stakeholders of those decisions.

Parents, students, and the college community, however, are not the only individuals whose expectations an institution needs to manage. In the event that your institution is involved in a lawsuit, members of a jury will have their own set of expectations about campus security. Do they assume that campus police, like local police, are armed and have the same authority and training? How will they react if the allegation is that a student or a campus police officer died when an armed police officer might have been able to prevent the tragedy?

**What do parents and students expect of the level of security on campus? Do they know or expect that campus police are or are not armed? Do they expect that everyone in a uniform is armed?**

## Conclusion

The issue of arming or not arming campus police officers is not without risk, no matter what the final decision is. The actuarial and empirical data available regarding criminal incidents on campus are just the starting point to see how your institution stacks up against similar institutions. From there, the risk manager must weigh the more subjective and emotional expectations of students, parents, and potentially jurors to achieve a tailored solution which meets the needs, expectations, and resources of the institution.

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## Endnotes

- <sup>1</sup> State University of New York (SUNY) Cortland, "Report of the University Police Arming Task Force," 2004, <http://www.cortland.edu/police/UPTFFinalReport.doc>. See this report for a history of the evolution of one campus security force.
- <sup>2</sup> Applied Risk Management, "Campus Violence Prevention and Response: Best Practices for Massachusetts Higher Education, Report to Massachusetts Department of Higher Education," June 2008, <http://www.mass.edu/library/Reports/CampusViolencePreventionAndResponse.pdf>, p. vi.
- <sup>3</sup> US Department of Education, Office of Postsecondary Education, "The Campus Safety and Security Data Analysis Cutting Tool," <http://ope.ed.gov/security/>. Off-campus crime showed similar declines.
- <sup>4</sup> In 2009, Stonehill College in Massachusetts decided to arm its campus police officers for the first time. They chose .40 caliber Glock semi-automatic handguns that use police-approved ammunition. Vicki-Ann Downing, "Stonehill College in Easton Arms Campus Security Officers with Handguns," *The Enterprise*, February 26, 2009, <http://www.stonehill.edu/x16637.xml>.
- <sup>5</sup> SUNY Cortland, "Report of the University Police Arming Task Force," 20.
- <sup>6</sup> *Ibid.*, 19.
- <sup>7</sup> Samantha Tellez, "Controversy Over Arming Campus Police with Rifles," *Southwestern College Sun*, December 13, 2010, <http://www.southwesterncollegesun.com/campus/controversy-over-arming-campus-police-with-rifles-1.1830583>.  
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- <sup>8</sup> Applied Risk Management, "Campus Violence Prevention and Response," p. 38.
- <sup>9</sup> Michael Riley, "Arizona Shootings Trigger Surge in Glock Sales Amid Fear of Ban," *Bloomberg*, January 12, 2011, <http://www.bloomberg.com/news/2011-01-11/glock-pistol-sales-surge-in-aftermath-of-shooting-of-arizona-s-giffords.html>.  
Martha Neil, "Glock Sales Double for Ariz. Gun Dealer in Aftermath of Congresswoman's Shooting," *ABA Journal*, January 11, 2011, [http://www.abajournal.com/news/article/glock\\_sales\\_double\\_for\\_ariz.\\_gun\\_dealer\\_in\\_aftermath](http://www.abajournal.com/news/article/glock_sales_double_for_ariz._gun_dealer_in_aftermath).
- <sup>10</sup> Criminals in the general population may be acquiring more sophisticated weapons, and to the extent that their activities spill over onto porous urban campuses, there may be an escalation of weaponry, albeit not necessarily in response to the weapons employed by campus security forces.
- <sup>11</sup> Incidentally, the Virginia Tech killer, Seung-Hui Cho, also used a Glock. See Gary Fields, "Rampage Gun's Reputation Built on Style, Ease of Use," *Wall Street Journal*, January 12, 2011, <http://online.wsj.com/article/SB10001424052748704515904576076261511207484.html>.
- <sup>12</sup> SUNY Cortland, "Report of the University Police Arming Task Force," 17.
- <sup>13</sup> Applied Risk Management, "Campus Violence Prevention and Response," 2.
- <sup>14</sup> *Ibid.*, 38.
- <sup>15</sup> *Ibid.*, 8.

<sup>16</sup> One of the proponents of relaxed gun restrictions on campuses nationwide is a group called Students for Concealed Carry on Campus, <http://www.concealedcampus.org/>. The site includes a breakdown of current state campus gun laws (<http://www.concealedcampus.org/state-by-state.php>). Currently, only Utah allows students to carry guns on public institution campuses. In Colorado, allowing students to carry guns is optional for individual public schools, and several have granted the option.

<sup>17</sup> Brian A. Reaves, "Campus Law Enforcement, 2004-05," US Department of Justice, Bureau of Justice Statistics Special Report, February 2008, <http://bjs.ojp.usdoj.gov/content/pub/pdf/cle0405.pdf>.

<sup>18</sup> Ibid.

<sup>19</sup> SUNY Cortland, "Report of the University Police Arming Task Force," 17.

<sup>20</sup> Massachusetts limits damages in personal injury actions against such institutions to \$20,000. Massachusetts General Law, Chapter 231, Section 85K, "Limitation of tort liability of certain charitable organizations; liability of directors, officers or trustees of educational institutions" (M.G.L. 231 § 85k), <http://www.malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter231/Section85k>.

<sup>21</sup> Applied Risk Management, "Campus Violence Prevention and Response," 2.

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**The only way to keep your health is to eat what you don't  
want, drink what you don't like, and do what you'd rather not.**

—MARK TWAIN (1835–1910),

AMERICAN AUTHOR

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# How Health Care Reform Really Affects Student Health Plans

| Alex Balise and Kristen Devine, University Health Plans, Inc.

*Abstract: With the proposal of a new rule in 2011 that re-defines student health insurance coverage, many colleges and universities may be wondering what impacts the new rule could have on their student health plans (SHP). This article highlights some of the ways that, if implemented as proposed, the rule could impact SHPs, including possible increased premiums, colleges no longer offering SHPs, and insurers potentially leaving the student health insurance market. The article also provides case studies based on three actual colleges' different SHPs to illustrate how the proposed rule could impact institutions of higher learning differently.*

## Introduction

In early February, the Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) proposed a new rule that defines student health insurance coverage<sup>1</sup> as a type of individual coverage and clarifies which rules of the Public Health Services (PHS) Act and Affordable Care Act (ACA) will apply to student health plans (SHP) as such.<sup>2</sup> The goal of this article is to explain how health care reform and the proposed rule, if implemented, will affect SHPs.

Over one million students are currently covered<sup>3</sup> under one of 2,000 college and university SHPs.<sup>4</sup> According to the American Council on Education,

“These SHPs are important as they provide coverage when no parental coverage is available, when student coverage is better than available parental coverage, or when out-of-network coverage makes parental coverage prohibitively expensive. For the most part, the benefits are tailored to meet the unique needs of students...Schools voluntarily provide coverage on a guaranteed issue basis to our students, do not vary premiums based on an individual student's health status, and typically do not impose pre-existing condi-

tion exclusions. SHPs are particularly important for international and graduate students.”<sup>5</sup>

SHPs as a whole are also less expensive than other individual plans offered to the general public. See Figure 1 at the end of this article for a comparison of SHPs and other individual plans.

The authors of this article believe that it is important for colleges and universities to continue offering SHPs, but are concerned that implementation of the new rule will negatively impact SHPs in the following ways:

1. Premiums will rise significantly for many SHPs.
2. Some schools will stop offering SHPs.
3. The combination of the loss ratio requirement and the uncertainty of very large claims with no maximum benefit may cause some insurers to exit the student health market, leading to decreased competition within the market.

This article will question and examine possible issues related to implementation of the proposed rule.

## The Proposed Rule

As mentioned above, the proposed rule clarifies which aspects of health care reform will and will not apply to SHPs as individual plans. Examples of the policies that will not apply to SHPs are the guaranteed availability and renewability requirements. This is because SHPs are, by definition, offered only to students (and their dependents, where applicable) and generally provide limited duration coverage. Under the proposed rule, colleges and universities will have a “transition period” during which they can work to increase SHP coverage and ultimately eliminate annual limits for essential health benefits.<sup>6</sup>

The requirements of the new rule will be effective for policy years beginning on or after January 1, 2012. For

**Over one million students are currently covered under one of 2,000 college and university student health plans.**

most SHPs, this means that the proposed changes will not be required until the 2012-2013 policy year. As of the 2012-2013 policy year, SHPs will be required to have no lifetime limits and an annual maximum benefit of no less than \$100,000 for essential health benefits. SHPs will also have to provide preventive care without cost sharing, clearly state in all print materials that the SHP does not meet all ACA requirements,<sup>7</sup> and include prescription coverage as of the 2012-2013 policy year. SHPs may also be required to meet a minimum medical loss ratio requirement (MLR) of 80 percent at that time. By the 2013-2014 policy year, SHPs will need to have a maximum benefit of at least \$2,000,000 for essential health benefits. As of the 2014-2015 policy year, SHPs will be required to eliminate any pre-existing condition exclusions and provide unlimited coverage with a \$5,950 out-of-pocket maximum<sup>8</sup> for essential health benefits.<sup>9</sup>

The aforementioned requirements will result in major plan changes for many SHPs in the coming policy years. An independent research group, the Lookout Mountain Group, estimated that “only 15 percent of college-sponsored health plans comply with the American College Health Association’s (ACHA) standards for quality coverage.”<sup>10</sup> The ACHA guidelines for SHPs are very similar to the requirements that SHPs will need to meet under the proposed rule. The ACHA guidelines include preventive care coverage, prescription benefits, elimination of pre-existing condition exclusions, and the maintenance of reasonably high MLRs.<sup>11</sup> In a 2008 study of SHPs, the US Government Accountability Office (GAO) found “nearly all (96 percent) of the 194 student insurance plans we reviewed established a maximum benefit amount.”<sup>12</sup> Based on these findings, the vast majority of SHPs will need to make significant changes in the coming years to meet the requirements set forth in the proposed rule.

### **Comment Period**

The 60-day comment period for the proposed rule on Student Health Insurance Coverage ended on Tuesday, April 12, with over 100 public comments.<sup>13</sup> The comments are available to view online at [www.regulations.gov](http://www.regulations.gov) (Docket ID: CMS-2011-0016). CMS and HHS do not respond to each comment individually. They do, however, respond to the comments as a whole shortly after the end of the comment period.<sup>14</sup> At the time this article was

printed, CMS/HHS had not yet responded to the comments.

Although several people posted comments arguing that the proposed rule should be void because the Patient Protection and Affordable Care Act (PPACA) has been deemed “unconstitutional,” the majority of those who commented discussed the potential effects of the proposed rule itself. Most concerns were either financially motivated or questioned the impact of the proposed rule on students. Several posts explained that SHPs fill a market need and expressed concerns that did not fall neatly into either of the previous categories, such as the coordination of SHPs with student health centers. Not surprisingly, the majority of comments included financial concerns. Among the most popular financial concerns were premium increases, implementation costs, the MLR requirement, administrative costs, the impact on financial aid distribution, and the use of tax credits for SHPs.

A number of posts also noted the importance of quality, affordable health insurance coverage for students and questioned how the proposed rule would affect students. In particular, commentators expressed concerns about the continued affordability of SHPs, how the rule will impact international students, and the potential discontinuation of some SHPs. This article will focus on premium increases and SHP affordability, the coordination of SHPs with student health centers, the MLR requirement, and how the proposed rule might impact international students.

### **Premium Increases**

Currently, schools can customize the benefits of SHPs to meet the needs of their unique student populations; therefore, SHPs vary significantly.<sup>15</sup> If the new regulations take effect, it is likely that they will “drastically alter a large market whose policies vary widely in their benefits.”<sup>16</sup> The requirements of the proposed rule will transform current student accident and sickness plans into comprehensive student health insurance plans, and many students will face a large increase in their SHP premiums as a result of the increased coverage.

## Differences in Current Student Health Plans

The GAO study of SHPs in the 2007-2008 academic year found that considerable differences existed among the plans:

“The plans GAO reviewed varied in the services they covered and how they paid for covered services. Specifically, some plans excluded preventive services from coverage, and some plans limited payment for benefits such as prescription drugs. In addition, plans also varied in terms of premiums and maximum benefits, with annual premiums ranging from \$30 to \$2,400 and maximum benefits ranging from \$2,500 for each illness or injury to unlimited lifetime coverage.”<sup>17</sup>

A comparison of three actual plans for the 2010-2011 policy year illustrates that these differences still exist among SHPs. For the purposes of this article, the schools that offer these plans will be referred to as “College X,” “College Y,” and “College Z.” Refer to Figure 1 at the end of the article for a tabular comparison of these plans.

College X offers a basic Student Accident and Sickness Insurance Plan with an annual student premium of about \$400. There is a \$50 deductible per accident and a \$5,000 maximum benefit per condition. Covered services are paid at 100 percent for the first \$1,000 per condition, then at 80 percent up to the \$5,000 maximum per condition. Prescriptions are covered with no co-pay, but there is a \$150 policy year maximum. Routine physical exams are not covered, and there is a \$250 maximum per condition for outpatient lab work and x-rays. Intentionally self-inflicted injuries are also excluded. While this plan is very affordable and provides coverage for minor accident or sickness, it is clearly not sufficient for individuals with chronic health conditions. This type of plan would also put a student at financial risk if he or she experienced a catastrophic accident or sickness.

College Y offers a comprehensive Student Health Insurance Plan with no maximum benefit. The annual premium is just over \$1,200 and dependents are not eligible for coverage. In-network services are covered at 100 percent after co-pay, and out-of-network services are covered at 80 percent. Mental health, allergy injections, and routine physical, gynecological, hearing, and vision exams are covered with a \$20 co-pay for each visit. Prescriptions are also covered with \$10, \$25, or \$45 co-pays depending on the drug’s tier. With no policy year maximum, students covered under this type of plan are less likely to experience very large out-of-pocket costs as a result of obtaining treatment for chronic conditions or catastrophic events.

As you can see, the differences between these two plans are significant. The coverage under College Y’s plan is clearly much more comprehensive than that under College X’s plan, but College Y’s premium is also roughly three times College X’s premium. The differences in these two plans reflect the trade-offs that schools make when designing a plan that best meets both the medical and financial needs of their students.

Many schools that switch from a basic accident and sickness policy to a comprehensive student health insurance plan experience an increase in their SHP enrollments. This confirms that there is

a demand for comprehensive coverage at some schools. The additional premiums collected, however, do not always offset the additional claims, leading to high MLRs. College Z is a great example of this.

College Z’s Student Health Insurance Plan has very similar benefits to those of College Y’s plan. Aside from College Z offering dependent coverage and having slightly higher office visit (\$25) and prescription co-pays (\$15/\$30/\$50), the plans are essentially identical. The premium for College Z’s SHP, however, is nearly \$2,000. That is five times College X’s premium and significantly higher than College Y’s premium. The vast difference in premium between the plans at Colleges Y and Z is largely due to the fact that College Z has experienced much

**Many schools that switch from a basic accident and sickness policy to a comprehensive student health insurance plan see an increase in student health plan enrollments.**

higher loss ratios (over 100 percent). The administration at College Z realizes that students cannot afford for the premium to be any higher and are now considering reducing benefits to prevent further premium increases.

An independent actuarial and consulting firm, Milliman, Inc., recently published a report examining the financial implications of implementing the proposed rule for SHPs. For the analysis, Milliman used prototypes of current low, medium, and high benefit SHPs to illustrate the expected premium increases necessary to meet the requirements set forth in the proposed rule. According to the report, SHP premiums will need to increase by between 6.9 percent and 97.0 percent to meet the 2014 standards described in the NPRM. In 2010-2011 dollars, the estimated premium increases range from \$134 to \$642, resulting in estimated premiums for the 2014-2015 policy year ranging from \$1,304 to \$2,087. The report also included highlighted benefit summaries to illustrate the annual benefit changes that will be necessary for current low-, medium-, and high-benefit SHPs to meet the proposed requirements for each of the 2012-2013, 2013-2014, and 2014-2015 academic years. UnitedHealth Group posted a copy of this report with its comment (CMS-2011-0016-0070.1) on the proposed rule.<sup>18</sup>

### **Possible Results of Increased Premiums**

Many schools view the offering of SHPs as a service provided to their students and do not want to offer a plan that many of their students may not be able to afford. The 2008 GAO study reported that most of the college administrators they interviewed “explained that maintaining premium affordability for their students is a priority.”<sup>19</sup> Comments submitted by the Association of Independent Colleges and Universities in New Jersey, Smith College, Hamilton College, Fulton-Montgomery Community College, and the University of Texas System in response to the proposed rule supported this finding. Although HHS/CMS stated that they “believe that this proposed

rule will have a minimal effect on premiums,”<sup>20</sup> Lookout Mountain Group representative Jim Mitchell said, “Campus health officials were dubious, estimating [premium] increases of up to 400 percent.”<sup>21</sup> This estimate may sound high, but the percentage falls within the premium differences between the SHPs offered by College X and the other Colleges in Figure 1.

With little choice in coverage limits, deductibles and coinsurance options will become the main cost control option for SHPs. However, most schools do not want to offer a high-deductible plan. They want students to have easy access to care without having to worry about paying a large amount out of pocket before receiving benefits. As a result, “Some colleges may decide that they can’t offer cost-effective plans with adequate benefits, and they will help direct students to good options on the individual insurance market... Others will try to develop more comprehensive plans.”<sup>22</sup>

Another option, particularly for small schools, will be to join or develop a consortium. This can both increase the number of people to whom SHPs are available and decrease premium for the group as a whole.<sup>23</sup> By creating a larger group, schools that participate in a consortium are able to decrease the risk and overhead charges from the insurer, potentially making the premium more affordable for their students. At the same time, however, this arrangement can result in schools having to cede individual control over benefits and premium to the consortium.

Many schools will want to continue to offer SHPs instead of directing students to individual health insurance exchanges. This is partly because they realize that “students face unique obstacles to obtaining health insurance because they often do not have access to common sources of insurance such as employer-sponsored coverage, dependent coverage from a parent’s plan, government programs, or affordable individual coverage.”<sup>24</sup> States are expected to develop insurance exchanges that will help individuals find appropriate coverage. As these exchanges are devel-

**Most schools do not want to offer a high-deductible plan. They want students to have easy access to care without having to worry about paying a large amount out of pocket before receiving benefits.**

oped, more individual options may become available for young adults, but there is still a question as to whether individual options will be subsidized for students. In Massachusetts, full-time college students are not eligible for state subsidies on individual plans marketed on the state exchange. There is also a question as to whether students will be able to opt out of a student health insurance program by purchasing catastrophic coverage only. Harvard University Health Services (HUHS) stated in their comment that this situation would “constitute a step back from effective campus public health measures.”<sup>25</sup>

Young adults (ages 19-26) in Massachusetts can purchase Young Adult Plans (YAP) that are less expensive than the individual plans offered to other adults and students who are not eligible for low income subsidies. As illustrated in Figure 1, however, the YAP premiums are as high as some of the more expensive SHPs, but often have much lower benefit maximums. In addition, plans like YAP A require large deductibles and high emergency room co-pays before receiving benefits. The initial out-of-pocket costs associated with a high-deductible plan like YAP A may cause cash strapped students to put off expensive, but necessary, medical care.

This could become a problem for SHPs as well if high deductibles are one of the only options to keep premiums down. The option to seek treatment under a high-deductible plan, though, would not be affordable for many students. By putting off medical care, students would be putting themselves at risk to develop more serious (and more costly) health problems. For example, a student may be hesitant to go to the doctor because he assumes that he has a common cold and does not want to pay for the office visit. Without treatment, however, what he assumes is a cold could develop into a more serious condition, such as pneumonia or bronchitis. This more advanced condition will now cost more to treat than if the student had sought basic treatment earlier.

The potential increase in SHP premiums is also problematic because it defies the purpose of SHPs: to provide affordable health coverage and access to local providers for students who may not be able to obtain it elsewhere. Higher premiums and the development of high-deductible SHPs could each negatively impact students in a number of ways, including forcing students to drop classes in order to afford mandated health insurance

coverage. According to Perry & Carroll’s comment, “For many students at the community college level, the cost of insurance coverage may rival tuition costs, forcing students to choose between insurance coverage and college attendance.”<sup>26</sup>

### **Financial Aid and Insurance Requirements**

Although SHPs will likely remain less expensive than other individual plans, students will no longer have a low-cost option for more limited basic accident and sickness coverage. Undergraduate students more commonly enroll in their college or university’s health plan not because they have aged out of their parents’ plans, but because of the lower premium.<sup>27</sup> The potential increase in premium for many SHPs may be particularly detrimental to students who are already struggling to pay for their education.

For this reason, some schools that already offer optional SHPs may decide to make insurance coverage mandatory for certain groups of students (i.e., requiring all full-time students to have insurance). By mandating insurance coverage, the school “can include the cost of the health insurance premiums in the college’s overall cost of attendance, which establishes students’ financial need and may enable students to receive financial aid to pay for their health insurance premiums.”<sup>28</sup> Administrators, though, are hesitant to add any additional tuition fees “at a time when many are concerned with the rising cost of attending college.”<sup>29</sup> Administrators may also need to consider how the combination of an insurance requirement and increased premium rates would affect the distribution of financial aid for the student population as a whole. This issue came up in several of the public comments regarding the proposed rule.

In addition to students being able to include their health insurance premiums in their financial aid packages, another potential benefit of imposing an insurance requirement is that:

“Students who enroll in plans offered by colleges with health insurance requirements generally are healthier than those who voluntarily enroll in plans offered by colleges without a requirement. Because larger and healthier populations typically enroll in student insurance plans offered by colleges with an insurance requirement, these colleges are generally able to offer plans with more com-

prehensive benefits or more affordable premiums than they would otherwise have been able to offer if they did not have such a requirement.”<sup>30</sup>

Imposing an insurance requirement could be one way that schools can try to keep premiums low while increasing benefits to meet the proposed requirements.

### **Student Health Centers**

One way that schools currently try to keep premiums low is through the coordination of their SHP with their on-campus student health center to eliminate duplication of benefits:

“Student health insurance coverage is generally designed to complement the university health services and academic medical centers. Leveraging these state-of-the-art centers is one of the ways that colleges and universities are able to keep the costs of student health insurance coverage low... If the Department does not recognize student health centers’ preventive services as satisfying the requirements of section 2713, issuers will be forced to duplicate this coverage, and the cost of student health insurance coverage will rise unnecessarily.”<sup>31</sup>

In many cases, the student health center is a more efficient and cost-effective option for students. Currently, if a service is available at the student health center, the SHP may not include the service in its outside benefits. Whether this coordination of benefits will be allowed in meeting the requirements of the proposed rule is not yet clear. In Massachusetts, however, “A school may elect to provide some or all of its student health benefits through an on-campus student health service.”<sup>32</sup>

Alternately, the insurance company may require a higher co-pay for the same service provided at an outside provider rather than at the student health center. The coordination of student health center services with the insurance company benefits the students by helping to keep their insurance premiums low. For example, some student health centers provide vaccinations at no cost to students, whereas students who obtain the same vaccinations from an outside provider may be responsible for a co-payment while the insurer pays the remainder of the charge. When

a service does require an additional fee, student health centers typically charge much lower fees than do outside providers, reducing the claim pool and saving premium dollars when students utilize the student health center. The claim transfer to the student health center eliminates the need for payment through the insurance plan.

Another way that schools encourage students to seek care from the student health center is by setting up a student health center referral requirement. This again lowers outside claims by having students receive treatment at the student health center before seeing an outside provider. This arrangement enables the insurance company to provide a premium discount to the students. If benefit shifting to the student health center is discouraged under the new requirements, students will have less of an incentive to receive care from the student health center rather than from outside providers. The insurance company would no longer be able to offer the discount if students stop seeking services from the student health center before accessing outside providers.

HUHS’ comment reinforced the important role student health centers play in public health and requests clarification regarding the choice of primary care provider for SHPs. HUHS described their recent work addressing the potential spread of a pandemic flu to illustrate how “a campus health service that is the primary care provider for students is an essential ingredient for successfully managing these situations.”<sup>33</sup> In recognition of the unique nature of student health care, special effort should be made to allow for schools to continue requiring students to choose a primary care provider on campus. The American Council on Education similarly commented, “With clinicians, mental health professionals, health educators, and others using principles of the patient-centered medical home and keenly focused on both adolescent health and academic success in higher education, primary care providers within the network of the institution’s student health center are best suited to provide the continuum and continuity of case so important to students’ success.”<sup>34</sup>

### **Medical Loss Ratio**

Individual insurance plans are currently required to have a minimum medical loss ratio (MLR) of 80 percent. Insurance companies in the student market believe that SHPs should have a lower MLR requirement than other

individual plans because of the extra administrative work associated with student plans. For example, many SHPs have several enrollment/waiver periods each academic year to accommodate significant enrollment turnover and students who do not begin classes in the fall term. Many schools also allow enrollment due to qualifying events, such as loss of other coverage, throughout the year. For schools that require students to have insurance, a waiver and waiver appeal process must be set up and managed each academic term. Waivers and appeals are an integral part of SHPs, but they add to the administrative burden because they require manual enrollment adjustments beyond the regular open enrollment periods.

Each year, most SHPs issue new identification cards in addition to creating and distributing updated communication materials that reflect new premiums and any benefit changes. Under the proposed rule, insurance companies will also be required “to provide notice to enrollees that the policy does not meet all the requirements of the Affordable Care Act.”<sup>35</sup> This notice must be in any policy documents sent to students, further adding to the administrative costs for SHPs.

Another reason that SHP insurers believe that their MLR requirement should be less than 80 percent is because the average premiums of SHPs are lower than the average premiums of comparable individual plans. This means that the dollar amount retained by SHP insurers is less than the dollar amount retained by insurers of other individual plans. For example, Student Plan Y and Individual Plan D in Figure 1 have very similar benefits, but Plan D has a much higher premium. Assuming that both plans meet the 80 percent MLR requirement, the insurer of Student Plan Y would retain \$240 per enrollee to use toward administrative and other costs while the insurer of Individual Plan D would retain \$986 per enrollee.<sup>36</sup>

Although HHS/CMS recognize that “the administrative cost structure of student health insurance plans is higher than the more typical individual policies, in part

due to the customized nature of each college or university’s plan, making compliance with the 80 percent MLR standard potentially prohibitive,”<sup>37</sup> there is not enough data currently available for them to make an informed decision on this matter for SHPs.<sup>38</sup> If SHPs are required to meet a high MLR ratio, some customer services currently provided by insurance companies and brokers may be reduced or eliminated. This could potentially shift more administrative work to the schools, which would increase the cost of sponsoring an SHP for the school.

It may be important to note here that the state of Maine recently received a three-year waiver from the MLR requirement for individual plans and will have an MLR requirement of 65 percent for that period. After analyzing a large amount of data collected from the state, the administration determined that the requirements set for individual plans nationwide could potentially destabilize Maine’s insurance market. One factor considered in this decision was “the number of issuers reasonably likely to exit the state or to cease offering coverage in the state absent an adjustment in the 80 percent MLR and the resulting impact in competition in the state.”<sup>39</sup> Again, SHPs may be at risk of losing issuers if an 80 percent MLR requirement is applied to the student market, which this article discusses further below. It will be interesting to see whether SHPs

will be able to apply for a similar exception to the MLR requirement.

### **Rebates**

Another potential requirement that is concerning to SHP insurers is the need to issue rebates to students if the final MLR is less than the minimum MLR requirement. Rebates are a complex process, especially for SHPs. Colleges and universities that currently have rebate programs have experienced significant administrative issues. Given the transient nature of student populations, the address that the insurance company has on file is often outdated and

**If student health plans are required to meet a high medical loss ratio, some customer services currently provided by insurance companies and brokers may be reduced or eliminated, shifting such work to the schools.**

insurers may send refund checks to old addresses. Locating international students and students who have already graduated has proven to be particularly challenging. “Given the transient nature of the student population and the common practice of billing premium charges through institutional student accounts, the administrative burden and cost of refunding directly to the individual, in many instances, would exceed the value of the rebate.”<sup>40</sup>

A more viable alternative to the rebate requirement is for SHPs to be required to arrange for a reserve account where excess earned premiums are held and then applied to offset the costs of future student premiums. Aetna proposed another alternative in its comment: “Student health insurance coverage should not be required to pay rebates to individual students, but rather, any rebates owed should be paid to the colleges, because they are the contract holder and because they are in the best position to be able to locate current and former students.”<sup>41</sup>

### Competition

The total paid claim amount for a limited benefit program has the potential to increase significantly with an unlimited benefit plan. One large loss can greatly impact a group’s claims experience. Insurance companies in the student market are particularly concerned about the uncertainty of large claims because of their limited enrollment numbers. This puts the insurers at risk and can potentially have a negative effect on MLRs, which will in turn affect future premium rates. Depending on the school’s claims experience, it may get to the point where underwriters are no longer comfortable offering SHPs to certain student populations.

Insurers in the student market are also concerned about whether MLR requirements will be enforced on a national or state by state basis. If the MLR requirement applies per state, the low concentration of colleges and universities in certain states may cause issues for some insurance companies. Furthermore, if SHP insurers are

required to issue rebates when they do not meet the minimum MLR requirement, the insurance companies will not have adequate reserves when the MLRs of their SHPs are far greater than 80 percent, or even over 100 percent. For these reasons, smaller insurance companies in particular may decide to exit the student health insurance market. Less competition in the market will minimize plan options for schools and affect the level of service that schools and students have come to expect from their insurers and brokers.

In response to the changing market place, student health insurers may develop products that assume the vast majority of the risk while allowing schools the flexibility to develop customized benefits. For example, minimum premium financial arrangements similar to those offered in the employee market may become a viable option in the student market.

Another possible result of the proposed rule is an increase in self-insured SHPs. In addition to their already appealing “low overhead costs and high flexibility,” self-insured plans will not be subject to the regulations of the new rule.<sup>42</sup> Schools may find this appealing because it would allow them to remain in control of the SHP offered to their students.

Several schools that currently offer self-insured plans, however, have expressed concern that self-insured plans will not meet the rule’s definition of “student health insurance coverage” and

therefore not qualify as “minimum essential coverage” for the students. HUHS, in particular, requested clarification on the status of self-insured SHPs in the final rule.<sup>43</sup>

### International Students

International students do not currently need to comply with the mandates of the proposed rule. The unclear status of international students in relation to this rule raises a number of questions.

For example, will international students be expected to have insurance that meets the same requirements expect-

**Several schools that currently offer self-insured plans have expressed concern that they may not meet the rule’s definition of “student health insurance coverage” and therefore not qualify as minimum essential coverage for students.**

ed of domestic students? Currently, each school decides whether international students are required to enroll in the SHP and, if not, sets waiver requirements. Some schools use the same waiver process and requirements for both international and domestic students. Other schools have a separate waiver process and/or additional waiver requirements for international students. At some schools, for example, international students are required to submit paper forms and/or provide their policy information for review while domestic students can submit waivers online. A number of schools further require that international students have plans that are based in or have a claims address in the United States. In Massachusetts, for example, international and domestic students alike can only waive their school's SHP with comparable health insurance that is based in the United States.<sup>44</sup> The main purpose of these requirements is to ensure that international students have adequate coverage while studying in the United States.<sup>45</sup>

Another question is whether schools will begin requiring international students to enroll in the SHP to ensure that their coverage meets the same standards that domestic students' coverage has to meet. If schools begin to require international students to enroll in the school-sponsored SHP, but domestic students have the option of waiving with comparable coverage, it could be seen as discriminatory. Stanford University has already addressed this issue.<sup>46</sup> In the spring of 2010, Stanford announced plans to make enrollment in the SHP mandatory for international students. International students at the school were outraged that they were being "singled out" and started a petition. Two months later, over 550 people had signed the petition, and Stanford agreed to set clear waiver requirements and review each international student's policy individually.<sup>47</sup> This new policy allows the school to ensure that international students are adequately covered in the United States without forcing them to enroll in the school's SHP, but also requires a considerable amount of additional administrative work on the school's part.<sup>48</sup>

One point made in the Stanford petition is that many international students have access to fairly inexpensive yet comprehensive coverage from their native countries. This also came up in one student's comment on the proposed rule:

"It is unclear whether those proposed rule[s] will be applicable to international students as to

domestic students. If the answer is no, then an issue of discrimination might arise. If the answer is yes, those inexpensive plans that international students normally chose [*sic*] may no longer meet the new standard... Due to their unfamiliar [*sic*] with the US medical system, except for emergencies, most students would choose to take medical care at their own country if they can, where they can also get much cheaper medical cares. Thus this high standard insurance coverage requirement seems coercive to most international students in a sense."<sup>49</sup>

Some of these "inexpensive" international plans, however, have limitations that may not meet a school's insurance requirements, and students may still be required to purchase secondary coverage. The Alliance for International Education and Cultural Exchange explained in its comment, "Imposing higher coverage requirements for these participants will significantly raise the cost of exchange programs, excluding many whose participation serves long-term US national interests."<sup>50</sup> Hence, a mandate for international students to purchase an expensive SHP, or the imposition of waiver requirements that international plans may not be able to meet, could be a financial disincentive for some international students to study at American colleges and universities.

## Conclusion

Considering past experience and using Massachusetts as an example, SHPs can succeed under more stringent requirements such as those of the proposed rule. This success, however, depends on the administration's understanding and consideration of the unique nature of SHPs. CMS/HHS have already taken the unique nature of SHPs into consideration when writing the proposed rule. We hope that they continue to do so when proposing solutions to the requirements that have not yet been clearly addressed.

Based on the information available at this point in time, it is expected that health care reform and the proposed rule will affect SHPs in the following ways: premiums will increase for many SHPs, some schools will stop offering SHPs, more self-insured SHPs will be developed, and competition within the student market may

decrease due to the combination of the MLR requirement and the uncertainty of very large claims in an unlimited benefits plan. It is not yet clear how these requirements will impact international students.

If schools do not provide health insurance coverage to their students, those students who are not covered under a parent's, spouse's, or employer's plan will have to purchase an individual policy or risk going without insurance coverage. As illustrated by the plans in Figure 1, SHPs are typically much less expensive than other individual insurance plans that are marketed to the general public. Many students would thus be put at financial risk if their schools stopped offering SHPs.

Referring again to the comparison in Figure 1, the SHPs of Colleges Y and Z both saw significant increases in enrollment after upgrading their school-sponsored plans to a more comprehensive health insurance option for students. College Y is a great example of an SHP that has successfully increased benefits while keeping the plan affordable for its students. College Z, on the other hand, saw a significant premium increase after offering a more comprehensive plan to its students.

There are a number of viable options for schools to try to keep their SHP premiums low while increasing benefits to meet the requirements of the proposed rule. Student health centers can coordinate with brokers and insurance companies to establish appropriate programs for their specific student populations. Schools may also choose to build or join consortiums if needed to offer competitively priced comprehensive insurance plans. Self-insured plans and other alternative insurance products may also become popular options for SHPs. These options, however, have not yet been deemed acceptable ways of meeting the proposed requirements.

By the time this article is published, SHP guidelines should be better defined, and colleges and universities will hopefully have a better grasp of available options. In addition, HHS/CMS will likely have responded to the public comments. The proposed rule and related comments are available to view on-line under Docket ID CMS-2011-0016 at [www.regulations.gov](http://www.regulations.gov).

**FIGURE 1: COMPARISON OF SHPs AND INDIVIDUAL PLANS**

STUDENT PLANS				INDIVIDUAL PLANS offered on MA State Exchange			
	STUDENT PLAN X*	STUDENT PLAN Y	STUDENT PLAN Z	YOUNG ADULT PLAN A	YOUNG ADULT PLAN B	INDIVIDUAL PLAN C	INDIVIDUAL PLAN D
Plan Type	PPO	PPO	PPO	HMO	HMO	HMO	HMO
Annual Premium <sup>+</sup>	\$400	\$1,200	\$2,000	\$1,990	\$2,475	\$2,800	\$4,930
Annual Benefit Max	\$5,000 per condition	Unlimited	Unlimited	\$50,000	Unlimited	Unlimited	Unlimited
Annual Deductible	\$50 per accident	None	None	\$2,000	\$250	\$2,000	None
Out-of-Pocket Max	None	None	None	\$5,000	\$5,000	\$5,000	None
Office Visit	\$10	\$20	\$25	\$25	\$25	\$25	\$20
Prescription	100% up to \$150	\$10 / \$25 / \$45 Co-pays	\$15 / \$30 / \$50 Co-pays	\$30 Co-pay / 50% Co-ins	\$15 Co-pay / 50% Co-ins	\$15 Co-pay / 50% Co-ins	\$15 / \$30 / \$50 Co-pays
ER Co-Pay	\$50	\$100	\$100	\$250	\$250	\$100	\$75
Coverage Level	80%	100%	100%	80%	70%	80%	100%

\*This plan is not offered in Massachusetts

<sup>+</sup>The Student Plan premiums are from the 2010-2011 policy year. The Individual Plan premiums were valid as of March 2011.

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## Endnotes

<sup>1</sup> As defined in the proposed rule, “Student Health Insurance Coverage is a type of individual health insurance coverage (as defined in Sec. 144.103) that is provided pursuant to a written agreement between an institution of higher education (as defined in the Higher Education Act of 1965) and a health insurance issuer, and provided to students enrolled in that institution of higher education and their dependents, that meets the following conditions:

- (1) Does not make health insurance coverage available other than in connection with enrollment as a student (or as a dependent of a student) in the institution of higher education.
- (2) Does not condition eligibility for the health insurance coverage on any health status-related factor (as defined in Sec. 146.121(a)) relating to a student (or a dependent of a student).
- (3) Meets any additional requirement that may be imposed under State law.”

Centers for Medicare & Medicaid Services (CMS), US Department of Health and Human Services (HHS), “Student Health Insurance Coverage,” *Federal Register* 76, no. 29 (February 11, 2011): 7781.

<sup>2</sup> *Ibid.*, 7777-7778.

<sup>3</sup> *Ibid.*, 7769.

- <sup>4</sup> US Government Accountability Office (GAO), *Most College Students Are Covered through Employer-Sponsored Plans, and Some Colleges and States Are Taking Steps to Increase Coverage*, Report 08-389, March 28, 2008.
- <sup>5</sup> American Council on Education, *Letter to the Department of Health & Human Services and the White House Office of Health Reform on the Patient Protection and Affordable Care Act*, August 12, 2010, <http://www.acenet.edu/AM/Template.cfm?Section=Search&CONTENTID=37793&TEMPLATE=/CM/ContentDisplay.cfm>.
- <sup>6</sup> Essential health benefits are defined in section 1302(b) of the Affordable Care Act as including “at least the following general categories and the items and services covered within the categories:
  - (A) Ambulatory patient services.
  - (B) Emergency services.
  - (C) Hospitalization.
  - (D) Maternity and newborn care.
  - (E) Mental health and substance use disorder services, including behavioral health treatment.
  - (F) Prescription drugs.
  - (G) Rehabilitative and habilitative services and devices.
  - (H) Laboratory services.
  - (I) Preventive and wellness services and chronic disease management.
  - (J) Pediatric services, including oral and vision care.”*Patient Protection and Affordable Care Act*, HR 3590, 111th Congress, 2nd sess. (2010), <http://democrats.senate.gov/reform/patient-protection-affordable-care-act-as-passed.pdf>.
- <sup>7</sup> Per the proposed rule, student health plans will be exempt from certain individual plan requirements from the Public Health Services Act:
  - (1) Guaranteed Availability and Guaranteed Renewability. For purposes of section 2741(e)(1) and 2742(b)(5) of the Public Health Service Act, Student Health Insurance Coverage as defined in paragraph (a) of this section is construed to be available only through a bona fide association.
  - (2) Annual Limits.
    - (i) Notwithstanding the annual dollar limits requirements of Sec. 147.126, for policy years beginning before September 23, 2012, a health insurance issuer offering student health insurance coverage as defined in paragraph (a) of this section may not establish an annual dollar limit on essential health benefits that is lower than \$100,000.
    - (ii) For policy years beginning on or after September 23, 2012, a health insurance issuer offering student health insurance coverage must comply with the annual dollar limits requirements in Sec. 147.126.”CMS, 7781.
- <sup>8</sup> According to the Democratic Policy Committee’s analysis of the Patient Protection and Affordable Care Act (PPACA), “For all plans in all markets, prohibits out-of-pocket limits that are greater than the limits for Health Savings Accounts.” The current health savings account (HSA) out-of-pocket maximum is \$5,950 for an individual.

Democratic Policy Committee, “The Patient Protection and Affordable Care Act as Passed Section-by-Section Analysis,” <http://dpc.senate.gov/healthreformbill/healthbill49.pdf>.
- <sup>9</sup> CMS, 7778.
- <sup>10</sup> Sara Lipka, “Colleges’ Student Health Plans Would Offer More Protections Under Proposed Rules,” *The Chronicle of Higher Education*, February 10, 2011, <http://chronicle.com/article/Federal-Health-Care-Law-Will/65072/>.

- <sup>11</sup> American College Health Association, "Standards for Student Health Insurance/Benefit Programs," *ACHA Guidelines, Recommendations, and White Papers*, March 2008, [http://www.acha.org/Publications/Guidelines\\_WhitePapers.cfm](http://www.acha.org/Publications/Guidelines_WhitePapers.cfm).
- <sup>12</sup> GAO, 24.
- <sup>13</sup> Regulations.gov, "Docket Folder Summary – Student Health Insurance Coverage," <http://www.regulations.gov/#!docketDetail;dt=FR+PR+N+O+SR+PS;rpp=10;po=0;D=CMS-2011-0016>.
- <sup>14</sup> CMS, 7775.
- <sup>15</sup> GAO, 16.
- <sup>16</sup> Lipka, "Colleges' Student Health Plans."
- <sup>17</sup> GAO, 6.
- <sup>18</sup> Regulations.gov, Public Submission CMS-2011-0016-0070.1, "Comment on Proposed Rule: Student Health Insurance Coverage," <http://www.regulations.gov/contentStreamer?objectId=0900006480c23938&disposition=attachment&contentType=xml>.
- <sup>19</sup> GAO, 20.
- <sup>20</sup> CMS, 7775.
- <sup>21</sup> Lipka, "Colleges' Student Health Plans."
- <sup>22</sup> Sara Lipka, "Federal Health-Care Law Will Ban Limited Student Insurance Plans but Threaten Comprehensive Ones," *The Chronicle of Higher Education*, April 14, 2010, <http://chronicle.com/article/Federal-Health-Care-Law-Will/65072/>.
- <sup>23</sup> GAO, 32.
- <sup>24</sup> Aetna Student Health, "Student Coverage," *Aetna on the Issues*, June 2009, [www.aetna.com/about/aoti/data/Student\\_Coverage.pdf](http://www.aetna.com/about/aoti/data/Student_Coverage.pdf).
- <sup>25</sup> Regulations.gov, Public Submission CMS-2011-0016-0087.1, "Comment on Proposed Rule: Student Health Insurance Coverage," <http://www.regulations.gov/contentStreamer?objectId=0900006480c24bc2&disposition=attachment&contentType=xml>.
- <sup>26</sup> Regulations.gov, Public Submission CMS-2011-0016-0026.1, "Comment on Proposed Rule: Student Health Insurance Coverage," <http://www.regulations.gov/contentStreamer?objectId=0900006480c0b932&disposition=attachment&contentType=xml>.
- <sup>27</sup> Lipka, "Colleges' Student Health Plans."
- <sup>28</sup> GAO, 31.
- <sup>29</sup> *Ibid.*, 31.
- <sup>30</sup> *Ibid.*, 30.
- <sup>31</sup> Regulations.gov, Public Submission CMS-2011-0016-0076.1, "Comment on Proposed Rule: Student Health Insurance Coverage," <http://www.regulations.gov/contentStreamer?objectId=0900006480c243e8&disposition=attachment&contentType=xml>.
- <sup>32</sup> Massachusetts Division of Health Care Finance and Policy (DHCFP), "114.6 CMR 3:00: Student Health Insurance Program," June 2009, [http://www.mass.gov/Eeohhs2/docs/dhcfp/g/regs/114\\_6\\_3.pdf](http://www.mass.gov/Eeohhs2/docs/dhcfp/g/regs/114_6_3.pdf), 4.
- <sup>33</sup> Regulations.gov, Public Submission CMS-2011-0016-0087.1, "Comment on Proposed Rule: Student Health Insurance Coverage," <http://www.regulations.gov/contentStreamer?objectId=0900006480c24bc2&disposition=attachment&contentType=xml>.
- <sup>34</sup> Regulations.gov, Public Submission CMS-2011-0016-0068.1, "Comment on Proposed Rule: Student Health Insurance Coverage," <http://www.regulations.gov/contentStreamer?objectId=0900006480c231f6&disposition=attachment&contentType=xml>.
- <sup>35</sup> CMS, 7774.
- <sup>36</sup> The retention for each plan was calculated as follows:  
Premium x (100% - MLR) = Retention.
- <sup>37</sup> CMS, 7773.
- <sup>38</sup> *Ibid.*, 7773.
- <sup>39</sup> Steven B. Larsen, "Re: State of Maine's Request for Adjustment to Medical Loss Ratio Standard," Center for Consumer Information and Insurance Oversight, March 8, 2011, [http://cciio.cms.gov/programs/marketreforms/mlr/states/maine/maine\\_decision\\_letter\\_3\\_8\\_11.pdf](http://cciio.cms.gov/programs/marketreforms/mlr/states/maine/maine_decision_letter_3_8_11.pdf), 5.
- <sup>40</sup> Regulations.gov, Public Submission CMS-2011-0016-0099.1, "Comment on Proposed Rule: Student Health Insurance Coverage," <http://www.regulations.gov/contentStreamer?objectId=0900006480c26eb2&disposition=attachment&contentType=xml>.
- <sup>41</sup> Regulations.gov, Public Submission CMS-2011-0016-0026.1, "Comment on Proposed Rule: Student Health Insurance Coverage," <http://www.regulations.gov/contentStreamer?objectId=0900006480c0b932&disposition=attachment&contentType=xml>.
- <sup>42</sup> Lipka, "Colleges' Student Health Plans."
- <sup>43</sup> Regulations.gov, Public Submission CMS-2011-0016-0087.1, "Comment on Proposed Rule: Student Health Insurance Coverage," <http://www.regulations.gov/contentStreamer?objectId=0900006480c24bc2&disposition=attachment&contentType=xml>.
- <sup>44</sup> DHCFP.
- <sup>45</sup> Amy Julia Harris, "Foreign Students Win Insurance Choice," *The Stanford Daily*, April 7, 2010, <http://www.stanforddaily.com/2010/04/07/foreign-students-win-insurance-choice/>.
- <sup>46</sup> *Ibid.*
- <sup>47</sup> *Ibid.*
- <sup>48</sup> *Ibid.*
- <sup>49</sup> Regulations.gov, Public Submission CMS-2011-0016-0044.1, "Comment on Proposed Rule: Student Health Insurance Coverage," <http://www.regulations.gov/contentStreamer?objectId=0900006480c20610&disposition=attachment&contentType=xml>.
- <sup>50</sup> Regulations.gov, Public Submission CMS-2011-0016-0081.1, "Comment on Proposed Rule: Student Health Insurance Coverage," <http://www.regulations.gov/contentStreamer?objectId=0900006480c24630&disposition=attachment&contentType=xml>.

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**Good health and good sense are two of life's greatest blessings.**

—PUBLILIUS SYRUS (1ST CENTURY BC),

ROMAN AUTHOR

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Every human being has a work to carry on within, duties to perform abroad, influence to exert, which are peculiarly his, and which no conscience but his own can teach.

—WILLIAM ELLERY CHANNING (1780–1842),

UNITARIAN PREACHER

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# International Branch Campuses and Unique Risk Considerations

| Ivana Chalmers, Northwestern University

*Abstract: A very unique set of considerations may influence the ability of an international branch campus to meet its objectives and attain long-term success. After briefly examining the context-dependent nature of a branch campus, this article outlines examples of unique risks that may affect a branch campus' operations. Finally, readers will review the valuable input that home campuses and other collaborators can provide in managing the operations of international branch campuses.*

## Introduction: Branch Campuses Are Increasing in Number

Institutions of higher education based in the United States (US) continue to dominate the number of established international campus operations outside of their home country. Currently, US institutions have established almost 50 percent of all international branch campuses.<sup>1</sup> The University of Kentucky's *White Paper on Internationalization* purports that in order for the United States to maintain its global leadership and influence in all spheres, it is essential for its higher education sector to continue looking outward globally.<sup>2</sup> While global leadership might be a driver resulting in the dominance of US-based institutions in the branch campus market, it is clear that these institutions are recognizing and attempting to meet specific needs.

Today's students are more globally mobile<sup>3</sup> and believe that exposure to cultures and languages other than their own are important factors to their success in the job market.<sup>4</sup> Furthermore, governments are increasingly investing in education, seeing it as a catalyst in transforming their countries' economies and putting them on the map.<sup>5</sup>

The desire to be recognized as an international higher education hub is clearly evident in countries such as the United Arab Emirates (UAE). With 40 international branch campuses within its borders, the UAE hosts approximately one quarter of all such ventures in the world.<sup>6</sup>

The small neighboring country of Qatar hosts at least nine international branch campuses. A desire to legitimately qualify the national population for work in the growing mixed and private sectors largely drives this country's education policy,<sup>7</sup> stimulated by wealth generation from prodigious natural gas reserves. In Qatar, international branch campuses are seen as long-term consultants.<sup>8</sup>

While the international branch campus market has become more competitive, there have also been campus closures, confirming the need for universities to undertake cautious market research before making a decision to open a branch campus.<sup>9</sup> Lack of commonalities between the different contexts and locations for branch campuses highlights the need for guidelines or best practices that can inform decision making for universities considering such ventures.

## Branch Campuses Have Unique Contexts

The nature of operations at satellite campuses, or branch campuses, as they shall be referred to throughout this article, are significantly context-dependent. Campuses recruit employees from both local and international resource pools, and the student population is likely to be a mix of local nationals, study abroad individuals, and locally based expatriate students whose families are in the region. Differences between branch campuses are so acute that no official comprehensive list of all branch campuses in the world exists.<sup>10</sup>

The Observatory on Borderless Higher Education offers the following definition for international branch campuses:

"An international branch campus is an off-shore entity of a higher education institution operated by the institution or through a joint venture in which the institution is a partner (some countries

**Today's students believe that exposure to cultures and languages other than their own are important factors to their success in the job market.**

require foreign providers to partner with a local organization) in the name of the foreign institution. Upon successful completion of the course program, which is fully undertaken at the unit abroad, students are awarded a degree from the foreign institution.”<sup>11</sup>

A branch campus can also be defined as providing “small, specialized, and limited academic programs offered offshore to take advantage of a perceived market.”<sup>12</sup>

The success of these “offshoots” of the home campus, or the original institution, also depends on the factors and conditions under which the branch campus is required or expected to operate.

### **Branch Campuses Have Unique Risk Implications**

As a result of their unique context, branch campuses can be exposed to a range of unique risks. A branch campus might be a private, profit earning venture; a partnership with a local institution; or entirely sponsored by a local government or corporate entity. Each of these contexts brings with it unique risk considerations. As such, home campus risk management frameworks may fail to transplant successfully to the branch campus.

In establishing a branch campus, the home campus should gear risk management measures towards aligning the institution with its goals, values, and mission<sup>13</sup> and meeting established benchmarks that underpin the progress of such an operation. In doing so, the home campus may also minimize the impact of any potential risk – risk that may be reputational, strategic, financial, or regulatory in nature.

A set of goals that a home campus may have with respect to their branch campus include:

- Maintaining the quality of the degree from the branch campus so that it is comparable to the same degree from the home campus.
- Protecting institutional knowledge and business continuity by minimizing the turnover of employees during the critical startup period.

- Meeting any requirements or benchmarks of a host or sponsor to ensure sustained funding support.
- Protecting the home campus from risks as a result of branch campus activities.

Each of the above goals is examined in more detail below to better illustrate some of the unique risk implications for branch campus operations.

### ***Maintaining Degree Quality: A Reputational Risk Consideration***

Institutions considering establishment of branch campuses should remain sensitive to the factors that may diminish the quality of their degrees, ultimately impacting the reputation of the home campus. Such factors include the quality of teaching and programming, access to resources, and official recognition.

#### ***Quality and Retention of Faculty***

Frequently, institutions hope to have home campus faculty teaching at branch campuses, a model that is prevalent in Asia and the Middle East.<sup>14</sup> However, recruitment and retention of such faculty is an ongoing issue of sustainability, particularly if international engagement is not recognized as valuable in tenure and promotion criteria.<sup>15</sup> Moreover, senior

faculty members are often reluctant to leave their work,<sup>16</sup> alienate themselves from their colleagues, or lose momentum in their research.

The ability of faculty to teach in a multilingual and multicultural environment will also likely impact the quality of teaching. Experience in this regard can prove very valuable in meeting the goal of maintaining degree quality.

#### ***Quality and Content of Programming***

Particularly in instances of any kind of sponsorship or financial support from a host or partner, whether an educational, corporate, or governmental entity, the branch campus should have responsibility of the con-

**A branch campus is an off-shore entity of a higher education institution operated by the institution or through a joint venture in which the institution is a partner.**

control of academic programming content and standards. The lack of control in this regard may pose significant risk to the quality of education at the branch campus. In addition, branch campuses in the Middle and Far East may face issues of censorship, something beyond the control of branch campuses or their hosts and partners but with direct influence on academic freedom and the content of programming.

### *Critical Resource Availability*

The ability to acquire books and equipment may have significant impact on the quality of teaching. Northwestern University faced resource acquisition challenges at the beginning of its establishment of a branch campus in Qatar. With degree offerings in communications and journalism studies, availability of media equipment was critical to course work. However, monopoly by a single vendor in the local marketplace meant that administration had to choose between spending 30 percent more to buy equipment locally or to ship it from known vendors overseas and risk a longer delivery time and likely delay by customs upon entry.

In conservative societies, customs officials may hold back educational materials containing nudity or political content. The host, sponsoring institution, or the appropriate governmental agency should seek support for the import of such materials prior to finalizing a branch campus agreement.

### *Accreditation*

Accreditation by educational bodies in the university's home country is an official recognition that the branch campus meets the goal of maintaining degree quality. Home campuses whose goals include accreditation of their branch campuses will need to consider the impact of accreditation requirements on their branch campus operations in terms of the time and effort required and make the ability to meet these requirements a key priority.

George Mason University learned this lesson when, after almost four years of operation in the UAE, it was forced to close down in 2009 due to a 50 percent reduction in its subsidy and pressure from the university's sponsor, Edrak, that the branch campus

academic dean report directly to Edrak instead of the university provost. The lack of resources and risk of losing accreditation due to the reporting structure forced the university to close its branch campus before it was able to produce a single graduate.<sup>17,18</sup> George Mason University students could not transfer their credits to other Emirati institutions as the university was not yet locally accredited.<sup>19</sup>

The home campus should also take into account the accreditation requirements of the host country, if any such requirements do exist. While this might not influence the ability of a branch campus to meet its key goals or a sponsor's requirements, it may allow for better integration in the host country's higher education environment and gives students the opportunity to transfer from local institutions to the branch campus, opening another avenue for student recruitment.

### ***Maintaining Institutional Knowledge:***

#### ***A Strategic Risk Consideration***

Loss of staff naturally lends itself to the risks associated with loss of business continuity and institutional knowledge. In a startup environment of a branch campus, the likely chaotic and unstructured nature of operations may further increase this risk, as staff may encounter a stressful and less supportive environment than what they may encounter at more established higher education institutions. In setting up a branch campus, institutions should carefully manage employee expectations during recruitment and establish internal support systems.

#### ***Implications on Recruitment***

While the home campus may expect branch campus employees to focus on the short-term goal of jump-starting a new campus, it might also expect them to think strategically and build systems and processes that will serve the branch campus in the long-term. The home campus should communicate this unique set of expectations during the recruitment process so that staff members are better prepared to deal with the challenges during the critical startup period. The home campus should address these expectations in job descriptions and discuss them with potential staff during interviews.

The home campus should also advise interviewees that they may encounter several duties that will fall outside of their natural scope of the job description. During the startup period at Carnegie Mellon University in Qatar, for instance, staff members in the human resources department were responsible for housing arriving employees, assisting them with obtaining identification and drivers' licenses, finding schooling for children, and facilitating driving tests.

### *Internal Support Systems*

At a branch campus, employees may experience enhanced strain from working with collaborators from entirely different cultures and experience levels. In addition to the unstructured and multicultural working environment, this stress may also impact their personal lives via new living quarters, routines, pastimes, weather conditions, or laws and regulations.

The branch campus can offer workshops and training addressing culture shock and dealing with significant change during the startup period to help alleviate the impact of the new environment on employee productivity in the workplace. In addition, branch campuses may offer a forum that allows employees to share their thoughts, frustrations, and concerns during this adjustment phase. This may be an excellent way for administration to better understand the measures that may minimize the effects of these issues on the workplace environment and the progress of the branch campus development.

### **Meeting Host or Sponsor Requirements: A Financial Risk Consideration**

One example of the importance of meeting the host country's requirements is Johns Hopkins University's medical program in Singapore. According to a *University World News* article, the home campus shut down the program because the local authorities did not feel the university

was meeting expectations, failing to reach eight out of 13 performance benchmarks they originally set out.<sup>20</sup> Johns Hopkins' administration believed this was an unfair judgment since the university had no control over the factors that led to its inability to meet those goals. This lack of control of an unfamiliar environment may pose a significant financial risk as host countries or sponsors may prove to be unsympathetic.

If a branch campus is under consideration as a joint or entirely sponsored venture, universities should carefully consider the risks or impacts of loss of financial support.

Sponsors want to see their investment realized and will most likely have expectations and requirements that the branch campus must meet in order to continue their support.

### *Requirements for Student Recruitment*

Student recruitment may be one of the expectations or requirements set out by host or sponsors of international branch campuses. For instance, it is not unusual for hosts or sponsors to request admissions of students according to their ethnicity or nationality. In Qatar's Education City, the focus is to educate the local population; therefore, the branch campus must admit a minimum number of local students to each of the six international branch campuses.<sup>21</sup> Requirements such as this may pose a risk to a branch campus' ability to reach the required volume

of student numbers and may subsequently affect any profit earning needed for the campus to continue operations.

Furthermore, comparatively high admissions standards of internationally accredited institutions may cause more students to opt for local providers of education and pose a risk to a campus' ability to recruit required local students. As competition increases, these local institutions inevitably improve, further widening a student's options for higher education in the region.<sup>22</sup> Universities may need to carefully balance host or sponsor student recruitment requirements against the risk to sustainability from a

**If a branch campus is under consideration as a joint or entirely sponsored venture, universities should carefully consider the risks or impacts of loss of financial support.**

competitive marketplace, especially since some regions are already heading for saturation of the higher education market.<sup>23</sup>

**Liability Implications for the Home Campus:  
A Regulatory Risk Consideration**

Branch campuses may find themselves in a gray area in terms of regulatory risks. As part of the larger whole, they may have to conform to regulatory requirements of their countries of origin, while the capacity to address these requirements may not exist in their specific branch campus operational contexts.

Branch campuses in countries whose legal systems differ significantly from that of the home campus may face risk simply because they may not be aware of how they are exposed. While the home campus might be able to enforce appropriate penalties regarding workplace harassment, discrimination, or breach of copyright, for instance, such issues may not have the same support of the legal system in the country of the branch campus. Despite the lack of equivalent legislative regulations in existence in Qatar, Northwestern University in Qatar has been asked by the Office of the General Counsel to produce proof of compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), Higher Education Opportunity Act (HEOA), Illinois Campus Security Act (CSEA), Family Educational Rights and Privacy Act (FERPA), and Health Insurance Portability and Accountability Act (HIPAA), to name a few.

**Branch Campuses Require Unique Support**

As is evident from the examples discussed, understanding the local operational context of a branch campus may prove vital to its success and long-term sustainability. Furthermore, branch campuses may require a unique range of support from both their home campuses and externally to mitigate the effects of risks on the attainment of key goals.

Branch campus issues should be high on the agendas at the home campus for the first few years, and the home campus should empower a task force of committed internal stakeholders to provide support during this time. Just a few of the internal partners of Northwestern University's branch campus in Qatar are listed in Figure 1 to illustrate the type of support that a home campus can provide.

**FIGURE 1: INTERNAL SUPPORT FOR  
BRANCH CAMPUSES**

HOME CAMPUS DEPARTMENT	EXAMPLES OF SUPPORT SERVICES
Office of the General Counsel	<ul style="list-style-type: none"> <li>• Providing legal advice</li> <li>• Reviewing contracts</li> <li>• Reviewing waivers and indemnification documents</li> <li>• Ensuring adherence to regulatory requirements</li> </ul>
Risk Management	<ul style="list-style-type: none"> <li>• Reviewing and providing advice on insurance products</li> <li>• Supporting the creation of a branch campus insurance framework</li> <li>• Providing duty of care obligation advice</li> <li>• Supporting international travel risk mitigation</li> </ul>
Academic Deans of the schools represented at branch campus	<ul style="list-style-type: none"> <li>• Supporting academic programming content</li> <li>• Assisting with home campus faculty recruitment</li> </ul>
Purchasing	<ul style="list-style-type: none"> <li>• Leveraging home campus vendors for services in branch campus location</li> <li>• Integrating purchase policies and procedures into branch campus environment</li> </ul>
Student Affairs	<ul style="list-style-type: none"> <li>• Helping create branch campus guidelines for student organizations</li> <li>• Creating synergies and student collaborations between campuses</li> </ul>

In addition to the valuable support given by collaborators from the home campus, the home campus can increase the likelihood of a branch campus' success by the creation of local partnerships.

Consultants can provide valuable input, as well. Consultants offer a variety of services and are often well-connected in the local context, providing important resources in advising the branch campus. An example would be a government liaison who can speak the local language and assist the administration in dealing with legislative matters. Similarly, experienced security advisors can support the campus' duty of care and emergency management

efforts for a very globally mobile population, while legal consultants and insurance advisors can facilitate a better understanding of the local legal and insurance system and mitigation of the subsequent risks.

Furthermore, dialogue with other entities in the same operational environment could prove very useful. Other international branch campuses need not be competitors and may serve as strategic partners for mutual future success. Even non-academic entities, particularly global companies with the same country of origin as the home campus, may be a great resource to branch campus leaders, enhancing their understanding of operations in the local culture and context. Lastly, groups such as committees, task forces, research groups, and think tanks, whose focus is on long-term impacts and trends of higher education and the country in general, may provide valuable strategic insight for sustained future success of the branch campus.

### **A Look to the Future**

As branch campuses increase in number in the international market, their experiences will continue to inform discussions and improve the ability of higher education decision makers to make the right choices when considering whether to establish branch campus agreements with partners, governments, educational bodies, and corporate entities. Case studies from real experiences will also provide insights into particular geographical locations and the unique risk implications for those contexts. As the international higher education market reaches saturation points, the continued success of established branch campuses despite the competition may depend on the ability of home campuses to provide the right kind of support and the ability of branch campuses to meet their objectives, manage exposures to risk, and build key relationships with partners on the ground.

### **About the Author**



*Ivana Chalmers* has worked at Northwestern University in Qatar (NU-Q) since its inaugural year of 2008. NU-Q provides undergraduate degrees in journalism and communications. With a diverse employee community and students of 24 different nationalities, this unique environment results in a one of a kind operational context. Ms. Chalmers is the risk assessment specialist for the branch campus.

At NU-Q, Ms. Chalmers' portfolio encompasses a wide range of duties in a risk environment where precedents are rare, established policies may be unsuitable, and the context differs starkly from that of Northwestern's home campus. Her role includes assessment of risk exposures and evaluation of insurance needs for the campus, while serving as a point of contact to internal and external security, legal, and risk management stakeholders. She is a key contact for and a member of several security, safety, and emergency management committees.

Before joining NU-Q, Ms. Chalmers worked in the corporate media industry in London, England, and Johannesburg, South Africa.

In 2010, Ms. Chalmers co-published a chapter for a book, *Girl Wide Web 2.0: Revisiting Girls, the Internet and the Negotiation of Identity*, edited by Sharon Mazzarella, about young Arab women and their use of social networking sites for expression of identity, entitled "Degrees of Caution: Arab Girls Unveil on Facebook." This work was awarded the honor of top paper' in its category by the National Communications Association (NCA), and Ms. Chalmers presented it at the 2010 NCA conference in San Francisco.

Ms. Chalmers is currently working towards a Strategic Decision Making and Risk Management professional certificate through Stanford University and holds a GCMBE Level II Project Management certificate from Meeting Professionals International (MPI). She graduated top of her class from Rhodes University in Grahamstown, South Africa, with a bachelor's degree in journalism and media studies, specializing in television production.

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**The way a team plays as a whole determines its success.  
You may have the greatest bunch of individual stars in the  
world, but if they don't play together,  
the club won't be worth a dime.**

**—BABE RUTH (1895–1948),**

**AMERICAN BASEBALL PLAYER**

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# The Need to Establish a Framework to Manage Sport Clubs

| Ian McGregor, McGregor and Associates

*Abstract: University sport clubs provide students with excellent opportunities for involvement and leadership. However, due to their relative autonomy and the potential for injury to students in particularly high-risk sport clubs, they can also create a wide variety of risks if a management framework is not in place. This article highlights a recommended framework to help risk managers and recreation professionals in institutions of higher education identify, manage, and mitigate the risks inherent in sport clubs through the involvement of student sport club leaders.*

## Introduction

Across North America, university sport clubs continue to be a major “sweaty palm” issue for most campus recreation departments. Student-run sport clubs provide an excellent learning environment for student leaders. However, many sport clubs operate with a fair degree of autonomy, and from the administrator’s perspective, too many of these clubs are just “doing their own thing” with few controls in place to minimize problems.

The bottom line from a litigation perspective is that a court would likely deem sport clubs to be part of the university, since they compete regionally and nationally as university teams. Therefore, the university will likely be held responsible for sport club activities as these relate to practice and competition, as well as travel, fundraising, social activities, and other club-related activities. As a result, it is important that campus recreation departments effectively manage sport clubs to ensure that the risk of participant injury and liability is minimized and to provide a better experience for both the sport club and the university.

One risk management solution is to implement a framework for managing sport clubs which provides flexibility on how to implement various sport club policies

and procedures, yet incorporates some non-negotiable requirements that sport clubs must follow. Ultimately, this framework is all about finding a balance between freedom and control.

This article outlines the key elements needed to establish an effective framework for managing sport clubs and potential implementation strategies.

**One way to minimize sport club risk is to implement a framework which provides flexibility on implementation, yet incorporates non-negotiable requirements that clubs must follow.**

## Defining Sport Clubs

Sport clubs are generally defined as physical activity-based clubs which are often split into two categories:

**Tier 1: Competitive clubs** compete against other university or community teams in games, contests, or events. Travel is almost always involved. These clubs may be affiliated with a national governing body (NGB) where such a body exists. Examples could include rugby or lacrosse clubs.

**Tier 2: Recreational clubs** provide instruction, participation, or social opportunities to participants. Travel may be involved. Examples could include rock climbing or dance clubs.

Within either of these categories, a sport club may be classified as high-risk if:

1. There is a greater probability of a serious injury occurring during the activity (e.g. rugby, rock climbing, or martial arts clubs), and/or if
2. Travel is involved.

## Establishing a Sport Clubs Framework

An effective sport clubs framework needs to incorporate the following key elements.<sup>1</sup>

### **Recognition/Renewal of Sport Clubs**

While various campuses may handle the process to recognize and renew sport clubs differently, the sport clubs administrator (SCA) *must* be involved in this process, especially if financial or facility resources are an issue. On many campuses, the original chartering and recognition of any club takes place somewhere else on campus, such as through student affairs. In many instances, sport clubs are ratified without any consultation with campus recreation, which may typically include questions of whether there is space to house the club within campus recreation and whether the club has sufficient resources to operate. It is not unprecedented for campus recreation to reject a sport club for valid reasons, only to have the club return to campus recreation demanding space since the official club sanctioning body, such as student affairs, subsequently approved the club.

The institutional risk manager can play a significant role in ensuring that appropriate vetting by the sanctioning body of potential new sport clubs takes place prior to their approval by working with the key players to set up an automatic consultation process between campus recreation and the club sanctioning body.

#### ***Sport Club Recognition Process***

Once a university recognizes a sport club, the SCA should initiate an internal campus recreation sport club recognition process. Four steps are involved:

- **Step 1:** SCA meets with prospective sport club president to review eligibility factors and criteria (e.g. availability of facilities, availability of qualified coaching, availability of competitive opportunities, etc.).
- **Step 2:** Prospective sport club submits application and initial recognition documentation (e.g. constitution or bylaws, goals and objectives, list of interested students; name of faculty advisor, etc.).
- **Step 3:** SCA recognizes (or rejects) the sport club application.
- **Step 4:** SCA notifies prospective sport club president.

#### ***Sport Club Renewal Process***

In addition to having a sport club recognition process, it is equally important to also have a renewal process.

Campuses need to move away from a “once you’re in, you’re in” mentality. A lot can happen during the academic year or before the start of a new academic year. Therefore, the SCA needs to develop a formal annual review process which takes into account factors like club (mis)behavior during the year and lack of ongoing viability of a club, such as waning interest or loss of competitive opportunities.

### **Annual Submission Requirements**

Effectively managing sport clubs begins by collecting appropriate data on each sport club and each sport club member. Whether this is done electronically or manually, it is important that the SCA establishes what information needs to be collected at the beginning of each academic year. In addition to establishing these requirements, the SCA must impose strict submission deadlines. It is simply not good enough to have important information, such as emergency contact information or waivers, come trickling in well after the semester has started, especially in situations where sport clubs are travelling. Information typically collected from sport clubs includes:

- Member information
  - Name, address, phone number, e-mail address
  - Medical information  
(*Caution: The SCA must also consider storage and security issues with any sensitive information*)
  - Emergency contact information
  - University ID
- Waiver forms signed by all club members
- Competitive and practice schedules
- Budget requests
- Facility requests
- Proof of insurance, if applicable

### **An Effective Sport Clubs Management Structure**

The key to successful administration of a sport clubs program is achieving a balance which encourages student leadership and involvement without compromising university policies and procedures, creating an increased or undue risk of injury to participants, or increasing risk of legal liability to universities.

On a day to day basis, sport clubs are managed by club members with the primary role of campus recreation, or the university, being to support, assist, and advise the stu-

dent leaders. The key to a successful sport clubs program is strong student leadership and involved university support. While the SCA is not responsible for the day to day operation of individual sport clubs, the SCA can assist sport club officers in ensuring safer practices are followed. Similarly, the trip administrator, discussed further in the next section, is not responsible for organizing and coordinating sport club travel, but he or she can assist the sport clubs' trip leaders to ensure they implement safer travel practices.

However, ultimately the SCA holds overall responsibility and accountability for sport clubs. This means that the university must develop and implement a management structure reflecting this reality. The management structure should clearly spell out the roles and responsibilities of:

- The SCA and sport club staff, if applicable
- The sport club executive board, including sport club officers
- The sport club coach
- The sport club advisor, if applicable
- The sport club council, if applicable

The starting point for the SCA is to develop an SCA job description to clearly articulate roles and expectations of all levels of the sport clubs structure. The key working relationship which needs to be established and documented is the direct link to the sport club officers. Clearly, there may be some limitations to this involvement, especially on campuses where there is a large number of sport clubs. The SCA may need to prioritize the extent of his or her oversight and limit involvement to the higher risk sport clubs.

Sport club officers run the show on a day to day basis. To assist clubs in this effort, the SCA needs to develop minimum operational requirements and establish a standardized board structure for sport club officers, which may include a president, vice president, treasurer, and safety officer. The inclusion of at least one safety officer position per club should be a top priority for all SCAs and would constitute an example of a non-negotiable requirement for clubs. While a relatively new concept for sport clubs,

the safety officer position is seen as a viable (and doable) option in the provision of basic medical care for clubs, especially in the event of an emergency. For financial reasons, requiring high-risk sport clubs to have athletic trainers is still not possible for many campuses, despite these trainers being a requirement for most varsity sports.

Another priority in this area is the relationship between campus recreation and the sport club coach. Coaches can be paid or volunteer students, faculty, staff, or off-campus personnel. Whatever the arrangement, all coaches need to focus on coaching and not be involved in the day to day responsibilities of running the club—tasks that should

be performed by the sport club officers. The SCA needs to develop a sport clubs coach contract or agreement which clearly outlines the university's expectations in this regard. It is also critical that the SCA is actively involved in the coach hiring and firing process.

### ***Effective Travel Policies and Procedures***

Sport club travel is a huge concern for most universities. Therefore, it is vital that universities implement a simple, yet effective travel management system. How can risk managers help simplify such a complex issue?

The approach taken centers on first developing a series of "doable" travel policies, some of which may be deemed as

non-negotiable requirements, such as no travel after midnight or before 6:00 am. It also develops simple procedures to complement these policies. These procedures should focus on four main sections:

- Trip Administrator Roles and Responsibilities
- Trip Leader Roles and Responsibilities
- Trip Approval Processes
- Emergency Response Plan and Procedures

### ***Trip Administrator and Trip Leader Roles and Responsibilities***

Effective travel management depends on two key people—the **travel administrator**, typically the SCA, and the **trip leader**, a sport club member who travels with

**Ultimately, the sport clubs administrator holds responsibility for sport clubs. The university must implement a management structure reflecting this reality.**

the club. The implementation of a trip leader position is absolutely essential. This club member acts as the eyes and ears of the SCA and represents the missing link in terms of establishing responsibility and accountability for individual sport clubs during a trip. Hence, for these two key positions, determining who is responsible for what is a core issue for effective travel management.

Basically, the role of the trip administrator, usually the SCA, is fourfold:

1. Administer trip approval process.
2. Establish pre-trip communications with the trip leader(s).
3. During the trip, act as a point of contact for the trip leaders.
4. Ensure post-trip follow up procedures are followed.

The role of the trip leader is to:

1. Sign a trip leader agreement.
2. Before the trip, communicate with the trip administrator and submit a final travel roster.
3. Enforce travel policies during the trip.
4. Contact trip administrator for post-trip follow up and completion of any required forms.

### *Trip Approval Process*

It is important that institutions establish an effective process to approve all sport club trips, and the following process is recommended:

- ♦ **Step 1: Trip Approval.** Sport club submits trip request/approval form to the trip administrator.
- ♦ **Step 2: Driver and Vehicle Approval.** Driver(s) submits copy of driver's license and driving record (or a driver declaration). Driver submits proof of vehicle insurance if private vehicles are being used.
- ♦ **Step 3: Trip Administrator Approves or Rejects Trip.**

To address the "plethora of paper" issue, a college or university would benefit from a web-based or custom software program to implement its trip approval process. Many campuses across North America have implemented such systems, even using free tools like Google Docs, to help track and manage sport club travel.

### *Emergency Response Plan and Procedures*

The trip leader is responsible for handling all emergencies during a trip. Specific duties during an emergency are to:

- ♦ **Step 1:** Contact appropriate emergency services, such as medical, fire, or police.
- ♦ **Step 2:** Provide or obtain first aid.
- ♦ **Step 3:** Contact trip administrator.
- ♦ **Step 4:** Submit post-trip documentation, such as an accident report.

### **Summary**

While there may be resistance to the implementation of a new framework for managing sport clubs on North American campuses, moving in this direction has become a necessity given the high-risk nature of many sport clubs, as well as the unstructured and often "arm's length" operation enjoyed by many sport clubs. It is time for risk managers to implement a model which provides structure and minimizes injury through safe practices, while simultaneously respecting the need for sport clubs to exercise some autonomy within a reasonable framework.

Implementing an effective sport clubs framework can be a daunting task, especially on campuses that have large numbers of sport clubs. Established clubs can give serious resistance, since they may not see the need or urgency to change the status quo. While achieving buy in from clubs may be difficult, it is essential that the framework be implemented and entrenched. Often the best strategy is to involve key sport club leaders in the change process right from the beginning. Most clubs will ultimately view the framework in a positive light if an institution educates these leaders about the need for improved safety of members and convinces them that the objective is not to take over the clubs.

While there will always be "sweaty palm" issues involved in the operation of sport clubs, establishing a sport clubs framework represents a significant improvement and higher standard of care over the current laissez-faire attitude on many campuses.

## About the Author



An internationally recognized expert on risk management in the sport and recreation fields, *Dr. Ian McGregor* is a renowned speaker at conferences and workshops throughout the United States and Canada. He was previously director of athletics and recreation at the University of Toronto and Saint Mary's University in Canada and at Dominican University of California.

Dr. McGregor is president of Ian McGregor & Associates Inc., providing risk management consulting services primarily to educational institutions and specializing in risk assessments, risk management planning, and training. His virtual training programs include webinars and online courses. His Online Risk Assessment benchmarking tool has been implemented at over 100 universities.

He has taught courses on legal liability and risk management at four postsecondary institutions, has written numerous risk management articles and manuals, and publishes the *Risk Management Newsletter for Recreation*.

He can be reached through his website at [www.sportrisk.com](http://www.sportrisk.com)

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## Endnotes

<sup>1</sup> Based on a "Sport Clubs Model," developed by McGregor & Associates.

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**If we knew what it was we were doing,  
it would not be called research, would it?**

—ALBERT EINSTEIN (1879–1955),  
GERMAN-BORN THEORETICAL PHYSICIST

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# Enterprise Risk Management in Higher Education: A Review of the Literature Reveals What We Know (and What We Don't)

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*Abstract: The limited research literature on enterprise risk management (ERM) in general, and specifically as it relates to higher education, means that we cannot be certain about the efficacy and effectiveness of the framework. This article reviews studies and deficiencies in the literature regarding ERM and suggests areas for further study that will provide information and evidence useful to institutions of higher education as they evaluate whether or not (and how) to implement ERM models on their campuses.*

## Introduction

The events of September 11, 2001, the tragic shootings at Virginia Tech, and the infrastructure devastation that occurred at colleges and universities in the New Orleans area in the aftermath of Hurricane Katrina have created heightened awareness of the potential destructive impact of risk and crisis for higher education administrators. In response, most colleges and universities have developed crisis management or emergency response plans to assess and respond to such large-scale incidents as well as day-to-day institutional risks. In 2009, the National Campus Safety and Security Project (NCSSP) conducted a nationwide survey and found that 87 percent of campuses had engaged in a campus safety and security audit.<sup>1</sup> However, while most colleges and universities have fairly comprehensive crisis plans in place, most of them are not integrated or strategic in nature. In *The State of Enterprise Risk Management (ERM) at Colleges and Universities Today*, the Association of Governing Boards (AGB) and United Educators' (UE) survey noted that 60 percent of institutions "do not use comprehensive, strategic risk assessment to identify major risks to mission success," and only five percent indicated that they have adopted "exemplary practices for management of major risks."<sup>2</sup>

Even for those institutions with risk management plans, most decisions continue to be made in "silos, which leads to the creation of multiple frameworks for governance, infrastructure, and processes; fragmented risk and control activities; potential gaps in overall risk coverage; and duplication of effort."<sup>3</sup>

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## The New Reality: Colleges and Universities Face Enormous Risk....and Pressure to Control and Respond

Colleges and universities have traditionally perceived themselves as substantially different and separate from other for-profit and not-for-profit entities, and the "outside world" has historically viewed and treated them as such. Today's risk managers know all too well what others in higher education administration are coming to realize: in addition to an increased focus on, and accountability for, student safety and welfare, colleges and universities face many of the same pressures and exposures to risk as those in the corporate world, "namely, a dynamic business environment, an unforgiving stock market, industry man-

dates on corporate governance, and changes in regulatory and accounting requirements."<sup>4</sup> The 2007 University Risk Management and Insurance Association (URMIA) white paper, *ERM in Higher Education*, cited several "drivers" that place increased pressure and risk on colleges and universities, including competition for faculty, students, and staff; increased accountability; external scrutiny from the government, the public, and governing boards; IT changes; competition in the marketplace; and increased levels of litigation.<sup>5</sup>

Several authors have undertaken research to identify risks associated with colleges and universities. Helsloot and Jong conducted a study in the Netherlands that cat-

egorized risks at colleges and universities, concluding that it is “predictably impossible to arrive at a uniform hard and fast yardstick against which risk in higher education and research can be measured.”<sup>6</sup> Campo enumerated the variety and types of lawsuits that can affect higher education, and, therefore, increase costs and litigation for an institution.<sup>7</sup> Culcleasure described numerous potential risks affecting higher education, ranging from student suicide to tenure disputes to the protection and security of academic and intellectual property.<sup>8</sup> Dolan<sup>9</sup> and Franke<sup>10</sup> enumerated a wide range of risks, including grade tampering, major fires and explosions, ethical breaches by top administrators, off-campus travel, students disgruntled by grades, and political terrorist attacks against academic researchers.

In addition to the risks and pressures facing any organization, higher education has some specific challenges, such as the perception of the quality of an educational program, the attraction and retention of students, the quality and upkeep of the infrastructure, the completion of capital projects and campaigns, collaboration with other institutions, administration of competitive scholarships and the distribution of federal financial aid, study abroad programs, decentralized programs and online learning, and employment issues within a tenure system.<sup>11</sup>

### **The Evolution of Risk Management An Understanding in Flux**

Because of the high number and wide variety of risks facing colleges and universities, the field of risk management in higher education has evolved substantially in the past 10 years. The National Association of College and University Business Officers (NACUBO) and PricewaterhouseCoopers’ paper, *Developing a Strategy to Manage Enterprisewide Risk in Higher Education*, pointed out that, in the past, risk management had a more limited scope and “meant making sure that an organization was adequately protected in the event of a catastrophe.”<sup>12</sup> Liebenberg and Hoyt, in their study of the appointment of chief risk officers (CRO) in corporate firms, explained that “the

traditional risk management approach has been characterized as a highly disaggregated method of managing firm risks.”<sup>13</sup> Arena pointed out that “recent years have seen an explosion of interest in risk management, which has moved from peripheral functional areas of the organization to the corporate level.”<sup>14</sup> Michael Power, in his book, *Organized Uncertainty: Designing a World of Risk Management*, noted that risk management has been elevated from its technical, analytical roots established in the 1960s to a “relatively new stage of organizational governance” and that it has “become an empirical fact that the concept of

risk in its raw form has acquired social, political and organizational significance as never before.”<sup>15</sup> Increasingly in today’s environment, “risk is being more broadly defined as any issue that affects an organization’s ability to meet its objectives.”<sup>16</sup>

While the practice of risk management and the associated understanding of its significance has been changing and evolving in recent years, Whitfield noted that “while commitment to risk management is strong, actual execution continues to evolve and remains weak.”<sup>17</sup>

### **The Risk Manager: Changing Roles and Responsibilities**

The role of the person responsible for coordinating the risk management process has also changed significantly. D’Arcy noted that “traditional risk managers

frequently focus on the probability of maximum loss, the largest loss that could reasonably be expected to occur.”<sup>18</sup> According to Demidenko and McNutt, today’s CROs “believe their role to be primarily that of a process leader who ensures that risk is being identified at the senior executive level but managed at the business unit level.”<sup>19</sup> Changes in the risk environment require different skills and knowledge from risk managers, who now must be responsible for coordinating a huge number of tasks.<sup>20</sup>

Risk managers in the corporate sector are increasingly being hired at the executive or governing board level. According to a 2010 Deloitte survey, 86 percent of firms surveyed had a CRO or equivalent, up from 73 percent in

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2008 and 65 percent in 2002.<sup>21</sup> These CROs are given a high profile, reporting to the board or to the chief executive officer at 85 percent of the organizations.<sup>22</sup> In higher education, oversight for risk management practices often remains the responsibility of the chief financial officer or other business officer (with many additional responsibilities) or a risk management committee. Increasingly, institutions are designating a full-time risk manager, but Harwell's study of risk management practices in higher education revealed that the risk manager, "too often associated with insurance and underwriting," is "positioned organizationally below the executive level and participate[s] in institutional objectives only through influence and networking."<sup>23</sup> Eick's study regarding factors that promote effective risk management in higher education found that the field itself is still often viewed as a support function, and "risk managers are charged with assignments as diverse as managing insurance programs, advising senior administrators on liability and loss prevention issues, reviewing contractual relationships, and advising on issues in litigation."<sup>24</sup> Her study revealed that "it is more difficult for risk managers to affect change when they are ranked below the executive level where the strategic decisions are being made."<sup>25</sup>

### ***The Rise of Integrated and Institution-Wide Approaches***

The desire to approach risk management from a more integrated and holistic framework, as well as legal requirements in the for-profit sector, have given rise to the concept and development of ERM. Demidenko and McNutt's analysis of challenges regarding international ERM implementation noted that European companies are more advanced in their ERM program developments than US companies and are more focused on "public image," while US companies are more driven by regulatory concerns and compliance.<sup>26</sup> Lermack noted that, "during the first decade of the 21<sup>st</sup> century, ERM has become identified as a best management practice for organizations of all types, including for-profit financial and non-financial organizations, non-profits, universities, and government organizations."<sup>27</sup>

### **Driving Forces for ERM Adoption and Implementation** ***Evolving Terminology and Definitions***

Power noted that "ERM is a label for a system of concepts which have grown in organizational significance since the mid-1990s."<sup>28</sup> Liebenberg and Hoyt explained that "ERM is synonymous with integrated risk management (IRM), holistic risk management, enterprise-wide risk management, and strategic risk management."<sup>29</sup> Precursors to this term include corporate risk management, business risk management, holistic risk management, strategic risk management, and integrated risk management.<sup>30</sup> The ERM concept "refers to a broad approach to risk management that includes strategic risk management."<sup>31</sup> ERM often links institutional governance, risk management, and the strategic goals of the institution.<sup>32</sup> Abrams noted that a study of various ERM definitions revealed three common characteristics: that the model is integrated, comprehensive, and strategic.<sup>33</sup> ERM also includes the concept of "opportunity" and potential benefits to the organization as a part of the risk evaluation process.

Many companies and institutions of higher education that have adopted an ERM model utilize the ERM definition provided by the Committee of Sponsoring Organizations (COSO), or the Treadway Commission:

"Enterprise risk management 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 the entity's objectives."<sup>34</sup>

In his book, *COSO Enterprise Risk Management: The New Integrated ERM Framework*, Robert R. Moeller outlined in detail the evolution and key concepts of COSO ERM and noted that it is "designed to be applied to the total organization and to as many smaller supporting units as manageable. This is in contrast to many of the preexisting risk frameworks that stood by themselves and thus tended to be implemented within silos or specific parts or functions of an organization."<sup>35</sup>

Proponents of ERM believe that "ERM makes risk management part of the firm's overall strategy and enables

companies to make better risk-adjusted decisions that maximize shareholder value.”<sup>36</sup> Achampong noted that “it is both logical and desirable to integrate risk management and strategic planning into one coordinated, holistic process to create a synergistic effect that leverages the benefits of both processes.”<sup>37</sup> Abrams observed that “compliance itself then becomes a benefit of this approach, rather than just a costly proposition.”<sup>38</sup> Many have cited the “value proposition” of ERM, including decreased costs, increased ability to identify and manage risks, value to the shareholders, ability to respond more effectively to crisis, and an enhanced ability to identify opportunity.

While there are many proponents of ERM because of its purported integrated and strategic framework, there are also detractors and those who question certain aspects of its viability. Power discerned that because ERM originates from the field of accounting and the concept of “internal control,” its design is narrowly focused on “rule-based compliance” and fails to become “embedded” in decision-making processes at an organization.<sup>39</sup> Arena concluded that not enough attention has been paid to other management practices already in place when ERM is implemented, which “leave[s] open the possibility that firms introduce ERM merely as a compliance device, or a self-contained internal control activity, but without assimilating it more closely into business processes.”<sup>40</sup>

A 2004 PricewaterhouseCoopers survey identified that CEOs “viewed ERM as an external accountability device that does not impact on managers’ decisions and operations.”<sup>41</sup> The survey also noted that senior executives “perceive a number of significant challenges in their efforts to leverage ERM’s potential... [including] difficulty in quantifying risk, a conflict in corporate priorities, and difficulty identifying and/or measuring ERM benefits.”<sup>42</sup> Deloach noted that “if the value of [ERM] cannot be measured, it is unlikely to gain broad acceptance.”<sup>43</sup>

### **Compliance Requirements Fast-Track ERM Adoption in the Corporate Sector**

Certain external factors have affected the adoption and implementation of ERM practices in the financial sector. Reasons include “a broader scope of risks arising from such factors as globalization, industry consolidation, and deregulation; increased regulatory attention to corporate governance; and technological progress that enable better risk quantification and analysis.”<sup>44</sup> As a result of significant business failures in the 1980s and 1990s, governments in several European countries took action, imposing regulatory requirements regarding risk management, such as the Cadbury Code (1992), the Hampel Report (1998), and the Turnbull Report (1999). ASNZS 4360:2004, *The Australian and New Zealand Standard on Risk Management*, has become an accepted and proven practice for risk management in the two countries. In Europe, Basel II was adopted, “which explicitly prescribes that operational risk must be adequately managed.”<sup>45</sup> These guidelines specifically linked internal controls to risk management and broadened the scope beyond the financial realm. In 2009, the International Standards Association released its risk management principles and standards guidelines, ISO 31000:2009.<sup>46</sup>

In 2002, the Public Company Accounting Reform and Investor Protection Act, otherwise known as Sarbanes-Oxley (SOX), was adopted. In 2007, the Securities and Exchange Commission (SEC) issued guidelines placing greater emphasis on risk assessment and developed requirements for enterprise-wide evaluation of risk. As of 2010, the SEC requires disclosures in proxy and information statements about the relationship of a company’s risk management practices, as well as the board’s leadership structure and role in risk oversight. While the SEC does not require a specific framework for the “enterprise-wide” evaluation of risk, it does reference the 2004 COSO report and model; therefore, many cor-

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porations have adopted the specific ERM model outlined by the Treadway Commission. Cendrowski and Mair, in their book, *Enterprise Risk Management and COSO: A Guide for Directors, Executives, and Practitioners*, noted that “the SEC’s discussion of the COSO-IC framework has a decidedly grudging tone, and the COSO-IC framework seems to be ‘recommended’ mostly because little else is widely available.”<sup>47</sup> By 2004, the financial ratings agencies, such as Fitch, Standard and Poor’s, and Moody’s, had begun to utilize the ERM concept in their evaluation of rated firms.

The Casualty Actuarial Society’s report, *Overview of Enterprise Risk Management*,<sup>48</sup> provides a succinct summary, including definitions, of these regulatory, rating agency, and corporate governance guidelines and requirements through 2003.

### **ERM in Higher Education**

In 2008, analysts for Fitch, Moody’s, and Standard and Poor’s “indicated that their firms intended to include ERM factors in the rating process for higher education institutions.”<sup>49</sup> A 2008 Risk and Insurance Management Society, Inc. (RIMS) report noted that “the expectation is that organizations now will be required to go into depth on how they identify risk, set risk tolerances, and provide evidence of effectiveness.”<sup>50</sup> Analysts for Fitch and Standard and Poor’s “indicated that their firms intended to include ERM factors in the rating process for higher education institutions,” estimating that it would be at least five years “before institutions could expect to see meaningful evaluation of ERM in a rating.”<sup>51</sup>

While federal compliance regulations regarding risk management are not currently in place for higher education in the United States, as they are in Great Britain and several other countries, many colleges and universities have voluntarily chosen to adopt ERM frameworks, “some in anticipation of being required to comply in the future; others believing that such compliance represents a best practice in risk management.”<sup>52</sup> In recent years, AGB, NACUBO, and URMIA have developed white papers and presentations advocating ERM for higher education. Most major insurance companies, audit firms, and law firms with higher education practice groups have designated practitioners focused on the ERM function within higher education. Over 10 years ago, the report developed

by NACUBO and PricewaterhouseCoopers outlined the key elements and benefits of “enterprise-wide risk management” for higher education.<sup>53</sup> The 2009 AGB and UE report, *The State of Enterprise Risk Management at Colleges and Universities Today*, outlined the benefits of the ERM model, encouraging institutions of higher education to define risk more broadly and to develop a culture of evaluating and identifying risk at multiple levels, including the active leadership of the president and board of trustees.<sup>54</sup>

A 2007 PricewaterhouseCoopers quarterly survey of senior executives at large US-based multinational corporations revealed that 83 percent of respondents cited ERM as one of their top 10 priorities,<sup>55</sup> in part due to SEC and other regulatory requirements. In higher education, most presidents, chancellors, and boards of trustees do not prioritize risk management or crisis management, especially as part of an integrated planning model, even though incidents that might occur on their campuses may result in death, financial loss, or significant damage to reputation. In fact, according to Whitfield, “higher education leaders and managers are lacking proficiency in skills that historically have been viewed essential in the ‘for-profit corporate sector’ to effectively deal with the changing business environment.”<sup>56</sup> Garratt observed that “most board directors do not budget time for, nor have little sustained interest in, thinking regularly and rigorously about the future health of their business.”<sup>57</sup>

Lermack noted that because the culture found throughout academia is often collegial and departmental, “dictating a widespread awareness of risk identification and management tools across the academic departments” is a “challenge” for institutions of higher education.<sup>58</sup> He noted that, “while some universities may be skilled at crossing organizational lines to conduct interdisciplinary research, they may not be as adept at examining interdisciplinary risks and opportunities because of their decentralized departmental structure.”<sup>59</sup> Mitroff concluded that most universities don’t “get it” when it comes to effective risk management implementation, and that will not change unless the “basic structure of the university changes.”<sup>60</sup> Willson observed that “a growing number of universities are integrating a risk management framework into their strategic planning and decision-making processes, but sustaining formal risk management and reporting process (*sic*) is a challenge.”<sup>61</sup>

A 2009 think tank of risk management practitioners in higher education revealed that, while campus administrators were fairly well-informed about ERM and its benefits, “they remained unclear or intimidated by the process of implementing ERM.”<sup>62</sup> Practitioners have turned to colleagues in the field, professional organizations, and insurance companies for guidance (see Figure 1). URMIA’s white paper, *ERM in Higher Education*, included narratives outlining the implementation process and effectiveness as observed by risk managers at several institutions of higher education.<sup>63</sup> NACUBO and AGB, supported by PricewaterhouseCoopers and IBM, sponsored a summit to “develop a higher education-specific, sustainable model for ERM and to discuss the appropriate roles and responsibilities

for presidents, business officers, risk officers, and trustees.”<sup>64</sup> An executive summary outlined by the University of Washington described various models and approaches to implementing ERM at colleges and universities, including an analysis of the approaches to risk management and compliance of several peer institutions.<sup>65</sup>

A recent *Chronicle of Higher Education* article noted that hard numbers to quantify the growth of the risk management field are difficult to ascertain, but cited URMIA membership growth, nearly double that of a decade ago, as evidence of an increased focus on risk management in higher education, as well as the risk manager function.<sup>66</sup> Through their membership, URMIA members routinely share information with colleagues regarding best practices and emerging trends. A recent question

posed to URMIA member institutions via their listserv revealed that many institutions of higher education are exploring the implementation of ERM. A recent online survey to URMIA member institutions<sup>67</sup> showed that, of the 54 respondents, 57 percent had an ERM framework in place. Most were in the exploratory or early stages of implementation with 17 percent describing their ERM model as “initial” or “lacking,” 33 percent as “basic” or “fragmented,” and a total of 22 percent at the “defined” or “integrated” stage. Survey respondents also indicated that 33 percent of ERM programs were in place for less than one year, with 35 percent in place for one to three years. Respondents indicated that the impetus for the implementation of ERM on their campuses came from a wide variety of sources, including the chief business officer, the chief risk manager (a combined total of 54 percent), or an ERM committee that had been established. In 20 percent of the cases, the primary driver for ERM implementation was the board of trustees. However, 67 percent of respondents had not conducted studies regarding the implementation strategies or effectiveness of their ERM models, and those that indicated that they had cited best practice

**FIGURE 1: ERM RESOURCES FOR RISK MANAGERS**

ACRONYM	ORGANIZATION NAME	WEBSITE
ACE	American Council on Education	<a href="http://www.acenet.edu">www.acenet.edu</a>
AGB	Association of Governing Boards of Colleges and Universities	<a href="http://www.agb.org">www.agb.org</a>
ASSE	American Society of Safety Engineers	<a href="http://www.asse.org">www.asse.org</a>
CAUBO	Canadian Association of University Business Officers	<a href="http://www.caubo.ca">www.caubo.ca</a>
COSO	Committee of Sponsoring Organizations	<a href="http://www.coso.org">www.coso.org</a>
CURIE	Canadian University Reciprocal Insurance Exchange	<a href="http://www.curie.org/drupal">www.curie.org/drupal</a>
IIA	The Institute of Internal Auditors	<a href="http://www.theiia.org">www.theiia.org</a>
ISI	The International Statistical Institute	<a href="http://www.isi-web.org">www.isi-web.org</a>
ISO	International Organization for Standardization	<a href="http://www.iso.org/iso/iso_catalogue.htm">www.iso.org/iso/iso_catalogue.htm</a>
NACUA	National Association of College and University Attorneys	<a href="http://www.nacua.org">www.nacua.org</a>
NACUBO	National Association of College and University Business Officers	<a href="http://www.nacubo.org">www.nacubo.org</a>
PRIMA	Public Risk Management Association	<a href="http://www.primacentral.org">www.primacentral.org</a>
RIMS	Risk and Insurance Management Society, Inc.	<a href="http://www.rims.org">www.rims.org</a>
URMIA	University Risk Management and Insurance Association	<a href="http://www.urmia.org">www.urmia.org</a>

*\*Risk managers also rely on publications, surveys, and experts from insurers, as well as internal and external auditors.*

benchmark studies, conference attendance, literature reviews, and presentations by insurance companies as examples, rather than empirical research.

Kimbrough found that one reason for the lack of objective ERM metrics is the sensitive nature of this information, noting that how an entity views and manages specific risks can be perceived by an organization as information that should be kept confidential.<sup>68</sup>

The online URMIA survey confirmed that ERM information, while shared anecdotally with colleagues and key constituents within an organization, is difficult for an outside observer to quantify. Only 24 percent of respondents indicated they have a website describing their ERM framework and results. Another question posed recently to URMIA members via the listserv asked how they shared risk assessment reports. Most respondents noted that the information was “confidential,” and institution leaders shared the information primarily with the CRO, the president, the chief financial officer, and/or the board.

### **ERM Research and Studies**

While ERM has been adopted in the corporate sector for a significantly longer period of time than in higher education (and more proactively in countries outside of the United States), there is little empirical research regarding its effectiveness. Arena noted that “there are few critical contributions exploring how ERM works in practice, and even fewer addressing how its organizational assembling evolves and contributes to a risk management style.”<sup>69</sup> Huber noted that “there is a lag between practical implementation and theoretical reflection. The result is a distinct lack of literature on risk management as an instrument for governance in general.”<sup>70</sup> Kimbrough explained, “The measurement tools seen in the literature vary widely in terms of their components, are largely subjective in nature, and generally produce qualitative rather than quantitative results.”<sup>71</sup>

In higher education, while there have been a few studies that evaluate the role of the risk manager or the existence of certain risk management practices, empirical research regarding the implementation practices and effectiveness of ERM in higher education remains nearly non-existent. There have been no critical studies that evaluate the integration of the ERM framework and its

practices within the college or university or whether or not the models are effective in systematically and strategically addressing risk at institutions of higher education. Most of the information regarding ERM in higher education has been developed by practitioners, such as risk managers; educational professional organizations, such as NACUBO, URMIA, AGB, and others; and insurance or other business agencies. Primarily, they have used surveys of members or a think tank approach to generate literature. Risk managers rely primarily on these organizations for information regarding best practices, updates in the field, and strategies for ERM implementation and reporting. Figure 2, located at the end of this article, summarizes recent research and industry surveys in the corporate sector and in higher education.

### **Conclusion**

For a variety of reasons, the concept of ERM is gaining increased acceptance within the higher education community. Many institutions of higher education have adopted aspects of ERM, even

if they do not have a fully integrated, institution-wide framework in place. The fact that the major ratings bureaus appear not to be moving quickly on their previously stated intentions to require institutions of higher education to demonstrate how they are implementing ERM frameworks on their campuses may have implications for ERM adoption.

Through trial and error and practical application, many institutions of higher education are tackling the ERM model and learning as they go. Through this process, they

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offer advice and guidance to other practitioners who seek to implement the model. Many presidents, boards of trustees, risk managers, and other senior administrators within higher education institutions see the value and merit of approaching risk management from a systemic perspective. While they may not have empirical evidence to support their views, they understand that approaching risk and its potential negative consequences from a non-integrated perspective can have serious consequences and downsides.

The higher education sector still needs empirical research regarding the efficacy, financial and strategic benefits, and implementation practices of ERM. Many questions remain, including:

1. What specific factors lead institutions of higher education to implement ERM models?
2. What roles do the president and board play in implementation, support, and on-going integration of the ERM model?
3. How is the ERM model linked to assessment, institutional strategic planning, decision making, and fiscal management? What is the relationship between the mission and values of the institution and the ERM model?
4. What is the appropriate terminology and categorization of the implementation “stages” for ERM at a college or university in order to measure maturity models?
5. What is the role of the risk manager, and how is that communicated and understood within the organization? What roles do other administrators play in the identification and management of risk?
6. How is ERM communicated, interpreted, and understood within the campus community?
7. What evidence exists that the implementation of the ERM model has reduced, mitigated, or controlled risk; created opportunity; enhanced financial viability; and/or resulted in other positive factors for the college or university?

Empirical studies stemming from the questions above will assist the higher education community in gaining a better understanding of the definitions, models, current implementation practices, and benefits of ERM at colleges and universities. Research results will also assist presidents and boards of trustees that may be considering the

implementation of an ERM model at their institutions but are not certain of its potential effectiveness and value. In addition, research and documentation will assist risk managers at colleges and universities by providing them with not only with a history and background of the goals and practices of ERM at colleges and universities, but also with the specifics at some institutions that have previously implemented such models. This will be particularly important as agencies responsible for bond ratings begin to utilize the ERM framework to rate higher education institutions and if the government or accrediting agencies utilize the ERM framework as one criteria to assess institutional effectiveness.

Studies such as these will contribute to the research base by providing empirical evidence regarding several aspects of ERM models at institutions of higher education, including the role and function of the risk manager; the attitudes, perspectives, and significance of the president and board; and the understanding of the ERM goals and functions within the college or university. It may also be helpful in terms of the development of a “higher education-specific, sustainable model for ERM” called for by NACUBO, AGB, and others at the ERM summit.<sup>72</sup> While findings from specific studies at one institution may not be generalizable to other institutions of higher education, empirical findings will provide relevant and insightful information that will further develop the ERM concept and help risk managers and higher education leaders to better understand its applicability in the higher education environment.

**FIGURE 2: RISK MANAGEMENT RESEARCH**

YEAR	CONDUCTED BY	TITLE	RESEARCH DESCRIPTION	KEY FINDINGS	SECTOR	FOCUS
2010	Enterprise Risk Management Initiative at NC State for the American Institute of CPAs (AICPA) and the Chartered Institute of Management Accountants (CIMA)	<i>Enterprise Risk Oversight, A Global Analysis</i> <sup>73</sup>	40-question online survey of 331 AICPA members and 264 CIMA members.	46% of global corporate firms and 11% of US corporate firms have a “formal ERM process that regularly provides a robust, systematic report of aggregate top risk exposures to the board and senior management.”	Corporate	Enterprise Risk Management
2010	Financial Executives Research Foundation (FERF)	<i>Enterprise Risk Management: Insights and Operationalization</i> <sup>74</sup>	Survey of 40 large Fortune-500 companies (and detailed interviews with 25 of them).	ERM programs are in “comparatively early stage of development.”	Corporate	Enterprise Risk Management
2010	AON	<i>Global Enterprise Risk Management Survey</i> <sup>75</sup>	Study designed to show the extent to which ERM had been implemented in organizations globally.	55% of the respondents noted that their ERM framework was at the “defined” or “operational” maturity level (stages 3 and 4 out of 5 stages of implementation maturity).	Corporate	Enterprise Risk Management
2010	Deloitte	<i>Global Risk Management Survey</i> <sup>76</sup>	Survey of 131 global financial institutions.	90% have defined risk governance model; 79% have an ERM program in place or in progress, an increase from 59% in 2008; 86% have chief risk officer function.	Corporate	Enterprise Risk Management
2010	Marika Arena, Michela Arnaboldi, and Giovanni Azzone	<i>The Organizational Dynamics of Enterprise Risk Management</i> <sup>77</sup>	Case study over seven years of three private Italian firms (examined through the theoretical lens of Miller and Rose (1992)).	ERM can be at odds with pre-existing management culture; ERM framework can be perceived as “compliance device” rather than strategic framework; qualitative risk maps are of little use to managers; approach to ERM may differ in practice by managers from intended philosophy at “the top.”	Corporate	Enterprise Risk Management
2009	Ananth Rao	<i>Implementation of Enterprise Risk Management (ERM) Tools—A Case Study</i> <sup>78</sup>	Case study of private sector corporation in Dubai with ERM framework.	Helps managers identify factors to optimize ERM; confirms that recommendations of COSO and Turnbull report are “prudent and practical.”	Corporate	Enterprise Risk Management

**FIGURE 2: RISK MANAGEMENT RESEARCH (continued)**

YEAR	CONDUCTED BY	TITLE	RESEARCH DESCRIPTION	KEY FINDINGS	SECTOR	FOCUS
2009	AGB and United Educators	<i>The State of Enterprise Risk Management at Colleges and Universities Today</i> <sup>79</sup>	Survey of 600 administrators at colleges and universities regarding ERM data, practices, and policies.	49% indicate risk management is a priority at their institution; 23% state their governing board monitors risk through regular, formal reports; 60.1% do not identify major risks to institutional mission success through comprehensive, strategic risk assessments.	Colleges and Universities	Enterprise Risk Management
2009	Robert Anthony Campo	<i>How Do College and University Leaders Organize and Implement Policies of Risk Management to Prevent or Mitigate Institutional Liability?</i> <sup>80</sup>	Qualitative study of 29 in-depth interviews with risk managers and other administrators at upstate New York colleges and universities regarding methods, policies, and procedures to “resolve conflicts, avoid court action, and limit risk factors that lead to institutional liability.”	Delineation of risks and liabilities facing colleges and universities; themes for preventative risk management; presidential role for leadership of risk management.	Colleges and Universities	Risk Management; Liability and Legal Issues
2008	Risk Insurance Management Society (RIMS)	<i>RIMS Report: The State of ERM</i> <sup>81</sup>	Analysis of 564 organizations participating in self-report assessment of ERM using the Risk Maturity Model (RMM).	“Positive correlation between higher RMM scores and higher credit ratings.”	Corporate	Risk Management; Enterprise Risk Management
2008	National Campus Safety and Security Project (NCCSP)	<i>Results of the National Campus Safety and Security Project Survey</i> <sup>82</sup>	Survey of 342 colleges and universities about key aspects of crisis preparation and response.	Preparedness for various types of threat incidents; responsibility for crisis management; gaps in crisis planning.	Colleges and Universities	Risk Management; Crisis Management
2006	The Conference Board	<i>The Role of the U.S. Corporate Board of Directors in Enterprise Risk Management</i> <sup>83</sup>	Analysis of Fortune 100 board committee charters, survey of 127 board members, and interviews with 30 board members.	89.5% of corporate directors have high-level, top-down understanding of risk; 77.4% fully understand the risk/return trade-offs underlying current corporate risk strategy; 47.6% rank key risks.	Corporate	Enterprise Risk Management

FIGURE 2: RISK MANAGEMENT RESEARCH (continued)

YEAR	CONDUCTED BY	TITLE	RESEARCH DESCRIPTION	KEY FINDINGS	SECTOR	FOCUS
2006	Ian I. Mitroff, Michael A. Diamond, and C. Murat Alpasian	<i>How Prepared Are America's Colleges and Universities for Major Crises?</i> <sup>84</sup>	Survey of 350 provosts regarding their institution's crisis preparation.	Preparedness for crisis and disaster; composition of crisis-management teams; level of support for crisis management.	Colleges and Universities	Risk Management; Crisis Management
2006	I. Helsloot and W. Jong	<i>Risk Management in Higher Education and Research in the Netherlands</i> <sup>85</sup>	Survey and face to face interviews with key informants, literature review of risk in higher education, and telephone survey of risk management practitioners.	Categorization of types of risk in higher education; reveals gaps in coordination and lack of integrated safety, security, and crisis management.	Colleges and Universities (Netherlands)	Risk Management; Crisis Management
2006	Robert L. Kimbrough	<i>The Relationship Between Perceptions of Organizational Culture and Implementation of Enterprise Risk Management</i> <sup>86</sup>	Survey (using self-developed ERM instrument) of 2000 internal audit executives.	Describes relationship between organizational culture and ERM implementation; role of risk manager in ERM implementation; instrument to measure.	Corporate	Enterprise Risk Management
2005	Fred D. Culcleasure	<i>Risk Management: A Study of Current Practices at North Carolina's Private Colleges and Universities</i> <sup>87</sup>	Quantitative survey of North Carolina Independent Colleges and Universities (NCICU) members.	83% of 23 risk practices increased in usage after 9-11, including policy and administrative changes; increase in creation of risk management teams and role of risk manager.	Colleges and Universities	Risk Management; Role of Risk Manager
2003	Andre P. Liebenberg and Robert E. Hoyt	<i>The Determinants of Enterprise Risk Management: Evidence From the Appointment of Chief Risk Officers</i> <sup>88</sup>	Review of 26 US firms that "announced" the hiring of a chief risk officer (CRO) to implement an ERM program (as compared to a control group).	An absence of systematic differences between firms that signal their use of ERM with the appointment of a CRO and the control group; more highly leveraged firms are more likely to appoint CROs.	Corporate	Enterprise Risk Management

FIGURE 2: RISK MANAGEMENT RESEARCH (continued)

YEAR	CONDUCTED BY	TITLE	RESEARCH DESCRIPTION	KEY FINDINGS	SECTOR	FOCUS
2003	Rick Harwell	<i>A Study of Effective Risk Management Practices in Higher Education</i> <sup>89</sup>	Qualitative research study of 23 URMIA member risk managers regarding the effectiveness of risk management practices at their institutions.	Summary of risk management culture and landscape in higher education; effective risk management practices; trends in the risk management field.	Colleges and Universities	Risk Management; Role of Risk Manager
2003	Christine Eick	<i>Factors that Promote Effective Risk Management at Universities Classified by the Carnegie System at Doctoral/Research Universities – Extensive</i> <sup>90</sup>	Mixed methods study examining the factors that promote effective risk management at doctoral/research institutions.	Delineates the traits of effective risk managers; necessary institutional and administrative elements for effective risk management.	Colleges and Universities (Netherlands)	Risk Management; Role of Risk Manager
2003	Rick N. Whitfield	<i>Managing Institutional Risks—A Framework</i> <sup>91</sup>	Qualitative multi-industry case study of firms and universities in order to examine the feasibility and transferability of a corporate institutional-wide risk management framework (ERM) for colleges and universities.	ERM framework is transferable; “one size fits all” model does not work; need for further study and research.	Colleges and Universities	Risk Management; Enterprise Risk Management

## About the Author



Anne Lundquist has 20 years of increasing administrative responsibilities in higher education, having served as the dean of students at four liberal arts colleges. Using her expertise in several student affairs areas, Ms. Lundquist has presented at a number of national conferences, as well as conducted webcasts, on risk management planning, institutional liability, students with psychiatric disabilities, and the development and implementation of integrated community standards/restorative justice judicial models. She was the co-chair for NASPA's 2010 Small College and University Institute.

Currently, Ms. Lundquist is a PhD candidate in the educational leadership program at Western Michigan University with a concentration in higher education administration, where she also works with the vice president of student affairs on assessment and strategic planning. She is the co-author of *The Student Affairs Handbook: Translating Legal Principles into Effective Policies*. She has published articles and poetry in a variety of publications. Ms. Lundquist received her BA in religious studies from Albion College and her MFA from Western Michigan University in creative writing. She also served in the Peace Corps in Micronesia.

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**The first step in the risk management process is to acknowledge the reality of risk. Denial is a common tactic that substitutes deliberate ignorance for thoughtful planning.**

**—CHARLES TREMPER,  
RISK MANAGER AND AUTHOR**

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**The most serious failure of leadership is the failure to foresee.**

—ROBERT GREENLEAF (1904–1990),

LEADERSHIP RESEARCHER AND FOUNDER OF THE CENTER FOR APPLIED ETHICS

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# Getting Ready with UC Ready: How the University of California Made Business Continuity Planning Practical for Higher Education – and Created a New Way to Manage the Risk of Interruption

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*Abstract: Many colleges and universities lead the way in emergency response capabilities and have extensive risk management plans, emergency plans, emergency operations centers, hazard mitigation plans, crisis communication plans in place to help manage the risks of emergency events. The corporate world, however, has historically excelled at business continuity planning, or planning ahead to protect profits against disruptive events. Business continuity planning can help colleges and universities plan their immediate responses to crisis events while also implementing strategies to continue meeting the mission of the organization and moving into the recovery phase. This article highlights the efforts of one university system to develop an online tool that builds business continuity planning capabilities across all departments on campus. It also describes how that tool can be used by other institutions of higher education to develop their own unique business continuity plans.*

## Introduction

For decades, the corporate sector has known a truth that the higher education sector has been slow to learn—that disaster readiness is important for the success of the enterprise.

In higher education, risk managers transfer risk with insurance, and an institution's leaders plan and practice emergency response. Higher education institutions have risk management plans, emergency plans, emergency operations centers, hazard mitigation plans, crisis communication plans, and hopefully the people, skills, training, and equipment to save the institution when bad things happen.

On the one hand, the emergency response capabilities of higher education institutions often far exceed those of

the corporate sector. Colleges and universities assume a level of responsibility for people and property that is very appropriate for higher education, but not typical in the corporate world. It has been said—with exaggeration but with a kernel of truth—that many corporate emergency plans have but two sentences: “Call 911. Leave the building if needed.”

But in another respect, corporate leaders have much to teach their counterparts in higher education: businesses plan ahead to protect their profits against disruptive events. Adverse weather, supply chain disruptions, competitive surprises, import-export difficulties, cost of fuel—the list goes on. Good management demands that options be studied and the organization be resilient enough to change course when circumstances require.

Business continuity planning (BCP) is a methodology developed in the 1970s and widely used in the private sector. It assesses risks, analyzes the business impacts of disruptive events, develops strategies for keeping the business operating, plans the immediate response to emergency events, and lays plans for recovery back to normal operations. The federal government advocates an analog

methodology for federal, state, and local governments called continuity of operations planning (COOP).

Neither BCP nor COOP has gained a firm foothold on campuses, though, because neither fits the way colleges and universities do business. Beginning in 2001, the University of California (UC) addressed this lack by developing a methodology for “mission continuity planning” geared specifically to higher education. It aims to make the university's teaching, research, and support functions resilient against interruption. Its goal is to keep students

**Business continuity planning assesses risks, analyzes the business impacts of disruptive events, develops strategies for keeping the business operating, plans the immediate response to emergency events, and lays plans for recovery.**

learning, faculty teaching, research projects humming, and many other services available to the public, regardless of any earthquake, hurricane, fire, flood, or flu.

The UC mission continuity methodology broke important ground and is currently in use at more than 60 universities in the United States, Canada and Australia. This is the story of how it developed, what it does, why it works, and how it has spread.

### **It All Began at Berkeley**

The University of California, Berkeley (UC Berkeley) is one of 10 campuses that comprise the UC System. Located in the city of Berkeley on the San Francisco Bay, UC Berkeley is a publicly supported university of 35,800 students with 7,500 of those students living on campus. There are 21,400 faculty and staff.

The setting is urban, although one side of the campus borders the heavily wooded East Bay Hills. The campus physical plant includes more than 1,100 research laboratories, in accord with Berkeley's reputation as one of the world's great research universities.

The Berkeley campus has a strong culture—among students, faculty, and staff—of social and political engagement. High value is placed on diversity of the campus population, indicated by the fact that one of the campus' top officers is titled vice chancellor for equity and inclusion.

### **Vulnerabilities and Hazards**

The Berkeley campus sits directly on the Hayward Fault, the fault that is most likely to produce the next major earthquake in Northern California. Fifteen miles away is the San Andreas Fault, which is the second most likely. Seismologists estimate that there is a 63 percent probability that a Bay Area fault will produce a major quake (magnitude 6.7 or higher) within the next 30 years.<sup>1</sup>

Wildfire danger also threatens the campus. The East Bay Hills that form the rear border of the campus are populated with a highly flammable eucalyptus forest, which fueled the 1991 Oakland Firestorm, causing 25

deaths and 3,800 homes lost, that was stopped just short of the campus by the heroic efforts of firefighters.

Infectious disease is of great concern. Worldwide travel by the campus' highly international student body increases the possible sources of infectious agents, as well as the likelihood that future pandemics will arrive at UC Berkeley early in their cycles.

There is also significant risk of crime, including both individual acts and crowd disorder. UC Berkeley's valued freedom of expression, tolerant social attitudes, passion for social equity, pressure cooker academics, and the presence of street drugs form a potent brew that results in numerous challenges to civil order. UC Berkeley has a long history of violent acts—a home invasion of the chancellor's house by a knife-wielding youth; home stalking of faculty by animal rights activists; "liberation" of research animals; campus arsons, bombings, and vandalism; workplace violence; and mental health issues. Other possible events include the deliberate or accidental release of hazardous agents from the university's labs.

In addition to criminal violence, UC Berkeley experiences numerous protest activities every year that require control and containment and pose a potential for violence.

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this day.**

### **History of Preparedness**

UC Berkeley's disaster preparations began in the 1970s with a seismic reconstruction program for its buildings, a program that continues to this day. Using funds allocated by the state of California for reinforcing public buildings, the university has for the past 30 years been upgrading its buildings to current seismic standards. An example is shown in Figure 1.

In 1997, the campus completed its first emergency operations plan, which laid out a process for immediate response to disruptive events. Other planning efforts quickly followed: a classroom seismic recovery plan, a utilities infrastructure seismic report, individual building emergency plans, and a strategic plan for loss reduction and risk management. A quake-brace program was started

to share with departments the cost of bolting and bracing office furniture and lab equipment.



**FIGURE 1: UC BERKELEY'S UNIVERSITY HALL, AN EARLY EXAMPLE OF SEISMIC RECONSTRUCTION**  
(photo credit Tom Holdford/UC Berkeley)

### A New Concern

In the year 2000, campus leaders became concerned that operational considerations were being overlooked. If the “Big One” hits, what about UC Berkeley’s business functions? Will the university be able to run payroll to provide for the needs of staff and faculty? Will the purchasing system be operational to support recovery? Will human resources systems be robust enough to handle the many personnel issues that will arise during a major campus disruption and recovery period? What about the financial system and other computer systems and networks? What if the Big One strikes during the admissions cycle?

A campus business resumption plan<sup>2</sup> addressed these concerns in 2001. As the plan neared completion in September of that year, the horror of September 11 seared into the campus psyche a fact that had certainly been understood but never felt with such clarity: *rare events DO happen, and they can powerfully impact our lives.*

### A Plan

The campus business resumption plan contained a number of recommendations, including three that were to lead the campus into uncharted waters: (1) that the campus start a program of *ongoing* business resumption planning, (2) that it do so department by department, and (3) that a staff position be established to coordinate this new program.

The chancellor accepted the report, and UC Berkeley’s one-person Office of Business Resumption came into being. A standing committee of 26 senior campus leaders, including six faculty members, was formed to provide strategic guidance. It was named the Business Resumption Coordination Group and continues to guide UC Berkeley’s effort to the present day.

### Now What?

UC Berkeley’s new business resumption manager faced a problem: how was he to carry out this mandate? Business resumption planning, also called business continuity planning, was at that time mainly a private sector strategy. He could find few examples of it being applied on a campus—and no examples of department-level planning.

### A Training Approach

The business resumption manager’s first attempt was a training program. He investigated the private sector methodology, developed a four-session syllabus, and trained key personnel from several departments on how to create a business resumption plan. The training was well-received; people were glad to learn that there were indeed things they could do to prepare to carry on their business functions through disruptive events. However, not a single plan resulted. Trainees later indicated that the project seemed so daunting that, once trained, they were reluctant to start.

### A Template Approach

Abandoning the training effort, UC Berkeley’s business resumption manager adopted a self-guiding template in the form of a Microsoft Word document that walked the user through a series of questions. Little training was needed, and the answers to the questions would form the department’s business resumption plan. A scenario-based template was used, then later replaced with a template that focused on the department’s critical functions. Results were better than before: about 20 departments created plans using these templates.

### Reality Dawns

As plans accumulated, UC Berkeley asked a crucial question: how well was the program fulfilling its aim? UC Berkeley is a large, complex campus, and over 100 “business” departments provide the infrastructure needed for

teaching and research to happen. Furthermore, the university's departments tend to be highly interdependent, and the university should coordinate these plans. How can the university meld data contained in 100 Word documents into one campus level plan?

### **FEMA to the Rescue**

In 2004, the UC Berkeley campus obtained a grant from the Federal Emergency Management Agency (FEMA) to develop a computer-based business resumption planning tool. The terms of the grant allowed the campus to either buy or build a tool, and the resulting product was intended to be a planning device specifically adapted to the needs of higher education. The grant application had been in progress for almost two years, but the award arrived at the perfect moment.

The availability of the FEMA grant caused UC Berkeley to rethink some very basic questions. The answers to those questions formed the foundation of a new methodology—one that would finally adapt the best practices of business continuity planning to the structure and culture of the university.

### **Seven Fundamental Questions**

#### **Produce Seven Principles**

##### ***Question 1: For what types of disaster is the university preparing?***

Answer: All types, including natural disasters (earthquake, wildfire, infectious illness), technology-related disasters (network failure, power outage), and human-caused disasters (criminal activity, civil disorder).

##### ***Question 2: For what scale of event should the university prepare?***

Answer: Any size event that could have a significant impact on the mission of the campus, including a regional event (earthquake), a local event (flood in a building), or even a personal event (failure of a researcher's hard drive).

##### ***Question 3: What does a "prepared" campus look like?***

Answer: A campus that has a mechanism in place for immediate response to protect life, health, and property, *plus* an ability to keep its core functions operating (or to restore them quickly if interrupted).

##### ***Question 4: What are the core functions that we should be prepared to continue or resume when disaster strikes?***

Answer: Teaching, research, and public service—the three-pronged mission of the university.

##### ***Question 5: What will make a department able to keep its core functions operating?***

Answer: Having alternate ways to perform those functions and being nimble and resilient enough to shift. It is important to note that UC Berkeley did not answer this question with, "Having a well thought out recovery plan." This distinction is fundamental to UC Berkeley's method, which will be further discussed later in this article.

##### ***Question 6: What level of the organization should engage in business continuity planning? The campus as a whole? The major divisions? Departments?***

Answer: Whatever level exercises operational control. Most colleges and universities operate in a fairly decentralized fashion with day to day and month to month decision making vested in the frontline units: academic departments and small or large research units, plus the many departments that provide support services. Since business continuity planning focuses on operational issues—the "nuts and bolts" that need to be in place for the university to deliver on its mission—it needs to happen at the lower levels of the organizational chart.

##### ***Question 7: If we do our business continuity planning department by department, do we also need to do a plan for the campus as a whole?***

Answer: Yes, but if thorough planning is done at the operational level, virtually every important issue will surface, including the issues that require attention by the executive level of the campus. A campus-level plan will almost create itself.

Once UC Berkeley leaders had answered these seven questions to their satisfaction, they had seven clear principles to guide their business continuity planning methodology.

## The New Methodology

Over the period of 2004 to 2006, UC Berkeley worked with department level units to evolve its methodology to embody the seven principles.

Most fundamentally, it was determined that the “business” in business continuity planning is teaching, research, and service. Later, when applying the methodology to the University of California Medical Centers, key decision makers added patient care to this list. This had been a stumbling block for the university and for almost all other universities that had tried to do business continuity planning. Planning for continued operation of the university’s *support* and *infrastructure* functions was not enough; the university also needed to engage the academic side of the house.

Eventually, the university found the word “business” to be a barrier in itself, and BCP champions stopped using it. Instead, the university calls its program “continuity planning” and sometimes “mission continuity planning” or “academic continuity planning”.

The decision to engage UC Berkeley’s academic units had daunting implications:

1. The number of targeted units increased beyond the campus’ 100+ support units. It now included all 350-400 units on campus: academic, research, and support.
2. The university had to engage faculty in the continuity planning efforts since faculty are the decision makers in classrooms, labs, and academic departments.

With this number of departments to work with, it was very clear that UC Berkeley needed a tool. The tool would have to be extremely easy to use and intuitive because continuity planning would be largely a do it yourself exercise for departments. UC Berkeley’s one-person office, now called the Office of Continuity Planning,<sup>3</sup> could not offer training to 350 units.

Surveying the business continuity planning tools that were then on the market, the university was unable to find any that fit its needs. The tools were either not flexible enough to address the specific issues of higher education, were wedded to the language of the corporate sector, required extensive training before use, or were designed to create one plan only, not 350 plans.

Fortunately, the IT Division of the Berkeley campus has a very capable group of web application programmers—because it became clear that the university would have to design and build its own tool.

## The Tool

Berkeley launched its tool for use in September 2006. Named *Restarting Berkeley*, it was the first of four editions of the tool, each with a different name. The opening screen of the tool is shown in Figure 2.



**FIGURE 2: THE FIRST EDITION OF UC BERKELEY’S WEB-BASED CONTINUITY PLANNING TOOL (2006)**

The *Restarting Berkeley* tool was essentially an on-screen questionnaire, designed to be completed by departmental staff. Answers typed into the screen by the users got stored in its database. On request, those answers could be reproduced in a nicely formatted departmental continuity plan, which could be saved elsewhere and printed. Each department had a separate plan in the tool, with access to the plan controlled by the department.

Because continuity planning is intended to apply to all types of disaster events, scenario-based questions were used only sparingly. For instance, strategies for operating post-earthquake would not typically be useful when the event is a pandemic flu. Instead, the tool focused on the concept of *critical functions*. Users identified the critical functions performed by their departments, then were led through a series of questions on each.

Disasters were treated as a diminishment of resources. Thus, instead of asking, “How would your department keep functioning if a big earthquake struck?”, users were

asked questions like, “How would you perform [critical function X] if you lost any of these: your office space, or half your staff, or the data network, or some of your lab equipment?”

Asking the user to name his or her own department’s critical functions produced a second crucial benefit: *any* type of department could use the tool. The physics department and the custodial department each have a number of critical functions; they simply have different ones.

Because the tool had to be extremely easy to use, the developers paid attention to good web design, such as uncluttered screens, intuitive navigation, alternate ways to get from here to there, clear instructions, on-screen help, only a small number of questions per screen, and attractive colors and graphics.

Faculty participation increased greatly in 2007 when UC Berkeley’s executive vice chancellor and provost commissioned a committee of faculty to devise a plan for continuity of instruction, initially in the context of a pandemic but later expanded to include all types of disruptive events. This faculty group produced a thorough set of recommendations<sup>4</sup> that were subsequently incorporated into Berkeley’s continuity planning tool as a new module focused on the instructional process.

Four years and three editions later, 303 Berkeley departments (of 350) have continuity plans in the tool. Of these, at least 250 departments received no training; they simply opened up the web-based tool and began typing.

### **Does the Methodology Produce Real Readiness?**

Recall question 5 above, “What will make a department able to keep its core functions operating?” UC Berkeley answered: *Having alternate ways to perform those functions and being nimble and resilient enough to shift.* The university continued: *It is important to note that we did NOT say “having a well thought out recovery plan.”*

Plans do not guarantee outcomes. Moreover, it is simply not possible to detail ahead of time the steps a department will need to take to deal with a crisis; there are too many types of crises. Hence the concept of a recovery plan has limited cogency. A good recovery plan will contain information and suggestions that will position a department to recover, but it will not lay out the detailed steps. Consider Hurricane Katrina as an example.

## **CASE STUDY: HURRICANE KATRINA’S IMPACT ON NEW ORLEANS COLLEGES AND UNIVERSITIES**

When Hurricane Katrina struck in late August 2005, the universities in New Orleans lost at least one semester of instruction. There was an exception to this: the University of New Orleans (UNO), an 11,000 student university on the shore of Lake Ponchartrain. Heavily impacted by the storm and flooding, the UNO campus closed immediately. However, campus leaders decided they could conduct a large percentage of their fall semester classes online, and within weeks they had set the semester in motion. Their Blackboard course management tool, used in almost all courses, was inoperable because it was hosted in the damaged UNO computer center. Moving quickly, the university initiated a contract with Blackboard, Inc. to provide service to the campus from a remote Blackboard hosting site. Data was moved to that site, and instructors and students moved online, teaching and learning via the web.

The lesson here is that UNO devised an alternate way to carry on instruction, and the university’s leaders were nimble and resilient enough to shift. They were not following a pre-designed recovery plan, but they were able to cobble together a Plan B and make it work.

### **The True Aim of Continuity Planning**

Good continuity planning will position a university to do what UNO did. *This, then, is the true aim of continuity planning: to position an organization ahead of time with some possible options, then to put in place (again, ahead of time) some factors that will help the organization exercise those options when needed.* This means taking steps in advance to ensure that, when a crisis comes, the college or university will have available people with skills, important records and data, communication mechanisms, ways to obtain replacement equipment, and similar enabling factors.

So does UC Berkeley’s continuity planning methodology produce real readiness? On various screens of the planning tool, users are given the opportunity to identify *action items*, or things that their department (or another department or the campus) could do in advance to make their operations more resilient against interruption and more able to shift when needed to an alternate way of doing business. These action items are the most important

product of the planning process. UC Berkeley tracks the action items over time, prompts departments to review progress periodically, assists with completion where possible, and provides action item status reports annually to campus leadership. This is the mechanism of readiness.

Many action items identified by departments are easy and low-cost, such as updating the staff home contact list every six months and providing multiple copies to all. Other action items may have to wait for resources. Still others may be beyond the scope of the department and should be referred to the proper unit. But all exemplify an old adage: "An ounce of readiness produces a pound of recovery."

### **A Good Idea Spreads**

The principal agents who developed UC Berkeley's continuity planning methodology and tool were Ron Coley, associate vice chancellor of business and administrative services since 1998, and Paul Dimond, manager of the Office of Continuity Planning since 2004. In 2007, a year after the launch of the *Restarting Berkeley* web tool, Coley and Dimond produced an improved edition of the tool and renamed it *The Berkeley Continuity Planning Tool*.

At that moment, a new force engaged: Grace Crickette, chief risk officer of the UC System, who had been watching Berkeley's progress with great interest, decided to champion the methodology for all the other institutions in the UC System. Crickette secured funding for a continuity planner position at each of the other UC institutions, expanding the program to include 10 campuses, two medical centers, a national laboratory, and UC's statewide division of agriculture and natural resources. She also funded a third edition of the web tool, making it customizable for different campuses and other institutions. Dimond led a team drawn from all the UC institutions to redesign the tool. The third edition was launched in January 2009 and renamed *UC Ready*.

At the time of this writing in May 2011, each of the UC institutions has a robust continuity planning program,

and Crickette has established continuity planning as an integral part of her system-wide enterprise risk management (ERM) program.

### **The Program Goes National**

In 2008, while the *UC Ready* edition was still under construction, the national Kuali Foundation<sup>5</sup> expressed interest in UC Berkeley's tool. The Kuali Foundation is a non-profit consortium of universities and colleges that

have banded together to produce and distribute open source administrative software for higher education. Its motto is "for higher education, by higher education."

Beginning with the *Restarting Berkeley* tool in 2006, UC Berkeley had freely given the tool's source code, plus legal rights, to any universities that wanted to install the tool on their own servers and use it. By 2008, 20 to 30 universities<sup>6</sup> outside the UC System had done so and were using the tool.

Convinced that there was a demand for the tool and for continuity planning in higher education, the Kuali Foundation asked UC to donate the tool to the Foundation for inclusion in Kuali's suite of software offerings. Crickette and Coley agreed, and a new project was born. With energetic leadership by Shelton Waggener, UC Berkeley's chief information officer whose programmers had built each edition of the tool, nine

other universities across the United States and Canada put up seed money. The tool was then rewritten in the open source language required by Kuali, a governing board was formed with Waggener as chair, a sustainable financial model was put in place, and the *Kuali Ready* tool was launched for use in April 2010.

*Kuali Ready*<sup>7</sup> is now the fourth edition of the tool, with added customizability and other features, including the ability of each university to "brand" the tool with its own tool name and graphics. It is available to any two- or four-year institution of higher education. The non-profit Kuali Foundation charges a modest annual subscription fee to

**Many action items identified by departments are easy and low-cost, such as updating the staff home contact list every six months and providing multiple copies to all. Other action items may have to wait for resources.**

cover costs, and in return, the Foundation hosts the software on its servers, takes care of all technical matters, and provides full user support. For universities or colleges who prefer a different arrangement, the Foundation provides the source code, including future upgrades, at no charge whatsoever, but hosting and support must be provided by the adopting school.

As of May 2011, 62 universities and colleges in the United States, Canada, and Australia have subscribed to the *Kuali Ready* tool. The UC System has retired its previous editions and subscribes to *Kuali Ready*, continuing to title the tool *UC Ready* using the custom naming option (see Figure 3). Dimond chairs a continent-wide council of “functional owners,” or continuity planners, who plan new features for the tool, and the Kuali Foundation is nurturing the first community of higher education continuity planners.



**FIGURE 3: THE KUALI READY TOOL AS IMPLEMENTED AT THE UNIVERSITY OF CALIFORNIA**

Continuity planning appears to have finally taken root in higher education. Its impact will be significant, though its goal sounds modest: to ensure that faculty, staff, and students can do *tomorrow* what they were doing *yesterday*—no matter what happens *today*.

## About the Authors



*Grace Crickette* is the University of California’s chief risk officer. Major initiatives for the risk services department include reducing the cost of risk, implementing system and local safety programs, improving claims management systems, developing risk financing strategies, and implementing enterprise risk management (ERM) and emergency management and business continuity planning throughout the university. Ms. Crickette joined the university in December of 2004 after 13 years as a vice president and officer in audit, insurance, safety, and human resources capacities for the equipment and construction industry. Ms. Crickette graduated with distinction from the University of Redlands with a bachelor’s degree in business administration and holds a variety of professional designations in the areas of claims, safety, audit, and human resources, including the Associate in Risk Management (ARM) designation and Senior Professional in Human Resources. In 2008, Ms. Crickette received the Risk Innovator Award for innovation and excellence in risk management in higher education. She has consulted with numerous public and private entities on the implementation of ERM, including Harvard University and SingHealth Care, Singapore’s largest health care group. She is a member of a variety of national committees and boards, including Risk and Insurance Management Society’s (RIMS) ERM Committee, Kuali Ready Board, CISO Governing Board, and BACSPP Board.



*Paul Dimond* is manager of the Office of Continuity Planning at the University of California, Berkeley. He is also coordinator of continuity planning for the University of California System, which includes 10 campuses, five medical centers, 220,000 students, and 170,000 faculty and staff.

Starting in 2004, Mr. Dimond led a Berkeley team that adapted private sector business continuity planning to the needs and culture of the campus. To implement the new methodology, he developed a pioneering web tool that remains the only continuity planning tool specifically

designed for higher education. Formerly called *Restarting Berkeley*, *The Berkeley Continuity Planning Tool*, and *UC Ready*, this web tool was donated by UC in 2010 to the Kualu Foundation, which now offers the tool for use by any institution of higher education. In the 14-month period following the release of the Kualu edition in April 2010, 62 colleges and universities adopted the tool for use. Mr. Dimond now chairs the *Kualu Ready* Functional Council, the only nationwide association of higher education continuity planners.

Mr. Dimond holds a BS in physics from Boston College and an MBA from San Francisco State University. He has had a varied career including periods as a Peace Corps volunteer, director of a social service agency, electrician, physical plant manager, and management consultant. He has been a UC Berkeley staff member since 1981.

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#### Endnotes

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- <sup>3</sup> Office of Continuity Planning Home Page, University of California, Berkeley, <http://ocp.berkeley.edu>.
- <sup>4</sup> "Pandemic Influenza Instructional Planning Working Group, Final Report," University of California, Berkeley, July 2008.
- <sup>5</sup> Kualu Foundation Home Page, <http://www.kualu.org>.
- <sup>6</sup> The count of 20 to 30 universities is an estimate, based on anecdotal evidence. The precise count was not tracked.
- <sup>7</sup> Kualu Ready Home Page, <http://www.kualu.org/ready>.

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There are two big forces at work, external and internal. We have very little control over external forces such as tornadoes, earthquakes, floods, disasters, illness, and pain. What really matters is the internal force. How do I respond to those disasters? Over that I have complete control.

—LEO F. BUSCAGLIA (1924–1988),

ITALIAN AUTHOR AND MOTIVATIONAL SPEAKER

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# Planning for the Big One: A University's Earthquake Response

| Harry Rosenthal, MBA, CPCU, ARM, Regis & Partners, Managers of Unimutual, and Jacqui Lyttle, University of Canterbury

*Abstract: On September 4, 2010, a 7.1 magnitude earthquake hit Christchurch, New Zealand, which was previously thought by most to be fairly safe from the risks associated with quakes. Due to extensive emergency response planning and recovery operations, the University of Canterbury weathered this emergency event and emerged with new lessons learned to share with the higher education community. This article provides an insider look at the earthquake's impacts on the city, describes the university's immediate and longer term response to the earthquake and many after-shocks, and provides lessons learned.*

## Introduction

There is rarely a shortage of stories about disasters and catastrophic losses in the global media today. Real-time coverage delivered by both international news services and social networking sites provide continuous details of the impact of significant events anywhere on the planet. While keeping us informed, they also serve as reminders for the importance of risk management in both our professional and personal lives. A survey of global disasters clearly shows that 2010 was a watershed year for our profession in terms of both man-made and natural disasters. While many risk professionals personally experienced the atypical weather patterns of that year, such as colder than usual winters, more severe storms, and localized flooding, overall 2010 was a year of exceptional loss of property, commerce, and human life from earthquakes, heat waves, floods, volcanoes, super typhoons, blizzards, landslides, and droughts. Each of these large-scale events, when coupled with local experience, tested the ability of universities to provide uninterrupted services to staff, students, and community. As a year, 2010 was exceptional in providing the higher education risk management profession with examples illustrating the

need to better prepare institutions for future losses and interruption events.

In addition to economic costs and business disruptions, the catastrophic loss events of 2010 had a tragic impact on human life, resulting in the death of at least a

quarter million people across the globe. Measured in terms of human life, it was the deadliest single year in more than a generation. By comparison, more people were killed worldwide by natural disasters in 2010 than have been killed in terrorism attacks in the past 40 years combined.<sup>1</sup>

In addition to the loss of human life, the impact on an already weak global economy was profound. The reinsurance company SwissRe estimated that the global economic loss from both natural and man-made disasters that year was around \$218 billion, more than triple the 2009 experience.<sup>2</sup> A major contributor to the extreme human and financial toll for the year was earthquakes. Across the globe in 2010, there were 2,114 earthquakes recorded above an intensity of 5.0 on the moment magnitude scale, which will be used in this article, coming close

to the 2007 record of 2,270.<sup>3</sup>

The year witnessed an 8.8 earthquake in Chile which was the fifth largest earthquake recorded since 1900 and the tragic devastation caused by the 7.0 quake which struck Haiti, causing the loss of 230,000 people and a physical and economic aftermath which still cripples the country today.

This article discusses another of 2010's large earthquakes and its subsequent aftermath on a major university. At 4:35 am on Saturday, September 4, 2010, a rupture occurred on a previously unrecognized Greendale strike-slip fault beneath the Canterbury plains of New Zealand's South Island. The event produced a magnitude 7.1

**Overall, 2010 was a year of exceptional loss of property, commerce, and human life from earthquakes, heat waves, floods, volcanoes, super typhoons, blizzards, landslides, and droughts.**

earthquake that caused widespread damage throughout the region. In spite of being slightly larger than the deadly Haitian quake, no deaths occurred and only two serious injuries were reported despite the epicenter lying 40 kilometers west of the city of Christchurch, population 386,000. On February 22, 2011, a large aftershock of 6.3 magnitude again struck the city, resulting in significant loss of life and halving the forecasted economic growth for the country.<sup>4</sup> The original, larger quake released an estimated 648 kilotons of energy, and the strong ground motion led to some building collapses, widespread non-structural damage, and extensive liquefaction with an estimated loss of \$4-5 billion. The second quake is estimated to have caused \$11 billion in damage. Located near the site of the greatest devastation was the University of Canterbury.

#### **Earthquake Impacts on a College Campus: The University of Canterbury**

The University of Canterbury is one of the country's most distinguished universities. Established in 1873, the university is located three miles from the center of Christchurch, along with several other tertiary institutions, including Lincoln University, Christchurch Polytechnic Institute of Technology, and the University of Otago Christchurch School of Medicine. Canterbury is a public university with a student population of over 18,000, including 1,800 students living in on-campus residence halls.

Due to several factors, including comprehensive pre-event planning and well coordinated post-event recovery operations, most organizations in the metropolitan Christchurch area, including the University of Canterbury, were able to resume relatively normal operations shortly after the first earthquake event. The university was able to continue providing teaching, learning, and research activities within two weeks of the large earthquake. It is hoped that university risk professionals will examine significant earthquake losses, such as the California Northridge event

and the Christchurch earthquake, as learning experiences for future university risk planning and mitigation strategies.

Why is learning from both the successes and failures of these events so important? Dr. Roger Bilham, a professor of geological sciences at the University of Colorado, noted that the current trend indicates world populations are moving to growing mega cities located on fault zones and in flood prone areas. Along with these populations are

higher education institutions tasked with providing resilient education services. Professor Bilham's work estimated that 400 to 500 million people live in large cities prone to major earthquakes, and developing the skills to plan for and respond to such low-frequency but high-severity events is an increasingly important skill for university risk professionals.<sup>5</sup>

#### **The Charm of New Zealand: The Geologic Story**

As major land masses go, New Zealand is a very "new" place both in terms of geology and the presence of man. One could say it was one of the last major land masses created and the last to be discovered by mankind. Geologically speaking, New Zealand was formed from volcanic action and substantial earth movement; as a result, there are few places in the world with such diverse geographic characteristics and greater physical beauty and charm. Noted for its isolation, the country is located 1,200 miles southeast of Australia. Its nearest neighbors are the Pacific Island nations of New Caledonia, Fiji, and Tonga. Due to its isolation, it is one of the last major land masses to be settled by human habitation with Polynesian settlers arriving 700-800 years ago.<sup>6</sup>

Earthquakes loomed large not only for those first inhabitants, but also for today's residents. Located on the Pacific "Ring of Fire" and along the meeting point of the Pacific and Australian plates, New Zealand remains very active in terms of seismic activity. One of the oldest recorded major earthquakes was a 7.8 event recorded in

**It is estimated that 400 to 500 million people live in large cities prone to major earthquakes.**

**Developing the skills to respond to such low-frequency but high-severity events is an increasingly important skill.**

1848. To date, the largest recorded earthquake was an 8.2 magnitude which struck in 1855, significantly changing the configuration of the capital city's waterfront, Wellington Harbor. While no subsequent earthquakes have surpassed an 8.0 magnitude, the country has experienced 10 major quakes since, ranging from 7.0 to 7.8 in intensity. The latest information from GeoNet, the New Zealand government's seismic incident reporting bureau, reported the islands experience about 15,000 tremors a year, with at least one a day measuring 4.0 or larger.<sup>7</sup> Translated in terms of frequency and severity, this means the country can typically expect a magnitude 6.0 earthquake once a year, a magnitude 7.0 once a decade, and a magnitude 8.0 once every 100 years.

### **Emergency Planning and Response at the University of Canterbury**

Many regard the emergency preparation at the University of Canterbury as among the best in the university sector, and it is clear this preparation served the university well in facilitating a rapid recovery to the September earthquake. The university had sustained significant damage to the more than 80 capital buildings across the campus, but no lives were lost. The early morning hour of the quake and the fact that it occurred during an academic mid-term break meant there were few people on campus and bore an uncanny similarity to the university's case study used during planning stages, the Northridge Quake in California in 1994.

It is important to note that the university's level of emergency planning was not always so high. Until 2006, the University of Canterbury, as was common in the sector, had let emergency preparedness slip in its priorities. While meeting statutory requirements for building and workplace emergency management, the university lacked a holistic view of emergency response across the campus. In 2006, the university did not have an effective emergency management plan or in-house expertise, and leaders had not conducted any meaningful response specific training. There was little support or resource allocation for emergency preparation by senior management and no defined emergency management structure in place. The deterioration of the university's ability to respond and lack of an emergency preparedness budget placed great doubt in the minds of some senior managers that the university could

respond to a major incident with an adequate level of coordination, much less effectively communicate to internal and external stakeholders during a serious incident.

By 2006, university management began to recognize this deficiency and the reputational risk for a campus that could not demonstrate an efficient emergency response. While civil preparedness became an increasingly important initiative of the New Zealand government, several high profile North American campus shootings focused the attention of university administration in both New Zealand and Australia on the need to effectively respond to campus emergencies. These incidents catapulted local educational institutions into the international media, highlighting the benefits of a comprehensive emergency management framework in protecting students, faculty, and staff and maintaining university image and reputation.

By 2007, the University of Canterbury was engaged in reviewing and rebuilding its emergency management capability to become one of the leading universities in the Australia/New Zealand region. Following a comprehensive review of the current emergency management process, university leaders developed a detailed emergency plan which recognized the criticality of web communication in disaster planning. Examples included an emergency management specific website, which has served as a model for other institutions in the region. More importantly, during a fiscally austere time, the university allocated funding to emergency management and began setting up a dedicated EOC to allow effective internal and external communications from a central command center to coordinate recovery following a catastrophic loss.

### **The September Earthquake: A Personal Perspective**

The University of Canterbury's experience in major earthquakes began on September 4, 2010, when the eighth largest earthquake in New Zealand history struck. Jacqui Lyttle, senior policy and risk advisor for the University of Canterbury, explained, "I recall stirring to the sound of a flock of seagulls screeching across the sky, but woke up properly to the sound of breaking glass, falling bookcases, loud rumbling, and the bedroom violently moving."

The quake was uncharacteristically local with its epicenter in Christchurch, located on the eastern shore of New Zealand's South Island. The more lethal quake, of course, occurred on February 22, 2011. This aftershock of

6.3 magnitude was approximately the 14<sup>th</sup> aftershock of a magnitude larger than 5.0 resulting from the initial event.<sup>8</sup>

Ms. Lyttle, a key member of the university's emergency operations center (EOC) team and one of the authors of the university's emergency preparedness program, was alone with her child, as the previous day her husband departed on a remote camping trip and was out of cell phone range. Without power or water and facing unknown damage to her home, she felt the same conflict common to large event response team members, where obligations to home and family momentarily conflict with obligations to perform an important emergency response function for the university. While most emergency response plans recognize the possibility of such potential inherent conflicts, they can significantly impact the staffing and effective performance of incident team members and are difficult to fully incorporate into emergency response planning. While most plans cover the detailed roles of each emergency responder, such plans should also recognize that circumstances may not immediately allow each team member to have a complete support structure in place to allow a timely response.

Surprisingly, after the earthquake, cell phone networks were still in operation, allowing for widespread communication until the system was overloaded. Within 20 minutes of the earthquake, Ms. Lyttle was in contact with the incident controller at the University of Canterbury EOC to inform them of her status. Ongoing phone coverage allowed her to eventually contact her husband, who returned to a cell coverage area, and facilitate child care arrangements with her parents. Emergency planning must include a 24-hour possibility horizon when anticipating availability of response team members. In this case, the timing was fortunate: people were at home or in student housing, making everyone easy to locate and allowing emergency teams to verify that their homes and families were safe. The February aftershock occurred during the middle of the day of a work week, creating a situation of greater uncertainty regarding people's whereabouts even weeks after the event.

In Ms. Lyttle's case, the first quake hit her suburb of Christchurch particularly hard. As neighbors gathered in the street during the early dawn hours, they discovered that all but five of the 20 homes in the cul-de-sac on which she lives sustained heavy damage. To leave one's home fol-

lowing such devastation is a significant personal challenge, knowing that even basic utilities, such as water, may not be restored for several days. In New Zealand, Civil Defense authorities encourage residents to be extremely self-sufficient. The message from the authority has always been that residents must plan for up to four or five days of no assistance from the government and should plan to support themselves before help arrives from the government. Creating this expectation amongst the population allowed the civil authorities the freedom to establish priorities for response and recovery without a flood of demands for service from much of the population.

The February 22 aftershock demonstrated the importance of the timing and destructive forces of catastrophic events. The timing made it far more difficult to locate people, which greatly increased the criticality of emergency response. The aftershock was far more destructive; the New Zealand government offered to buy 5,000 homes in the most heavily impacted areas after it determined the quake had left the land too unstable to rebuild with another 10,000 homes still needing to be assessed.<sup>9</sup> The aftershock also killed 181 individuals.

### **The September Earthquake: Activating the EOC and Launching the University's Response and Recovery**

The September 2010 quake resulted in the first actual activation of the University of Canterbury's EOC when a staff member switched on its emergency generator at 4:55 am, 20 minutes after the quake hit. The incident controller, Chris Hawker, was onsite by 5:15 am, and an initial briefing was held 30 minutes later, establishing priorities and advising the university vice chancellor of the current situation and plan. Within one hour of the earthquake occurring, the EOC was in operational contact with the Christchurch City Civil Defense Authority and part of the integrated network of emergency response and recovery operations for the area. The vice chancellor arrived at the EOC by 6:00 am, and the fully functional incident response team was onsite by 8:00 am to begin a damage assessment.

What was waiting for them? Fortunately, they were working with an almost empty campus where structural damage was minimal. Initial evaluation teams found what appeared to be minor structural damage, but extensive damage to building contents, including equipment and

research facilities. In particular, the university's James Hight Library had over a million volumes scattered across the facility as extensive shelving systems had collapsed and "dominoed" across entire floors, resulting in significant damage to the shelving, windows, ceiling tiles, and light fixtures. It was clear the university would have to close the library, a key resource for the university, for an extended period. For some disciplines, a prolonged closure could be endured; however, some disciplines, such as arts, music, and social studies, required access to hard copies of volumes and monographs. The university needed to identify new methods of providing teaching and research resources to those students.

Initial concerns were, of course, for any injuries or deaths. The team quickly established that no casualties had occurred. The second priority was to secure the campus; the university's "open campus" design made it necessary to enlist the support of campus security to ensure that no one entered the area until the team could assess the safety and integrity of campus buildings. The team also had to contend with the possibility of aftershocks. Unlike an explosion or a flood, earthquakes are typically not a one-time event; on September 4, there were 98 recorded aftershocks, presenting a significant safety concern for emergency responders and damage assessment teams.

Earlier testing on using the EOC facility provided a degree of familiarity to emergency response staff. The dedicated EOC facility served as the location for practice drills, and tested decision making models worked well for the university in the actual situation, resulting in not only the ability to activate and coordinate recovery operations quickly, but also in providing a framework for key decision making. High priority problems were recognized and resolved quickly, such as the unexpected automatic unlocking of all doors on campus due to complete power loss.

Having a trained central response team allowed the university to quickly engage a structural engineering firm, and Ms. Lyttle began accurate, early discussions with

insurers to inform them of the extent of damage and remediation actions.

Once the incident controller and vice chancellor determined significant courses of action, communication with stakeholders became critical. The first web staff arrived at the EOC at 6:30 am, and the first in a long series of earthquake-related messages was loaded onto the university website at 7:20 am. This student, staff, and community communication channel provided photos, bulletins, and university status announcements and developed into a key resource for the university community.

It was fully operational when the university's leaders decided to close the campus at 1:00 pm on the day of the quake. Following the decision to close, the EOC coordinated a wide range of activities, including a staged recovery program once the structural integrity of campus buildings was established. Due to the efforts of the power company, electricity was returned in stages to the campus as early as the evening of the quake and was fully restored over the next few days.

On Wednesday, September 8, there was a 5.1 aftershock which rattled the EOC, resulting in another temporary loss of power and another requirement to assess the structural integrity of the campus. The university postponed scheduled recovery actions for an additional day. In spite of the frustration caused by this setback, later that day the recovery of

university laboratory spaces began, followed by the initial recovery of offices and workshops the following day. By Friday, staff and research students returned to continue low risk cleanup of labs and research areas, although research could not resume until the team could assess the integrity of fume hoods and other major research instruments.

The University of Canterbury opened to returning students two weeks later. While normal academic activities were taking place, of particular concern was the exam period scheduled from October 28 through November 11. During that period, 110 aftershocks hit the campus, which developed aftershock evacuation protocols and en-

**Unlike an explosion or a flood, earthquakes are typically not a one-time event; on September 4, there were 98 recorded aftershocks, presenting a significant safety concern.**

gaged extra security personnel to ensure both the integrity of the exam process and a safe environment. The university informed students of the procedures and carried out exams as scheduled.

The library re-opened to the public on February 21, 2011, and provided a unique case study for the delivery of remote library services. While many universities have included e-learning and alternative methods of providing library resources, the experience of the University of Canterbury was unique for the region, as this was the first recent full loss of a major university library building in the Australian/New Zealand region. It provided a comprehensive test of the ability of e-learning and online access to resources to meet students' needs during the second term of 2010.

### **Key Lessons Learned**

So how did the university do? Certainly, the unexpected nature and severity of the earthquake was very significant for the university. Officials had included earthquakes in their various disaster scenarios, but most believed Christchurch had a relatively low risk of major earthquakes due to the assumption that it was not located near a major fault line. However, evidence of fault lines could have been covered up by sedimentation deposited over the years from the mountains to the west. In a 1998 report produced for the local government authority, the Canterbury Regional Council, the possibility of such hidden or "blind" faults was predicted by University of Canterbury scientist Dr. Jarg Pettinga.<sup>10</sup> The fault is clearly on the map now.

The lessons captured below relate to the initial earthquake in September 2010 and were identified over the following five months. The University of Canterbury's culture of continuous learning drove its desire to glean useful information from the institution's response to the first event. Early in the initial recovery phase, university officials recognized that they needed to capture lessons learned as part of the recovery process. As early as midday on the day of the quake, the emergency response team had established a self-analysis process to add to the institutional memory, identify improvements, and provide credible information to share with others. Mechanisms used to build the institutional memory of the quake included two formal "lessons" debriefs undertaken in subsequent weeks; an online student experience survey to allow the sharing of

experiences, comments, and suggestions among the entire student community; and the commissioning of a formal report by the university on how it performed. The university will release this report to the higher education sector.

While to date there have been many lessons learned, including the need to keep phone trees up to date and the issues regarding staffing of the EOC during a regional event addressed above, the following are some of the lessons the University of Canterbury wishes to share with the high education sector.

### ***The "End" of an Event***

As Christchurch was not regarded as an earthquake intensive zone, planning and preparation could have better addressed the ongoing aspects of a large quake. In the five and a half months between major quake incidents, there were close to 4,000 aftershocks recorded in the region. Prior to the February 2011 event, some of these aftershocks reached magnitudes of 5.1 and 4.7, large events in themselves. While University of Canterbury planners were aware that aftershocks can last for up to one year, it was difficult to understand how that would impact the long-term activation of the EOC and staff's personal and professional lives. Even before the February 2011 aftershock, university staff realized that recovery must go beyond the normal operation of buildings and academic schedules to also address the needs of staff, students, and community members when the "event" has no defined ending. This also took a toll on emergency staff, who worked to return the university to normal operating procedures, only to experience setbacks in the form of continued aftershocks and the need to revert back to emergency operating mode. Having a limited number of emergency management team members under such circumstances placed unrealistic expectations on some key individuals and affected performance.

### ***Staff Availability***

Like all prominent institutions, the University of Canterbury is fortunate to have amongst its academic staff professional experts who can provide advice during a crisis situation. For example, during the avian and swine flu epidemics, it was common for Australian and New Zealand university emergency professionals to enlist the services of medical academics on emergency response committees as consultants. At the time of the quake, the university had

on staff at least five leading experts on earthquake damage and post-event engineering. However, these academics were called away to provide advice and support for both the city of Christchurch and the New Zealand Earthquake Commission, making them unavailable to assist with the university's recovery efforts.

After the quake, there was an immediate need for structural engineering support to inspect and declare buildings on campus safe for occupancy. The university contracted with an external geotechnical and structural engineering firm to conduct surveys of the campus and the certification of damaged buildings. The university recognized this critical dependence on outside structural engineers and will continue to incorporate it into future crisis events where such expertise would be sought competitively. However, additional pre-event coordination with outside service providers would also improve this critical relationship.

### ***Striking a Balance to Accommodate Unexpected Responses***

New Zealand makes no secret about earthquake risk, and the government has spent vast resources preparing its citizens for a large event. With that said, it is never clear how staff and students, as individuals, will cope with a large seismic event. It became clear as the recovery process began that there was a range of coping methods. While many staff and students of the University of Canterbury had previous experience with earthquakes, some from other countries found the post-event losses shattering, both professionally and personally. The homes of many staff and students were seriously damaged, and some were without power and water for an extended period. Such personal challenges, when coupled with challenges at the university, tested the coping skills of everyone and fostered the feeling of divided priorities for many staff members. The university must recognize these divided priorities, perhaps by increasing the number of individuals who have roles in recovery to allow stressed emergency staff to have time to address personal recovery.

Some staff and students were completely surprised by the event, which in some cases resulted in a series of

unreasonable demands and unrealistic priorities. Such demands created an unanticipated drag on the operational response of the recovery. For example, while demands such as, "My research is important and must be accommodated at once," were not unanticipated, the impacts of such demands on the university's true recovery priorities will be included in greater detail in future disaster recovery planning.

### ***Role Reversal***

Even though the University of Canterbury is home to a substantial number of research programs, after the quake, the campus itself became a type of research laboratory for the impact of major earthquakes on urban environments.

There was significant interest in how the university and surrounding communities fared following this major loss. The university will incorporate a greater recognition of "disaster tourism" in its future planning, whereby people who were not affected by the event came to the university to see for themselves the damage and impact of large losses. These unexpected visitors, of course, differ from looters and others such as opportunists who come to sites following a loss for personal gain. Since the campus is an open campus with few effective fences or

gates, the university needed additional security resources to patrol the perimeter, keeping out those who might do the campus further harm or expose themselves to danger while the campus was closed.

The University of Canterbury also discovered another class of visitors to post-disaster locations: the "earthquake tourist." Many of these tourists represented the engineering field, and they came to learn from building failures and how structures respond to significant earthquakes. The University of Canterbury became a teaching and research laboratory and a subject of academic investigation and interest to many in the engineering field.

For example, shortly after the loss, an overseas architectural society was interested in the impact of large quakes on building internal fittings and how they survive such events. The university, with a core mission of teaching, learning, and research, responded to these requests by

**University officials recognized that they needed to capture lessons learned as part of the recovery process.**

earthquake tourists, and this phenomena will be recognized in future planning, including identification of such researchers on campus and the ownership of equipment brought on campus to measure ongoing impacts.

### **Social Networking**

Events in the Middle East during the spring of 2011 illustrated the power of the Internet and social networking when it comes to suddenly organizing large groups of people into action. Universities must address this type of self-initiated activism in disaster planning. Universities are places where development of stakeholder relationships takes priority, and following a catastrophic event, stakeholders may wish to participate in the recovery process. Through social networking sites, these groups have the potential to spontaneously organize and impact recovery operations before emergency planners have time to coordinate and focus these efforts. The University of Canterbury experienced a strong wave of volunteerism, including a volunteer group called the Silt Worms, which assisted in landscaping recovery. This group became even more important following the February quake when it transformed into the USCA Volunteer Army, made up of thousands of volunteers assisting in liquefaction ravaged communities. Future disaster planning should recognize the potential for spontaneous volunteer corps and provide guidance for such groups when they occur.

### **Insurance Issues**

With the initial quake and its deadly aftershocks in February 2011, the impact on the insurance sector will be considerable. As of the development of this article, there have been an additional 31,000 property damage claims added to the 181,107 damage claims from the original 7.1 earthquake in September.<sup>11</sup> New Zealand, a small country, relies heavily on the global insurance market to assist in its risk financing. It is predicted that risk financing will be difficult over the next few years, as earthquakes caused the largest single losses to the global reinsurance market in

2010. According to a December 2010 *Guy Carpenter* report, in 2010 the Chilean earthquake cost the reinsurance market around \$8 billion, and the cost of the September New Zealand quake was estimated to be around \$4 billion with perhaps an additional \$12 billion resulting from the February 2011 aftershock.<sup>12</sup> Of the eight catastrophes that individually caused insured losses of more than \$1 billion in 2010, five were related to severe weather and storms in the United States, Australia, and Europe for a total loss of \$7.9 billion.<sup>13</sup> The only man-made event to incur losses in excess of \$1 billion in 2010 was the Deepwater Horizon

oil rig explosion in the Gulf of Mexico, with the expectation that BP and its captive will cover most of the expenses, capping insured losses at approximately \$3.5 billion.<sup>14</sup>

For countries like New Zealand to maintain the confidence of the global insurance market, the coordination and support of insurance professionals must become an important part of the post-event process. This is an issue which has taken up most of Ms. Lyttle's professional time since September 2010. Insurance coordination was part of the university's original disaster recovery planning, and the earthquake and aftershocks reinforced the need to have detailed plans for the appointment of loss adjusters, claims preparers, and other experts prior to the critical incident in order to expedite the recovery process. A robust approach to

insurance issues was evident from the quake and resulted in the creation of an insurance steering group of senior university staff and best practices as a model for others to follow.

### **Areas of Greatest Benefit**

Finally, the quake reinforced not only the value of the costs, time, and resources needed to maintain emergency management as a priority in the university, but also which areas delivered the most benefit in the days following the quake. For example:

1. The university recognized a need to train more staff in emergency management to build a larger

**To maintain the confidence of the global insurance market, the support of insurance professionals must become an important part of the post-event process.**

cohort of staff to support the response and recovery process, particularly when faced with a regional disaster impacting team members personally, as well as professionally. Knowledgeable and trained staff, able to engage the emergency response network, clearly shortens recovery time. Additional training programs are under design by the university to ensure more staff members can play a role in the recovery response.

2. The earthquake strongly validated the importance of testing systems and conducting exercises to ensure currency and confidence across the entire emergency management structure. This has encouraged emergency response staff to improve and further develop their desktop and applied training exercises.
3. The earthquake highlighted the need to find a balance between raising the awareness of the need for emergency preparedness and the general perception of the University of Canterbury as a safe place for learning and research. The university is concerned that the quake will affect future foreign student enrollment and the perception of Christchurch as a safe destination for study. Emergency response awareness efforts, however, may possibly be sending the wrong message to parents of foreign students considering sending their children to the university.
4. The university also recognized the need to develop more standard operating procedures (SOP) to use during an event. Over time, the earthquake will prove to be a rich source for the development of SOPs, which can serve to identify core programs the university needs to address for future disasters. SOPs will be particularly helpful in unanticipated areas of operation, such as conducting exams during a period of aftershocks. Recognizing the need to develop new SOPs on the fly is an important attribute in the recovery process.
5. Nothing beats experience. While South Islanders are no strangers to earthquakes, past experience in other emergency situations helped senior management make decisions in this crisis. In addition to emergency testing and drills organized by the risk management division, the deputy vice chancel-

lor who oversaw the emergency activity had prior experience during both the H5N1 and SARS epidemics. This previous experience in managing risk-related issues during a crisis helped create a good result for the university when faced with the 2010 earthquake. The lesson is to engage senior management in all emergency operations to ensure they have practiced skills when a large event requires decisive action.

### **Elevation of the Role of the Risk Profession on Campus and Beyond**

Perhaps equally as significant has been the elevated status of the university's risk personnel in campus planning, as well as the role the University of Canterbury has played in higher education in sharing their methods with Australian and New Zealand institutions. For many in higher education, a key lesson stemming from the earthquake was the importance of developing a strong culture of mutual, cooperative information sharing within a professional network to ensure a well-developed emergency response plan. Staff members from the University of Canterbury have presented at sector professional gatherings on the development and testing of the emergency management program. For the past five years, the University of Canterbury has consulted with, shared information, and engaged the higher education sector through organizations such as the Australasian University Risk and Insurance Management Society (AURIMS) and the Tertiary Education Faculties Management Association (TEFMA), inspiring others to improve the resilience of their respective institutions through the mutual sharing of knowledge and expertise. The free and candid exchange of information through these professional networks benefited all in the university sector and served the University of Canterbury well in the days following the earthquake and aftershocks.

Ms. Lyttle was a key presenter at the 2009 AURIMS conference in Perth, Australia, and in May 2010, the university hosted a conference dedicated to emergency management in Christchurch. At that conference, they conducted a simulated exercise for participants, encouraging others to advance their emergency response programs. The Australian university risk financing mutual, Unimutual, has incorporated and shared the university's expertise in its Business Continuity Special Interest Groups,

comprised of universities across the Australian higher education sector.

### Summary

Sir Geoffrey Palmer, New Zealand's prime minister from August 1989 to September 1990, said, "Sometimes it does us a power of good to remind ourselves that we live on two volcanic rocks where two tectonic plates meet, in a somewhat lonely stretch of windswept ocean just above the Roaring Forties. If you want drama—you've come to the right place."<sup>15</sup> These words ring true for many people who live in seismically active zones, including Hawaii, California, or Tokyo. In these zones are universities, which play a critical role in their communities and must possess the skills to rapidly recover following a loss to continue providing training, education, and research opportunities.

These skills are not the source of competitive advantage amongst higher education institutions. Instead, universities should share them in the spirit of mutual cooperation of all in the higher education sector. There is no better example of this spirit of sharing in the Australia/New Zealand region than the University of Canterbury, and it is rewarding to see collaboration has helped forge more resilient institutions in the face of challenging circumstances.

In spite of the recent economic and human losses suffered in the February 2011 aftershock, the residents of Christchurch know that large earthquakes may be likely in the future, as the nearby Alpine Fault is overdue. The university has endured a difficult time, but its leaders view these difficulties as an opportunity to examine their priorities, find a better balance of their limited resources, and keep people focused on future possible events as they undergo a process of returning to "normal." The University of Canterbury is dedicated to sharing any lessons learned with the higher education sector, allowing other universities to use those experiences to produce better responses to the next crisis event.

### About the Authors



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He holds a master's of business degree from the Florida Institute of Technology, as well as an Associate in Risk Management (ARM) from the American Insurance Institute. In addition, he holds the professional designation of a Chartered Casualty and Property Underwriter (CPCU) with the American Insurance Institute, one of the highest professional titles in the American insurance industry.

Mr. Rosenthal began his professional career as an archaeologist working in the Mediterranean, Europe, the United States, and Mexico. Leaving archaeology in the late 1970s, he began a career in government administration and has over 25 years of experience in risk management and claims administration in the utility, government, and private sectors in both Australia and the United States. He has been an adjunct lecturer and facilitator in both undergraduate and postgraduate programs at the University of New South Wales and University of Technology, Sydney, and he is active in the development of risk management education in Australia.



*Jacqui Lyttle* has worked in the tertiary sector for the last 15 years, most recently in the role of senior policy and risk advisor at the University of Canterbury in Christchurch, New Zealand. Ms. Lyttle's current line management responsibilities include policy, risk, compliance, earthquake

insurance, and emergency management.

Ms. Lyttle is part of the emergency management team charged with developing and implementing a comprehensive emergency response strategy for the university. This team was awarded “Organisation of the Year” in 2008 by the Emergency Management Academy of New Zealand (EMANZ) for outstanding campus emergency management. Ms. Lyttle holds a role within the university’s incident management team and has been involved in both the planning and operational response for campus and scenario exercises for the last four years.

All the emergency management planning came to fruition in both September 2010 and February 2011 when Ms. Lyttle was part of the frontline incident management response to the earthquake events. Subsequent to both, Ms. Lyttle has had operational responsibility for insurance matters related to the quakes.

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**I learned law so well, the day I graduated I sued the college,  
won the case, and got my tuition back.**

—FRED ALLEN (1894–1956),

AMERICAN COMEDIAN AND RADIO SHOW HOST

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# The Rising Price of Higher Education: The Next Bubble to Pop?

## A Collapse in Tuition Revenues Could Have Cascading Effects on Risk Management

| Robert B. Smith, LeClairRyan

*Abstract: Much like the dot.com and housing market bubbles, many are watching the current “higher education bubble,” defined by continually rising prices, and waiting for it to burst. This article focuses on the higher education bubble and what that means in practical terms for American parents and students, as well as university programs. It also discusses the impacts on risk managers as more universities are forced to do more with less and face the potential of continued decreasing funding, program closures, drops in enrollment, and competition from online education providers.*

### Introduction

During the nadir of the latest so-called Great Recession, a telling exchange occurred at a holiday cocktail party thrown by a good friend. Having just picked up a new car for a song, one of the guests delightedly recounted how auto dealers, increasingly desperate to move their inventory, would do almost anything to make a sale. “It’s a great time to buy a car,” the man declared. “They’re doing amazing deals and throwing in all kinds of specials.”

The host of the party, however, was none too amused and with a wry smile said, “Well, my car is seven years old. It has 143,000 miles on it, and the rear window has cost me \$900,000.” Everyone paused. What did he mean? The host then ticked off the college and university stickers that he had so proudly affixed to the back of the vehicle, one by one, as his four kids gained admission to highly selective and very expensive colleges. Nods of instant understanding went all around the room—auto prices might have plummeted to new levels of affordability, but college tuition? Not by a long shot.

During the go-go years of the rising real estate market, few would have been surprised to hear of a \$1 million

or higher price tag for a McMansion out in California’s Inland Empire. Today, something similar could be said of the ever-mounting cost of higher education in the United States: over the past few decades, generations of American parents have learned to associate sending their kids to college with fears of eye-popping sticker shock and astronomical debt. Indeed, the National Center for Public Policy and Higher Education now estimates that average college tuition and fees have increased by 440 percent in the past 25 years. This is more than four times the inflation rate and nearly double the rate of price increases related to medical care.<sup>1</sup>

Parents are still reaching into their jeans for hundreds of thousands of dollars to help their children obtain college degrees, but when it comes to getting their hands on that cash, Americans can no longer use their homes as easy access ATMs. Meanwhile, young graduates are emerging into a bleak employment market that is recovering only at an anemic pace. A young lawyer friend, who along with her husband has racked up some impressive student loans, captured the impact of this quite well: “We have a really big mortgage,” she said, “but no house.”

No wonder the term “higher education bubble” is nearing buzzword status in both the blogosphere and within the halls of academia. Home ownership and earning a college degree, after all, are part and parcel of the American Dream. It does not bode well that even for a highly paid professional such as this young lawyer, one leg of the American Dream has been cut off or delayed for decades—at least until those student loans are paid. But bubbles, unfortunately, are a structural reality throughout our economy. As we should have learned from both the dot.com and subprime mortgage eras, when cheap money

**The National Center for Public Policy and Higher Education estimates that average college tuition and fees have increased by 440 percent in the past 25 years. This is more than four times the inflation rate.**

chases after something that nearly everyone regards as a critical necessity, a bursting bubble cannot be far off. As noted by Mark J. Perry, a professor of economics and finance at the University of Michigan, the housing bubble resulted from about a four-fold increase in home prices between 1978 and 2006. College tuition, by contrast, shot up by more than a factor of ten during the same period. “The college tuition bubble makes the housing price bubble seem pretty lame by comparison,” Perry wrote.<sup>2</sup>

One of the leading voices in the growing chorus on this issue, Glenn Harlan Reynolds, a law professor at the University of Tennessee, summed up the problem this way: “Something that can’t go on forever, won’t. And the past decades’ history of tuition growing much faster than the rate of inflation, with students and parents making up the difference via easy credit, is something that can’t go on forever. Thus my prediction that it won’t. ... Right now, people are still borrowing heavily to pay the steadily increasing tuitions levied by higher education. But that borrowing is based on the expectation that students will earn enough to pay off their loans with a portion of the extra income their educations generate. Once people doubt that, the bubble will burst.”<sup>3</sup>

With troubling headlines such as “Tsunami Heading to Campus,” “UNLV President Plans for Fiscal Collapse,” and “Harvard Study: ‘Hey, Maybe Not Everyone Should Go to College,’” Reynolds carefully tracks this trend on his *Instapundit* blog.<sup>4</sup> But the prospect of a bursting bubble has also caught the attention of mainstream publications like *The Chronicle of Higher Education*. “Consumers who have questioned whether it is worth spending \$1,000 a square foot for a home are now asking whether it is worth spending \$1,000 a week to send their kids to college,” noted an editorial in *The Chronicle’s* May 22, 2009 issue. “There is a growing sense among the public that higher education might be overpriced and under-delivering.”<sup>5</sup>

Naturally, the burst of a swollen higher education bubble, should it occur, would be of no small consequence to risk managers at American colleges and universities.

Indeed, its cascading effects would impact risk analysis and preparedness in manifold ways. For risk management professionals, then, a useful thought exercise is to envision an environment marked by plummeting enrollments, shrinking endowments, and disappointing levels of tuition income. Over the long-term, what might such a collapse mean for higher education and society? What should risk managers do in preparation?

### **The Ill Effects of “Doing More with Less”**

Certainly, the burst of a higher education bubble would mean the rising prominence of approaches based on “doing more with less.” With fewer students enrolling at America’s colleges and universities, the drop in tuition income would lead to layoffs in short order. This certainly could create greater public safety and risk hazards. Downsizing a 50-officer campus police department by a third or a half, in other words, would be a boon to the bad guys.

For many colleges and universities, adopting a do more with less approach would, frankly, be quite a shock. With apologies for introducing yet another analogy drawn from the housing crisis, America’s higher education institutions have grown accustomed to ever-increasing growth—just like residential real estate over the past decade or so.

State of the art labs, new dormitories, gourmet food service, and Olympic-sized swimming pools might not be the functional equivalents of McMansions, but their upkeep and maintenance costs will loom large in the event of a bubble collapse. For universities, this could lead to some tough choices. Do we fix the cracks in the swimming pool? Can we afford to spend less money on our program to secure hazardous chemicals in the lab? In the event of a severe and protracted downturn, empty buildings could proliferate at the worst hit institutions, not unlike the post-boom “ghost towns” that now dot the collapsed exurbs of California, Nevada, and Arizona, our national poster children for teaser rate mortgages.

In this “new normal” of higher education, adverse impacts on programs would also be a given. The first casual-

**Certainly, the burst of a higher education bubble would mean the rising prominence of approaches based on “doing more with less.” For many, adopting such an approach would be a shock.**

ties would be the likes of pottery or modern dance classes, but eventually, more substantial programs could end up on the chopping block in the brutal cost-benefit analysis that would surely follow a bubble collapse. Of course, when you close the nursing school, it is inevitable that lawsuits would follow from those who were halfway through the program, and what happens to the faculty? Will the institution pay the tenured professors to teach philosophy, history, and literature for the rest of their lives, even though those departments have greatly diminished enrollments or have been shuttered completely? In a doom and gloom economy, parents will be disinclined, to say the least, to allow their children to study, for instance, Italian Renaissance poetry. The collapse of the higher education bubble could have a chilling effect on the humanities and could shake up programming in ways that affect insurance coverage and other risk management considerations. One can almost hear the dining room table conversation as it plays out: “Forget being an art history major or a writer,” Dad says. “Go to business school.”

At the risk of waxing philosophical, such trends could have long-term implications, not only for higher education, but also for society as well. Will we witness the death of the humanities? The humanities, after all, teach Americans important things like critical thinking and the historical roots of our civilization. They link us to our past and create strong cultural bonds among all of us. We have all read *The Iliad* and *The Odyssey* at least once. What would our shared culture be like if references to a Trojan horse or the song of the Sirens were met with blank stares of incomprehension? If our workforce is weighted too heavily with the likes of accountants, lawyers, and video game developers, will this weaken the social and cultural glue that has made us who we are? “Chase the money, kid,” Dad says. “You can always read the ‘Great Books’ when you are older.” With more students arriving at college with dollar signs in their eyes, prospects for a next generation of well-trained, competent, and enthusiastic teachers would also be curtailed, with

potentially drastic consequences for the country. Some believe we are already on the verge of such a crisis. One blogger recently referred to Wisconsin’s labor dispute with public school teachers as “the collapse of the lower education bubble.”<sup>6</sup>

### **A Competitive Shakeup Is Already Underway**

Of necessity, thought experiments must include a few worst case scenarios. A dramatic downturn in enrollments and tuition, as well as the aforementioned shift in students’ learning priorities, could lead to an unprecedented shakeup in American higher education. Any number of smaller schools could go out of business, with only the largest and best endowed schools remaining intact. But even some of the country’s biggest schools might face a rising threat from for-profit colleges—lean and mean businesses focused on leveraging technology to provide educational services better, faster, and cheaper. Already, says *The Chronicle of Higher Education*, “online, nontraditional institutions are becoming increasingly successful at challenging high-priced private colleges and those public universities that charge \$25,000 or more per year. The best known is the for-profit University of Phoenix, which now teaches courses to more than 300,000 students a year—including traditional-age college students—half of them online.”<sup>7</sup> Indeed,

Reynolds is already urging students to do everything possible to stay out of crushing debt, perhaps by pursuing a trade rather than a degree. “Don’t go to colleges or schools that will require you to borrow a lot of money to attend,” he wrote. “There’s a good chance you’ll find yourself deep in debt to no purpose. And maybe you should rethink college entirely.”<sup>8</sup>

As noted by *The Chronicle of Higher Education*, administrators are thinking hard about what they can do to make their schools more competitive. The proposed solutions include the idea of adopting year-round schedules, which would enable colleges and universities to be more efficient and cost effective. That makes sense. During

**Given the proverbial writing on the wall with respect to the hypothesized higher education bubble, it seems prudent for the risk management community to begin asking some hard questions.**

the summertime, sleepy university campuses certainly are enjoyably quiet and peaceful, but this comes with a significant cost. Thus, would-be reformers are starting to ask why lecture halls shouldn't be full of tuition paying students for 12 months out of the year. "Two former college presidents, Charles Karelis of Colgate University and Stephen J. Trachtenberg of George Washington University, recently argued for the year-round university, noting that the two-semester format now in vogue places students in classrooms barely 60 percent of the year, or 30 weeks out of 52," noted *The Chronicle*. "They propose a 15 percent increase in productivity without adding buildings if students agree to study one summer and spend one semester abroad or in another site, like Washington or New York. Such a model may command attention if more education is offered without more tuition."<sup>9</sup>

In all likelihood, we will also witness the advent of a new breed of sheriffs, so to speak, who will ride into town and usher in unpopular or even draconian belt tightening measures. In February, for example, real estate developer and tech entrepreneur Gene Powell "laid down the law" after taking the reins as chairman of the University of Texas System Board of Regents.<sup>10</sup> Essentially, Powell, whose goals include ramping up online learning and helping campuses make more money off of their technological inventions, warned higher education leaders to stop complaining about budget cuts.

Naturally, a growing number of institutions are working to increase their online offerings. By 2012, according to *The Chronicle of Higher Education*, Brigham Young University-Idaho aims to boost the number of Internet-based classes it offers to 20 percent of all courses, with 120 offerings designed to help students enrich their educations or earn their degrees faster.<sup>11</sup> Other competitive gains, experts say, might be made through technological innovations that increase productivity or even by restructuring administrators' salaries so that they include incentives for successful cost containment and tuition reduction results.<sup>12</sup>

### What Goes Up Must Come Down

How likely is a collapse of the higher education bubble? Let's put it this way: in any other market ever observed by anyone, corrections have always come eventually, and with any of these corrections comes a lot of pain. On his *Carpe*

*Diem* blog, Perry, the University of Michigan professor, posted a chart showing US home prices, the Consumer Price Index, and college tuition rates from 1978 to 2010.<sup>13</sup> The line for home prices, of course, has a long upward trajectory, for the most part, until it takes an abrupt downturn with the crash of 2008.

### U.S. Home Prices vs. CPI 1978 to 2010

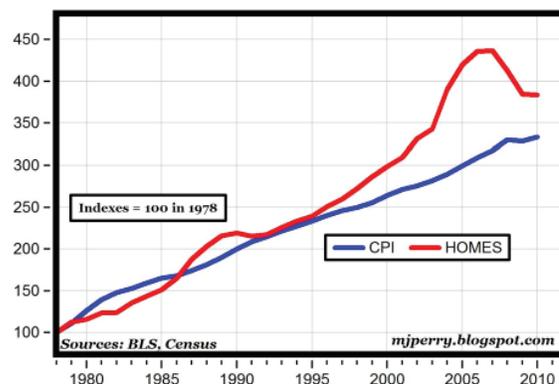


FIGURE 1: US REAL ESTATE BUBBLE - HOME PRICES VS. CONSUMER PRICE INDEX, 1978-2010<sup>14</sup>

The line for college tuitions literally runs from the lower left corner to the top right corner—about as steep a rise as any statistician could imagine. The trajectory is so sharp, in fact, that one cannot help but think of two well-worn phrases: "what goes up must come down" and "the bigger they are, they harder they fall."

### College Tuition CPI vs. U.S. Home Prices vs. CPI 1978 to 2010

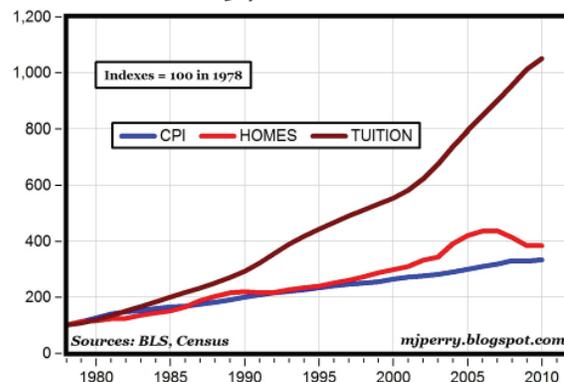


FIGURE 2: INCREASES IN US COLLEGE TUITION PRICES, 1978-2010<sup>15</sup>

Risk managers at the nation's colleges and universities are accustomed to contemplating a gamut of potential threats to university safety, financial health, and operations. Given the proverbial writing on the wall with respect to the hypothesized higher education bubble, it seems prudent for the risk management community to begin asking some hard questions. What happens if you have to close that program? What happens when applicants, attendees, tuition revenue, and endowment contributions are all down significantly? When colleges and universities around you are closing their doors, how should you respond from a risk management standpoint? How would a bubble collapse affect institutions' physical assets? What health and safety issues will suffer? Will campus safety be reduced with an inevitable attendant rise in incidents and claims? Will legal and insurance costs skyrocket with the rise of layoff-driven employment lawsuits?

Like the rest of us, risk managers have seen their retirement portfolios shrink. Many will be working a few years longer now in an effort to regain what has been lost. What happens to them—and perhaps their own college-age dependents—if they lose their jobs? After all, the day might be coming, maybe even soon, when Mom and Dad look their sons and daughters in the eye and say, “No more. We cannot pay a million dollars for your education. Time to go learn a trade.”

### About the Author



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### Endnotes

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- <sup>13</sup> Mark J. Perry, “The Higher Education Bubble: It’s About to Burst,” *Carpe Diem* (blog), June 7, 2010, <http://mjperry.blogspot.com/2010/06/higher-education-bubble-its-about-to.html>.
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**Justice and power must be brought together, so that whatever is just may be powerful, and whatever is powerful may be just.**

—BLAISE PASCAL (1623–1662),

FRENCH MATHEMATICIAN, PHILOSOPHER, AND PHYSICIST

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# Deliberately Indifferent: Crafting Equitable and Effective Remedial Processes to Address Campus Sexual Violence

| Brett A. Sokolow, W. Scott Lewis, and Sandra K. Schuster, National Center for Higher Education Risk Management (NCHERM)

*Abstract: The title of this article, “deliberately indifferent,” serves both as a nod to the legal standard by which college and university violations of Title IX are determined by the courts and as a reference to the systemic risk management challenge posed to colleges and universities by student-on-student sexual violence. This article addresses the question of why that systemic challenge exists and is so commonplace and to offer practical solutions in addressing cases of sexual misconduct that will be transformative for every college and university. This, in turn, will serve to improve the quality of the educational experience for students, the safety of campuses, and risk management for institutions of higher education. This article also offers a wide ranging discussion of what colleges and universities need to do to accomplish the changes that are needed, and demanded, by courts and government agencies.*

## **Introduction:**

### **The Risk Management Challenge**

This year, the US Department of Education launched a new initiative through its Office for Civil Rights (OCR) to enforce Title IX through general compliance reviews—not just in response to a formal complaint—to go public with its enforcement actions and to recast campuses it investigates as models for other campuses to emulate through a process of negotiated restructuring of policies, procedures, and practices.<sup>1</sup> The initiative started with Eastern Michigan University and Notre Dame College and has now expanded to include compliance reviews and complaint driven investigations at the University of Virginia, Ohio State University, Duke University, Harvard University, Yale University, Princeton University, four SUNY System campuses, and the University of Notre Dame. In early April, OCR issued sweeping new guidance, as well, which seems to have put the interrelation of Title

IX and campus sexual violence before colleges in a way that is unprecedented and inescapable.<sup>2</sup> Stanford University, Yale University, and the University of Virginia promptly announced sweeping changes to policies and practices, many of which were in the works before the issuance of

the Dear Colleague Letter. Additionally, this year Security-on-Campus, Inc., released its blueprint<sup>3</sup> for Title IX compliant remedial practices and has gone to Congress to ask for another revision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), called the Sexual Violence Elimination Act (SAVE Act), to better address campus sexual assault victims’ rights.<sup>4</sup>

### **Failure to Provide Equitable Remedies**

Many campuses offer very effective models for victim intake and initial crisis intervention.<sup>5</sup> Many have also established advocacy programs that are literally life-saving. In rural Georgia, a campus spearheaded the successful effort to bring rural counties together with local donors to create a Sexual Assault

Nurse Examiner (SANE) program where there was none. That is real, measurable progress. Victim services have come a long way on college campuses, but strength in those programs now allows college and university officials to claim proactive stances on the broader issues of sexual violence. Those proclamations on too many campuses are still hollow. Improving victim services is critical, but there are many advocacy programs out there hesitant to recommend to victims that they pursue campus grievances on their own campuses, because of the dysfunctional operation of the remedial processes. It is those processes on which this article focuses.

**Many campuses offer very effective models for victim intake and initial crisis intervention. However, it is the operation of remedial processes related to sexual assault that require attention.**

## By Equitable, Do We Mean a Victim-Centered Process?

No. An equitable process focuses on gender (race, age, religion, etc.) equity, where equity is defined as fair, balanced, leveling, equal, and impartial. That may sound victim-centered, but that is because the process on many campuses for so many years considered primarily—or, in some cases, only—the rights and situation of the accused student. Thus, equity ends up feeling like a shift to the “other side,” even though it is not. An equitable process on many campuses will force a victim focus, but only as a casualty of history.

The case of *Dixon v. Alabama*<sup>6</sup> demonstrates this phenomenon. In 2010, the Association for Student Conduct Administration<sup>7</sup> (ASCA) celebrated the 50<sup>th</sup> anniversary of this landmark decision. That case created for six African American students the right to due process prior to being expelled from Alabama State College. Their offense was to join the civil rights movement and to participate in peaceful protests against segregation. With its decision, the 5<sup>th</sup> Circuit Court of Appeals laid the foundation for the field of student conduct administration, which would be charged with assuring that all students facing campus discipline would receive legally required notice, a hearing, and other trappings of fair process. The casualty of history here is that, while the student conduct field was birthed from the civil rights movement, the evolution of the case law that sprang from *Dixon* has allowed higher education officials to be myopic. The African American students in *Dixon* were respondents in the eyes of the law, assumed to have property rights in their education. Their rights accrued to them not as victims of misconduct, but as victims of arbitrary campus action whose rights derived from the 14<sup>th</sup> Amendment of the US Constitution.

All of the cases that followed *Dixon* developed a body of law, then, around the rights of respondents. Campus conduct evolved as the exploration, implementation, and protection of *their* rights. College and university officials

forgot that *all* students have civil rights, to the point where in the 1990s Congress had to legislate repeatedly to encourage a more balanced focus from colleges and universities to incorporate victim’s rights, as well.<sup>8</sup> It wasn’t until the late 1990s that a series of cases started to more fundamentally reshape the field of student conduct, this time into an exploration of the civil rights of victims of sexual assault.

Due process is, by definition, a one-sided view of fairness, and now student conduct officials and others in higher education are finally and belatedly filling in what the complainant’s rights paradigm should be, with sexual assault being the touchstone. This article asserts the notion that the Campus Sexual Assault Victim’s Bill of Rights, amending the Clery Act; the Family Educational Rights and Privacy Act (FERPA); and even Title IX form the floor—not the ceiling—for best practices to address sexual violence on college campuses. Most campuses are still striving to reach the floor, let alone the ceiling, yet many college leaders believe if they are complying with the rights and disclosure requirements of Clery and FERPA, they are doing what they need to be doing. OCR investigations of Title IX violations by colleges have added layer upon layer of procedural requirements, but until now, OCR had done this case by case, rather than giving colleges and universities the broad-based guidance

that finally came in the form of the April 2011 Dear Colleague Letter.<sup>9</sup> While helpful, the Dear Colleague Letter is not comprehensive, and OCR’s 2001 Title IX Guidance<sup>10</sup> should also be required reading for college administrators.

While OCR has now published guidance, it does not publish its finding letters when it completes an investigation of a college. How can risk managers access those finding letters aside from individual Freedom of Information Act (FOIA) requests? Luckily, the Center for Public Integrity (CPI) had made those requests already as part of its investigative article series on campus sexual misconduct.<sup>11</sup> Lead author of the article series Kristen Lombardi

**Due process is, by definition, a one-sided view of fairness, and now student conduct officials and others in higher education are finally filling in what the complainant’s rights paradigm should be, with sexual assault being the touchstone.**

gave the National Center for Higher Education Risk Management (NCHERM) more than 200 finding letters, now posted and freely available on NCHERM's website.<sup>12</sup> The information in these letters goes far beyond the Dear Colleague Letter in providing useful information for higher education risk managers on the ground.

### **What Do Complainant Rights Look Like?**

Title IX, which not only protects victims of gender discrimination, but also requires gender equity in the proceedings used to remedy discrimination complaints, largely governs the answer to this question.

A university can balance its process with the goal of equity by assessing what it does for one party (the respondent) and whether it should provide an equivalent right, privilege, or opportunity for the other party (the complainant or alleged victim). The gender construct is based on the fact that almost all campus sexual violence complaints are made against men, and thus the protections of fair and due process accrue to men as respondents. If you typically afford protections to men and not women, you engage in gender discrimination. Since most complainants are women, women are disadvantaged by the narrow view of due and fair process as accruing primarily to men. Title IX has legislatively created something akin to a property right in an education, as described in Dixon v. Alabama, and in educational access for women (or anyone discriminated upon on the basis of gender) as a balance to the property-based due process rights which accrue to typically male respondents.

While it is up to a university's leaders to audit remedial processes to determine what rights, opportunities, or privileges they afford to all parties in a sexual assault complaint, following is a list of typical procedural elements many colleges and universities need to address to ensure balance. The law may also demand these procedures if it can be shown that they are provided in a way that creates a discriminatory or gender biased effect. Key to understanding the validity and applicability of these procedural elements are the following quotes from the OCR investiga-

tion of Title IX violations by Temple University in 2007: "The University's approach to sexual assault complaints fails to recognize the distinction between a Title IX complaint of discrimination alleging sexual assault and a disciplinary hearing against a student for violating the Code of Conduct's rule against sexual assault...§106.8(a) permits the use of a student disciplinary procedure not designed specifically for Title IX grievances to resolve sex discrimination complaints, as long as the procedure meets the requirements of affording a complainant a prompt and equitable resolution."<sup>13</sup>

OCR is stating that it will not permit colleges and universities to use conduct proceedings to lawfully address gender discrimination under Title IX unless colleges and universities adjust those processes with the equity lens of a civil rights remediation. Following are some elements of that lens.

### ***Notice and Explanation of Process***

Just like many higher education officials would sit down with a respondent and explain the process by which they would determine their alleged violation, it is both possible and beneficial to create the same opportunity for victims. They need to understand the parameters of the

policy and what it does and does not cover. They need to know how the conduct process plays out, and giving them a chance to ask questions will help to make what is to come more predictable and comfortable for them.<sup>14</sup> It may clear up misunderstandings in advance and help conduct administrators set reasonable expectations with victims for what the process can and cannot accomplish. Several OCR decision letters explicitly require this.<sup>15</sup>

### ***Notice of When Complaint Is Delivered to Respondent***

Some respondents are not aware in advance that a complaint is headed their way. Victims are rightfully apprehensive that a respondent who receives a complaint may respond with shock, anger, and potentially even violence.

**Title IX not only protects victims of gender discrimination, but also requires gender equity in the proceedings used to remedy discrimination complaints.**

Keeping the alleged victim in the loop as to exactly when notice will be given may help them to make protective decisions and expect possible contact from the respondent soon after.

### **No-Contact Order**

Imposing a no-contact order between the parties to a complaint is becoming a more common practice, and as long as college officials take meaningful steps toward assuring that the no-contact order is enforceable, this type of protection can create a level of reassurance and conflict de-escalation that is helpful. Many victims are subsequently harassed by the person they accuse and their friends and are subject to retaliation. A no-contact order is one of the mechanisms for colleges and university officials to proactively curtail potential harassment and retaliation provoked by the filing of the complaint. It is more functional than a civil restraining order, because the university can adjust it to address contact, presence, distance, and other aspects of safety and readjust it over time if needed. Victims are starting to press the case that no-contact orders imposed on them without their desire for them or which unnecessarily restrict their movements or contacts with mutual friends are potentially retaliatory. Many campuses are responding with skewed no-contact orders, before and often after the end of the suspension of the accused student. Skewed no-contact orders restrict one party more than another or spell out that the institution will not discipline victims for inadvertent violations of the no-contact order.

### **Victim Receives Copy of Response to the Complaint**

Colleges and universities can benefit greatly from shedding light throughout the process, rather than cloaking it in secrecy or creating an information vacuum. When an alleged victim makes a complaint, university officials should share that complaint with the respondent. If the respondent writes a formal response to the complaint—and s/he should—officials should also share a copy of that response with the alleged victim.<sup>16</sup> Appropriate FERPA consents should be obtained, and officials may need to redact certain information, but that is better than keeping the alleged victim in the dark about the respondent's specific responses to the allegations of the complaint.<sup>17</sup>

### **Interim Suspension**

An interim suspension can be an important way to protect the rights of a victim from a respondent who may pose a continuing threat of harm. The law of interim suspension is quite friendly to colleges, giving private institutions almost unfettered latitude. Public institutions are more confined, but generally are permitted to interim suspend for good cause for up to 10 business days, pending a hearing. However, what is good cause? Many campuses use the ongoing threat to the victim or the community standard, but the law would permit interim suspensions to preserve the integrity of the investigation, to thwart the destruction of evidence or collusion of witnesses, or to prevent retaliation. Many administrators are hesitant to use interim suspension authority, but higher education officials should use this authority more expansively when any of these circumstances warrant a temporary separation. In its 2005 letter to Riverside Community College District, for instance, OCR stated, "OCR has recommended that whenever a student files a claim of hostile environment discrimination, a college seriously consider taking interim steps to protect the student from the potential of further discrimination or retaliation."<sup>18</sup>

Many administrators are reticent to disrupt a student's academics without proof of a violation, but how do they know an accused student is safe to stay? Yes, modifications to housing and no-contact orders might help, but officials need to more effectively balance the disruption to the accused student that might come from a short suspension with the disruption to the alleged victim from the alleged assault and the effects of permitting the accused student to remain on campus. It is also sometimes possible to separate a student from campus while still permitting them to continue academic coursework without being physically present in class. Often, the hesitation to interim suspend comes because campuses move too slowly to complete the investigation and hearing. Solve that problem, and the interim suspension can potentially be shorter and less disruptive.

### **Right to Unbiased, Trained Decision Makers**

Making sure that victims are aware that the institution has a separate process for critical issues and/or that regular conduct decision makers are specifically trained in addressing relationship violence, stalking, discrimination,

and sexual misconduct can send a clear message that a college or university's process is attentive to victims' needs, sensitive to their concerns, and respectful of their experiences. Dozens of OCR finding letters critique campuses for insufficiency of training for Title IX coordinators, investigators, hearing officers, and appeals officers.<sup>19</sup> Title IX requires an investigation that is adequate, reliable, impartial,<sup>20</sup> thorough, objective, and independent.<sup>21</sup> Again, in its letter to Riverside Community College District, OCR stated, "A reasonable, equitable, and reliable process requires an investigation that is logically thorough and applies the prevailing standards of law, not just in name, but also in substance."<sup>22</sup> Doing so requires training that is detailed, comprehensive, and accurate.

### ***Right to a Closed Hearing***

It is baffling why some campuses persist in noting that a hearing can be open to the public under certain circumstances. It can scare victims from reporting. In order to open a hearing to the public, an institution would need permission from all parties to the complaint, every student witness, and any students who are participating as panelists on the conduct board. This is almost impossible, and even if such consensus was reached, it would still be a bad idea. Since universities can already publicize the results anonymously and victims can, in many circumstances, discuss the results publicly—as can the institution—there really is no distinct additional benefit to an open hearing. Moreover, open hearings would violate federal law. For instance, in Georgia, a state ruling allows sexual misconduct hearings at public higher education institutions to be open to the public; however, Title IX's confidential investigation requirements trumps state open meetings provisions.

### ***Right to the "More Likely Than Not" Standard of Proof***

According to the US Department of Education,<sup>23</sup> the appropriate standard of proof for discrimination claims is the preponderance of the evidence, or a more likely than not approach. Universities that use a different standard do

so at their own peril. A number of campuses have corrected this standard when complaints were made, and now OCR says it plans to issue guidance to all institutions on it.

### ***Complainant Standing***

OCR is clear that colleges and universities must more effectively recognize and empower victim standing in remedial proceedings. To OCR, the victim is the complainant, regardless of who brings the actual complaint. For instance, some universities bring complaints forward, rather than the student. OCR has stated, for example, that

institutions cannot relegate complainants/victims to the position of witness in a hearing.<sup>24</sup> Victims have the right to have standing as complainants, if they choose. The complainant (victim) must be permitted to question witnesses if that opportunity is afforded to the accused student,<sup>25</sup> and the complainant (victim) must be permitted to attend the entire hearing if that right is also given to the accused student, which is common in many states.

### ***Right to a Prompt and Equitable Resolution***

Complainants have a right to a prompt and equitable resolution, with promptness depending on the nature of the complaint. OCR expects policies that spell out clear timelines for resolution

and every step of the process.<sup>26</sup> While there is no clear rule for what is prompt, college and university officials should establish a reasonable timeline and adhere to it unless there is a good reason to delay. For complaints involving discrimination or violence, colleges and universities should fast track them on a 30-day timeline up to 60 days at most. OCR has defined equitable in a variety of ways, and the section on sanctions below further defines it. These quotes may also help to shed light on OCR expectations:

"At the conclusion of a case of sexual harassment or sexual assault ... regardless of the outcome of the case, the Title IX Coordinator will review all of the evidence used...to determine whether the complainant is entitled to any remedy under Title

**Dozens of OCR finding letters critique campuses for insufficiency of training for Title IX coordinators, investigators, hearing officers, and appeals officers.**

IX that may not have been provided for under the University's disciplinary procedures."<sup>27</sup>

"Steps must also be taken to undo any harm to the victim or victims. This may include reimbursement for counseling, reassignment to another teacher, repeating the course at no cost, tuition adjustments, private tutoring, assigning other qualified faculty to grade or re-grade the victim's work, correction of transcripts or other student records, etc."<sup>28</sup>

### ***Right to Have Substantiated Claims Forwarded to a Hearing***

If an institution's leaders want a process that appropriately incorporates civil rights into its balance, they cannot take the approach Harvard tried in 2002 of requiring independent corroborating evidence before the university proceeds with a hearing.<sup>29</sup> An institution should investigate all claims, and where a reasonable belief exists that policy may have been violated, officials should refer the complaint for a hearing. Corroboration or substantiation must exist at some level before a hearing proceeds, but any source can provide it, including a credible victim. It would be unfair to the respondent to refer a completely unsubstantiated complaint to a hearing, as Title IX also provides for the due process rights of those accused of gender discrimination.<sup>30</sup>

### ***Advisor/Advocate***

Most conduct processes today offer the complainant an advisor or advocate. Institutions of higher education should develop a trained cadre of advocates who are familiar with the campus process so that the complainant can choose a knowledgeable supporter, if desired. However, if the complainant wants some other person as an advisor or advocate, institutions should find a way to make that possible. Some campuses limit advisors to members of the campus community in an effort to respect FERPA, but

in doing so might limit an alleged victim from bringing a trusted friend, sister, local rape crisis center advocate, parent, or other vital support resource. Given the imperative for gender equity, what is offered to complainants in terms of an advisor or advocate must also be offered to the accused student.

### ***Right Not to Have Complaints of Sexual Violence Mediated as the Primary Remedy***

OCR has directed colleges not to mediate sexual assault. However, many have argued that allowing for mediation of sexual violence is a way to accommodate victims who desire that approach. While that may be a useful approach in specific cases, mediation is not an acceptable approach to situations where there is a likelihood of continuing conflict and violence. Campuses can offer victims mediation—or, even better, restorative justice—opportunities subsequent to and in addition to the normal resolution processes to which the complaint should be subjected, but not as a substitute for them. This applies to all complaints of sexual assault, but not to sexual harassment where there is no physically assaultive component.<sup>31</sup>

### ***List of Witnesses***

Surprise witnesses who the respondent or institution calls without notice can often upset complainants. All parties to a complaint should submit and exchange a written list of witnesses at least 48 hours in advance of the hearing to avoid the potential for surprise and to allow all parties the utmost opportunity to prepare their arguments. This is necessary<sup>32</sup> because most campuses try to adapt their conduct system to address Title IX grievances, rather than deploying an appropriate investigation procedure. In a civil rights investigation process, the institution would interview all witnesses, not the parties involved, and no surprises would occur. Compelling complainants to coordinate their own investigations and call their own witnesses can violate Title IX as well, according to the OCR

**An institution should investigate all claims, and where a reasonable belief exists that policy may have been violated, officials should refer the complaint for a hearing. Corroboration must exist at some level, but any source can provide it.**

investigations of Temple University and the University of New Hampshire:

“§106.8(a) permits the use of a student disciplinary procedure not designed specifically for Title IX grievances to resolve sex discrimination complaints, as long as the procedure meets the requirements of affording a complainant a prompt and equitable resolution... The [Temple] University’s approach to sexual assault complaints fails to recognize the distinction between a Title IX complaint of discrimination alleging sexual assault and a disciplinary hearing against a student for violating the Code of Conduct’s rule against sexual assault...”<sup>33</sup>

“UNH did not provide an independent investigation of sexual harassment claims by students, instead requiring complainants to investigate and prove their own allegations of sexual harassment.”<sup>34</sup>

### **Copies of Documentary Evidence**

All documentary evidence that is introduced in the hearing should be shared between the parties at least 48 hours in advance of the hearing to avoid the potential for surprise and allow the parties the opportunity to prepare their arguments.<sup>35</sup> OCR found that pre-hearing procedures at Temple University were not equitable because the respondent was given a chance for a pre-hearing meeting and given considerable information, including a summary of the evidence, that was not afforded to the complainant.<sup>36</sup>

### **Right to Advance Notice of Board Composition and Right to Challenge**

The presence of certain people on a conduct board, including faculty advisors, student friends, or foes, could unnerve either the complainant or respondent. All parties should know in advance of the hearing who the hearing officers will be and have the opportunity to object to any member of the board for cause. This not only accomplishes an equivalence of opportunities for both parties, it helps to assure the Title IX requirement of objective, impartial, unbiased decision makers.

### **Sexual History/Character**

It is generally acknowledged that past sexual history and character have little relevance in investigating sexual misconduct, but this can be tricky. A published rule excluding sexual history and character evidence can be helpful. OCR approved the exclusion of sexual character evidence in its investigation of Georgetown University.<sup>37</sup> But should all such evidence be excluded, or only when it is introduced by one party against another? What are the mechanics? Can students introduce their own history or character? One approach is an absolute bar on this type of evidence; another is to not permit this kind of evidence unless it meets a high relevance threshold (that it would be “manifestly unfair” not to consider the information). The policy should clarify whether the bar extends to evidence of behavior between the alleged victim and respondent or just between the alleged victim or respondent and uninvolved third parties. In what will be a substantive departure for many campuses, the university must adjust its processes to allow the investigation to consider a pattern of complaints or behavior. This is one of the main disconnects that occurs when using a conduct process to resolve a civil rights grievance. Civil rights investigations are charged with determining whether discrimination occurred, and the OCR guidance is full of descriptions of how patterns can and do provide evidence of discrimination.<sup>38</sup> Failure to investigate patterns can violate Title IX.<sup>39</sup> This runs counter to the student conduct practice of considering each case on its evidence and only bringing previous violations into consideration at the sanctioning phase. Again, conduct processes can be used to remedy gender discrimination, but only if they adjust to the mandates of civil rights remediation. If campuses adopt a civil rights investigation model rather than an adversarial hearing model for resolution, it will be unlikely that pattern investigation will prove to be a violation of the accused student’s due process rights.

### **Separate Testimony Options**

When the Gomes<sup>40</sup> case challenged this accommodation, the court found that allowing the alleged victim to testify from behind a screen did not prejudice the rights of the accused students. The case rested on due process grounds, again ignoring the square-peg-in-a-round-hole aspect of trying to use conduct proceedings to remedy gender discrimination complaints. For OCR, this would

be a no brainer, and courts have used such protections for victims for years. It does not prejudice the fairness of those proceedings. Colleges and universities should create a procedural rule and make it clear to the parties that they can use separate meetings, screens or partitions, live closed circuit technology, and, very often now, computer video conferencing tools like Skype to allow the parties to testify outside each other's direct physical presence or sightline. While it would be unfair to require any party to testify remotely, if *any* party wants to be in a separate room or behind a screen, university officials need to be willing to accommodate that reasonable request and even offer it without being asked.

### ***Right to Present Own Complaint or Use Proxy***

Many colleges and universities have faced difficulty when trying to make the conduct process work well in sexual misconduct cases, which has prompted some campuses to try to invent better models. That has resulted in some bizarre variations on the theme, such as trying to use shuttle diplomacy in which the parties never see, encounter, confront, or question each other. Other colleges have tried to use representatives to present evidence to take the pressure off the students. It can be very disempowering to refuse to allow a victim to present his/her own complaint, if s/he wants to. "Making the case" can be cathartic and an important step on the road to healing. That can't happen in a shuttle meeting environment. It is also less educational to impose a proxy-based hearing process, where someone speaks for the parties or they never hear from each other. If a party wants or needs a proxy, officials should allow it, but there is no reason procedures should require it.

### ***Right to Know Outcome and Sanctions***

Every complainant/victim should have the right, under university policies, to know the outcome and sanctions of *any hearing* involving discrimination or violence. "Final results" as described in the law does not mean the final

finding of an appeal. No laws bar higher education officials from sharing this information. While the Clery Act requires universities to do so for sexual assault, Title IX requires it for all gender discrimination complaints, including sexual harassment, bullying, stalking, and relationship violence. Higher education officials should provide this information in writing<sup>41</sup> and should place no conditions on their willingness to share it. In 2008, any FERPA re-disclosure restrictions were lifted, and so the

parties are able to share this information with others without FERPA implications. It is important to note that, while FERPA and the Clery Act are considered the primacy sources of best practice for victim notification, changes to those laws only came about to effectuate the requirements of Title IX to apprise complainants of the status of investigations, their findings, *and the rationale therefor*.<sup>42</sup> This is the legal standard, yet on most campuses victims are told they cannot know the rationale. The Title IX guidance is quite clear that FERPA cannot be construed to conflict with or prevent compliance with Title IX.<sup>43</sup>

### ***Appeal***

If university policy provides the respondent with a right of appeal, equity requires that similar rights be extended to the complainant. Dozens of OCR letters concur.<sup>44</sup> Title IX also requires the complainant to be informed of the status

of the appeals request, processing, and outcome, regardless of which party files the appeal. FERPA does not bar this, as some people believe, because as stated above, Title IX is controlling on this question.

### ***Amnesty***

OCR has repeatedly danced around the amnesty question, but here is what is known. Two OCR letters to Boston University (BU) failed to find that charging sexual assault victims with alcohol violations was retaliation under Title IX.<sup>45</sup> They so found for two reasons that may be somewhat unique to BU. First, BU had a legitimate

**Community protection and remedying discrimination must become top priorities. Education, development, and rehabilitation necessarily take a back seat, though this may be hard to accept.**

non-discriminatory reason for the alcohol complaints that was not retaliatory, namely that BU was enforcing a zero tolerance policy even handedly.<sup>46</sup> Second, OCR could find no evidence that BU's practice created a systemic impediment to reporting of sexual assault by victims. Had there been evidence that victims failed to come forward for fear of conduct code-based reprisal, OCR would likely have reached a different conclusion. Simply, it is fair to conclude that OCR expects colleges and universities to use amnesty policies or other means to ensure that victims are not dissuaded from reporting by the imposition of charges for collateral misconduct that come to light through their initiation of gender discrimination grievances.

### **Retaliation**

OCR largely leaves questions of substantive indifference to the courts, preferring to enforce primarily on procedural grounds. One of the glaring exceptions to that OCR practice is in cases of retaliation, which it takes a particular interest in preventing. OCR expects clear policies prohibiting retaliation and strong protection from colleges and universities to ensure that retaliation does not occur. When it does, OCR applies the same remedial requirements as it does to address the underlying discrimination complaint, i.e. the need for the institution to make the victim whole, restoring her or him to their pre-deprivation status. This has interesting implications in many areas, but one of note is the need to address retaliatory grading with an administrative grade change procedure. Most colleges and universities have this capacity, but some still do not, and Title IX is a strong argument for why that lack of capacity needs to change.

### **Clarify and Empower the Intersection of Sexual Harassment and Sexual Assault**

This is more art than science, but many campuses incongruously charge students for engaging in sexual misconduct without charging them with sexual harassment, though by committing sexual misconduct they have by definition committed a form of sexual harassment in the form of unwelcome sexual advances. The courts almost always hold that one instance of sexual assault is severe enough to create a hostile environment. Colleges and universities shouldn't bury sexual misconduct in a sexual harassment policy, and it seems that OCR expects colleges

and universities to charge with both.<sup>47</sup> The art here is ensuring that boards do not default to sexual harassment as a lesser offense when they ought to be remedying the incident as a sexual assault or rape.

### **Does an Equitable Process Require a Victim-Centered Outcome?**

Yes and no. The law requires that college and university outcomes protect our communities, and if the respondent is found to be in violation for an offense governed by Title IX, policies must also assure that the victim receives the remedies required by federal law:

1. Bring the discriminatory conduct to an end
2. Take steps reasonably calculated to prevent the future reoccurrence of the discriminatory conduct
3. Restore the victim to his or her pre-deprivation status, to the extent practical and possible

Thus, community protection and remedying discrimination must become top priorities. Education, development, and rehabilitation necessarily take a back seat in outcomes, though this may be hard to accept. The three guidelines above should make many common sanctions suspect. In satisfying Title IX, there is a very real clash with some of the typically educational and developmental sanctions of student conduct processes.<sup>48</sup> In fact, sanctions for serious sexual misconduct shouldn't be developmental, but instead they should protect the victim and the community. That's the point at which development ends and a different priority must control. Why? The research of David Lisak is one of the most compelling reasons. Lisak is a forensic psychologist and professor at the University of Massachusetts, Boston. Lisak's 2002 study on undetected campus rapists<sup>49</sup> found that 63 percent of the perpetrators were repeat offenders, and repeat offenders committed 91 percent of the offenses identified.

So unless a university can distinguish whether an offender is one of the 63 percent of repeat perpetrators or one of the 37 percent of one-time perpetrators, can the university really afford to take a chance with the safety of its community?

When providing conduct trainings, it can be helpful to remind the boards, committees, and panels of a line from the movie *The Usual Suspects*: "The greatest trick the devil ever pulled was convincing the world he didn't exist." De-

spite the fact that students are bright or from good families or have never been in trouble before, when they insist in the face of a conduct charge that it was just a misunderstanding, they're not a rapist, she's a woman scorned, she's just being vindictive, it's only regretted sex, and he was drunk, too, conduct boards can go soft. Student development becomes offender enabling. Boards want to give the benefit of the doubt to a fresh faced young man who has his whole life ahead of him, and they can prey on our instincts as educators and our human sympathies and count on our sanctions to give them the benefit of the doubt.<sup>50</sup> The student convinces the board, and one many campuses they won't be removed permanently until they have raped twice. Is that what a university's policies should stand for? University officials allow students back in because they believe that developmental sanctions change people.

But in an egregious case, can anything short of separation achieve the aims of points one and two above? What about suspending for some period of time? Does time change behavior? Can a university verify that it has? Suspending upon the satisfaction of conditions or the demonstration that return is a safe decision might be more appropriate. Suspending the offender until the victim graduates is misguided. It assumes a contextual conflict and that no one else is at risk. Student conduct research does not support that assumption. It is not the job of a college or university to try to rehabilitate a sex offender, and very little research supports the notion that such rehabilitation is either possible or effective.<sup>51</sup> While the risk of the student moving on to another institution is very real, it is real whether the student is suspended or expelled. Colleges and universities should not let them withdraw when facing charges and should note any sanctions on their records or transcripts.

Sanctioning sex offenders is about protecting the community and remedying discrimination. Educating the offender has to come second. One tough thing to consider: if an institution's officials are considering not separating

an offender or are willing to let one back in, they also have to be willing to fix him up with their own daughters on a date. By reinstating him, the university is vouching for his safety. Is the university that sure of his rehabilitation?

### **Conclusion**

To get the attention of college and university leaders who still may not understand the importance of this issue, risk managers need to learn how to recast stalking, relationship violence, sexual harassment, and sexual assault as issues

to which the institution's presidents, vice presidents, trustees, and boards can relate. They care about retention, graduation rates, student success, risk management, and alumni giving, which exemplify return on investment for the corporate university. According to dozens of studies, gender violence impacts 25 to 50 percent of our male and female college student populations. Some of those who are victimized may be able to maintain their grades and course load, but most suffer academically. Some reschedule exams and assignments. Some reduce their academic loads. Some change majors. Some transfer. Some lose their loyalty to their school of choice. Some take their own lives. Some sue, go to the media, or provoke campus unrest. As a climate issue easily affecting up to half of the college student population, why isn't addressing gender violence a corner-

stone of risk management, retention, and student success initiatives? Being harassed, abused, stalked, or assaulted interferes with the institutional mission, the acquisition of knowledge, and the academic enterprise. Colleges and universities can take this opportunity to redouble their efforts so that campus communities recognize what officials already know: that meaningful prevention is essential to the academic enterprise and a vital tool of risk management, completion, and retention.

**In an egregious case, can anything short of separation achieve the aims of the institution? What about suspending for some period of time? Does time change behavior? Can a university verify that it has?**

## About the Authors



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## Endnotes

- <sup>1</sup> Kristen Lombardi, "Education Department Touts Settlement as 'Model' for Campus Sex Assault Policies," *iWatch News*, December 8, 2010, <http://www.publicintegrity.org/articles/entry/2747/>.
- <sup>2</sup> While much of the content of this article reflects compliance requirements elaborated in the April 4, 2011, OCR Title IX Dear Colleague Letter, the authoring of this article pre-dated the Dear Colleague Letter by several months. Access the Dear Colleague Letter at [http://www.whitehouse.gov/sites/default/files/fact\\_sheet\\_sexual\\_violence.pdf](http://www.whitehouse.gov/sites/default/files/fact_sheet_sexual_violence.pdf).
- <sup>3</sup> "Campus Sexual Assault Free Environment (SAFE) Blueprint – 2010: Proposed Enhancements To The Federal Jeanne Clery Act & Title IX," Security-on-Campus, Inc., <http://www.securityoncampus.org/pdf/SAFEblueprint.pdf>.
- <sup>4</sup> S.834 - Campus Sexual Violence Elimination Act, Open Congress for the 112<sup>th</sup> United States Congress, <http://www.opencongress.org/bill/112-s834/text>.
- <sup>5</sup> Syracuse University R.A.P.E. Center Home Page, Syracuse University, <http://students.syr.edu/rapecenter/>.
- <sup>6</sup> *Dixon v. Alabama*, 294 F. 2d 150 (5th Cir. 1961).
- <sup>7</sup> The Association for Student Conduct Administration (ASCA) Home Page, <http://www.theasca.org/>.
- <sup>8</sup> Amendments to the Clery Act in 1992 and to FERPA in 1998.
- <sup>9</sup> "Dear Colleague Letter: Sexual Violence Background, Summary, and Fast Facts," US Department of Education Office for Civil Rights, April 4, 2011, <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201104.html>.
- <sup>10</sup> "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," US Department of Education Office for Civil Rights, January 2001, <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>.
- <sup>11</sup> "Sexual Assault on Campus: A Frustrating Search for Justice," The Center for Public Integrity, [http://www.publicintegrity.org/investigations/campus\\_assault/](http://www.publicintegrity.org/investigations/campus_assault/).
- <sup>12</sup> Higher-Education Legal Resources, "Title IX OCR (Office for Civil Rights) Case Letter Database," National Center for Higher Education Risk Management (NCHERM), <http://www.ncherp.org/legal.html>.
- <sup>13</sup> "OCR Letter to Temple University, 2007," US Department of Education Office for Civil Rights (OCR) Case Letter Database, National Center for Higher Education Risk Management (NCHERM), <http://www.ncherp.org/OCRlettersdatabase.html>.
- <sup>14</sup> This is not to include an administrator's (particularly a conduct administrator) guess as to the anticipated outcome of the hearing, as this may inappropriately impact or influence the alleged victim's decision.
- <sup>15</sup> "OCR Letter to Temple University, 2007."
- <sup>16</sup> "OCR Letter to South College, 2001."
- <sup>17</sup> This should be shared in a personal meeting with the alleged victim's advocate present, as well.
- <sup>18</sup> "OCR Letter to Riverside Community College, 2005."
- <sup>19</sup> "OCR Letter to Berklee College of Music, 2004."
- <sup>20</sup> "OCR Letter to South College, 2001."
- <sup>21</sup> "OCR Letter to Westfield State College, 2002."
- <sup>22</sup> "OCR Letter to Riverside Community College, 2005."
- <sup>23</sup> See Letter to Jane Genster, General Counsel, Georgetown University, 2003, <http://www.ncherp.org/documents/georgetownOCRletter12-16-03.pdf>.
- <sup>24</sup> Where "witness" means being shut out of the hearing except while testifying, being treated as any other witness, unable to question other witnesses, etc.
- <sup>25</sup> "OCR Letter to Temple University, 2007."
- <sup>26</sup> "OCR Letter to Lassen Community College, 2003."
- <sup>27</sup> "OCR Letter to Temple University, 2007."
- <sup>28</sup> "OCR Letter to Riverside Community College District, 2005."
- <sup>29</sup> "OCR Letter to Harvard University, 2003."
- <sup>30</sup> "OCR Letter to Westfield State College, 2002."
- <sup>31</sup> "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>, 21.
- <sup>32</sup> "OCR Letter to Temple University, 2007."
- <sup>33</sup> *Ibid.*
- <sup>34</sup> "OCR Letter to the University of New Hampshire, 2003."
- <sup>35</sup> Balancing this with a speedier process can prove a challenge to colleges, but not as insurmountable as students asked to provide this information may indicate. Campuses would do well to remember that they should be compiling these reports and calling these witnesses in for statements and should be mindful of attempts at delaying processes by students attempting to graduate, finish the term, etc.
- <sup>36</sup> "OCR Letter to Temple University, 2007."
- <sup>37</sup> "OCR Letter to Georgetown University, 2004."
- <sup>38</sup> "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>.
- <sup>39</sup> "OCR Letter to Riverside Community College District, 2005."
- <sup>40</sup> *Gomes et al. v. Univ. of Maine System et. al.*, 365 F. Supp. 2d 6 (USDC, Me, 2005).
- <sup>41</sup> See "Program Review, Miami University of Ohio, 2007," and "OCR Letter to South College, 2001."
- <sup>42</sup> "OCR Letter to South College, 2001."
- <sup>43</sup> "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>.
- <sup>44</sup> "OCR Letter to South College, 2001."
- <sup>45</sup> "OCR Letters to Boston University, 2003."
- <sup>46</sup> This should not be interpreted as an endorsement of zero tolerance policies by OCR or NCHERM.
- <sup>47</sup> "OCR Letter to Temple University, 2007."
- <sup>48</sup> We are troubled when we hear conduct administrators ask about what "educational sanctions" we suggest instead of suspension and expulsion. This is indicative of a mindset that ignores the reality that suspension and expulsion can be very educational and developmental for an individual, particularly one still at the dichotomous stage of student development.
- <sup>49</sup> David Lisak, "Rape Fact Sheet: Victimization Rates," March 2002, [http://www.crisisconnectioninc.org/pdf/undetected\\_rapist.pdf](http://www.crisisconnectioninc.org/pdf/undetected_rapist.pdf).
- <sup>50</sup> This discussion pertains only to sanctioning, not to findings. We do not believe that an offender is in violation until evidence shows that it is more likely than not (admittedly a low evidentiary threshold) that s/he has violated the policy.
- <sup>51</sup> Linda S. Grossman, Ph.D., Brian Martis, M.D., and Christopher G. Fichtner, M.D., "Are Sex Offenders Treatable? A Research Overview," *Psychiatric Services*, March 1999, <http://psychservices.psychiatryonline.org/cgi/content/full/50/3/349>.

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**Justice denied anywhere diminishes justice everywhere.**

—MARTIN LUTHER KING, JR. (1929–1968),

AMERICAN CIVIL RIGHTS LEADER AND MINISTER

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**Some quirk in human nature allows even the most  
unspeakable acts of evil to become banal within minutes,  
provided that they occur far enough away  
to pose no personal threat.**

**—IRIS CHANG (1968–2004),  
AMERICAN HISTORIAN AND JOURNALIST**

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# Campus Threat Assessment and Management Teams: What Risk Managers Need to Know Now

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*Abstract: After the tragic shootings at Virginia Tech in 2007, many colleges and universities recognized that having threat assessment and management (TAM) teams in place to address potentially threatening behavior and situations among faculty, staff, and students on campus was a best practice. This article focuses on three main aspects of TAM teams on college campuses and what risk managers can do to encourage the success and effectiveness of those teams. The article discusses the legal duties that colleges and universities have in connection with violent incidents on campus. It also focuses on the development of a TAM process, the common challenges facing TAM team members, and how risk managers can help mitigate and minimize campus risks by assisting TAM teams.*

## Introduction

Many institutions of higher education recognized after the April 2007 tragedy at Virginia Tech that having a threat assessment and management (TAM) team is a best practice, and many have recently created teams or enhanced the operations of existing teams. Simply having a TAM team is not enough, though. Institutions must educate the campus community about the team, follow best practices as to the staffing and operation of the team, adopt appropriate related policies, and create and handle team-related documents well. Further, institutions must do more to educate their communities about the proper balance between community safety and the rights of persons of concern, so that misunderstandings about privacy and disability laws, for instance, do not unduly restrict the ability of institutions to take the steps necessary to promote campus safety. Failing to follow best and promising practices in this sensitive area can increase the serious risks of harm and legal liability.

This article is divided into three sections. The first section outlines the legal duties that colleges and universities have in connection with violent incidents on campus and discusses how related standards of care for TAM processes are likely to be developed in the litigation context.

The second section provides a primer on the TAM process, with an emphasis on the identification of resources that TAM teams can rely upon in seeking to comply with current best practices. The third section identifies common challenges faced by TAM teams and makes recommendations about how risk managers can promote campus safety and minimize risk by helping TAM teams to overcome those challenges.

## I. Legal Duties and Standards of Care a. Legal Duties

Colleges and universities undoubtedly strive to do what they can, within the bounds of reason and limited resources, to keep their campuses safe for students, employees, and visitors. Enhancing campus safety is, without doubt, the most important goal of the TAM

process. While legal liability considerations are, of course, secondary to safety concerns, legal issues are important, and risk managers can better assist campus TAM teams if they understand the legal issues implicated by campus violence and the work of TAM teams.

It will come as no surprise to risk managers that colleges and universities are generally held to have various duties to exercise due care to provide a campus environment that is reasonably safe from foreseeable acts of violence. The most universal source of such duties is the common law, i.e., the legal principles developed and expressed over time by state court judges in the form of case law, rather than by legislators in the form of statutes. The specific details of common law necessarily vary

**Colleges and universities undoubtedly strive to do what they can to keep their campuses safe; enhancing campus safety is the most important goal of the TAM process.**

from state to state, and an analysis of every state's laws would be well beyond the scope of this article. A resource known as the Restatement of Torts does, however, provide a valuable starting point for understanding the principles that are likely to be applied, in general, in many states. Through several editions of the Restatement, a body known as the American Law Institute (ALI) has endeavored to summarize what it considers to be the most cogent principles of common law that are being applied by judges in the United States. In turn, judges often rely upon Restatement sections and analysis when deciding what the law *should* be, and many formally adopt Restatement sections as the law in particular states. Thus, while some states may reject certain Restatement duties and analyses from time to time, it is fair to view the Restatement as summarizing well where the law generally is, and where it is likely to go, in most states.

The most current version of the Restatement of Torts is the *Restatement (Third) of Torts: Liability for Physical and Emotional Harm*. Many of the Third Restatement's sections have been in essentially final form since the mid-2000s, and the bulk of the work as a whole was officially adopted by the ALI in May 2011. Many courts cited and relied upon Third Restatement sections even before they were in official, final form, so we will focus on the Third Restatement's provisions in the remainder of this discussion.

Obviously, if an institution of higher education itself causes harm to a student or campus visitor through the acts or omissions of an institutional employee, then the institution is liable for negligence if the employee failed to exercise reasonable care and created a risk of physical harm.<sup>2</sup> The underlying duty can be thought of as a relatively passive duty to avoid doing harm. When thinking about campus violence, however, we ordinarily do not think about acts perpetrated by institutional employees. Instead, we usually think about violence perpetrated by third parties such as students or outsiders. This begs the question: does an institution of higher education have an *affirmative* duty to prevent physical harm to students or visitors that is caused by third parties?<sup>3</sup>

The Third Restatement answers this question by stating a facially comforting general rule, but it then goes on for pages about all the "exceptional" circumstances

in which liability may attach. The Restatement provides that "[a]n actor whose conduct has not created a risk of physical harm to another has no duty of care to the other unless a court determines that one of the affirmative duties provided in §§ 38–44 is applicable."<sup>4</sup> The duties of most importance to the campus TAM context are those described in sections 40–43 of the Third Restatement. This article will discuss each in turn.

### *i. Duties Based on a Special Relationship with the Injured Person*

Section 40 provides in part that "an actor in a special relationship with another owes the other a duty of reasonable care with regard to risks that arise within the scope of the relationship," and, most significantly for this discussion, provides that one of the "special relationships" giving rise to such a duty is the relationship of "a school with its students."<sup>5</sup> While the word "school" could be read as not including institutions of higher education, a comment to section 40 makes clear that the ALI intended the section to be applicable to colleges and universities. Fortunately, the comment at least recognizes that "because of the wide range of students to which it is applicable, what constitutes reasonable care is contextual—the extent and type of supervision required of young elementary school pupils is substantially different from reasonable care for college students." Further analysis of the section also recognizes that "[c]ourts are split on whether a college owes a duty to its students," and that those courts which do find a duty do so based on a broad variety of sometimes questionable rationales.<sup>6</sup> Thus, while the ALI might want to suggest that the context variable "special relationship"-based duty it envisions *should* always apply to the relationship between institutions of higher education and their students, it recognizes fairly, and fortunately, that the law is far from settled on this point. Nonetheless, given trends in the law and the fact that it is better to be safe than sorry, institutions should plan and conduct themselves as if courts would recognize *some* level of duty to protect students from other students or third parties and leave legal arguments about the issue to counsel in the event of litigation.

Third Restatement section 40 also states that businesses and other possessors of land that hold their premises open to the public have a “special relationship” with, and duty to reasonably protect, those who are lawfully on the premises.<sup>7</sup> Colleges and universities that maintain open campuses would often fit within this category of businesses. Further, the Restatement recognizes that landlords have a duty to exercise reasonable care to protect their tenants from foreseeable criminal activity.<sup>8</sup> These duties have been recognized often by courts for many years. This is one reason why courts which are hesitant to find a “special relationship” based on the student-university relationship alone but which want to find some basis for liability in a particular case, essentially shoehorn hazing and criminal assault cases into a “business invitee” or “landlord-tenant” framework.<sup>9</sup> In sum, risk managers should recognize that business owner and landlord-tenant-based theories continue to provide fertile ground for those claiming that institutions owe a duty to exercise reasonable care to prevent foreseeable attacks on campus.

*ii. Duties Based on a Special Relationship with the Person Posing the Risk*

Third Restatement section 41 focuses on circumstances when an entity may have a “special relationship” with the person who is posing the risk and a corresponding duty to exercise reasonable care to prevent that person from harming others. One example of relevance to this discussion focuses on the special relationship that employers have with employees. Most commonly, employers are liable for the acts of employees if those acts are within the scope of employment, i.e., the acts are motivated at least in part by a desire to serve the employer.<sup>10</sup>

Acts of targeted violence are, obviously, outside the scope of most jobs.<sup>11</sup> Section 41 of the Third Restatement recognizes, however, that employers can still be on the hook for acts outside the scope of an employee’s employment “when the employment facilitates the employee’s causing harm to third parties.”<sup>12</sup> “Facilitation” in this sense can be as simple as providing access to physical locations, such as, for example, where an employee can gain access to dormitories, classrooms, or other campus spaces by virtue of his or her employment.<sup>13</sup> Given how easy it would be to satisfy this standard, institutions should assume that they would generally be deemed to have a duty to exercise reasonable care in the hiring, training, supervision, and retention of employees.<sup>14</sup> For purposes of this discussion, this means that institutions should recognize that they will likely be held to have a duty to use reasonable care by, for example, engaging their threat assessment team when an employee’s statements or conduct raises questions as to whether he or she may pose a threat to others.

Another “special relationship” recognized by Third Restatement section 41 is that which a mental health professional has with patients.<sup>15</sup> The corresponding duty follows from state statutes and court decisions that implement the concept outlined in the California Supreme Court’s

well-known decision in Tarasoff v. Regents of the University of California, 551 P.2d 334 (Cal.1976). In general, Tarasoff-like principles either require or permit mental health professionals to breach the professional-patient privilege<sup>16</sup> where such professionals obtain information indicating that a patient may pose an imminent risk of harm to an identified individual or individuals. The broadly worded comments to Restatement section 41 suggest that professionals should use “reasonable care” to warn identified victims and/or take other steps

**Third Restatement section 41 focuses on circumstances when an entity may have a “special relationship” with the person who is posing the risk and a corresponding duty to exercise reasonable care to prevent harm to others.**

within their power to prevent specific, imminent harm. Institutions must recognize, though, that there is significant variation from state to state as to whether and how such duties are codified in statute or described by courts. One important thing for risk managers to take away from this discussion is that they should determine what the mental health professional-patient rules are in their state and ensure that mental health professionals on their TAM teams and on their campus have a sound and common understanding of those rules. Risk managers can also help the TAM team craft strategies to allow mental health providers on campus—such as counseling center staff—to assist the team in a more general advisory capacity in situations where they cannot disclose case-specific information.

### *iii. Duties Based on Undertakings*

Sections 42 and 43 of the Third Restatement describe duties that could have substantial relevance in the TAM team context. These sections provide that a person who undertakes to provide services to another that the person knows or should know reduce the risk of physical harm to the other or to a third person (e.g., a TAM team that involves itself in assessing and managing potentially threatening behavior) has a duty to use reasonable care in providing those services if: (a) the failure to exercise such care increases the risk of harm beyond that which existed without the undertaking to provide those services, or (b) the person to whom the services are provided or another relies on the actor's exercising reasonable care in the undertaking. These "gratuitous undertaking" duties are adapted from sections of the Second Restatement of Torts that have been relied upon by many courts over the years, specifically sections 323 and 324A. Section 323 in particular has been applied, significantly, in cases involving colleges

and universities.<sup>17</sup> It is therefore fair to conclude that these duties will continue to be accepted widely by courts in the form presented in the Third Restatement.

In the TAM team context, it could (and undoubtedly will) be argued that a team's undertaking to assess risks posed by persons of concern could fall within the scope of these duties. To fit squarely within these duties, the team's activities

would have to either *increase* the risk of harm or *be relied upon* to the detriment of an injured person. However, it is possible to imagine that an injured person could claim that statements made or actions taken by the TAM team in dealing with a threat management scenario gave the injured person a "false sense of security" that made the person, arguably, more vulnerable to an attack and/or that the injured person relied upon the TAM team for protection and, as a result, did not take independent protective action. Every case would be argued based on its facts, and there are many elements that would have to be satisfied before liability would actually attach, but risk managers should be aware of these potential duties when working with their campus TAM teams. If this sounds like a "no good deed goes unpunished" scenario, that is because it is to some extent; nonetheless, colleges

and universities have no choice but to undertake threat assessment activities and to perform them well, as discussed below.

### ***b. Standards of Care***

This section will focus on how TAM-related standards of care are likely to be developed in the litigation context. Risk managers in those states in which a campus TAM team is required by law<sup>18</sup> will have no trouble explaining to administrators why they should create and support TAM teams. Those in other states might wish to cite the following discussion.

**Risk managers can help the TAM team craft strategies to allow campus mental health providers to assist the team in a general advisory capacity in situations where they cannot disclose case-specific information.**

The Restatement of Torts duties described in the previous section maintain that where an affirmative duty to avoid a risk is imposed by a special relationship, an actor has an obligation to exercise due care. But what does “due care” mean in the context of campus threat assessment and management? There is no nationwide, federal statute, and only the Virginia statute lists, in general terms, activities that TAM teams should perform in that state. Thus, the TAM team “standard of care” issue is relatively wide open. Whether a TAM team’s activities in a particular case met a broadly defined standard of care will, therefore, be subject to debate. In the context of litigation, that debate is likely to be played out by the competing opinions of expert witnesses. Thus, risk managers should be familiar with the resources that experts would likely cite as defining the standard of care.

On the threshold question of whether colleges and universities should *have* threat assessment teams, there is not much room for debate. Many of the investigative reports that were conducted in the wake of the 2007 Virginia Tech shootings contained recommendations to the effect that campuses should create and/or support campus TAM teams. These reports are summarized well in “The IACLEA Blueprint for Safer Campuses” (IACLEA Special Review Task Force, April 18, 2008) (Blueprint), a document published by the International Association of Campus Law Enforcement Administrators (IACLEA).<sup>19</sup> The Blueprint was designed as a synthesis of the various reports done regarding the Virginia Tech shootings, and it contains numerous recommendations for campus safety from IACLEA. The Blueprint contains 20 campus safety-related recommendations, which should be consulted generally by risk managers who are assessing whether their campus safety operations are consistent with best and promising practices. On the specific topic of TAM teams, the Blueprint recommends that “[i]nstitutions of higher education should have a behavioral threat assessment team that includes representatives from law enforcement,

human resources, student and academic affairs, legal counsel, and mental health functions. Specifically, campus public safety should be included on the team.” It is safe to assume that in the litigation context, many competent experts would be likely to testify that this recommendation, based as it is on consideration of numerous post-Virginia Tech reports, represents a consensus as to what higher education institutions should be doing, in part, to prevent violence on campus.

Similarly, a June 2011 US Department of Education Family Policy Compliance (i.e., FERPA) Office publication titled “Addressing Emergencies on Campus” notes that the “Department encourages... postsecondary institutions to implement a threat assessment program, including the establishment of a threat assessment team that utilizes the expertise of representatives from law enforcement agencies in the community and that complies with applicable civil rights and other Federal and State laws.” This publication also articulates the Department’s view that “[u]nder a properly-implemented threat assessment program, schools can respond to student behavior that raises concerns about a student’s mental health and the safety of the student and others that is chronic or escalating, by using a threat assessment team.” This publication does not itself go into greater detail on why a TAM team should be established or how it should

function (though it does contain a link to a Department resource page of interest), but it is fair to assume, given its source and wide distribution, that it would be cited in support of an argument that having a properly functioning campus TAM team is currently a best and expected practice.<sup>20</sup>

Further, as more institutions create TAM teams, the presence of such teams on campus becomes a part of the custom in the industry, which can itself be used as evidence of the standard of care. While the “reasonable care under the circumstances” standard usually remains the technical standard in most cases, evidence of customs to help inform what that means can be persuasive.<sup>21</sup> These

**What does “due care” mean in the context of campus threat assessment?**

**There is no nationwide, federal statute. Thus, the TAM team “standard of care” issue is relatively wide open.**

theories would go a long way toward establishing that the applicable standard of care requires colleges and universities to have TAM teams.

Such a case would be supported further by the publication, “A Risk Analysis Standard for Natural and Man-Made Hazards to Higher Education Institutions,” published by the ASME Innovative Technologies Institute, LLC (ASME-ITI), and approved by the American National Standards Institute (ANSI) in 2010 (ASME-ITI Risk Analysis Standard). URMIA members are likely familiar with this document, as it outlines a “methodology to identify, analyze, quantify, and communicate asset characteristics, vulnerabilities to natural and man-made hazards, and consequences of these hazards on the campuses of colleges and universities.”<sup>22</sup>

On the topic of TAM teams, the Standard recommends “that Threat Assessment Teams be put into place on campus to help identify potential persons of concern and gather and analyze information regarding the potential threat posed by an individual(s).”<sup>23</sup>

In light of this ASME-ITI/ANSI recommendation, risk managers should recognize that courts have often allowed expert witnesses to testify to the effect that standards prepared by voluntary standards organizations such as ANSI represent the standard of care on a topic and/or have otherwise allowed such standards into evidence.<sup>24</sup> While voluntary standards do not have the force of law like statutes do, they can be persuasive evidence of the standard of care, given the deliberative, consensus driven process by which many are created. There is ample case law to this effect,<sup>25</sup> so it is fair to assume that some courts would similarly permit reference to the ASME-ITI/ANSI TAM team recommendation in the event of TAM-related litigation.

In addition to recommending that colleges and universities have a campus TAM team, the ASME-ITI/ANSI Risk Assessment Standard “provides resources for implementing Threat Assessment Teams on campus.”<sup>26</sup> While such resources would not, again, define the standard of care exclusively or conclusively, it is likely

that they would be cited as persuasive in the event of TAM-related litigation, because they are relied upon and recommended in the ASME-ITI/ANSI standard. Therefore, risk managers should determine whether their threat assessment teams are in fact following practices similar to those described in the cited resources. TAM teams should follow practices that are most responsive to the needs of their particular campuses, but if a team’s practices differ substantially from the general approaches outlined in the resources cited in the ASME-ITI/ANSI Standard, the team should be able to articulate why its following a different approach is more appropriate given the unique needs of its campus.

The remaining sections will outline some best and promising practices in more detail, highlight common areas of concern, and offer suggestions about how risk managers can work with TAM teams to address any gaps between where the teams are right now and where they should be.

## **II. Best Practices in Campus Threat Assessment**

The resources that are referenced in the ASME-ITI/ANSI standard provide guidance on what the authors consider to be current best practices for campus threat assessment and threat management.<sup>27</sup> These resources

cover both the processes and procedures that TAM teams should follow in handling reports of threats or other concerning behavior, as well as the campus and community systems and resources that support and facilitate TAM team operations.

### ***a. Threat Assessment Processes and Procedures***

There are several steps to the campus threat assessment and management process, beginning from the point where the TAM team first learns about a threat or other disturbing behavior through to the closure of the case. The steps in the best practices for campus threat assessment and management are as follows.<sup>28</sup>

**When a person or situation is reported, the team must first determine whether there is any imminent danger or an emergency situation.**

### *i. Screen Initial Reports*

When a person or situation is reported to the TAM team, the first thing the team should do is determine whether there is any imminent danger or an emergency situation. Determining whether there is an imminent danger will generally be based solely or primarily on the information that is reported to the TAM team and any other information the team already possesses. If the TAM team feels the situation is an emergency, the team should call law enforcement or security to take immediate steps to contain the person, make an arrest, or possibly get the person to an emergency psychiatric evaluation if the circumstances allow. The team will eventually need to conduct a full threat assessment inquiry to take appropriate measures in the event the person in question is released and returns to campus; but in the event of an emergency or imminent situation, the team's primary course of action is to notify law enforcement to ensure the situation is contained.

If the TAM team determines that there is *not* an emergency or imminent concern, the next thing the team should do is conduct a full threat assessment inquiry to determine whether the person or situation of concern poses a threat of violence or self-harm.<sup>29</sup>

### *ii. Conduct a Full Threat Assessment Inquiry*

To conduct a full threat assessment inquiry or investigation, the TAM team should seek out information from all persons and other sources that may have some information about the person or situation of concern. This information seeking mandate is an important role that distinguishes TAM teams from CARE teams and other student assistance teams, which typically respond to the information provided to them and do not seek out additional information from multiple sources.

The sources that the TAM team can contact for information should include persons who interact with the person of concern, as well as those who may be in a position to observe the person even if they typically do not interact with the person. The TAM team should gather information from people inside the institution, such as professors, resident advisors, and specialty service offices, such as disability services

or veterans services. Where possible, the team should also gather information from outside the institution, such as from an employer, previous school, community league coach, Internet activity, and family members where advisable.

### *iii. Evaluate Whether the Person or Situation Poses a Threat*

After gathering additional information in the threat assessment inquiry, the TAM team will evaluate the information to determine whether the person or situation in question poses a threat of violence or self-harm. To do this, the team can first organize the case information using a series of investigative questions, detailed in the resources recommended by the ASME-ITI/ANSI-approved risk assessment standard. The team should then use the information it has collected to determine whether the person of concern poses a threat—that is, to determine if the person has developed an idea or plan to do harm and is taking steps to carry it out.

If the TAM team determines that the person *does* pose a threat, it will then develop, implement, and monitor a case management plan to intervene and reduce the threat posed. If the team determines that the person *does not* pose a threat, the team can close the case or can opt to monitor the person or situation for a period of time and re-evaluate the case to assess whether the person still does not pose a threat.

### *iv. Develop, Implement, and Monitor a Threat Management Plan*

If the TAM team determines that the person in question poses a threat of violence or suicide, the team should then develop, implement, monitor, and document a plan to intervene and reduce the threat.<sup>30</sup> The plan should be customized to best address the person of concern and situation with the resources that the team and institution have available or could access or coordinate. The goal of a threat management plan is to help move the person of concern away from thoughts and plans of violence or suicide and get assistance to address problems.

Threat management/case management plans can include any of the following as the situation and resources dictate:

- ✦ Monitor the situation for further developments
- ✦ Engage with the person of concern to de-escalate the situation
- ✦ Involve an ally or trusted person to monitor the person of concern
- ✦ Family/parental notification
- ✦ Law enforcement intervention
- ✦ Disciplinary review and action
- ✦ Implement a behavioral contract
- ✦ Voluntary referral for mental health evaluation and/or treatment
- ✦ Mandated psychological assessment
- ✦ Involuntary hospitalization for evaluation and/or treatment
- ✦ Leave or separation from the institution
  - ✦ Voluntary leave
  - ✦ Interim suspension
  - ✦ Involuntary leave
- ✦ Modification of the environment to mitigate impact of contributory factors
- ✦ Collaborate with identified target/victim to decrease vulnerability
- ✦ Monitor and prepare for impact of likely precipitating events

Once the TAM team has created a threat management plan, it is just as important that the team document the plan, implement the plan, and then monitor how well the plan is working to make sure it is having the intended effect and not inadvertently making the situation worse.

It is important to note that a person can continue to pose a threat even after he/she is no longer a member of the campus community. The TAM team should continue to monitor the plan and modify it as needed for as long as the person/situation may still reasonably pose a threat. It may be necessary for the TAM team to continue to refer the person of concern to necessary resources or take other follow-up steps as the situation and level of concern dictate. As the TAM team considers what may affect the person's behavior in the short-, mid-, and long-term, the team

should anticipate the impact of future precipitating events—including important dates or events such as anniversaries, failing a course, termination of benefits, the ending of a relationship, or the occurrence of mass attacks elsewhere—that could prompt the person to become an increased threat. The team should develop contingency plans and take necessary steps to reduce or mitigate the anticipated threats.

#### *v. Close and Document the Case*

Cases handled by a TAM team generally remain open until the person of concern no longer appears to pose a threat. This may be well beyond when criminal cases are closed or mental health services are completed. Whether the case remains open or is closed, the TAM team should document how they handled the case, including the report that first came to the team's attention, the information the team gathered, the evaluation it made, the case management plan it developed and implemented (if necessary), and any re-evaluations or monitoring that the team conducted after the initial evaluation and case management efforts where relevant.

The level of detail in the case documentation—as well as where and how case records are maintained and stored—are critical issues for an institution's legal counsel to help a TAM team determine. The case documentation can also include the team's appraisal of whether there was sufficient concern regarding public safety that the Family Educational Rights and Privacy Act (FERPA)<sup>31</sup> health and safety exception would apply, in the event information sharing in the case is ever questioned or challenged. Legal counsel should be consulted on documentation issues, which are discussed further below.

#### ***b. Resources and Activities that Support TAM Team Operations***

While there is a tendency to think of the TAM team as involving only those individuals directly involved in staffing cases, we view the TAM team differently. Certainly, the identified members of the official team are critical to the process. However, just as important are all the members of the community that support and facilitate the work of the TAM team. Just as a sports team has first

string players on the field, the effective team also has back-ups to those players: specialty units, coaches, managers, scouts, marketing agents, fans, and, yes, even critics. So, too, does an effective TAM team. Furthermore, an effective TAM team recognizes and maximizes the value and contribution of all those elements to achieve the desired goal—the improved safety and well-being of the campus community.

TAM teams handle day to day reports submitted to the team, conduct full inquiries, and implement and monitor case management activities. To be more fully effective, though, a TAM team needs support from key resources and activities on campus and in the community. These resources and activities<sup>32</sup> include:

- Support/backing from the institution's leadership
- Administrative support
- Access to mental health services
- Involvement of law enforcement and security services
- Active outreach and training to the community
- Engagement with gatekeepers of all types, at all levels
- Clear policies and procedures for TAM team authority and operations

Risk managers can play an important role in making sure these resources are available to the TAM team, and that the activities are conducted, so that the team can focus its time on investigating and managing cases.

### **III. Common Challenges and Recommended Solutions**

Many institutions and TAM teams face common challenges that can hinder their effectiveness.<sup>33</sup> Some of the more common challenges and obstacles that TAM teams encounter include misconceptions on campus about threat assessment and threat management; misunderstandings regarding FERPA, Health Insurance Portability and Accountability Act (HIPAA), state

privacy laws, and information sharing; misconceptions about how disabilities laws apply to the TAM context; problems related to institutional policies and procedures that are not integrated optimally with TAM team operations; problems with documentation; moving directly to case management efforts without evaluating the person or situation of concern; and failing to implement part or all of a case management plan.

#### ***a. Misconceptions About Threat Assessment and Management***

When launching a threat assessment and management capacity of some sort, TAM team members may well encounter misconceptions and misunderstandings about what behavioral threat assessment is and what it is not. Some of these misconceptions include that threat assessment is the same thing as profiling (not true); that “reporting” someone to the TAM team is the same thing as tattling (not true, unless the person reporting is doing so maliciously); and that anyone reported to the TAM team is immediately or eventually suspended, expelled, punished, or fired (not true unless the institution has inappropriately conjoined its disciplinary process and threat assessment process).

One way that risk managers can help address these misconceptions is by working with their TAM team to develop and publicize frequently

asked questions about campus threat assessment and management. Another way is for risk managers to advocate for periodic campus-wide awareness training, such as orientation meetings for students and residential advisors and academic and operational department meetings, that would encourage reporting of concerns and promote familiarity with the TAM concept. The thrust of such training should be that the TAM team is focused on promoting campus safety and helping individuals who need it, not on punishment for disciplinary offenses. The more transparent the threat assessment process is for the

**One way risk managers can help address misconceptions is by working with their TAM team to develop and publicize frequently asked questions and advocate for periodic campus-wide awareness training.**

campus community—with respect to how the TAM team operates, not with respect to the particulars of a specific case—the easier it will be for the TAM team to build credibility and inspire confidence and the more likely people will be to submit reports to the team. In sum, simply having a TAM team on campus is not enough. For the team to be effective at reducing risk, the community must know about the team and be willing to report concerns when appropriate.

### ***b. Misunderstandings about FERPA, HIPAA, and State Privacy Laws***

When seeking information about a particular student in the course of its investigative work, TAM teams often encounter misunderstandings about FERPA and the extent to which it is perceived as interfering with TAM team members, professors, and others in regard to sharing information about a student of concern. Many people still believe that student records and information may not be shared under any circumstances. It is clear from the work of the Virginia Tech Review Panel and other entities that these misunderstandings are widespread and often difficult to counter.<sup>34</sup>

One way that risk managers can help enhance the overall effectiveness of their TAM team is by developing resources and strategies or supporting training programs to better educate the campus community about FERPA, the exceptions under which information can be shared, and the limited remedies for inappropriate disclosure of FERPA-protected information (campus personnel are often surprised to discover, for example, that neither individuals nor institutions can be sued for violating FERPA). TAM teams and campus police and security officers should be within the institution's definition of "school officials" with whom education records and information therefrom may be shared freely,<sup>35</sup> and institutions should take steps to assure that faculty and staff members know that. Most importantly, faculty and staff must understand that a long standing "health and safety" exception that was broadened in response to the Virginia Tech shootings permits disclosure of education records to any appropriate parties (on or off campus) where necessary to protect the health or safety of the student or others.<sup>36</sup> Through resources such as periodic training, web page information, and one-page fact sheets,

risk managers can help TAM teams to educate the campus community about the truth—and correct any misconceptions—regarding FERPA.

While not as prevalent, similar issues can be presented by campus community members' misplaced concerns about the privacy provisions of HIPAA. The HIPAA Privacy Rule prohibits the disclosure of personal health information by health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically. While HIPAA does apply to certain medical information on some campuses, many colleges and universities do not have operations that are covered by HIPAA, and student health records are generally covered by FERPA, not HIPAA.<sup>37</sup> Further, even if HIPAA does apply to certain records on some campuses, it permits disclosure of protected health information if a covered entity believes in good faith that disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and such disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.<sup>38</sup> In sum, risk managers and TAM teams should take steps to determine whether HIPAA privacy rule restrictions actually apply to campus operations and to educate the campus community about the rule and the health and safety exception if applicable to ensure that undue concerns about HIPAA do not restrict the provision of important information to a TAM team.

As for state law privacy rules, the most commonly applicable state law rules are those pertaining to the relationship between health care providers and their patients. Those rules, and the circumstances in which disclosure of otherwise privileged information might be allowed or required, are discussed in Section I.a.ii. above. The most important thing that risk managers can do with respect to such rules is to assure that TAM teams and providers who routinely see campus community members, such as student counseling center providers or employee assistance program (EAP) providers, have a *shared* understanding of the thresholds for disclosure that the providers will apply. TAM teams should understand when they can rely upon providers to breach privileges due to a specific threat level, and when, on the other hand, they should assume that they will have to assess and

manage threats based on other information sources. Risk managers should encourage TAM teams to have frank conversations with providers about such issues.

TAM teams cannot function without information from the campus community, so it is crucial that campus community members have an accurate understanding of privacy rules and, just as importantly, the exceptions to those rules. That way, TAM teams can do their important work without being restricted unduly by concerns about privacy rules.

### **c. Misconceptions about Disabilities Laws**

Colleges and universities are covered by the Americans with Disabilities Act of 1990 (as amended in 2008) (ADA) and Section 504 of the Rehabilitation Act, and many are covered by parallel state laws. The requirements of these laws are similar in most respects, so this article will refer to the ADA, because it is the broadest and the most broadly applicable. Undue deference to the potential ADA-related rights of persons of concern could lead a TAM team or institution to fail to take necessary threat management steps, while a failure to respect ADA-required procedures could result in liability under the ADA. TAM teams must, therefore, coordinate threat management efforts with counsel to assure that ADA-related issues are handled optimally.

A detailed treatment of these issues is beyond the scope of this article, but TAM teams should at least understand that while the coverage of the ADA is very broad,<sup>39</sup> it does not require that institutions tolerate threatening behavior that poses a “direct threat” to others<sup>40</sup> or that renders a student or employee not qualified to participate in the academic, residential, or work environment.<sup>41</sup> This is true in most states and federal circuits even if the threatening behavior is caused by a disability.<sup>42</sup> With this general information in mind, TAM teams can focus on inappropriate behavior instead of worrying about ADA issues specifically and work with legal counsel to take threat management actions that they deem necessary (e.g., mandatory counseling, suspension,

conditional re-entry to campus) without undue concern over the possibility that the person of concern might be covered by the ADA.

TAM teams do need to understand, though, that there are ADA-related due process considerations they need to respect. The US Department of Education’s Office of Civil Rights (OCR) has been clear in emphasizing that if an institution proposes to affect the status of a student covered by the ADA or Rehabilitation Act, it must provide “minimal due process” for temporary status changes, and “full due process” for longer term or permanent status changes. This means that in emergent situations, such as those that might require temporary suspensions, students should be provided with some notice of the institution’s concerns and some opportunity for the student to explain his or her side of the story. After the emergent issue has passed, if the institution decides to pursue longer term curtailment of a student’s rights, the student should receive a hearing and an opportunity for an appeal. At most institutions, a TAM team will not be responsible for administering disciplinary, involuntary withdrawal, or similar processes, but it should at least understand the due process requirements that will apply to the institution. This will allow the team’s threat management

recommendations or actions to dovetail effectively with campus procedures, and student rights can be respected without unduly compromising campus safety considerations.

### **d. Problems with Institutional Policies and Procedures**

Risk managers should work with TAM teams and counsel to assess whether institutional policies relevant to TAM operations, such as policies regarding student misconduct, weapons, workplace violence, threatening behavior and statements, and trespassing, are phrased in such a way as to allow TAM teams to take or advocate for disciplinary or protective action as appropriate. Universities should change policies, which in many

**TAM teams must coordinate threat management efforts with counsel to assure that ADA-related issues are handled optimally.**

states are enforceable as contracts, so that they can serve essential institutional prerogatives, while also optimally supporting TAM operations. Further, where teams and counsel discern through a review that there are gaps in institutional policies that could make it more difficult to address threatening behavior, universities should create policies to fill those gaps.

Similarly, institutional procedures that are likely to be implicated by TAM operations should also be reviewed by TAM teams and counsel. Teams need to become familiar with how the institution's procedures function, so that they will understand any related limitations. For example, if an institution's student disciplinary procedure or involuntary withdrawal procedure places practical limitations on what the TAM team can do or recommend in a given situation, the team needs to understand that in advance, rather than getting an unpleasant surprise in the midst of an emergent situation. Advance review will also provide an opportunity for the team and counsel to advocate for the revision of any procedures that will obviously and unnecessarily limit the options available for the management of threat situations.

In sum, while colleges and universities must comply with statutes as they are written, they have some flexibility in defining the rules that they impose on themselves through institutional policies and procedures. Optimized policies and procedures can facilitate the work of TAM teams, while those that universities craft without TAM issues in mind can impair that work and complicate already risky situations. A thorough TAM-related policy and procedure review should, therefore, be on every risk manager's agenda.

#### ***e. Documentation Challenges***

Risk managers know well that accurate documentation is helpful—unless it's not. Obviously, an institution would like good decision making processes to be documented well, but would regret the creation of documentation that,

if taken out of context, could shed an unflattering light on the work of a TAM team. TAM teams must understand that unless a privilege against disclosure applies, most of the documents they create, including e-mails, personal notes, and other relatively informal documentation, would be subject to disclosure in the event of litigation. Further, unless an exemption applies, public institutions may have to disclose documents in response to public record act requests, and colleges and universities may also have to turn over TAM team documents if a student of concern

demands them under FERPA.<sup>43</sup> While teams may be able to resist disclosure in specific cases if exemptions apply, teams should still be cautious and create all drafts, notes, e-mails, and final summary documents with these realities in mind.

Documentation that states the rationale for the team's decisions at various points in an assessment and management process and summarizes the factual basis for those decisions can serve to memorialize the team's thought process if its decisions are ever questioned. In final form, the documentation regarding a case should demonstrate that the team's work and decision making process was, to borrow Dr. Gene Deisinger's acronym, Fair, Objective, Reasonable, and Timely, in order to FORTify the institution's position.

Documentation should not, on the other hand, contain off-handed comments, speculation without basis in fact, ill-considered observations about sensitive mental health or disability issues, or partially formed thoughts and deliberations. While teams must "think out loud" when weighing options in a particular case, they do not need to document every passing thought and preliminary deliberation. It is very helpful to have a skilled scribe for the group who has worked with counsel to determine how to optimally document the team's deliberations and decision making.

Of course, because legal issues are often presented by the deliberations of TAM teams, those deliberations and related documentation could fall within the scope of

**Documentation that states the rationale for the team's decisions and summarizes the factual bases for those decisions can memorialize the team's thinking if its decisions are ever questioned.**

the attorney-client privilege, if legal counsel is involved. As discussed above, TAM-related discussions often involve balancing the privacy and/or disability law rights of persons of concern against the institution's legal duty to provide a safe campus community. Involving counsel in a TAM team's deliberations is therefore natural and appropriate. Counsel may be particularly helpful in reviewing draft documentation and minutes. If deliberations and related documents are within the scope of the attorney-client privilege under state law, they should be protected from disclosure in the event of litigation, from a FERPA request made by a student of concern, and, in some states, from a public record request.

The bottom line for risk managers is that they should assure that their campus TAM teams have consulted with counsel about the application of the attorney-client privilege to their communications and documents and about optimal documentation practices. That way, if disclosure of documents is ever necessary, the university can disclose them with confidence rather than trepidation.

#### ***f. Case Management Without Evaluation***

When cases first come to the attention of a TAM team, they can be accompanied by significant fear and other emotion that leads to an action imperative, or a strong pull to do something in response to the fear expressed. Certainly in those limited cases where there is an imminent threat to the community or an individual, such as a report of a person walking into an administrative building with a weapon, then institutions must understandably act quickly, even if the report turns out to misrepresent the situation. However, most reports do not involve such exigent circumstances and instead allow for time and opportunity to gather additional information, assess the situation, and develop a reasonable and meaningful approach based on the degree of danger that the TAM team perceives there to be. Having a consensus among the team members regarding whether the person or situation poses a threat—and the corresponding priority level the team believes the case merits<sup>44</sup>—can help guide clear, fact-based decisions regarding the most appropriate case management strategies to employ. This decreases the likelihood of reactionary interventions that may not improve the situation and can, at times, inadvertently escalate a situation unnecessarily. It also

decreases the impulse to craft case management plans based on partial or incomplete information, allowing the team to develop a full picture of the situation and corroborate the information in hand before deciding how best to intervene.

A well-developed threat assessment and management process allows for informed, assessment-led interventions that can best:

- De-escalate, control, or contain the person of concern
- Decrease the vulnerability of likely victims
- Mitigate effects of negative environmental or systemic influences
- Anticipate the effect of precipitating events that may develop

Risk managers can assist TAM teams in monitoring and reviewing team processes, challenging reactionary interventions (in the absence of exigent situations), and supporting assessment-based interventions that are proportional and responsive to the situation at hand.

#### ***g. Failing to Implement a Case Management Plan***

The last common challenge facing TAM teams is that they do solid work in conducting a full inquiry, making the assessment, and developing a case management plan—but then fail to implement and monitor part or all of the case management plan. Failing to implement a case management plan can come about because an individual TAM team member fails to do what he or she was tasked with doing, someone outside the team fails to do what he or she was asked to do to assist the team, or the team as a whole fails to put into action the plan that it crafted. There are various reasons, excuses, and rationales for these occurrences, but regardless of the perceived validity of the rationale, from a legal perspective, this could result in a significant safety risk and related legal exposure in the event that a person of concern causes harm. It is fair to say that TAM teams will be accorded discretion to decide on a reasonable course of action when assessing and managing threats, within the bounds of the duties described above. However, if a team fails to follow through on a commitment it makes to itself, it will have a more difficult time justifying its approach. If the answer to the question, "Why didn't you follow through?" is that

changing circumstances required a change of course, that would be subject to the same reasonableness standard. If, however, the answer is, "I forgot or didn't get around to it," that would sound very hollow in the context of litigation over a violent incident, whether the failure to follow through would actually have prevented the harm or not.

Risk managers can help their TAM teams to become more fully effective by ensuring that the team engages in the complete threat assessment and management process to include implementing and monitoring case management plans they develop to intervene and reduce any threats posed. If a TAM team is overloaded with incoming reports and new cases to investigate, the institution's risk manager can help the team to offload implementation of case management plans or specific components to various campus personnel who would fulfill these duties responsibly. Risk managers can also advocate for the hiring of a dedicated case manager position (or two or three dedicated case managers, as needs dictate), whose primary job would be to implement, monitor, and report on case management plans developed by the TAM team.<sup>45</sup> Finally, risk managers can conduct or request outside assistance in conducting a review or audit of the TAM team's work to identify areas where the team's procedures may fall short of best practices and to find remedies to bridge those gaps.

## Conclusion

There is no question that engaging with individuals who may pose a threat to others on campus is a risky business. In practical terms, though, some risk in this area cannot be avoided, because the current standard of care dictates that colleges and universities must have a campus threat assessment team. Given this reality, risk managers should assure that their campus communities know about and feel comfortable reporting concerns to their TAM teams, their teams follow best and promising practices, misconceptions about privacy and disability laws will not impede their teams' work, institutional policies and procedures support rather than impede the work of their teams, their teams follow optimal documentation practices, and their institutions are positioned to balance appropriately the statutory rights of persons of concern against campus safety needs. If risk managers can address

these issues, they will have gone a long way toward minimizing legal liability in this sensitive area and, most importantly, toward reducing the risk of harm on their campuses.

## About the Authors



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## Endnotes

- <sup>1</sup> The authors worked as subject matter experts with the team that developed the US Department of Justice Community Oriented Policing Services (COPS) Office's national curriculum, *Campus Threat Assessment Training—A Multidisciplinary Approach for Institutions of Higher Education* (see [www.campusthreatassessment.org](http://www.campusthreatassessment.org)). They also served as faculty for that program, which was presented at 10 locations throughout the United States in 2009, 2010, and 2011.
- <sup>2</sup> *Restatement (Third) of Torts: Liability for Physical and Emotional Harm* (Restatement (Third) of Torts), § 7 (American Law Institute, 2011).
- <sup>3</sup> This discussion will focus on duties owed to students and campus visitors, but not faculty and staff because, in most situations, workers' compensation statutes provide the exclusive remedy for employees who are injured or killed within the scope of their employment. Some sections

of the Restatement (see, e.g., Restatement (Third) of Torts, § 40(b)(4)(a) and § 40, cmt. k) and some exceptional provisions of state law do contemplate institutional liability to employees notwithstanding workers' compensation exclusivity, but such issues are limited, state-specific, and complicated enough that they are beyond the scope of this article. It should suffice to say that institutions will of course want to do what they can reasonably to keep employees safe from physical attacks on campus, even in the absence of a general legal duty to do so.

- <sup>4</sup> Restatement (Third) of Torts, § 37. For those risk managers and attorneys who have followed the development of case law in this area over the years, section 37 of the Third Restatement replaces sections 314 and 315 of the Restatement (Second) of Torts, upon which many courts have relied in deciding whether and/or what duties colleges and universities owe to their students.
- <sup>5</sup> Restatement (Third) of Torts, § 40(a), § 40(b)(5).
- <sup>6</sup> Restatement (Third) of Torts, § 40, cmt. I. Comment I listed and annotated as follows various cases in which courts imposed a duty of reasonable care to protect students on college or university property: "Schieszler v. Ferrum Coll., 236 F. Supp. 2d 602 (W.D.Va.2002) (concluding that, on specific facts alleged by plaintiff, college owed affirmative duty to student who committed suicide); Peterson v. S.F. Cmty. Coll. Dist., 685 P.2d 1193 (Cal.1984) (duty owed to student raped in college parking ramp); Furek v. Univ. of Del., 594 A.2d 506 (Del.1991) (finding university had special relationship with student who was a fraternity pledge but also relying on its undertaking to regulate hazing and its status as possessor of land and student's status of invitee); Nova Southeastern Univ., Inc. v. Gross, 758 So. 2d 86 (Fla.2000) (duty owed to graduate student placed by university in mandatory internship); Niles v. Bd. of Regents of Univ. Sys. of Ga., 473 S.E.2d 173 (Ga.Ct.App.1996) (stating in dicta that a "university student is an invitee to whom the university owes a duty of reasonable care"); Stanton v. Univ. of Me. Sys., 773 A.2d 1045 (Me.2001) (university owed duty to student-athlete as business invitee who was residing in dormitory to provide information about appropriate precautions for personal safety); Mullins v. Pine Manor Coll., 449 N.E.2d 331 (Mass.1983); Knoll v. Bd. of Regents of Univ. of Neb., 601 N.W.2d 757 (Neb.1999) (victim of fraternity hazing episode owed duty by university based on its role as landowner with student as its invitee); cf. Mintz v. State, 362 N.Y.S.2d 619 (App.Div.1975) (impliedly assuming that duty existed in deciding that university had not acted unreasonably as a matter of law in supervising overnight canoe outing by students); Davidson v. Univ. of N.C. at Chapel Hill, 543 S.E.2d 920 (N.C.Ct.App.2001) (holding that university has special relationship with cheerleader based on mutual benefit to each from the activity and control exerted by the university over the activity, but denying, in dicta, that university has special relationship generally with students)." Restatement (Third) of Torts, § 40, cmt. I.

On the other hand, the ALI cited and annotated as follows cases in which courts found no duty: "Bradshaw v. Rawlings, 612 F.2d 135 (3d Cir.1979) (applying Pennsylvania law) (college owed no duty to student injured while being transported by another underage student who had become drunk at off-campus class picnic); Booker v. Lehigh Univ., 800 F. Supp. 234 (E.D.Pa.1992) (university owed no duty to student who was injured after becoming inebriated at on-campus fraternity party); Baldwin v. Zoradi, 176 Cal. Rptr. 809 (Ct.App.1981) (university owed no duty to student by virtue of dormitory license where risks created by excessive drinking and drag racing were not foreseeable to university); Univ. of Denver v. Whitlock, 744 P.2d 54 (Colo.1987) (concluding that university

owed no duty to student injured while on trampoline at fraternity; to impose duty could result in imposing regulations on student activity that would be counterproductive to appropriate environment for student development); Coghlan v. Beta Theta Pi Fraternity, 987 P.2d 300, 311–312 (Idaho 1999) (college does not have special relationship with student that imposes a duty to protect student from risks involved in voluntary intoxication); Rabel v. Ill. Wesleyan Univ., 514 N.E.2d 552 (Ill.App. Ct.1987) (university owed no duty to student based on its landlord-tenant relationship with her for harm that resulted from prank by intoxicated fraternity member); Nero v. Kan. State Univ., 861 P.2d 768 (Kan.1993) (declining to impose duty on university solely because of its role as school but concluding university had duty of care as landlord for student living in dormitory); Boyd v. Tex. Christian Univ., Inc., 8 S.W.3d 758 (Tex.App.1999) (university had no duty to student injured while at off-campus bar); Beach v. Univ. of Utah, 726 P.2d 413 (Utah 1986) (university had no duty to protect student from consequences of voluntary intoxication while on university-sponsored field trip)." Restatement (Third) of Torts, § 40, cmt. I.

Finally, the ALI cited two general resources as follows: "Peter F. Lake, *The Rise of Duty and the Fall of In Loco Parentis and Other Protective Tort Doctrines in Higher Education Law*, 64 Mo. L. Rev. 1 (1999) (identifying a trend in tort law toward holding institutions of higher education to a tort duty with respect to the safety of students); Jane A. Dall, Note, *Determining Duty in Collegiate Tort Litigation: Shifting Paradigms of the College–Student Relationship*, 29 J.C. & U.L. 485 (2003) (advocating recognition of a special relationship between colleges and their students)." Restatement (Third) of Torts, § 40, cmt. I.

- <sup>7</sup> Restatement (Third) of Torts, § 40(b)(3).
- <sup>8</sup> Restatement (Third) of Torts, § 40(b)(6).
- <sup>9</sup> See cases cited in endnote 6 above. In addition to those cases, other cases in which institutions have been held to have a "business invitee" or "landlord-tenant"-based duty to protect on-campus visitors against acts by third parties include Bearman v. Univ. of Notre Dame, 453 N.E.2d 1196 (Ind. 1983) (university had duty to protect bystander injured due to fight between two drunken tailgaters), Peterson v. San Francisco Comm. College Dist., 36 Cal.3d 799, 205 Cal.Rptr. 842, 685 P.2d 1193 (1984) (college owed duty to protect student from reasonably foreseeable criminal attack on campus), and Miller v. State, 62 N.Y.2d 506, 467 N.E.2d 493 (N.Y. 1984) (state university had duty, as landlord, to use reasonable security precautions to protect student from foreseeable rape in an on-campus dormitory).
- <sup>10</sup> See Restatement (Third) of Agency, § 2.04 (American Law Institute, 2006).
- <sup>11</sup> See Restatement (Third) of Agency, § 7.07, cmt. c.
- <sup>12</sup> Restatement (Third) of Torts, § 41(b)(3).
- <sup>13</sup> Restatement (Third) of Torts, § 41, cmt. e.
- <sup>14</sup> Ibid.
- <sup>15</sup> Restatement (Third) of Torts, § 41(b)(4).
- <sup>16</sup> The scope of the patient-mental health professional privilege varies from state to state. One national resource often looked to for general guidance is the American Psychological Association's code, which provides in pertinent part that the privilege may be breached with patient consent "where permitted by law for a valid purpose such as to . . . protect the client/patient, psychologist, or others from harm . . ." *APA Ethics Code 2002*, Sec. 4.05(b).

- <sup>17</sup> See Mullins v. Pine Manor College, 449 N.E.2d 331 (Mass.1983) (finding that student on-campus rape victim relied upon college's providing security services, based on generalized interest by college applicants in campus security and the student victim's having visited several campuses before selecting Pine Manor); Eurek v. Univ. of Del., 594 A.2d 506 (Del.1991) (holding university subject to duty to student with regard to risks of fraternity hazing based on its undertaking to prohibit and regulate hazing activities); Davidson v. Univ. of N.C. at Chapel Hill, 543 S.E.2d 920 (N.C.Ct. App.2001) (finding that university owed duty to cheerleader based on its undertaking to advise cheerleading squad on safety matters).
- <sup>18</sup> See 110 ILCS 12/20(b) (2009) (Illinois statute, enacted after the February, 2008 shootings at Northern Illinois University, which requires each Illinois institution of higher education to develop a campus threat assessment team); Va. Code Ann. § 23-9.2:10 (2008) (Virginia statute enacted after the April, 2007 shootings at Virginia Tech which requires public higher education institutions in Virginia to establish a threat assessment team that includes members from law enforcement, mental health professionals, representatives of student affairs and human resources, and, if available, college or university counsel, and which charges such team to provide guidance to students, faculty, and staff regarding recognition of behavior that may represent a threat to the community, to identify members of the campus community to whom threatening behavior should be reported, and to implement policies and procedures for the assessment of individuals whose behavior may present a threat, and for "appropriate means of intervention with such individuals, and sufficient means of action, including interim suspension or medical separation to resolve potential threats.").
- <sup>19</sup> The Blueprint is available at: [http://www.iaclea.org/visitors/PDFs/VT-taskforce-report\\_Virginia-Tech.pdf](http://www.iaclea.org/visitors/PDFs/VT-taskforce-report_Virginia-Tech.pdf). In preparing the Blueprint, the authors (Raymond H. Thrower, Steven J. Healy, Dr. Gary J. Margolis, Michael Lynch, Dolores Stafford and William Taylor) consulted and referenced the following documents: Mass Shootings at Virginia Tech, April 16, 2007, Report of Review Panel, Presented to Governor Kaine, Commonwealth of Virginia, August 2007; Investigation of April 16, 2007, Critical Incident At Virginia Tech Prepared by Office of the Inspector General For Mental Health, Mental Retardation & Substance Abuse Services, James W. Stewart, III. Report: # 140-07; Presidential Internal Review, Working Group Report on the Interface Between Virginia Tech Counseling Services, Academic Affairs, Judicial Affairs and Legal Systems, Submitted to President Charles Steger, August 12, 2007; Oklahoma Campus Life and Safety and Security Task Force (CLASS) Final Report, January 15, 2008; New Jersey Campus Security Task Force Report, Submitted to Governor Jon S. Corzine, October 2007; Expecting the Unexpected - Lessons from the Virginia Tech Tragedy, by American Association of State Colleges & Universities; The Report of the University of California Campus Security Task Force, University of California Office of the President, January 2008; Gubernatorial Task Force for University Campus Safety, Report on Findings and Recommendations, State of Florida, May 24, 2007; Governor's Task Force on Campus Safety, State of Wisconsin, November 15, 2007; International Association of Campus Law Enforcement Administrators Special Review Task Force on Virginia Tech; Missouri Campus Security Task Force, Report on Findings and Recommendations, August 21, 2007; Association of American Universities, August 2007; Survey on Safety on AAU Campuses after the Virginia Tech Shootings; Report of the Campus Safety Task Force Presented to North Carolina Attorney General Roy Cooper; National Association of Attorneys General, Task Force on School and Campus Safety, Report &

Recommendations, September 2007; Report to the President of the United States on Issues Raised by the Virginia Tech Tragedy, June 13, 2007; The Report of the Virginia Tech Review Panel Synopsis prepared by Charles F. Carletta, JD, Secretary of the Institute and General Counsel, Rensselaer Polytechnic Institute, October 2007.

- <sup>20</sup> *Addressing Emergencies on Campus*, US Department of Education, Family Policy Compliance Office, at 11 (June 2011). Available at: <http://www2.ed.gov/policy/gen/guid/fpco/pdf/emergency-guidance.pdf>.
- <sup>21</sup> See Dobbs, *The Law of Torts*, § 164 (West Group, 2001) ("On the issue of negligence, a safety custom is often relevant because it reflects the judgment and experience of many people and thus directly suggests how a reasonable person might behave under the circumstances, on the theory that customary behavior is usually not negligent, or on the more specific ground that, under some circumstances, customary behavior tends to prove the proper balance of risks and utilities. . . . [A] safety custom in a negligence case is relevant evidence tending to show what does or does not count as reasonable care."
- <sup>22</sup> ASME-ITI Risk Analysis Standard at 1.
- <sup>23</sup> *Ibid.*, 10.
- <sup>24</sup> See Dobbs, *The Law of Torts*, § 164 ("As a sword, the plaintiff can show the defendant's violation of a safety custom as some evidence that defendant failed to act as a reasonable person under the circumstances. In some cases, evidence of the custom is presented by an expert, but the rule is no less applicable if the custom is institutionalized in advisory standards of the relevant industrial association." (citing, e.g., Hansen v. Abrasive Eng'g & Manufacturing, Inc., 317 Or. 378, 856 P.2d 625 (1993) (ANSI advisory standard deemed admissible but not conclusive)).
- <sup>25</sup> The court in Getty Petroleum Marketing, Inc. v. Capital Terminal Co., 391 F.3d 312 (1st Cir. 2004), provided a fair, balanced summary of the law in this area, as follows:

Many cases involve voluntary industry standards that do not have the force of law in the relevant jurisdiction. The overwhelming majority of such cases are negligence actions where the industry standard is offered as evidence of the appropriate standard of care. See, e.g., Miller v. Yazoo Mfg. Co., 26 F.3d 81, 83 (8th Cir.1994) (in personal injury action, American National Standards Institute lawnmower safety standards were offered to establish standard of care); Matthews v. Ashland Chem., Inc., 770 F.2d 1303, 1310-11 (5th Cir.1985) (in personal injury action, NFPA, National Electric Code, and the American National Standard Specifications for Accident Prevention Signs were offered to establish standard of care); Boston & Me. R.R. v. Talbert, 360 F.2d 286, 290 (1st Cir.1966) ("certain nationally recognized standards concerning the design of highway and railroad crossings" were offered to establish standard of care, with trial judge's warning that they were "not completely authoritative"); Dickie v. Shockman, No. A3-98-137, 2000 WL 33339623, \*3 (D.N.D. July 17, 2000) (in personal injury action, NFPA standards "and other codes applicable within the propane industry" were offered to establish standard of care).

These voluntary standards do not irrefutably establish the standard of care in a negligence case. Rather, they constitute "one more piece of evidence upon which the jury could decide whether the defendant acted as a reasonably prudent person in the circumstances of th[e] case." Boston & Me. R.R., 360 F.2d at 290. The defendant is free to argue that the standard is unduly demanding, either in general or in the particular instance, and that it does not reflect industry practice or the standard that a reasonably prudent person would employ. After all, voluntary standards are not law; in essence, they are simply recommendations written by

experts who may not themselves be available for cross-examination. In short, the merits of the standard are “for the jury’s consideration like any other evidence in the case.” *Ibid.*

Consequently, courts have generally treated such standards as factual evidence that the court may admit or exclude based on ordinary evidentiary principles. See, e.g., *Miller*, 26 F.3d at 83-84 (voluntary standard was properly admitted); *Matthews*, 770 F.2d at 1310-11 (voluntary standards were properly excluded); *Boston & Me. R.R.*, 360 F.2d at 290 (voluntary standards were properly admitted); *Dickie*, 2000 WL 33339623, at \*3 (admitting expert testimony regarding voluntary standards).

*Getty Petroleum*, 391 F.3d at 326-27. See also *Kent Village Assocs. Joint Venture v. Smith*, 657 A.2d 330, 337 (Md.Ct.Spec.App. 1995) (“[S]afety standards ... may be admitted to show an accepted standard of care, the violation of which may be regarded as evidence of negligence.” See also generally Feld, Annotation, Admissibility in Evidence, On Issue of Negligence, of Codes or Standards of Safety Issued or Sponsored by Governmental Body or by Voluntary Association, 58 A.L.R.3d 148 (1974 & 2010 Supp.).

- <sup>26</sup> ASME-ITI Risk Assessment Standard at 10. The ASME-ITI/ANSI Standard states that “the following resources or equivalent may be helpful in conducting a risk assessment”: Randazzo and Plummer, *Implementing Behavioral Threat Assessment on Campus: A Virginia Tech Demonstration Project* (Virginia Polytechnic Institute and State University, 2009), [http://www.threatassessment.vt.edu/Implementing\\_Behavioral\\_Threat\\_Assessment.pdf](http://www.threatassessment.vt.edu/Implementing_Behavioral_Threat_Assessment.pdf)); Deisinger, Randazzo, O’Neill, and Savage, *The Handbook for Campus Threat Assessment & Management Teams* (Applied Risk Management, 2008); *The Virginia Tech Review Panel Report*, August 2007, <http://www.vtreviewpanel.org/report/index.html>.
- <sup>27</sup> See *Implementing Behavioral Threat Assessment on Campus* (2009); *The Handbook for Campus TAM Teams* (2008).
- <sup>28</sup> These steps are summarized from *The Handbook for Campus TAM Teams* (2008).
- <sup>29</sup> TAM teams that are handling multiple cases can triage the initial reports received to determine which reports merit a full inquiry, and/or which reports should be handled first if all reports are to be investigated. *The Handbook for Campus TAM Teams* (2008) outlines sample screening and triage procedures for this purpose.
- <sup>30</sup> At institutions where a separate CARE or similar team works with students who may be at risk of suicide, and/or where an EAP or outside resource works with employees who may be at such risk, proper referrals should be made if a TAM team determines that a person of concern poses a risk to him or herself, but not to others. Legal duties to prevent suicide vary substantially based on particular circumstances and state law (discussion of which is beyond the scope of this article), but TAM teams will of course recognize at least some moral duty to attempt to make a referral if that appears necessary.
- <sup>31</sup> 20 U.S.C. § 1232g et seq.
- <sup>32</sup> A full discussion of these resources and their usefulness for enhancing TAM team operations and effectiveness is beyond the scope of this article. More information can be found in *The Handbook for Campus TAM Teams* (2008).
- <sup>33</sup> *Implementing Behavioral Threat Assessment on Campus* (2009), another resource recommended in the ASME-ITI/ANSI-approved risk assessment standard, details the specific challenges that Virginia Tech encountered in establishing its threat assessment team following its campus shooting in 2007, and the solutions that it implemented to address those challenges.

- <sup>34</sup> See *The Virginia Tech Review Panel Report*, August 2007, <http://www.vtreviewpanel.org/report/index.html>. See also several of the resources consulted by the Blueprint for Safer Campuses (listed in endnote 19, *supra*).
- <sup>35</sup> See 34 C.F.R. § 99.34(a)(1). See also *Addressing Emergencies on Campus*, at 11 (“schools can respond to student behavior that raises concerns about a student’s mental health and the safety of the student and others that is chronic or escalating, by using a threat assessment team, and then may make other disclosures under the health or safety emergency exception, as appropriate, when an ‘articulable and significant threat’ exists.”).
- <sup>36</sup> See 34 C.F.R. § 99.31(a)(10) and 34 C.F.R. § 99.36.
- <sup>37</sup> See HHS-DOE, *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Information Portability and Accountability Act of 1996 (HIPAA) to Student Health Records*, <http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>.
- <sup>38</sup> See 45 C.F.R. § 164.512(j).
- <sup>39</sup> The ADA requires that reasonable accommodations be provided to individuals with a disability, which includes individuals who have a physical or mental impairment that substantially limits a major life activity, conditions that substantially limit the operation of a major bodily function, and mental health conditions that substantially limit an individual’s ability to learn, concentrate, think and communicate. The ADA also prohibits discrimination against individuals who have a record of a disability, or who are regarded as having a disability. See generally 42 U.S.C. § 12102.
- <sup>40</sup> A “direct threat” means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation (in the employment context), and/or the elimination or modification of policies, practices or procedures or the provision of auxiliary services (in the student/member of the public context). In assessing whether a direct threat is present, institutions must assess the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. See 42 U.S.C. § 12111(3) (employment context); 42 U.S.C. § 12182(b)(3); 28 C.F.R. §§ 35.104, 35.159, 28 C.F.R. §§ 36.104, 36.208 (student/member of the public context).
- <sup>41</sup> See, e.g., *Ascani v. Hofstra University*, 173 F.3d 843 (2nd Cir. 1999) (unpublished disposition) (holding that a student who threatened and frightened her professor, and in fact pled guilty to harassment and trespass, was not “otherwise qualified” to continue as a graduate student, even if the behavior was precipitated by her mental illness (citing *Palmer v. Circuit Court of Cook County*, 117 F.3d 351, 352 (7th Cir.1997) (reaching this conclusion in the work setting), cert. denied, 522 U.S. 1096, 118 S.Ct. 893, 139 L.Ed.2d 879 (1998); *Husowitz v. Runyon*, 942 F.Supp. 822, 834 (E.D.N.Y.1996) (same)); *Bhatt v. University of Vermont*, 184 Vt. 195, 958 A.2d 637, 2008 VT 76 (2008) (holding, under state public accommodations law patterned after the ADA, that institution could dismiss a medical student for misconduct allegedly caused by a mental disability, where the misconduct demonstrated that he was not qualified to remain in the program); *Williams v. Widnall*, 79 F.3d 1003 (10th Cir. 1996) (holding that the Rehabilitation Act did not prohibit termination of employee for threatening his co-workers, even if that behavior was caused by a mental disability; *Little v. FBI*, 1 F.3d 255, 259 (4th Cir.1993) (same)).
- <sup>42</sup> See cases cited in endnote 41, *supra*. Even in federal circuits where courts have ruled that disciplining an individual for misconduct caused by a disability is the same thing as disciplining the individual for having a disability, see, e.g., *Hartog v. Wasatch Academy*, 129 F.3d 1076 (10th Cir.

1997) (the 10th Circuit encompasses Oklahoma, Kansas, New Mexico, Colorado, Wyoming and Utah) and *Humphrey v. Memorial Hospitals Ass'n*, 239 F.3d 1128 (9th Cir. 2001) (the Ninth Circuit encompasses California, Washington, Montana, Idaho, Oregon, Nevada, Arizona, Hawaii and Alaska), institutions and employers still do not have to continue to matriculate or employ individuals who are not qualified even with reasonable accommodations, or who pose a “direct threat”. See, e.g., *Hartog*, 129 F.3d at 1087. As noted above, risk managers and TAM teams should work with legal counsel to determine how to best navigate the disability law principles that will be applied to TAM work in their jurisdiction.

<sup>43</sup> FERPA regulations provide that students generally have a right to review their “education records,” which are defined broadly as personally-identifiable information recorded in any format (subject to various qualifications and exceptions), within 45 days of making a review request. 34 C.F.R. § 99.10. Thus, unless an exception applies, a student of concern could request access to a TAM team’s records in the midst of a threat management process, which could be problematic. However, law enforcement unit records are not “education records” subject to disclosure if maintained under the strict mandates of the applicable definition, see 34 C.F.R. § 99.8, and some TAM teams maintain their records with this exemption in mind. Of course, even if documents were not subject to disclosure under FERPA, they might still be subject to disclosure in the context of litigation, a civil rights agency investigation, or under public record laws, if applicable.

<sup>44</sup> See *The Handbook for Campus TAM Teams* (2008) for a full discussion of case prioritization and sample priority levels.

<sup>45</sup> See *Implementing Behavioral Threat Assessment on Campus* (2009) for a discussion of Virginia Tech’s experience hiring several case managers and for a sample case manager position description in the Appendix.

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**I could not tread these perilous paths in safety,  
if I did not keep a saving sense of humor.**

—HORATIO NELSON (1758–1805),

SOLDIER IN THE ROYAL NAVY, PARTICULARLY DURING THE NAPOLEONIC WARS

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**Innovation distinguishes between a leader and a follower.**

—STEVE JOBS (1955— ),

AMERICAN ENTREPRENEUR AND APPLE CO-FOUNDER

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# 2010 URMIA Innovative Risk Management Solutions Award

| 2010 Award Recipients: University of Missouri System and Texas Christian University

*Abstract: URMIA launched its Innovative Risk Management Solutions Award in 2007 to recognize new and creative risk management efforts implemented by our members which address specific exposures or risk management topics in colleges and universities. It also encourages members to share their successful ideas or projects as potential resources for others and to facilitate sharing of this information. In 2010, two different universities were honored as recipients of the Innovative Risk Management Solutions Award: the University of Missouri System and Texas Christian University.*

*This article provides an executive summary of each of these two programs, as well as direct links to access the program files and supporting information. The hope is that other college and university risk managers will be able to modify and implement similar programs on their own campuses and benefit from the sharing of these materials.*

## The University of Missouri System: Large Property Claims Handling

*JoAnne Flowers and Ed Knollmeyer, University of Missouri System*

### Introduction

The Curators of the University of Missouri have provided teaching, research, and service to the people of Missouri since it was founded in 1839. The first publicly supported institution of higher education established in the Louisiana Territory; the University of Missouri was shaped in accordance with the ideals of Thomas Jefferson, an early proponent of public higher education.

The University of Missouri is one of the nation's largest higher education institutions, with nearly 70,000 students on four campuses and an extension program with activities in every county of the state. The mission of the university, as a land grant university and Missouri's only public research and doctoral level institution, is to discover, disseminate, preserve, and apply knowledge. The Risk and Insurance Management Office serves four campuses and a health care system for all lines of commercial insurance and claims.

This report provides the analysis and evaluation of the process of handling large property claims. For this purpose, we defined large property claims as those over our deductible of \$100,000. The method of analysis/evaluation was to interview parties previously involved, review of carrier requirements, and documentation of how the existing processes have been managed. Recommendations included providing tools for departments to use in gathering the required information and to increase communication.

As a result, we developed materials, tools, and a new method of managing large property claims. The materials and tools can be customized based on the number of departments or campuses involved in the loss. A SharePoint site can accommodate information related to inventories as well as the request for proposal (RFP) for rebuild of buildings/spaces, drawings, photos, and other needed documentation. The tools being developed in advance allows shorter response time, reduction of staff preparation time since inventories do not have to be recreated each time, and versatility in managing the process.

**Managing the claim process for a large property claim, such as a hail storm, flood, or explosion, is a complicated, time consuming, and lengthy task. The challenge was how to simplify the process.**

## Section I – The Challenge

Managing the claim process for a large property claim, such as a hail storm, flood, or explosion, is a complicated, time consuming, and lengthy task. Our university experienced all of these in 2010. The process was burdensome due to the number of faculty, staff, and departments involved and steps required. As we worked through these claims, we decided to evaluate the process. The challenge became how to smooth out the process, make it as painless as possible for our internal customers, and achieve a full financial recovery. The additional return on the investment was to provide better tools and service while reducing the effort of all involved. Figure 1 shows a graphic representation of the major steps in the process.



**FIGURE 1: LARGE PROPERTY CLAIM LOSS AND RECOVERY CYCLE**

## Section II – Budget & Solution

Our evaluation led us to the development of a guide to share with departments at the time of an event. Also, we developed a tool that includes a SharePoint site and an Excel workbook to collect all the documentation needed for managing the claim. The only cost was time of one staff member for development (less than 100 hours) and minor internal cost (less than \$50) for the SharePoint site.

## Section III – Result

In 2010, after experiencing several large property claims, we were able to implement the use of the guide and Share-

Point tools with the most recent event. The users stated it was straightforward to use, didn't clog up email or cause a lot of copying, or any of the other issues with the old process.

The SharePoint site allows us a portal to collect the needed documents, store the information electronically, and package the documentation for the insurance carrier.

The guide helps clarify expectations and inform the department of the claim components and provide tools to those providing the required documentation. The guide and other materials are also uploaded to the SharePoint site for easy reference.

The Excel workbook can be customized and is scalable depending upon the size of the loss, the number of departments involved, or the size of the school. The workbook consists of inventories for contents and art and worksheets for capturing extra expenses and business interruption information. Since it is all in one package, administrators do not have to manage multiple files. Each worksheet has comments in the heading fields to guide the users as they complete the information. Users can also protect individual worksheets to reduce the risk of accidental or unauthorized changes. This prevents one department from accidentally changing information for another.

In summary, we identified a challenge in handling large property claims. The university risk management office evaluated the process and developed tools to respond to key issues. We then share these tools with our internal customers during a large loss. The evaluation allowed us to outline the key elements of the process. The tools allowed us to increase communication and understanding of the overall loss and claims process and reduce the amount of time and frustration for all involved.

## Section IV – The Project Materials and Final Product

To view the complete University of Missouri Property (Large Loss) Handling Guide, visit:

[https://www.urmia.org/journal/docs/UniversityofMissouri\\_LargePropertyLossGuide.pdf](https://www.urmia.org/journal/docs/UniversityofMissouri_LargePropertyLossGuide.pdf).

The guide also includes other supplemental materials, including snapshots of the inventories and screen shots of the SharePoint site.

## About the Authors



*JoAnne Flowers, ARM-P, AIC*, has served as the assistant director of risk and insurance management for the University of Missouri (UM) System since 2003. Prior to joining UM, she worked for Missouri Western State University and several insurance companies. Ms. Flowers has served

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*Ed Knollmeyer*, director of risk and insurance management for the University of Missouri (UM) System, has been in insurance for over 20 years, including 19 years in claims with Liberty Mutual Insurance. His career has taken him to Columbia, South Carolina; Mobile, Alabama; Jackson, Mississippi; Miami, Florida; Montgomery, Alabama; and Nashville, Tennessee. He has been with UM since January 2007 and now resides in Columbia, Missouri.

He currently serves as the vice chair for the Master Property Program Leadership Committee for the Midwestern Higher Education Commission.

The father of two, Mr. Knollmeyer is an ardent water skier and hiker and endeavors to be on the water whenever possible.

# Texas Christian University: Firefighter Information Data Organized (FIDO) - Pre-Planning Software

*Jill Laster, Paul Fox, Jonathan Roark, Randy Cobb, and Jonathan Brown, Texas Christian University*

## Introduction

The design and physical layout of the Texas Christian University (TCU) campus is no different from many other universities. TCU has a student population of 8,900 students with an additional 1,500 faculty and staff on campus during the school year with over 100 buildings of similar design, color, and materials organized and placed into just over 300 acres of land within the city of Fort Worth, Texas. There are two major traffic routes, one bisecting and one bordering the campus, which maintain the busy pace of the university day and night. The campus design places buildings in close proximity with beautifully landscaped pedestrian paths leading in and around the campus. At times, the campus can be confusing to freshmen, those who are unfamiliar with the campus' layout, and those who visit the campus infrequently. Although the campus presents a quaint and charming ambiance with the sometimes confusing maze of buildings and pedestrian paths, confusion among first responders, whether police, fire, or EMS, during an emergency is not the goal of the university.

TCU routinely liaisons with all first responders that serve the university to ensure that the university addresses and resolves any fire or security issues of concern. During a meeting with the Fire Station 21 of the Fort Worth Fire Department (FWFD), the group discussed the complexity of the campus layout and inherent problems of combating a fire on a university campus composed of numerous buildings with vastly different purposes, designs, and floor plans. The solution to this issue was the development of a comprehensive and detailed pre-fire planning database

for the TCU campus. The database was designed to assist responding fire department personnel and was developed with the assistance of the fire department. The university developed the Firefighter Information Data Organized (FIDO) and populated the database with detailed information critical to the success of firefighting on TCU's campus.

Database information included the street addresses of buildings, GPS coordinates, cross streets, and building floor plans with attached digital photos of firefighting equipment, controllers, safety items, or items designated by the fire department as critical. In addition, the database lists any student, faculty, or staff member with special needs who lives or has an office in campus buildings, as well as information about any hazardous materials, quantity, and location. FIDO contains the information specified by the actual firefighter that will enable him/her to arrive on the scene in a timely manner without delay, equipped with specific information and photos of the building involved in the emergency.

FIDO will significantly enhance TCU's safety and ability to respond to emergency situations on the campus.

## Section I – The Challenge *What risks or exposures were addressed by your solution?*

Like many universities, the TCU campus is located in a residential neighborhood.

When there is an emergency anywhere on the campus, first responders need to know where they are going and have as much information about the building to which they are responding.

TCU is five miles from the heart of downtown Fort Worth, and our first responders are the FWFD, Fort Worth police, and MedStar ambulance service. With the turnover in first responder employees, TCU had tried several different strategies in the past to orient first responders, including maps and campus tours, but confusion for first responders remained a concern. With the FIDO system, first responders receive the name and address of

**Although the campus presents a quaint and charming ambiance with its maze of buildings and pedestrian paths, confusion among first responders is not the goal of the university.**

each facility, as well as the GPS coordinates, floor plans, information on building usage, fire pump locations, the location of any hazardous materials, and any special occupant information, such as a student or employee with mobility or vision limitations.

The FIDO system provides immediate information concerning fire and life safety issues to local responders at the time of an emergency call, helping to mitigate property and life losses.

### ***Why was this risk or exposure a priority?***

The ability for universities to provide life safety and property protection to first responders is always paramount to saving lives and property. TCU does not have a dedicated fire department and relies on the city of Fort Worth for responding to fire and medical emergencies. With 100+ buildings on campus, detailed information concerning a particular location's fire protection system is rarely seen by the first responder in a timely fashion.

While useful in many arenas, the FIDO was developed to provide the basic information needed for the local first responder.

### ***What makes your solution in a unique or innovative approach?***

The ability to gather this type of information has always been around, whether using paper copy or software. The difficulty has been finding an easy to use solution that is flexible and inexpensive for a small department or university. The main goal of the project was to provide the needed information to a first responder in a package that is easy and accessible to them. The FIDO software package provides ease of use by both the department providing the information and the first responder using the information. TCU provides updates via thumb drives or e-mail as the FIDO system is updated to reflect campus additions or renovations.

### ***What programs or services on your campus were affected or improved by the project?***

The flexibility of the software package provides much more in services to the university than was originally anticipated. The software package that served as a foundation to FIDO, *Signature Scene* developed by Trancite Logic Systems, is a report generating package designed for

police and vehicular accident reporting. It uses templates that can be added or removed based on the needs of the report. This software package is used not only for FIDO needs, but it has also been used to document liability and personal injury accidents, ergonomic studies, air quality studies, and security evaluations.

### ***What are the positive results of the implemented program?***

The most obvious benefit of implementing this program is having readily available and usable information for first responders. The FWFD is considering using this or a similar package for their own use. The FWFD has deemed the current pre-fire planning system used by the department to be difficult for the typical firefighter at the local fire station to use. Because of the simplicity and commonly accepted formats of input data (.jpg, .gif, .doc, .pdf, etc.), the FIDO package has appealed to this agency as a possible replacement.

### ***How were the changes received by those affected by the program or service?***

At the upper administrative level at TCU, the response has been one of high praise for not only identifying a problem, but bringing a solution forward to solve it. Additionally, the FWFD thinks highly enough of it to consider it a possible replacement to their existing pre-fire planning software. Because it consolidated fire protection information into one location, the FIDO system is shared with the university's property insurance carriers. Internally, campus police use it to provide floor maps and fire information to outside agencies. Physical plant uses it to share fire protection data within its own department.

## **Section II – Budget & Solution**

### ***What was the total budget for this project?***

The cost for the original project was \$850 for the *Signature Scene* software package, plus \$500 for the customization of the fire template. Additional licenses for future copies was \$850; the university determined that, to save time allow two people to input information, an additional license was needed. The final cost was \$2,200.

**How many staff members were allocated to this project and for what length of time?**

The safety director and environmental health and safety coordinator were assigned to this on a part-time basis in addition to their normal duties. The project started at the end of the spring semester (beginning of June) and was completed by the beginning of the fall semester (end of August). Over this three-month period, these employees dedicated an average of 15 to 20 hours per week to gathering information, taking photographs, modifying input data, and reviewing report results. Over 100 individual building surveys were performed in addition to developing the building reports.

**If you projected an expected return on investment, how was that done?**

We broke down the cost of the project on a per building basis. For the university, the cost per building was about \$22. Manpower costs were not taken into account since there were no additional personnel added to existing staff. The per building cost was much cheaper than hiring a consultant.

**How are you tracking your success on risk reduction as a result of implementation?**

The only way to track whether this project will be a success is in its use by the FWFD and other agencies or departments. On a local fire station level, first responders can access the reports using on-board computers on the engines. The reports are also carried on the mobile incident command unit of the FWFD. The TCU campus police officers carry copies of the reports accessible through their on-board computers, and the university has provided a copy to the property insurance carrier to assist in its evaluation of fire protection systems across campus. Fortunately, no fires have occurred to provide a more detailed analysis.

FIDO was used in this year's renewals as a tool for TCU to provide underwriting information to TCU's broker and carriers. FIDO simplified the process for all concerned and replaced many of the requests by underwriters for campus tours.

**What strategies or venues did you use for communication to the college or university community?**

A series of meetings were held to introduce this program to upper management and key personnel within the TCU community. These meetings built support of the project, particularly with those who would be contributing information to be included within the reports. Since the use of this information is primarily for first responders outside of the university, presentations and meetings were also held with these groups, both for their input into what was needed for the reports and to educate them on the final product.

**The cost of the project on a per building basis was about \$22, which was much cheaper than hiring a consultant.**

**Section III – Result**

**How could other risk managers utilize your solution on their campuses?**

This software package is easily modified upon contacting Trancite Logic Systems. Universities will also benefit from contacting their local fire departments and physical plant departments to determine what information is available and what information they need to gather to make such reports useful. Once this is completed, officials should consider what pieces of information are consistent from building to building for placement on the customized template.

**Is your solution scalable for smaller/larger campuses?**

This software is flexible and can provide as much or as little information as needed for the institution's reports. The only limiting factor is the number of licenses needed to complete a project. The low cost of the software package, ease of use, and low staffing requirements make TCU's FIDO solution easily scalable. Now that the FWFD is considering adopting FIDO on a city-wide basis, it is easy to see how a campus solution can expand to a city solution.

The university needed only two staff members on a part-time basis to implement FIDO over a three-month period.

#### **Section IV – The Project Materials and Final Product**

To view the complete TCU FIDO guidance documents, including an overview of how it works, an example of the program in action, and a PowerPoint presentation, visit:

**[https://www.urmia.org/journal/docs/TexasChristianUniversity\\_FirefighterInformationDateOrganized.pdf](https://www.urmia.org/journal/docs/TexasChristianUniversity_FirefighterInformationDateOrganized.pdf)**

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**The fishermen know that the sea is dangerous and the storm  
terrible, but they have never found these dangers sufficient  
reason for remaining ashore.**

—VINCENT VAN GOGH (1853–1890),  
DUTCH POST-IMPRESSIONIST PAINTER

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**Back cover:**  
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