

URMIA Journal

2017



Highlighting innovative and effective higher education risk management solutions.

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Those who have knowledge, don't predict.

Those who predict, don't have knowledge.

— LAO TZU,

CHINESE PHILOSOPHER AND FATHER OF TAOISM

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URMIA Journal

2017

University Risk Management and Insurance Association



The host city of URMIA's 48th Annual Conference - Orlando, FL

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A Professional Non-Profit Forum for the Exchange of Information, Concepts,
Practices, and Developments Among Higher Education Risk Managers

From the President



It is my distinct honor to present you with the 2017 edition of the *URMIA Journal*. As we begin a new three-year strategic plan this year, one of our main initiatives is the enhancement of higher education risk management education. The *URMIA Journal* serves as one of the most effective resources in meeting this objective by providing exceptional higher education risk management information for our members.

About this time every year, I eagerly await the arrival of the *URMIA Journal* to see what innovative articles are included. This year's edition follows this long tradition of quality publications and features eight articles covering a vast array of ever-changing risks in higher education. The articles cover such important topics as mitigating risks with university related international travel, managing the day-to-day risks of minors, active shooter response plans that mitigate risk and save lives, strategic and operational risks on college campuses, enhancing safety culture through health and safety management systems, options to consider when managing construction risk, and New York's effort to protect its children from exposure to lead in drinking water.

Also highlighted in this edition is URMIA's 2017 Innovative Risk Management Solutions (IRMS) award, which recognized Iowa State University's "SafeFood 101" program. This program created an online training program to successfully train over 1,000 students annually in consistently safe food handling and serving procedures. Online training engages these students effectively and at their convenience. Upon successful completion of the course, students receive a SafeFood 101 card to certify they are approved to participate in a food service event on campus. Since 2007, URMIA has recognized new and creative risk management initiatives implemented by our members through this award. In the collegiate spirit of URMIA, the IRMS program encourages other college and university risk managers to take these ideas and modify them to fit the needs on their respective universities. Please join me in congratulating Iowa State University on their successful program.

I would like to express my particular thanks to the authors who wrote these articles, the members of the Communications Committee who assisted with reviewing and editing, and the URMIA National Office staff for their hard work in publishing this year's *Journal* for our members. I sincerely hope you find the information to be a valuable tool in this ever-changing world of higher education.

I look forward to seeing all of you at the URMIA Annual Conference in Orlando in September. It is destined to be a "magical" event!

Kathy E. Hargis, MBA

Associate Vice President of Risk Management & Compliance

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Upcoming URMIA Events

Join us **September 23-27, 2017**, in Orlando, Florida, for URMIA's 48th Annual Conference. Visit www.urmia.org/ac2017 for more information, and use the hashtag **#URMIA2017** to connect with URMIA on social media!



This year, URMIA is changing Risk Management Week to Risk Management Wednesdays! During the month of November, gather your colleagues each Wednesday for educational webinars that help spread the word about good risk management practices on campus.

Stay tuned for more details and tips on setting up your own RM Wednesdays events, resources to share with your campus, and webinars that make key risk management topics relevant to everyone at your institution.



**We shall not cease from exploration, and the end of all our
exploring will be to arrive where we started and know the
place for the first time.**

—T.S. ELIOT,

BRITISH POET, PLAYWRIGHT, AND ESSAYIST

Strategies for Mitigating Risks Associated with University-Related International Travel

| David Farris and Julie Zobel, George Mason University

Introduction

Within institutions of higher education, the recognition of the need for and support of a comprehensive international programs office that includes a robust risk element has evolved over time. This evolution has occurred in response to increased emphasis on the globalization of higher education, access to international and remote locations, high-profile incidents and terrorism around the globe, and the ever-changing regulatory and political landscape that has increased attention to international travel.

International travel occurs under the auspices of colleges and universities when faculty travel for scholarly reasons such as research, collaborating with international colleagues, delivering presentations, or attending conferences. Administrators and university staff often go overseas to recruit students or survey locations for study abroad and other educational opportunities. Staff often support faculty or administrators on internal trips or in some cases serve as study abroad trip leads. Students engaged in study abroad trips, conducting research, or attending conferences abroad constitute perhaps the largest group of travelers and arguably represent the greatest risk.

This article explores international travel risks, a holistic approach to assessing and managing these risks, resources for international travelers, and lessons learned when implementing an international travel program enterprise-wide.

International Travel Risks

The many benefits and joys of traveling abroad to expand our knowledge and our minds and engage in life-enriching experiences are sometimes met with risks. Some of the

most predominant risks include infectious diseases, natural disasters, civil unrest, terrorist activity, challenges faced when visiting less inclusive or open countries, and the spontaneous nature of excursions and side trips. In other

situations, lack of infrastructure, access to medicine or medical facilities, and remote destinations present additional challenges and risks. Some examples of international travel conducted for university business in areas with known or post-departure emerging risks include the following:

- + Research faculty from Tulane University were in West Africa assisting communities during the Ebola outbreak in the spring of 2014.¹
- + Many US college and university students were in Egypt during the civil uprising in 2011, as Egypt had been a popular and previously considered stable study abroad location. The University of California was one such school with 20 students in Egypt when chaos ensured and prompted the university to charter planes to evacuate students. However, despite being urged to return to the United States at no additional expense to the student, some made the personal choice to stay.²
- + The terrorist attacks in Paris in November 2015 tragically took the life of a study abroad student from California State University, Long Beach.³ Terrorist attacks are some of the most difficult events to predict and prepare for in the realm of study abroad or international travel related to university business or programs.
- + In late 2015, an undergraduate student from the University of Virginia took a non-university sponsored trip to North Korea. While walking through a hotel, the student removed a political

Some of the most predominant risks of travel abroad include infectious diseases, natural disasters, civil unrest, terrorist activity, challenges faced when visiting less inclusive or open countries, and the spontaneous nature of excursions and side trips.

propaganda poster referencing the late Kim Jong-il from the wall. This behavior “would be seen as subversive in a country where the ruling family is considered sacrosanct.”⁴ In March 2016, the student was sentenced to prison for 15 years of hard labor.⁵ Subsequently, the student was returned to the United States in June 2017 in a comatose state after a grueling 17-month experience in North Korean captivity. Sadly, Otto Warmbier died six days after his return to the United States.⁶ Although the student’s trip to North Korea was done through a private company and not related to university business, this example highlights the risks associated with travel to countries that are not considered open or may use Westerners for political gain.

- Another example that depicts risks associated with travel to less inclusive and open countries includes a Canadian-Iranian professor who was held in Iran from June to September 2016 as a result of her research on women in the Middle East. The specific charges, “collaborating with a hostile government against national security” and with “propaganda against the state,” was never relayed to her lawyer but was published by the Iranian press. Furthermore, the Iranian prosecutor reported that this professor was “dabbling in feminism.”⁷

Of Particular Concern:

Side Trips and Unplanned Excursions

A less obvious risk is the lack of preparation or safety measures put in place for excursions or ad hoc “side trips.” These are additional locations or outings added to the primary location or reason for the trip. Often these side trips are added because travelers are already close in proximity to an attraction that may be seen as adding value to the trip or because the coordinators wish to add an option for fun, a cultural experience, or an additional learning opportunity. It is most prudent when side trips are pre-planned and built into the program. However, when side trips occur spontaneously they can be met with unknown risks. For instance, in 2012 a US college student drowned during a side trip to “a beach known to have dangerous currents.”⁸ Additionally, in 2013 a jury awarded a US high school student over \$40 million due to the negligence found in the management of an educational trip to China

in 2007. In this case, parents were not told that students would be visiting non-urban areas. When the student and her classmates were taken to a wooded area, the student was bitten by a tick carrying a virus that can cause encephalitis and subsequently has suffered permanent brain damage. While this case involves a high school student, the broad effect on international educational programs is easily extrapolated to the university setting as indicated by the court brief filed by 28 educational organizations, including the Association of American Universities, on behalf of the high school sponsoring the trip to China.⁹

A Holistic Approach to Assessing and Managing International Travel Risks

The most effective manner by which to manage the risk associated with international travel is to have one holistic and comprehensive process that also has the flexibility to take into consideration the needs of different constituencies (faculty, staff, students) and associated departments (fiscal services, research, safety, human resources, etc.). This strategy starts with a sound centralized risk management program that is called upon and relied on throughout the university. The overall success of this centralized resource will affect the ability of the institution to engage in areas with an increased potential for risk, such as international travel.

Core risk management-related elements that support an institution’s international endeavors include a strong culture of identifying and managing risks, appropriate structure and staffing (centrally and within related departments), stakeholder buy-in and collaboration, formal policies and procedures, travel advisory and review committee, an international travel registration system, and emergency management.

Strong Culture of Identifying and Managing Risks

At the very heart of a successful risk management program is a positive and progressive culture of identifying and managing risks. This starts with senior leadership and should permeate the institution at every level. Accountability plays a large role in the culture of an institution and especially affects departments and personnel that have considerable responsibility for managing some of the major risk areas of finance, compliance, hazards, or operations, all of which are concomitant with an institution’s global activi-

ties. A sound culture of risk management and accountability within an organization can lead to proper assessment of risks which may mitigate faculty, staff, and student injuries and illnesses (or even death); minimize unreasonable financial losses; and encourage compliance, proper emergency planning, and more efficient operations.

Appropriate Structure and Staffing

Establishing an appropriate organizational structure and staffing levels for risk management will properly position an institution to fully meet strategic planning goals when engaging in activities with a higher potential for risk (e.g., international travel). Adequate staffing levels in the centralized risk management function with access to senior leadership allows for the appropriate level of attention on high profile incidents or matters that could negatively impact the institution's reputation or strategic initiatives. This, coupled with risk management staff embedded in program areas with a higher potential for risk, will poise an institution for prudent management of international business requiring international travel. That said, as is the case with many organizational elements in the university setting, there is no standard way to organize personnel that manage risks outside of the central risk management function.

The modern international programs office is typically led by an individual within academic administration who is responsible for the global footprint of the university. This footprint includes the management of satellite campuses outside of the United States, traditional study abroad programs, relationships with international universities, and international students attending the US-based home institution. Ideally, this individual has a team of staff that collaborates closely with other central offices that oversee safety, emergency management, and risk management, as well as research and export controls, student life, human resources, and fiscal services. It is becoming increasingly common for universities to have professional safety, emergency management, and risk management personnel embedded within their international programs or study abroad program offices.¹⁰ The professionaliza-

tion of these roles has allowed risk management, safety, and emergency management to become an integral part of overall management of institutional globalization.

Stakeholder Buy-In and Collaboration

The desired holistic approach to managing risks associated with international travel is most evident in the collaborative and inclusive nature of the process and procedures established. For instance, there is great value in bringing together subject matter experts from various areas when developing international travel policies and procedures. Areas that should be represented are academic administration to include those that manage centralized study abroad, provide services to international students and visiting faculty, and manage and support research compliance, as well as the academic departments with international programs and customer service-driven centralized operational support departments (e.g., safety, emergency management, and risk management).

Having a central risk management department that operates in a collaborative manner is essential to having institutional and individual buy-in at all levels of the organization. When risk management is viewed as a partner that can be relied upon for guidance, rather than a regulator, the most effective programs can be developed and the institution is positioned for success in managing risks. Of course, this balance can be hard to strike and maintain, given the competing

interests, limited resources, and diminished attention that many institutions of higher education support functions often experience, especially during periods of declining financial support.

Formal Policies and Procedures

Formal policies and procedures (i.e., administrative controls) serve as the backbone of a comprehensive risk management program for any risk area, and, therefore, an international travel policy is necessary to establish expectations regarding travel procedures and conduct integral to risk management strategies. Furthermore, university policies provide legitimacy to committees assigned with

Formal policies and procedures serve as the backbone of a comprehensive risk management program for any risk area.

carrying out the policy mandates and signal the organization's commitment to protecting students and employees. Given that a comprehensive international travel risk management program may take months or years to implement, an incremental approach is prudent and likely necessary. Policies should reflect the capacity of the risk management program and evolve as the program matures. A review of publicly available international travel policies¹¹ maintained by universities across the country reveals a consistent catalog of topics. They are:

- Appointment of a committee charged with reviewing and approving travel to areas deemed "high risk"
- Travel planning and registration procedures that students, faculty, and staff must follow (although some policies only apply to students)
- Specific conditions that warrant review, university intervention, prohibition against travel, revocation of travel authorization, or recalling travelers from abroad
- Services or resources available to travelers (e.g., health and supplemental insurance)
- Definitions necessary to clarify and enforce travel policies

Travel Advisory and Review Committee

Once formal policies and procedures have been established, it is recommended that the institution charter a committee or council to assess the risks associated with specific international trips. This committee should mirror the make-up of the team that was involved with establishing the formal policies and procedures and include stakeholders, such as institutional study abroad program managers, centralized risk management, international services and programs, research compliance, health and safety, emergency management, and representatives from academic departments with international programs. The charter for this committee ideally comes from the head of the academic enterprise, the provost, and the head of the administrative functions (e.g., senior vice president, executive vice president). This signi-

fies the importance of such a committee and their work to both the academic mission and the operational functions of the university.

The charge of such a committee should be to perform risk assessments on trips to areas that are deemed as "high risk." There are many ways to define "high risk." One example is to do so by inclusion on the US Department of State Alerts and Warnings list, Warning Level 3 (Avoid Nonessential Travel) on the Centers for Disease Control & Prevention Travel Health Notice list or travel to a country under comprehensive economic sanctions (currently, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine). In most cases, prior to a trip to a high risk area,

the committee reviews the details of the trip and subsequently assists travelers with trip preparation and understanding potential risks, university services, and coverage that may be available to them when traveling to such areas. In rare cases, the committee may deny the request for an exception to travel policies restricting travel to high risk areas. This decision would only be made under exceptional circumstances when risks presented by such a trip are unable to be transferred, managed, or accepted by the institution; an example would be the inclusion of several inexperienced students (e.g., first or second year college students) traveling to areas experiencing civil unrest or intense conflict.

Application to Travel to Hazardous Areas

As implied above, many institutions now require travelers who intend to travel to a high risk area (as defined in the respective institutional international travel policy) to submit an application to a committee of university administrators charged with reviewing and approving (or denying, in some cases) travel. For the committee to assess the risks associated with travel, it is necessary to collect as much information as possible, which, naturally, some view as intrusive and laborious. A cursory review of travel applications from six institutions¹² required the following information:

To assess the risks associated with travel, it is necessary to collect as much information as possible, which, naturally, some view as intrusive and laborious.

- ✦ Travel itinerary
- ✦ Emergency contact information (domestic and abroad)
- ✦ Explanation of precautions that will be taken
- ✦ Routine communications plan
- ✦ Justification for travel
- ✦ Acknowledgement or assumption of risk
- ✦ Department or supervisory approval

Travel oversight committees should also consider potential export control violations in addition to health and safety risks. Federal regulations prohibit the export or sharing of intellectual property, technology, or assets that can compromise national security. The most notorious university case involves the sharing of data regarding drone technology with Chinese researchers. The offending professor was given a four-year prison sentence.¹³ In another case, the University of Massachusetts Lowell was fined \$100,000 (waived pending no further violations) for exporting atmospheric testing technology to Pakistan.¹⁴ In 2006, the US Government Accountability Office released a report¹⁵ regarding lax export controls at universities and recommended an increase in export compliance enforcement. This report is indicative of increased scrutiny on international travel programs and faculty travel. The procedures used to identify and track travelers going abroad are often adequate with slight modifications to identify potential export compliance infractions. Applications to travel to hazardous areas can be modified to solicit information about technology that will be taken abroad, academic activities that include intellectual property, and destinations that may be subject to more stringent regulations for American citizens.

International Travel Registration System

For many institutions, the frequency and assortment of travel opportunities available to students and business-related travel requires technologies to manage travel programs and traveler itineraries. Several companies offer travel registration and tracking solutions, and many share similar capabilities, including travel program development and marketing, student application and registration workflow and approval, customizable fields and forms, and reporting tools that can quickly provide the location of travelers around the world.

Advantages of travel registration systems include more accurate data regarding travel frequency and destinations for insurance underwriters; metrics that can be used to create targeted marketing campaigns to increase participation in study abroad programs; improved efficiency through automated workflows and reduction in manual processes; and enhanced record keeping and retention. One of the most valuable capabilities of travel registration systems is the ability to identify travelers destined for areas deemed high risk (e.g., under Department of State Travel Warnings or other institutional risk threshold) so that a review process can be initiated in advance of travel. Lastly, these systems enable quick review for university faculty, staff, and students on travel to areas experiencing an emergency such as natural disasters or terrorist activity.

It is a mistake to assume that travel registration systems are the solution to the many risk management challenges associated with international travel. Instead, travel registration systems are merely a tool to facilitate the procedures outlined in university policies and risk management plans. Risk management is a collaborative endeavor and, as such, requires the assistance of various stakeholders. In the authors' collective experience, the selection and implementation of a travel registry database requires stakeholder input and resources from across the institution. Each stakeholder solicits specific features necessary to accomplish the goals of their respective department or function. Stakeholder requirements often overlap but sometimes conflict. For instance, academic and demographic data requested by travel abroad offices may conflict within institutional policies regarding the collection, transfer, and use of personally identifiable information. Furthermore, information sought by risk management professionals (i.e., side trip itineraries and layover destinations) may be deemed inconvenient or burdensome to faculty and students.

Emergency Management

Emergencies abroad rarely lend themselves to preconceived scenarios and protocols. Planning for international emergencies is difficult given the variety of circumstances in which travelers may find themselves. The challenge of planning for and responding to emergencies abroad are compounded by distance, culture, time zones, currency, and politics. The all hazard emergency planning philosophy uses procedure rather than specific protocols to apply

a general process that is used to respond and manage incidents. International travel emergency planning is much more than providing guidance on how to cope with culture shock, recover lost passports, and tips to prevent petty crime. Instead, emergency planning requires extensive planning and collaboration during an event.

Trip-Specific Emergency Planning

Travelers should be provided with a means to identify and document fundamental emergency preparedness information for the locations they will visit. Information should include a shelter location within or adjacent to their accommodations, a location to meet in the event of a building evacuation, and a rally point at which to rendezvous if the group becomes separated or is unable to return to the hotel. A sample trip-specific emergency plan is provided as an attachment to this article. With the advent of mobile public safety applications, emergency planning and response information can be embedded in custom institutional applications or third party applications.

Emergency Notification

Often travelers become aware of a threat or evolving crisis before the university does. In these cases, notification to the appropriate agency or university department in a timely manner is the first critical step. International travelers should be provided with one or more phone numbers that are monitored 24 hours a day. While police and public safety dispatch centers are an obvious option, communications officers are not likely equipped to coordinate a response. Instead, a university administrator who is intimately familiar with international travel programs should be designated to coordinate a response.

In other instances, the institution may become aware of a brewing crisis before travelers or simultaneously. Many international travel insurance companies monitor conditions around the world and will notify institutions when they deem conditions potentially dangerous. During the 2016 coup in Turkey, George Mason University was noti-

fied by Mercer Travel Assist (i.e., AXA Assistance USA) early of potential travel restrictions implemented by the military. Medex, International SOS, Travel Guard, and International Travel Assistance Group are a few companies that offer similar services.

Notifying travelers of emerging hazard or extant threats can be challenging. Many international travel registration systems now offer the ability to text and email travelers. This system is invaluable; however, policies and procedures should be developed to ensure that travelers are notified in a timely manner. Obviously, this strategy is contingent upon travelers having a cell phone, international data plan, and access to cell service. At a minimum, trip leaders should be required to maintain a cell phone with an international data plan. If they do not possess a phone, the institution should consider providing a cache of phones for trip leader use. Lastly, international emergency notification systems should be tested on a routine basis.

Emergency Communications

Like all emergencies, communications are often the Achilles' heel that slows or derails a well-articulated and thought out response. To mitigate the potential for miscommunication or failure to notify and involve the appropriate university unit during a crisis abroad, a conference call can be convened with all parties to

review the situation and initiate an appropriate response. George Mason University utilizes the institution's emergency notification system to convene an identified group of professionals who are familiar with international travel and emergency response procedures within 30 minutes to one hour after notification of an emergency.

Some crimes that occur abroad must be reported to document and record institutional crime statistics in accordance with Clery Act.¹⁶ Crimes that take place within or adjacent to accommodations where students are temporarily housed may be required to be relayed to the organization's Clery Compliance Coordinator and reported in the institution's Annual Campus Security Report even if no student was involved or injured in the crime. For more

Like all emergencies, communications are often the Achilles' heel that slows or derails a well-articulated and thought out response.

information contact, the institution's designated Clery representative or visit www.clerycenter.org.

Emergency Response

Procedures for managing international incidents should be documented, reviewed on a periodic basis, and tested in practice or with hypothetical scenarios. Plans should address in-country response procedures, as well as administrative procedures, that will be used upon notification of an emergency abroad. This internal plan outlines the roles and responsibilities of departments responsible for supporting travelers abroad during a crisis and procedures for responding to various types of emergencies (e.g., medical emergency, arrest, missing person, and communicable disease epidemic). In addition, emergency plans should include instructions on when and how trips will be relocated within country/region or recalled home due to devolving conditions. Agreeing upon procedures in advance avoids confusion during a crisis, thereby expediting services to travelers in need of assistance. Although emergency plans are beneficial, the administrative processes required to support plans are invaluable.

Incident Review and Monitoring

As overseas incidents occur, it is important to collect information to determine if there are things that could have been done to prevent the incident or lessons learned for better handling incidents when they do occur. Post-incident evaluations (i.e., after-action reporting) are a standard practice in emergency management. A review should critically evaluate pre-incident planning and response procedures. A thorough review may require the involvement of trip leaders and travelers. Deficiencies should be documented and corrected as soon as possible.

International emergency planning requires an extraordinary amount of effort, particularly given the wide array of locations and complications inherent to international travel. Some institutions are fortunate to have a position dedicated to student and/or faculty travel safety and risk management.¹⁷ For institutions that do not have a dedicated person to this task, it may be necessary to distribute emergency planning efforts across the institution's risk management, study abroad, safety, and emergency management functions.

Resources for International Travelers

The first line of defense against international travel risks is the traveler. The preponderance of effort tends to revolve around prohibiting travel or rendering assistance in the event of a crisis; however, equal attention should be given to the training and resources provided to travelers prior to departure and while travelers are abroad.

Pre-Departure Planning

Travelers should be encouraged to become familiar with current information about the destination country available from the US Department of State, as well as US Department of State Travel Warnings, if applicable. All travelers should be directed to register with the US Department of State Safe Traveler Enrollment Program (STEP) and to become familiar with the services available through US Department of State Overseas Citizens Emergency Center. To facilitate pre-departure planning, George Mason University offers an International Travel Pre-Departure Checklist used in conjunction with travel orientations and training.

Training and Education

One of the most effective ways to mitigate risk is to educate travelers of the potential hazards and empower them with information and resources prior to departure. Pre-departure orientation sessions can be an effective means of conveying important information to travelers and should include the following:

- Preparing for international travel
- Cultural considerations and culture shock (departing and returning)
- Overview of infrastructure and critical services
- Public health and hygiene
- Recommended or required vaccinations
- Public safety issues
- Gender and LGBTQ+ concerns
- Emergency procedures
- Requirements for returning to the United States
- Post-travel administrative and academic procedures

In addition to academic, administrative, and logistical issues, travelers, especially those leading groups of students, should be provided with information regarding procedures for contacting the university during a crisis, procedures for

contacting and requesting assistance from international travel insurance providers, and emergency procedures. To the extent possible, orientation sessions should be tailored to each audience, and in some instances ad hoc sessions may be necessary to address unique or emerging issues specific to the destination country. For example, during the Arab Spring many institutions reevaluated their orientation programs. As Gary Rhodes, director of the Center for Global Education at UCLA's Graduate School of Education and Information Studies, stated in an article about students abroad in Egypt, "Orientations vary in rigor. While some study abroad programs spend weeks preparing students for possible health risks, natural disasters, and political crises, others do much less."¹⁸ Although face-to-face orientation sessions typically require more time and effort than online sessions, in-person orientations provide opportunities for dialogue, insight into travel programs, and uncover faculty and student concerns, which can inform risk management strategies and orientation content.

Blanket Insurance Policy

According to a report conducted by the US Travel Insurance Association, 17 percent of travelers experience some sort of trip interruption, yet only 22 percent of travelers have travel insurance.¹⁹ Many institutions maintain a blanket insurance policy to provide supplemental insurance to travelers for emergencies. Many insurance providers offer bundled or a la carte options for the following services: emergency medical, repatriation of mortal remains, emergency evacuation/relocation, family reunification, trip cancellation, and on call assistance. The right insurance product should be tailored to the institution's service needs. If travelers are expected to pay for and maintain insurance while abroad, institutions can take advantage of economies of scale to reduce the cost to travelers and ensure that insurance coverage conforms to the institution's risk tolerance and insurance standards. Institutions should conduct a cost benefit analysis to determine what insurance products are needed based on known travel and the institution's risk profile.

Lessons Learned When Implementing an Enterprise-Wide International Travel Program

The authors were both the primary drivers and instrumental to the development of an enterprise-wide travel

program at their institution. While implementation took several years and there is still work to be done, it is important to share lessons learned.

Administrators and those in support service areas in higher education know that putting any program in place with such far-reaching implications and many stakeholders takes significant coordination and time. Those embarking on such a heavy lift should be prepared for significant progress to take several years, even when stakeholder buy-in is not a significant challenge, as was the case for the authors. That said, buy-in with regard to which department was responsible for specific elements of this program, in the absence of a dedicated health and safety professional within academic administration, was a challenge the authors faced. The personnel gathered for the development of international risk management policies and procedures often have the best intentions, but when faced with additional responsibilities and work load to their departments and themselves they can, understandably, become resistant, particularly if they are already under resourced. One of the ongoing challenges, inherent in all risk management programs, is compliance with university policies and procedures. Where students, faculty, and staff have the ability to circumvent procedure, some will elect to skirt the rules. How the institution identifies and resolves this challenge is a topic too complex to be addressed here.

A soft roll out of new requirements for academic programs, faculty, and individual student travel is essential to be flexible and adaptable as imperfections in the process come to light. As mentioned previously, there are many reasons for university travel to international locations. Some motives for international travel are easier to assess and manage risks for than others. Most administrators and academics can agree that managing risk is necessary when taking undergraduate students on study abroad trips. However, this rationale fades over the spectrum of types of university-related international travel and is less obvious when considering individual faculty travel. A comprehensive risk management approach includes addressing all types of international travel despite that faculty going abroad for research and scholarship opportunities as individuals do not typically want to adhere to additional travel procedures. This view is compounded when faculty are not seeking reimbursement or charging such travel to funded research. As with many health and safety and

risk management efforts in the university setting, faculty expertise must also be considered. Often faculty have been engaged in newly regulated activities for years and resent new requirements put forth by health and safety and risk management professionals who, in comparison, may be considered generalists with less experience in these areas. Achieving this level of buy-in requires much conversation and possibly incentives, such as coverage under the university's travel insurance policy. This incentive assumes an institution is comfortable with only covering travelers that subscribe to following the international travel procedures. That said, there are other benefits to faculty, staff, and students besides insurance coverage to a robust international travel program, namely emergency preparedness and response.

Integrating a new and extensive program at an institution can be a technical challenge as well. Over time, many institutions have implemented software solutions that address a particular need but do not integrate enterprise-wide. This patchwork approach can assist a department with their narrow-focused need but over time can lead to business intelligence gaps or inconsistencies. Ideally, an international travel registration system's scope would include all types of international travel, regardless of the purpose of the trip (e.g., study abroad, faculty research and scholarship, recruiting). This system would also be integrated with other related university software solutions, like those used to request and approve travel reimbursement for faculty and staff. If this integration is not done, it can lead to redundancy in data input requirements, which frustrates faculty and can lead to noncompliance. In addition, not integrating with other university software solutions can create inconsistencies in the implementation of policies across different types of travelers (i.e., staff and faculty) and inconsistencies in travel data, both of which add time and a lack of confidence when institutional officials are responding to an emergency. For instance, if the international travel registration system is not used for individual faculty travel,

emergency management personnel will need access to at least two databases to search for affected university personnel when a natural disaster or other emergency occurs internationally. This issue is compounded if the institution does not have a means to capture travel for which faculty do not plan to seek reimbursement.

Another potential for integration issues and conflicts to arise regards externally sponsored travel to hazardous areas. If an institution has accepted funding (on behalf of an investigator) and the proposed work included travel to a hazardous area, faculty must then be supported in completing this travel to be compliant with the sponsor's expectations and contract with the institution. Coordination with the research or sponsored programs office is essential before such proposals are developed; international travel procedures to hazardous areas must address this intersection.

Conclusion

There are many elements needed to put in place a robust international travel program in an institution of higher education. As with many university-wide programs, there is not a "one size fits all" approach to assessing and managing the risks associated with international travel. Risk management programs tend to evolve and improve over time as more experience institution-wide is gained, processes are tested, and faculty, staff, and students provide feedback. However, the authors feel the elements described herein are keys to successfully implementing such a program.

Furthermore, the real value and intangible benefit of the proposed strategy has been the establishment of a network of trusted and competent faculty and administrators and the subsequent creation of a comprehensive but yet flexible international travel risk management program. Our university-wide network works well as a team, anticipates issues, communicates often, and, as a whole, responds effectively to issues when they arise. We argue that the most beneficial aspect of this program is an adaptable and competent

Ideally, an international travel registration system's scope would include all types of international travel, regardless of the purpose of the trip (e.g., study abroad, faculty research and scholarship, recruiting).

group of professionals that hold the institution's interests and travelers' safety in high regard and act accordingly.

About the Authors



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Julie Zobel, PhD, is the assistant vice president for safety, emergency, and enterprise risk management at George Mason University. In this capacity, she oversees the Office of Risk Management, as well as the institution's emergency management, environmental compliance, fire safety, laboratory safety, occupational health, and occupational safety programs. Ms. Zobel leads the institution's Enterprise Risk Management (ERM) Program and is chair of the University Travel Advisory Committee, ERM Council, and Emergency Management Executive Committee. She led the institution's efforts to improve international travel risk management programs through the acquisition of new technologies, development of university policies, and documented procedures for managing risks abroad.

Endnotes

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HOW TO USE THIS FORM

This form must be completed Academic Directors or Trip Leaders (AD/TL) and made available to participants for the duration of travel and reviewed at each unique location (e.g., city or overnight accommodation). Sections I and II should be completed and shared with students prior to departure.

SECTION I: COMMUNICATIONS PLAN

AD/TL must provide in-country (e.g., international number or prepaid/disposable phone) contact information to all participants prior to travel or immediately upon arrival in-country.

PRIMARY ACADEMIC DIRECTOR/TRIP LEADER NAME:	CELL PHONE:	EMAIL:
<input type="text"/>	<input type="text"/>	<input type="text"/>
ALTERNATE ACADEMIC DIRECTOR/TRIP LEADER NAME:	CELL PHONE:	EMAIL:
<input type="text"/>	<input type="text"/>	<input type="text"/>
MASON COLLEGE/DEPARTMENT CONTACT NAME:	PHONE:	EMAIL:
<input type="text"/>	<input type="text"/>	<input type="text"/>

SECTION II: EMERGENCY BRIEFING POINTS



BUILDING EVACUATION

Whenever an emergency warrants a building evacuation or local officials order a building evacuation, all individuals must begin exiting the building using the nearest exit and proceed to the pre-identified Designated Assembly Area(s). All participants should identify two or more exit routes from their accommodations.



SHELTER LOCATIONS

Shelter locations may be used in the event of severe weather, earthquakes, and manmade threats (e.g., violence or civil unrest) to provide temporary respite from natural and manmade hazards. Travelers are encouraged to monitor local news and radio for weather and social conditions to remain aware of potential threats.



EMERGENCY RALLY POINTS

In the unlikely event that travelers are unable to communicate and return to the primary residence/location or designated assembly area an emergency, a meeting location should be established to facilitate reunification and accountability. Although large public venues (e.g., train stations and prominent landmarks) are appealing rally points they are also likely to be overwhelmed during an emergency.

SECTION III: SITE SPECIFIC INFORMATION

COUNTRY:	CITY/PROVINCE:	PHONE:
<input type="text"/>	<input type="text"/>	<input type="text"/>
ADDRESS: <input type="text"/>		
LOCAL LAW ENFORCEMENT PHONE:	LOCAL FIRE/RESCUE PHONE:	EMERGENCY MEDICAL SERVICES:
<input type="text"/>	<input type="text"/>	<input type="text"/>
NEAREST EMBASSY OR CONSULATE: <input type="text"/>		
EMBASSY OR CONSULATE ADDRESS: <input type="text"/>		
EMBASSY OR CONSULATE PHONE: <input type="text"/>		
PRIMARY DESIGNATED ASSEMBLY AREA:	ALTERNATE DESIGNATED ASSEMBLY AREA:	
<input type="text"/>	<input type="text"/>	
PRIMARY SHELTER LOCATION:	ALTERNATE SHELTER LOCATION:	
<input type="text"/>	<input type="text"/>	
PRIMARY EMERGENCY RALLY POINT:	ALTERNATE EMERGENCY RALLY POINT:	
<input type="text"/>	<input type="text"/>	

SITE ONE

SECTION III: SITE SPECIFIC INFORMATION

COUNTRY:	CITY/PROVINCE:	PHONE:
<input type="text"/>	<input type="text"/>	<input type="text"/>
ADDRESS: <input type="text"/>		
LOCAL LAW ENFORCEMENT PHONE:	LOCAL FIRE/RESCUE PHONE:	EMERGENCY MEDICAL SERVICES:
<input type="text"/>	<input type="text"/>	<input type="text"/>
NEAREST EMBASSY OR CONSULATE: <input type="text"/>		
EMBASSY OR CONSULATE ADDRESS: <input type="text"/>		
EMBASSY OR CONSULATE PHONE: <input type="text"/>		
PRIMARY DESIGNATED ASSEMBLY AREA:	ALTERNATE DESIGNATED ASSEMBLY AREA:	
<input type="text"/>	<input type="text"/>	
PRIMARY SHELTER LOCATION:	ALTERNATE SHELTER LOCATION:	
<input type="text"/>	<input type="text"/>	
PRIMARY EMERGENCY RALLY POINT:	ALTERNATE EMERGENCY RALLY POINT:	
<input type="text"/>	<input type="text"/>	

SITE TWO

SECTION IV: NOTIFICATION PROCEDURES

At any point during an international educational travel experience it may be necessary to contact the university or services retained by the university to respond to emergency situations.

CONTACT	PHONE	ALTERNATE PHONE
George Mason University Study Abroad	+01-703-993-2154	+01-703-993-7500 (After Hours)
International Travel Insurance Provider	+01-855-327-1469 (Toll Free)	+01-312-935-3542
George Mason University Police	+01-703-993-2810	

U.S. DEPARTMENT OF STATE OVERSEAS CITIZENS EMERGENCY CENTER: Provides assistance to American citizens traveling abroad. The center should be contacted by phone at +01-202-501-4444 whenever any of the following occur:

- Death of an American citizen abroad;
- Arrest/detention of an American citizen abroad;
- Robbery of an American citizen abroad;
- American citizens missing abroad;
- Crisis abroad involving American citizens.

MASON STUDY ABROAD: Should be notified whenever the following occur to facilitate services or support as necessary:

- Serious injury, illness, psychiatric situations, death, or hospitalization;
- Reports or occurrence of infectious disease;
- Natural disasters;
- Political unrest or turmoil;
- Missing employee or student; or
- Any other situation deemed an emergency by employees or students.

UNIVERSITY POLICE: Should be notified of the following crimes that involve employees or students or occur on property or locations under the control of the university in accordance with the Clery Act. Report crime by phone +01-703-993-2810 or complete a report online (<http://police.gmu.edu/clery-act-reporting/csa-form/>).

- Murder/non-negligent manslaughter;
- Negligent manslaughter;
- Sexual assault (i.e., rape, fondling, or incest);
- Robbery;
- Aggravated Assault;
- Motor vehicle theft;
- Arson;
- Domestic violence;
- Stalking;
- Larceny/theft;
- Vandalism, destruction of property, or damage to property;
- Intimidation; or
- Simple assault.

INTERNATIONAL TRAVEL INSURANCE PROVIDER: Should be contacted whenever the following services are needed:

- Security Evacuation Services;
- Emergency Medical Services;
- Emergency Travel Services;
- Information Services.

Now that you know, you cannot feign ignorance.

**Now that you're aware of the problem,
you cannot pretend you don't care.**

To be concerned is to be human. To act is to care.

—VASHTI QUIROZ-VEGA, AUTHOR

Maintain the Momentum in Managing the Risk of Minors

| Candace D. Collins, JD, Praesidium; Aaron Lundberg, LMSW, Praesidium; Bill Rudersdorf, AIG; and Matthew J. Kelly Jr., JD, AIG

Introduction

While the higher education landscape is ever changing, the need to manage the risk of minors remains a constant. Some exposure areas have been around for years, but others are only now emerging. University camps, conferences, tours, and facility rentals comprise a few of the traditional youth programs and activities operating on campus or in the community. Other access points for minors are easier to overlook: less structured academic events such as music lessons, student organizations, and the burgeoning class of enrolled minors.

These days, most institutions have something in place to manage the risk of minors. However, the scope and extent of this “something” varies widely and may only take into account the traditional youth program areas. This is not for lack of compassion. Very few people will say they do not support preventing child abuse. But compassion does not equate to overall awareness, attention, and budget allocation. The reality of the situation is that the risk of minors is one of any number of risks institutions must manage, and there are only so many resources to go around.

Risk managers are often the gatekeepers of ideas and initiatives, safeguarding all the things that matter most. Prospective students, the campus community, financial opportunities, and the overarching reputation are all worthy of protection. Sexual misconduct and abuse allegations potentially impact each one of these institutional value sets. It is therefore important to foster an environment in which all stakeholders and contributing members of the campus community are committed to protecting minors. Here’s how you can make it happen:

- Identify challenges and reevaluate goals: You can’t start addressing the impediments to a committed protection-of-minors program, developing a culture of safety, until you identify the overarching challenges.
- Tune up existing abuse prevention systems: Even the best intentioned abuse prevention policies will have

gaps. But how do you know the gaps exist?

- Shift the lens and expand the conversation – revisit your inventory of activities involving minors: Distinct from gaps in the existing system are overlooked areas and areas that are only now becoming vulnerable exposure points. Often if the risk management team doesn’t seek out these new or overlooked activities, the team will not even know they exist let alone be able to bring those activities into the abuse prevention fold.
- Strive for commitment: Go beyond complacency or mere compliance. Commit to a culture of safety, from senior leadership down to every staff member or volunteer of the institution who interacts with minors.

Risk managers are often the gatekeepers of ideas and initiatives, safeguarding all the things that matter most.

Identify Challenges and Reevaluate Goals

There are inherent challenges in managing the risk of minors. The theme that most commonly connects these challenges is the presence of silos. A college or university is not unlike any large organization. Departments, teams, and any variety of other interest groups

compete for attention and resources. And even without express or implied competition, parts of the institution may become trapped in their own information and procedures bubbles, unaware of how events and strategies in other parts of the institution could help or hinder their own efforts.

Youth protection policies and regulations may exist at the system, campus, department/division, auxiliary, and/or program levels. In identifying the potential challenges at your institution, determine whether policies and procedures in one department or program may address similar issues in another department or program and, if so, evaluate potential collaboration or conflict. Identify whether these policies have identified owners and enforcers.

When investigating and identifying challenges to implementing protection-of-minors and other risk management goals, be on the lookout for the following:

Unclear Ownership of Risk and Quality Control

Who owns what and when? The childhood game of hot potato may have been an early introduction to some attitudes on campus, but managing the risk of minors will likely force your institution to untangle a series of dotted lines and long-standing, loose affiliations.

Departmental Autonomy

Let's face it, departments have real and perceived autonomy. This autonomy coupled with the ability to create revenue streams can lead to youth programs and activities that risk management teams know nothing about.

Diversity and Volume of Potential Exposures

Having analyzed thousands of cases of organization abuse across industries, Praesidium sees plenty of confirmed and false allegations of sexual misconduct. These cases typically arise when individuals have access to youth, the ability to interact in private, and purposefully or inadvertently cross boundaries with youth. College campuses are filled potential exposures: open campus environments with lots of people where there is a wide range of events occurring on and off campus, some of which may have little oversight.

Conflicting Priorities and Limited Resources

Doing more with less has and will always be a challenge. Whether it's lack of time, money, technology, and/or personnel, you are likely in good company with others facing similar challenges.

Know which challenges affect your institution, be prepared to conquer the departmental divide, and reevaluate your goals. Whether stated or implied, **the goal of any protection-of-minors initiative should be to promote a culture of safety.** Creating a culture of safety means creat-

ing an environment where everyone keeps the well-being of those in care at the forefront every day. In a culture of safety:

- Standards are established, clear, and communicated to stakeholders.
- Standards are enforced.
- Everyone knows safety is part of his or her job.
- Everyone takes warning signs seriously.
- Everyone reports his or her concerns.
- Morale is high.
- Continuous quality improvement is institutionalized.

Part of addressing the risks to minors is – as with other exposure areas – convincing involved parties that it is not enough to hope that someone else will take care of it. While the risk management team has responsibility for rooting out vulnerabilities, the entire institutional community needs to know who owns a specific risk so that concerns get to the right person(s). While autonomy is something to be valued for certain creative and even entrepreneurial aspects of the institution's mission, institutions should not allow autonomy to cause different departments or groups on campus to go their own way when it comes to protecting minors and creating the culture of safety.

Creating this culture of safety will not happen overnight, and even if your institution is successful in creating this culture, don't assume it will stay. Consider searching your institution's mission for a back-to-basics approach of why managing this risk matters and should remain a priority despite the challenges.

Tune Up Existing Abuse Prevention Systems

If your institution already has existing abuse prevention systems in place as part of a protection-of-minors initiative, take inventory of these systems and take a fresh look at whether they are operating as intended. Make sure your efforts include key operations across: policies, screening and selection, training, monitoring and supervi-

Part of addressing the risks to minors is – as with other exposure areas – convincing involved parties that it is not enough to hope that someone else will take care of it.

sion, internal feedback systems, consumer participation, responding, and administrative practices.



FIGURE 1: Praesidium's Safety Equation¹

The following case examples, which include summaries from several similar situations, highlight typical abuse prevention gaps and how operational drift can occur absent a tune up.

Case Example 1. A university child care facility relies heavily on state licensing regulations to set policies and minimum standards. Because the facility is not viewed as a youth “program,” but instead an ongoing operation, it does not fall within the purview of the university’s existing protection-of-minors requirements. Notable program characteristics:

- Over reliance on licensing standards as a measure of safety.
- Student workers, particularly volunteers, present challenges and/or magnify existing abuse prevention gaps in screening, training, and supervision, which focus more on full-time employees.
- Program procedures often focus on child development techniques, hygiene, or logistics but lack an abuse prevention focus in the context of adult-to-child boundaries and interactions, procedures for high-risk activities (including diapering, toileting, and napping), and reporting and responding beyond suspected abuse and neglect.

Case Example 2. A university centrally manages only licensed youth camps. Non-licensed youth camps fall outside the purview of the protection-of-minors initiatives. This compliance focus leads to heavy oversight, regulation, and assessment of some youth programs but not others.

Case Example 3. A university does not have campus-wide requirements for individuals working with minors. Youth programs are allowed to operate under departmental guidance. This decentralization creates wide operational variances in how adults are screened, trained, and allowed to interact with youth in programs that provide similar day camp experiences.

Additionally, Praesidium surveyed over 550 youth programs operating at six higher education institutions.² This online survey asked youth program directors to identify a range of information about their program, including the number of minors served and a variety of program characteristics. The responses suggest two items worth a closer review on your campus. For instance, when asked broadly whether the program has developed any specific policies, programs with overnight stays responded “yes” more often than programs without overnight stays (or day programs). When asked about the types of individuals interacting with minors, programs with overnight stays also indicated they may rely on an increased number of student employees to operate their program. Praesidium assessments in the field further indicate that student employees are not always screened, trained, or supervised in the same manner as full-time, non-student employees. These disparities can lead to situations in which higher risk overnight programs operate with fewer prevention mechanisms in place. Your institution may want to further explore the extent to which policies exist at the program level and take a closer look at traditionally higher risk activities, including those with overnight stays, as part of any abuse prevention tune up.

Praesidium also reviewed the results of approximately 2,000 youth program self-assessments that sought targeted information on existing abuse prevention systems across operations noted above in Figure 1.³ These self-assessments were completed by traditional youth development organizations (after-school, aquatic, child care,

camps, and youth sport programs), social service agencies, and youth programs at higher education institutions across the nation as an initial step in a larger resource delivery initiative. The higher education youth programs represented only five percent of the data collected and included a mix of university-owned and operated programs plus student organizations. This preliminary self-disclosed information indicates that while scores for individual program operations in Figure 1 may vary, the higher education programs initially scored themselves lower than youth-serving programs in other industries when asked about the existence of abuse prevention mechanisms.

In an industry that is relatively new to youth protection endeavors, this limited industry data is not necessarily surprising. When coupled with the case examples, this information highlights the importance of determining the scope of any existing abuse prevention systems and ensuring your institution strengthens systems across all operations. For a quick check, ask yourself what types of programs or activities are covered, whether it matters where the activity operates, and who is affected by any minimum requirements (faculty, staff, students, or volunteers).

Shift the Lens and Expand the Conversation

In addition to any tune up of existing abuse prevention systems, consider shifting the lens and expanding the protection of minors conversation to include often overlooked areas, one-off situations, and emerging areas of growth. This encompasses a tenet stated already: increase communication from the top-down and the bottom-up. A true culture of safety needs buy-in from all involved members of the community. Just as risk managers need to always be looking for exposure areas, those involved in potential exposure areas should be conditioned to raise concerns (and know who to raise these concerns to). Similarly, breaking down the silos between different parts of the institution will open the conversation such that disparate groups can not only educate risk managers but learn from each other. This is especially important for certain areas, like enrolled minors, that fall outside of traditional exposure areas and thus may not be as well conditioned to their vulnerabilities. Foundations of a successful program include a strategy to continuously maintain an inventory of activities, as well as vetting each activity.

Below are certain areas that may merit more attention than they are currently receiving:

Less-Structured Projects and Activities

We often hear risk managers acknowledge they are sometimes the last to know about activities involving minors. Be sure to keep these projects on your radar and evaluate methods to integrate centralized tracking mechanisms going forward. Educate all departments (for example, those addressed in clinical hours below) on potential risk exposure areas. Particularly where it involves sending students out into the field, program organizers should understand the institution's duty arguably does not end outside the campus walls. The institution is still arguably responsible to exposing a vulnerable group to a representative of the institution, and thus there should be some sort of training or controls to show the institution remained committed to its culture of safety.

- *Lab and Field Research.* These activities often involve faculty, graduate, or post-graduate research with high school interns. Although these opportunities provide unparalleled real world experience, it is not uncommon for these activities to operate with little to no oversight or structure beyond the research itself.
- *Start-Ups.* Closely related to lab and field research are often newer academic programs that grow organically. However, any new start-up (academic or otherwise) can easily slip through the system cracks without mechanisms in place to approve, track, and manage new youth programs.
- *Student Teaching and Clinical Hours.* Education, social science, medicine, and many other colleges require on- and off-campus experiences in the field to obtain a degree. These interactions with minors and other vulnerable populations may not qualify as a typical "program." However, the need to manage the associated risks remains just as high.
- *On- and Off-Campus Community Outreach and Recruitment.* Regardless of whether an event falls under the traditional umbrella of recruitment or retention, these events can include one-day fairs, hosted lectures, departmental tours that may not go through admissions, and more traditional community engagement and outreach in K-12 schools. These events can also include departmental recruitment, overnight stays, and interactions designed to engage existing university students.

- *Music Lessons.* These activities are often one-on-one behind closed doors.

Student Organizations

In addition to less structured projects and activities, evaluate whether and to what extent student clubs and organizations fit within the institution’s risk portfolio. Many student clubs and organizations operate events with all the hallmarks of a traditional youth program. University students engage with local K-12 schools, run traditional day and overnight camps, host tours, and volunteer with local partner agencies.

Yet student organizations present their own set of challenges in managing the risk of minors. Among other things, these groups may have minimal oversight, lack funding sources, lack awareness of risk, lack planning or maturity, and may be at higher risk for crossing boundaries with close-in-age minors.

To ensure better management of these groups, integrate similar procedures as with university-owned and operated activities:

- Identify and inventory organizations serving minors.
- Educate student leadership.
- Provide student organizations with the tools to manage the risk.
- Encourage student organizations to assess their programs’ risk, particularly if they are considered separate entities.
- Maintain an open line of communication.
- Ensure a process is in place to properly vet activities. Those activities deemed outside of the institution’s comfort zone should be prohibited or mitigated.

Enrolled Minors

Enrolled minors often fall into two broad categories: 1) fully enrolled college students, or individuals who enter post-secondary schools at a young age; and 2) dually enrolled students, or high school students seeking college credit as part of a collaborative program.⁴

Research indicates dual enrollment programs are offered at over 50 percent of all two- and four-year institutions across the country and serve over one million secondary students annually. Dual enrollment programs across the country are expanding at a rate of approximately 7 percent every year. Approximately 1.4 million high school students took over 2 million college courses from post-secondary institutions nationwide in 2010-2011.⁵

As the appetite for dual enrollment programs and opportunities grows, now is the time to consult stakeholders on a variety of potential implications and apply the best practices and lessons learned from traditional youth programs. Start by identifying, inventorying, and understanding where your institution serves minors, beyond summer camps and conferences.

In the traditional youth program environment, best practices include the development and consistent application of robust screening mechanisms for individuals with access to youth.⁶ As your institution evaluates the expansion of enrolled minors, including dual enrollment offerings, it may be time to take a closer look at all screening processes, at minimum those of faculty and advisors with a higher percentage or likelihood of access to enrolled minors. Considerations include scope and frequency of criminal background checks, use of self-disclosure mechanisms, and scope

and frequency of registered sex offender searches. Separate from how institutions screen their employees and volunteers, institutions should discuss the prevalence of registered sex offenders on campus and whether and to what extent it may impact efforts to recruit enrolled minors.

Abuse prevention training should extend to individuals working with enrolled minors and include a variety of best practices designed to protect minors from abuse and employees from false allegations. Engage conversations on your campus to ensure all mandated reporters of child abuse know their status.

Research indicates dual enrollment programs are offered at over 50 percent of all two- and four-year institutions across the country and serve over one million secondary students annually.

Ensure those reporters know what, when, and how to report to external authorities and internally through any implicated protection-of-minors and Title IX procedures.

Training for students on the realities of minors on campus, particularly if your institution admits very young students who may be several years younger than 18 years of age (or the age of traditional entering freshman), is also vital. Recipients of the training should include other freshmen (and likely the entire student body), as well as the enrolled minors themselves. Do the enrolled minors and their parents receive any additional information on protecting themselves or considerations when dating other adult students? Consider the timing of this information, as well.

In the residential context, ensure Housing and Student Affairs teams are equipped with processes, procedures, and training that address how to manage typical residential situations that may now include minors as enrolled students. And finally, it should not be lost that, by definition, minors have a requisite parent or guardian attached to them. Consider using waivers as appropriate.

While this may seem overly cautious for a type of program that affects a small sub-section of the student body and a small group of faculty, it is important to understand the variety of access points created by an enrolled minor scenario.

There are alternative options to mandating that every single faculty member is vetted as if they may interact with an enrolled minor. For example, an institution could allow minors to only register for a defined sub-set of classes for which the faculty – professors and teacher’s assistants – were properly screened. Alternatively, the institution could consider an automated system that alerts faculty and administration when a minor has enrolled in a particular course and at that point make sure the related professor and assistants have requisite background checks and training. This method could, however, create conflicts and confusion, as well as gray areas between the start of classes and faculty clearance. Overall, it is important that the entrepreneurial efforts

of the institution to open itself up to new populations of students do not ignore the necessary risk management protections.

Strive for Commitment

It should be no surprise that abuse risk management requires a commitment. Broadly speaking, institutions value the safety of their campus communities. But how this value translates into action with respect to the protection of minors often exists across a continuum that spans complacency to compliance to commitment.



FIGURE 2: Commitment Continuum

Training for students on the realities of minors on campus, particularly if your institution admits very young students, is also vital.

As you evaluate implementation challenges and goals, execute any abuse prevention tune up, or engage new conversations on campus, ask yourself which best describes your institutional approach to managing the risk of minors.

Complacency is seen most often in smaller organizations, especially when lulled into thinking they have all their bases covered, in part because they may not have experienced a serious incident in some time (or ever). Complacent

organizations:

- Do not systematically identify, inventory, and correct potential safety risks.
- Do not assess risk when starting a new program.
- Do not identify individuals or departments as responsible for youth safety.
- Prioritize safety issues lower on the budget.
- Deny that an incident of child abuse could ever happen.

Compliance often describes organizations that assume they are “safe” based on their compliance with external standards, requirements, and/or licensing provisions. These external standards may include adult-to-youth

ratios, completion of criminal background checks, and mandated reporter training. Compliant organizations:

- View abuse risk like a natural disaster. This philosophy often presumes that abuse cannot be prevented; as a result, policies and training may focus on what to do after the suspicion of abuse arises.
- Rely solely (or heavily) on the existence of insurance as a risk management tool.
- May establish written policies relevant to effective risk management, but may not consistently provide employees or volunteers with “the why,” or the rationale that forms the basis of the policy.

Commitment rarely exists unless prioritized at a high level from senior campus leadership, the board of regents/trustees, or significant funding sources. An internal tragedy or extreme external pressures sometimes prompt commitment. Committed organizations:

- Utilize senior leadership to publicly demonstrate, through words and actions, the institution’s commitment to abuse prevention on an ongoing basis.
- Identify and empower a point person or group to oversee initiatives related to the protection of minors.
- Have mechanisms to identify, inventory, and track activities involving minors, which may include traditional youth programs, less structured interactions and one-off situations, facility rentals, student clubs and organizations, and enrolled minors.
- Establish minimum standards for interactions with minors, including appropriate and inappropriate boundaries and how to manage high-risk activities.
- Integrate abuse risk management in the screening process for all new employees and volunteers.
- Train all employees and volunteers on impactful abuse prevention content and have mechanisms to maintain ongoing awareness.
- Have a reporting culture that may over report, but not overreact.
- Treat allegations and incidents as an opportunity to strengthen youth protection efforts.
- Have systems in place to hold people accountable for prioritizing safety.

Best Practice Takeaways

Is complacency, juxtaposed with other high priorities, taking the place of a comprehensive prevention strategy? Regardless of whether your institution exemplifies one category across all operations or fluctuates across the continuum, the question becomes what will it take to achieve and maintain commitment at your institution?

- *Engage a Voice from the Top.* A culture of safety begins at the top. Be it the president, chancellor, or a board member, the person(s) must have power and influence. Someone who gets things done. Someone who communicates, by word and deed, often and loudly, the institutional commitment to youth safety.
- *Clearly Articulate Operational Standards.* Wanting to do the right thing and knowing how to do them are different. Higher education institutions should articulate clear policies and procedures that set a zero tolerance for abuse, define interactions between adults and youth, and provide guidance for managing high-risk situations. These operational standards should also address screening, training, and reporting mechanisms.
- *Build and Maintain Systems of Support.* Clearly telling people how they can prevent abuse is necessary but not sufficient. Institutions must also provide the resources necessary to implement defined standards. These support systems may include frequent and effective training, changes in technology, and adequate monitoring and supervision of facilities, adults, and youth. Empower supervisors to coach and support their teams.
- *Build and Maintain Systems of Accountability.* Everyone has competing demands for their time, and most people have the best of intentions. If we take the time to articulate standards and provide systems of support, we also need to hold people accountable for their actions and develop quality assurance mechanisms. Collecting data on near misses, incidents, and youth-to-youth behaviors provides critical data that can drive staffing, policy revisions, identify trends, and provide opportunities to reinforce leadership’s commitment to youth protection and safety.

Determine How Your Institution Will Maintain the Momentum

As with many issues on campus, this one starts with identifying what you know and what you don't know. A great place to start is a conversation with the right people on your campus. Identify the key stakeholders impacted by minors and the risks they create. These individuals may include risk, compliance, human resources, student affairs, housing, Title IX, faculty, and general counsel.⁷ Consider an integrated approach that leverages existing workgroups and interdisciplinary teams.

Managing the risk of minors takes a sustained, ongoing commitment to abuse prevention. But it only takes one person to start a dialogue and begin the journey. What are you waiting for?

About the Authors



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Mr. Rudersdorf was formerly executive director of risk management for Educational & Institutional Insurance Administrators. In that role, he consulted for colleges and universities on risk management issues to help mitigate liability exposure and reduce claims expense. He worked with university administrators and their staff on employment practices, general liability, umbrella, property, auto, international travel, errors and omissions, directors and officers, and workers' compensation. Previously, he was also the director of health, safety and environment at a North American composite company responsible for managing regulatory compliance, safety, environmental, and quality process for three divisions including bulk transportation, manufacturing, and chemical warehousing/distribution.

Mr. Rudersdorf earned a BBA in finance and risk management from the University of Wisconsin-Madison and an MS in occupational safety and health from the University of Wisconsin-Whitewater. Mr. Rudersdorf currently holds the Certified Safety Professional (CSP),

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Mr. Kelly works closely with a number of industry practice groups at AIG, including the Education and Retail, Real Estate, and Hospitality groups. From an industry-wide perspective, he works on emerging issues related to security, the Internet of Things, and product liability and general liability trends. He analyzes these and other issues by way of their potential effect on a client's total cost of risk and their litigation exposure.

Prior to AIG, Mr. Kelly practiced law for 10 years in the Metro New York area. He is admitted to the bars of New York, New Jersey, and Connecticut. He has a BA from Boston College and earned his JD cum laude from Brooklyn Law School. He also recently received his Certificate in Risk Engineering from Clemson University. Mr. Kelly is based in New York.

Endnotes

- ¹ Praesidium's Safety Equation™ is derived from the results of root cause analyses of thousands of cases of organizational abuse. It uses a conceptual mathematical model and hundreds of best practice standards to assess the risk of abuse in an organization.
- ² Praesidium, *Proprietary Analysis of Minors on Campus Risk Survey Data*, 2017.
- ³ Praesidium, *Proprietary Analysis of Know Your Score! Online Self Assessment Data*, 2017.

- ⁴ Drew Allen, *Dual Enrollment: A Comprehensive Literature Review and Bibliography*, CUNY Collaborative Programs - Office of Academic Affairs (New York: The City University of New York, 2010), accessed May 22, 2017, https://www.cuny.edu/academics/evaluation/library/DE_LitReview_August2010.pdf.
- ⁵ Stephanie Marken, Lucinda Gray, Laurie Lewis, and John Ralph, *Dual Enrollment Programs and Courses for High School Students at Postsecondary Institutions: 2010-11* (Washington, DC: National Center for Education Statistics, 2013), accessed May 22, 2017, <http://nces.ed.gov/pubs2013/2013002.pdf>.
- ⁶ Janet Saul and Natalie C. Audage, *Preventing Child Sexual Abuse Within Youth-serving Organizations: Getting Started on Policies and Procedures* (Washington, DC: National Center for Injury Prevention and Control of the Centers for Disease Control and Prevention, 2007), accessed May 22, 2017, <https://www.cdc.gov/violenceprevention/pdf/preventingchildsexualabuse-a.pdf>.
- ⁷ This paper does not seek to provide legal advice and should only be taken as informational guidance. Because of different regulatory schemes in different jurisdictions, it is important to involve the relevant General Counsel or Legal & Compliance Department when devising the best way forward. Often, it is important to involve an external counsel with experience in the space.

**In the midst of movement and chaos,
keep stillness inside of you.**

—DEEPAK CHOPRA, FOUNDER OF THE CHOPRA CENTER AND
ALTERNATIVE MEDICINE ADVOCATE

Preparing for the Worst: A Guide for Active Shooter Response Plans that Mitigate the Risk of Liability and Save Lives

| Allison C. Ayer, Esq., and Adam J. Chandler, Esq., Vrontas, Ayer & Chandler, P.C.

Introduction

The unthinkable happens. Someone walks on to a campus brandishing an assault rifle, a handgun, or some other weapon. He starts indiscriminately attacking students and employees. There is no happy ending to this story. The reality is that the nature of colleges campuses, which are by design open and accessible to the public, makes them more vulnerable to active shooters than K-12 schools.¹ Indeed, numerous active shooter scenarios have taken place on college campuses in recent years. There are, however, steps that an institution can take today to prepare for this worst case scenario, analyze the legal and liability exposures facing campuses, and minimize the potential loss of life caused by an active shooter. As part of emergency response protocols, colleges and universities are well-advised to consider taking steps to address active shooter scenarios on their campuses and to establish procedures for faculty, students, and staff to respond to them. Granted, it is sometimes difficult to balance the need for preparation and action with the desire to avoid creating fear and anxiety among the college community. But it can be done if colleges and universities develop active shooter response plans that appropriately acknowledge the risk, minimize liability, and, most importantly, help to save lives if the unspeakable happens on campus.

Setting the Stage: What Is an “Active Shooter”?

The response plan to any emergency depends on the nature of the threat. The campus-wide response to an individual seeking to harm a specific target will be different than the response to someone pursuing random violence. The initial step to establishing a response plan to an active shooter situation, therefore, is to reach consensus about

the precise threat to which it seeks to respond.

The Department of Homeland Security defines an “active shooter” as “an individual actively engaged in killing or attempting to kill people in a confined or populated area; in most cases...us[ing] a firearm and [when] there is no pattern or method to their selection of victims.”² In other words, there is some level of randomness to the victims in an active shooter scenario. Active shooter situations also typically are unpredictable, tend to evolve quickly, and usually are ongoing at the time of first response.³

But active shooter scenarios are different than other crimes in that untrained bystanders are perceived as impacting the results.⁴ According to the Federal Bureau of Investigation (FBI), “[u]nlike a defined crime, like a murder or mass killing, the active aspect [of the term “active shooter”] inherently implies that both law enforcement personnel and *citizens have the potential to affect the outcome of the event based upon their responses.*”⁵ Developing a coordinated and complete response plan for an active shooter is extremely important given the unique influence that bystanders have on the ultimate result.

The Prevalence of the Active Shooter: Statistics

The FBI recently conducted a study of 160 active shooter incidents in the United States between 2000 and 2013.⁶ The FBI’s findings established an increased frequency of active shooter incidents annually during this 13-year period.⁷ According to the FBI, 486 people were killed during these incidents and 557 were wounded; 60 percent of the active shooter incidents ended before police arrived.⁸

Importantly, the FBI study found that 39 of the 160 (24.4 percent) active shooter scenarios during this time period took place in an educational environment.⁹ Indeed,

The FBI recently conducted a study of 160 active shooter incidents in the United States between 2000 and 2013. The FBI found an increased frequency of active shooter incidents annually during this 13-year period.

educational settings were the second largest location type of active shooter scenarios that took place during 2000-2013.¹⁰ At institutions of higher learning specifically, there were 12 active shooter scenarios in this timeframe.¹¹ In nine of these incidents, the shooter was a current or former student; in two incidents, the shooter was an employee.¹² See Figure 1.

Notably, 117 individuals were killed and 120 were wounded during active shootings at educational facilities.¹³ These are higher casualties than in other settings.¹⁴ Of all 160 active shooter incidents reviewed by the FBI, Virginia Polytechnic Institute and State University had the second highest casualty count, where casualties included administrators, faculty, staff, and students.¹⁵

Notwithstanding these sobering statistics, the overall number of crimes reported between 2001 and 2013 decreased by 34 percent, according to the National Center for Educational Statistics.¹⁶ Moreover, according to a 2010 FBI study, only 0.2 percent of all violent crimes reported on college campuses involved murder or non-negligent manslaughter.¹⁷

While even one violent crime on campus is unacceptable, the fact remains that killings on US college

campuses, including those caused by active shooters, are rare. Nevertheless, given the potential loss of life associated with an active shooter and the public attention on the topic, there exists a potential for liability if an active shooter incident takes place at a college or university.

Legal Implications of an Active Shooter

While it may seem unfair that a college or university could face liability for an individual coming onto campus and committing a criminal shooting spree, there exists a reasonable possibility that an institution of higher learning will be sued in connection with an active shooter scenario. Often as part of their grieving, the surviving families of victims seek to find someone to blame for their losses. As a result, a college or university may face legal exposure if an active shooter scenario occurs. Understanding the likely legal issues of such a suit should help an institution mount a defense and establish pre-suit procedures that minimize the risk of liability.

Negligence

Negligence is a likely theory of liability that would be asserted against a college or university after an active shooter

A Study of 160 Active Shooter Incidents in the United States Between 2000 - 2013: Location Categories

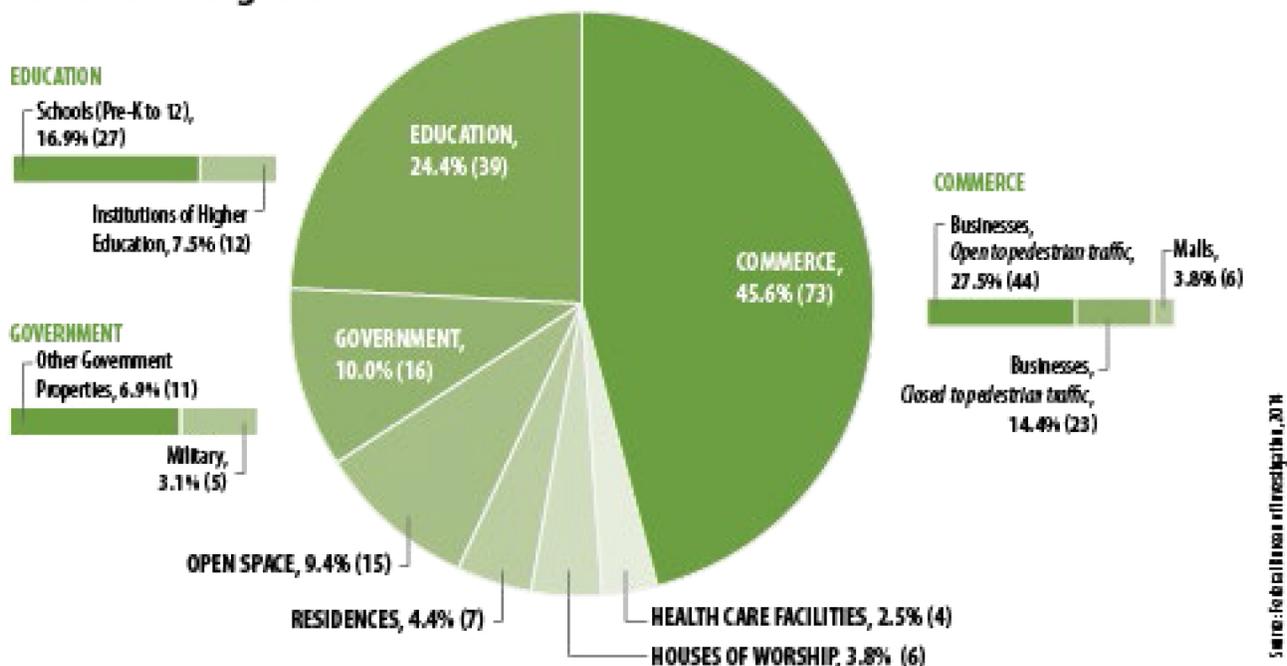


FIGURE 1: Graph of Location Categories, originally prepared by and reproduced for this article from, A Study of 160 Active Shooter Incidents in the United States Between 2000-2013, published by the FBI

scenario. The institution's carelessness would be alleged to have caused the injuries sustained by the victims of the active shooter. The plaintiff would have to prove that: 1) the institution owed a duty to the victims, 2) the institution breached the standard of care (by failing to take reasonable action to prevent and/or respond to the attack), 3) the institution's breach caused the incident/injuries, and 4) the victims suffered damages (personal injuries, death, loss of income, loss of enjoyment of life, pain and suffering, etc.) as a result of the attack.

Loss of Consortium

A loss of consortium claim is a separate and distinct claim that could be brought in connection with an active shooter scenario. In this type of claim, the next of kin of a victim of the active shooter, such as a spouse or parent, could bring a separate claim for loss of consortium.

Negligent Infliction of Emotional Distress

This theory of recovery recognized in many states allows a victim's close family member who witnessed the harm and experienced related emotional distress to recover for those injuries. A college or university might face a separate claim under this theory if, for example, a close relative rushed to the scene and witnessed the shooting or its aftermath after hearing about it in the media or from a family member trapped in the affected area of the active shooter.

Negligent Hiring and Supervision

A plaintiff might allege that a college or university is liable for failing to hire staff with adequate education, experience, training, and knowledge of responding to active shooters. A plaintiff may also allege that senior level college personnel are liable for failing to properly supervise staff in active shooter prevention and training. If a staff or faculty member was the shooter, it also could form the basis of a negligent hiring/supervision claim.

Contract Claims

A student or faculty member who suffers an injury in connection with an active shooter may bring a breach of contract or promissory estoppel claim against a college or university. This type of claim would involve allegations that statements and promises set forth in marketing materials, or in student or employee handbooks about what the institution will do to protect faculty and students, constitute contract or quasi-contract terms that the institution breached when it failed to prevent the active shooter or failed to respond swiftly once the incident happened.

Occupational Safety and Health Act (OSHA)

A college or university also could face liability under OSHA in connection with an active shooter scenario.¹⁸ The General Duty Clause of OSHA requires employers to provide employees a place of employment free from recognizable (e.g. reasonably foreseeable) hazards that are likely to cause injury, including death.¹⁹ Such clause might be found to have been breached if faculty or staff are injured during an active shooting scenario on campus. In that case, there might well be an OSHA violation that could lead to penalties and fines for an institution.²⁰

Joint and Several Liability

Many states recognize joint and several liability – the principle that each defendant is liable for the full amount of damages awarded no matter the relative degree of fault. Through contribution, defendants held liable for more than its pro-rata share may seek partial reimbursement from other tortfeasors. Importantly, this right of contribution encourages defendants to name other tortfeasors to reduce the overall exposure. As a result, there exists a legitimate possibility that a college or university would be named in any lawsuit resulting from an active shooting on campus even if the institution has only limited responsibility and even if the actual victims do

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not file suit directly. For example, a mental health provider that failed to see the warning signs of the active shooter's violent tendencies, or law enforcement officials accused of responding too slowly, may well file a contribution claim against the college or university.

While it may face suit in an active shooter scenario, a college or university is not without defenses on several legal grounds.

Indemnification

If a college or university gets sued, it should immediately consider whether it has a basis to seek defense or indemnity from another entity. Assess whether there exists any written agreement, for example with a local law enforcement agency or a private security company, or a lease with landlord, whereby these other entities may owe the institution defense and indemnity for their failures in connection with an active shooter scenario. Depending on the scope of the indemnification provision, a college or university might have an argument that any cause of action filed in connection with a shooting arose from the contracting entity's negligent management of the facility or their negligent administration of services they agreed to provide to the institution.

Charitable Immunity

Many states have statutes or common law that limit liability and/or damages of a charity. Typically, colleges and universities qualify as a charity to which the immunity applies.

Inadequate Proof

Colleges and universities will also be able to defend themselves on the basis that Plaintiff cannot prove the required legal elements. If the shooter was completely unknown to all of his victims and to the faculty and staff (or if faculty and staff had no reasonable indication beforehand of the shooter's propensity toward violence); if the attack happened swiftly and without any warning; or if the institution reacted quickly and appropriately, helping to minimize the

number of victims, end the attack, and provide medical attention as necessary, these facts would support a conclusion that the institution acted reasonably without a breach of any standard of care or contractual duty owed to the victims. On facts like these, there exists a strong argument that any injuries sustained during a shooting were caused by the unpredictable, unforeseen psychiatric break of a disturbed individual who independently and without reasonable warning to anyone at the college went on a criminal shooting rampage. A contract or negligence based claim would likely fail for, among other things, the lack of the breach of any duty on the institution's part to protect the victims from the shooter.

Any cross-claim for contribution would also likely fail for the same reasons, as long as there is no evidence that the institution ignored warning signs of the shooter and/or failed to prepare for and respond swiftly and appropriately to the shooting.

With that said, if university faculty or staff missed warning signs or inadequately responded to the shooting, knowing of the risk, the legal analysis would change substantially. If, for example, faculty knew of a shooter's mental health issues and/or a threat he presented, an institution's likelihood of liability and its exposure would significantly increase. Given the media coverage of mass shootings on college campuses, the risk of an active shooter scenario is or should be known. In that case, a college or university could be found liable if it has no active shooter

response plan, or an inadequate one, and/or it fails to adequately communicate, train for, and implement such a plan. Having a comprehensive active shooter response plan will serve as critical evidence that a university took all reasonable steps to fulfill its duty to address the risk of an active shooter, thereby mitigating liability and damages. More importantly, such a plan is likely to actually save lives.

Having a comprehensive active shooter response plan will serve as critical evidence that a university took all reasonable steps to fulfill its duty to address the risk of an active shooter.

Examples of Different Approaches for Active Shooter Response

The shootings at Columbine in 1999 and Virginia Tech in 2007 served as early catalysts for a change in the response to active shooter situations. Before these tragic mass shootings, standard operating procedure involved waiting for a specialized law enforcement task force to arrive to deal with the active shooter threat. Now, it is widely accepted that there must be a more immediate response not only by law enforcement, but also by the individuals placed in harm's way who often lack any formal response training.²¹ What precisely that immediate response should look like has been widely debated. While there will undoubtedly be continued discussion, law enforcement and other industry groups have developed practices that they believe minimize the potential loss of life in the unlikely event that an institution is targeted by an active shooter.

Evacuate, Hide Out, Take Action

The US Department of Homeland Security advocates the "Evacuate, Hide Out, Take Action against the active shooter" approach.²²

Under this approach, individuals who face an active shooter should first try to evacuate the premises if there is an accessible and safe path.²³ Homeland Security suggests having an escape plan in mind whenever entering a building.²⁴ While individuals are encouraged to help others get out of harm's way, they should escape the area even if others do not follow.²⁵ Individuals who can evacuate are advised to leave their belongings and, difficult as it may be, avoid assisting the wounded encountered during the escape.²⁶ Individuals able to run should keep their hands visible so that police do not mistake them for the assailant and call 911 as soon as possible.²⁷

If an individual cannot evacuate, the next step is to "hide out."²⁸ The idea is to locate a place to wait out the attack where the active shooter is less likely to find you.²⁹ The hiding spot should be out of the active shooter's view and offer protection if shots are fired, such as in an office with a closed and locked door.³⁰ To prevent the active shooter from finding people hiding out, individuals should minimize noise by remaining quiet, silencing cell phones, and turning off other sound sources, such as televisions or radios.³¹ Once in the hidden location, individu-

als are encouraged to protect themselves from injury by hiding behind large, heavy items, like cabinets or desks.³² To prevent the active shooter from entering, individuals are encouraged to lock and barricade any door.³³ If possible, the chosen hide out should be in a place that does not restrict further movement if there is an opportunity to get away.³⁴ Individuals should also call 911 if possible to alert responders of the active shooter's location.³⁵ If the active shooter is close by, Homeland Security suggests leaving the phone connected to allow a dispatcher to listen even if speaking is not possible³⁶ so that law enforcement can track the cell phone and isolate the hiding location.

If neither evacuation nor hiding out is possible and one's life is in imminent danger, the last step is to "take action against the active shooter."³⁷ Individuals left with this option should forcibly attack the active shooter and "act...as aggressively as possible."³⁸ Throw items, yell, use improvised weapons against the shooter, and fully commit to all actions.³⁹ At this point, when no other response is possible, the idea is to use all force possible to save yourself from the shooter.

Two other concepts for active shooter preparedness and response that have emerged in the college and university setting have been coined "Run, Hide, Fight" and "A-L-I-C-E."⁴⁰

Run, Hide, Fight

The three-step approach of Run, Hide, Fight is a common method employed by universities and colleges to respond to an active shooter.⁴¹ Some describe the Run, Hide, Fight "mantra [as]...the standard at colleges in the event of a campus shooting."⁴² It is similar to the approach advocated by Homeland Security.

As the response name suggests, the first course of someone who finds him or herself in an active shooter scenario is to run to a safe location away from the active shooter.⁴³ Individuals are expected to leave the affected area whether or not others follow, call 911 when out of danger, and advise other bystanders to not enter the dangerous area.⁴⁴

The next option in this approach is to find a place to hide.⁴⁵ Individuals are advised to turn off lights, lock doors, and remain as quiet as possible, including by turning off electronic devices.⁴⁶ This part of the response is often called a "lock down."

If an individual cannot run or hide and his or her life is in imminent danger, then the last resort is to fight the shooter.⁴⁷ The idea is to aggressively attack the shooter and use any and every method possible, including using real or makeshift weapons, to overcome the active shooter so that the violence stops.⁴⁸

Some detractors argue that “Run, Hide, Fight” fails to take into account all the realities of an active shooter scenario.⁴⁹ For example, it fails to address the natural “freeze” response that many people have to sudden, unexpected violence.⁵⁰ Critics also claim that it presumes a one-size-fits-all, linear response approach.⁵¹ In other words, it gives the impression that each step must be completed before moving on to the next, when it may be more appropriate to “fight” in the first instance without ever running or hiding. This same criticism could be made of most of the multi-step active shooter response protocols. To address these concerns, it is important that trainers make clear that any response plan which is condensed into a few simple words should NOT create a rigid step-by-step approach; rather, it provides a set of options that must flexibly be considered and applied depending on the particular facts and circumstances one faces.

A-L-I-C-E

A-L-I-C-E is an acronym for Alert, Lockdown, Inform, Counter, and Evacuate.⁵² It has many of the same steps as other approaches, although it places them in a different order. The biggest difference is that while the three-step approaches discussed above advocate for escaping to safety as the first and preferred approach, in A-L-I-C-E this is the last step.

According to the A-L-I-C-E response method, the first thing individuals facing an active shooter should do is to call 911 and tell the operator what the individual is witnessing.⁵³ The idea is to provide law enforcement with as much information as possible about exactly what is happening as early on as possible so that responders can better tailor their reaction to the precise circumstances.

The next two steps are to lockdown in the affected

area and then inform others of what you plan to do if the active shooter approaches the area.⁵⁴ Proponents of A-L-I-C-E believe this type of coordinated approach increases the chance of survival. The fourth step of A-L-I-C-E is to counter the active shooter.⁵⁵ Initially this should involve trying to escape or evacuate. However, if this is not possible, the “counter” step of the A-L-I-C-E involves individuals launching an aggressive offense against the active shooter.⁵⁶ Much like the “fight” or “take out” steps of the approaches above, at this point, individuals should use anything they can find as a weapon to attack the shooter.⁵⁷ The hope is that the individuals will be able to disarm the shooter or at least disorient or slow him down long enough that they can escape to safety. This leads to the final step of A-L-I-C-E, which is to evacuate the area when advised by law enforcement or when individuals feel it is safe to do so.⁵⁸

It is important that trainers make clear that any response plan which is condensed into a few simple words should NOT create a rigid step-by-step approach.

Other Examples

There are other plans that have been developed to respond to active shooter scenarios.

“Get Out, Hide Out, Take Out” is very similar to “Run, Hide, Fight,” although it uses slightly different terminology. It calls for individuals to get away from the place where the shooter is attacking and escape to safety as their first option.⁵⁹ If that is not possible, individuals lockdown and barricade themselves in a secure area and, as a last resort, take out the shooter by actively confronting the shooter and aggressively fighting to save oneself.⁶⁰

“Evade, Barricade, Overwhelm” is another three-step process to responding to an active shooter.⁶¹ It is sometimes called “Avoid, Barricade, Confront.”⁶² Advocates to this approach believe the meaning of these primary steps are broader and more dynamic than the terms used in other response plans.⁶³ “Evade” calls for a person to escape in the direction away from the violence, staying low to the ground and remaining cautious around corners and other blind spots.⁶⁴ When law enforcement is encountered, the person should raise his/her hands in the air and follow

all instructions.⁶⁵ In this way, the person avoids remaining stationary and becoming a possible passive target. For the “barricade” element, a person should lock the door, if possible, and/or block the door with furniture and other heavy objects.⁶⁶ Individuals are advised to remain as quiet as possible, including by silencing electronics, close blinds and turn off lights.⁶⁷ Lastly, individuals collectively act to “overwhelm” the shooter. This involves preparation and a collective effort, not just the heroism of one person who will stand up and fight, preparation, and it also offers the element of surprise.⁶⁸

“React, Escape, and Survive” the threat is yet another version of active shooter response.⁶⁹ This approach is less specific than the other methods. Inherent in the vagueness of this approach is the idea that active shooter scenarios are by nature dynamic and difficult to respond to in a one size fits all approach. A more vague approach like this has the benefit of educating individuals that they must at all times be flexible in thought and action to save themselves from the threat of an active shooter.⁷⁰

There are also competing theories for active shooter response that encourage bystanders to actively engage the shooter immediately before attempting more passive responses like getting out or hiding. Some argue that the best chance of survival when one encounters an active shooter is to engage any and every method of resisting the shooter.

Considerations for Developing a Response to Active Shooters

While it is true that the likelihood of a college or university experiencing an active shooter is extremely low, an institution is still well-advised to develop a response plan as part of its emergency preparedness. Given the media coverage of mass shootings, parents of college students expect universities to have comprehensive emergency protocols in place to keep their children safe. More importantly, given the risk of significant carnage to faculty, staff, and students in the unlikely event of an active shooter, developing and executing a response plan is a relatively simple way to increase the chances of survival. Having an active shooter plan also should mitigate the risk of liability to college and universities.

The examples above provide some guidance about the components of active shooter response plans. But, as with

any other policy, colleges and universities should develop active shooter response plans that are tailored to their particular circumstances. For example, a private college in a rural town may require a different active shooter plan than a public university in a large city. It is important to remember that the precise terms of an active shooter response will differ for each institution, depending on its risk assessment, as well as the individualized educational, philosophical, and social missions of the institution. Colleges and universities must tailor any active shooter response plan to their particularized needs and available resources. In addition to understanding the common concepts for active shooter response, including the ones discussed above, the following considerations may further aid a college or university in deciding what it should include in its active shooter response plan to manage the risk on its campus:

- *Assess the risk.* As an initial step, a college or university should conduct an assessment of the risk of an active shooter on its campus. This may begin by identifying the institution’s particular vulnerabilities so that it can tailor the active shooter response plan to the actual risks, needs, available resources, and mission of the college/university.
- *Review a campus map.* To determine the appropriate steps of an active shooter response plan, a college should also evaluate the design and layout of the campus. A university should know the campus layout and consider whether it is desirable and/or feasible to limit access to certain parts of campus, to routinely limit entrance points, and/or to install additional security cameras on campus.⁷¹ It should also understand the physical facilities where it may be most vulnerable and integrate this information into a response plan.
- *Use a team.* Consider creating a multi-disciplinary team to develop and implement the active shooter response plan.⁷² An institution may choose representatives from the faculty, staff, and students to prepare a written plan and to discuss its implementation. It should also evaluate when and how often the team should meet after the plan is finalized to discuss appropriate training or other preparedness exercises, as well as the need for plan revisions to account for developments, new risks, and/or new resources.

- *Cooperate with local police and/or other industry professionals.* A college should evaluate the capabilities of local law enforcement agencies in responding to active shooters. It may consider creating and implementing an active shooter plan with cooperation from local law enforcement. A college/university may also consider hiring private contractors or consultants with emergency management backgrounds.
- *Account for differential training and knowledge.* Faculty, staff, and students who will implement the active shooter response plan may not have any self-defense training and will likely lack any meaningful understanding of the psychology of an active shooter or his or her mental health issues.⁷³ Given this, colleges may wish to resist implementing an active shooter response plan that advocates for fighting/resisting an active shooter as the first line of defense. An institution may also wish to avoid implementing a response plan that advocates for negotiating with the shooter. Colleges should evaluate whether a multi-step plan where individuals first get away, next hide/obstruct the shooter, and lastly resist the shooter if necessary is more appropriate. While the terminology differs, many active shooter response plans accept this type of approach, which indicates some level of consensus among experts in the field, an important consideration for an institution as it decides how it should respond.
- *Be clear and concise.* Simplify any active shooter response plan to the extent possible, particularly when training. In a highly stressful situation where one's life is in danger, an individual is much more likely to recall and act upon simple action steps rather than complicated contingency plans that attempt to address every possible eventuality.⁷⁴ This is precisely why active shooter response plans are often consolidated to three or four easy-to-remember steps.
- *Integrate a communication system and publicize the plan.* The Higher Education Opportunity Act requires colleges and universities to notify the campus community in the event of a significant emergency and to publish the procedures to im-

mediately notify the community upon the confirmation of a significant emergency or dangerous situation, unless it would compromise efforts to contain the emergency.⁷⁵ Given these requirements, as part of developing an active shooter plan, a college/university should consider the most effective way to communicate with faculty, students, and staff about the presence of an active shooter and how to respond to that danger. Colleges should ask themselves whether notice of an emergency should happen by email, text message, social media, or other avenue, and then consider how to integrate information about the alert system into the active shooter plan.⁷⁶ The institution should also make sure that faculty, staff, and students know where the active shooter response plan is available, whether or not it is part of the general emergency preparedness protocols.

- *Include a plan for training.* An institution should consider the most effective way to teach students, faculty, and staff about the institution's expectations in the event of an active shooter. A college/university should consider providing specific training for active shooter response. A college will have to assess not only who to train but how to train them. For example, consider who among faculty, staff, campus police, or students should be trained and whether training should be mandatory or voluntary. An institution might also consider the timing of the training. Should it happen only at orientation, during each academic year, or periodically on some other schedule? Finally, the format of the training should be analyzed carefully. One college might decide to provide only written materials, while another may choose to use training videos, live presentations, role playing, or even unannounced drills. Given that there is faculty turnover and students are bombarded with a variety of policies, particularly the first week and first year of school, consider updating the plan and conducting regular educational sessions on an ongoing basis. This will increase the chances that faculty, staff, and students can absorb the materials so that any real-time response happens almost intuitively,⁷⁷ thereby maximizing survival, given

how quickly a real-life active shooter scenario occurs.

- *Be aware of anxiety/fear.* Any institution with an active shooter response plan should balance communicating the importance of having and understanding the plan with minimizing anxiety about active shooters. An institution should make every attempt to educate all faculty, students, and staff that the likelihood of an active shooter scenario actually occurring is highly unlikely. Emphasizing that a desire for preparedness formed the basis for the institution's decision to develop a response plan will help in this regard.
- *Do not forget prevention.* The best and most effective way to mitigate the risk of an active shooter is to stop it from ever happening. Importantly, many of the major shootings on college campuses have been connected to students upset about a perceived academic issue.⁷⁸ Implementing an active response shooter plan, therefore, may also involve educating faculty, staff, and students about identifying warning signs of an active shooter scenario. Indeed, faculty and staff may be in the best position to react to at-risk individuals who make threats or otherwise express anger or resentment against the college/university.⁷⁹ An institution that effectively deals with these types of issues in many cases can avoid an active shooter scenario altogether. In doing so, remember an institution's obligations under the Family Educational Rights and Privacy Act (FERPA) and the privacy rule of the Health Insurance Portability and Accountability Act (HIPAA).⁸⁰ While FERPA has an exception for disclosing certain personally identifiable information in emergencies, this may not protect a college or university if such information is disclosed during a false alarm, like if someone is perceived, but turns out not to be, at risk of committing violence on campus.⁸¹

Conclusion

It is unpleasant to contemplate an active shooter coming onto a college or university campus to invoke mass casualties on faculty, staff, and students. Fortunately, the odds of any institution facing such an incident is low. Nonetheless, undertaking efforts to prepare for the worst will help ensure the safety and survival of employees and students. One can find many examples of active shooter response plans that have been vetted by security experts and law enforcement agencies and adopted by colleges and universities. Many outlets also produce guidebooks, posters, and videos to help develop plans for responding to active shooters. While these materials can be helpful, institutions should avoid blindly adopting practices common to other institutions that may or may not fit their particular needs, risks, or mission.⁸² Active shooter response plans should be individualized to each college or university. In the end, developing an effective response plan comes down to three important elements: 1) prevention; 2) preparation; and 3) execution. If a college or university relies on these principles, they can minimize the likelihood of an active shooter, mitigate liability and exposure, control anxiety, and maximize the chance of survival on campus.

The best and most effective way to mitigate the risk of an active shooter is to stop it from ever happening.

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Test fast, fail fast, adjust fast.

—TOM PETERS,

AMERICAN AUTHOR ON BUSINESS MANAGEMENT

A Risky Business: Managing the Day-to-Day Risks of Having Minors on Campus

| Julie Miceli and Ashleigh J. Morpeau, Husch Blackwell

Introduction

The demand for high-quality academic, enrichment, and athletic programs for minors is on the rise. In response, many colleges and universities are expanding the ways in which they serve minors through formal programming, as well as through formal and informal mentoring, volunteer opportunities, and partnerships with K-12 schools.

Administering minor-serving programs does not have to be a risky business. Institutions offering these programs need to keep in mind that there are both legal and reputational risks associated with these programs and find ways to prevent and reduce those risks. Colleges and universities should also recognize that the potential risk to institutions goes far beyond the high profile risk scenarios that we are all familiar with, such as severe injury, death, and sexual abuse. Programs serving minors commonly face a myriad of day-to-day compliance and legal risks. The potential legal liabilities associated with these risks can be expansive, and the costs of litigation can be substantial.

Undoubtedly, the benefits of these programs can be significant for the youth in the institution's community, as well as the institution itself. To ensure that program staff members are prepared to address emerging compliance, risk, and legal issues, institutions must identify the practical risks regularly facing program staff and stay up to date on the applicable federal and state laws and case law developments that can impact program operations. Institutions should also recognize that even their highest performing minor-serving programs may need risk assessment. Indeed, many such programs form organically to meet rapidly growing need, and due to their rapid development, may not have received the full benefit of risk mitigation strategies and legal counsel in the development of their program operation sand policies. This article highlights a number of key areas for institutions to consider

as they evaluate their programs and activities that serve minors and work to mitigate legal and reputational exposure to the institution.

Taking Inventory of Programs and Activities

To address the risks associated with having minors on campus, institutions should first take a close look at every program and activity serving and interacting with minors. Institutions typically offer a variety of minor-serving

programs and activities, such as academic enrichment programs, athletic or music camps and clinics, and other institution-sponsored events (e.g., debates, theater productions). Of course, the institution may also host programs and events sponsored by third parties that may rent space from the institution or that may involve participation of faculty, staff, students, or student groups. An often overlooked area, however, are those unofficial activities, such as campus tours and visits, lab tours, and mentoring and tutoring programs being conducted by faculty, students, or student groups.

All of these on- and off-campus activities have varying degrees of connection to the institution. Regardless of whether they are officially sponsored or hosted by the institution, they may all be occurring under the institution's name or imprimatur, which could expose the institution to legal and reputational risk. Undeniably, a college or university will always be a more desirable target for a lawsuit or negative media campaign than an individual. So even programs and activities that are not officially sanctioned by the institution but that may be indirectly connected to the institution should be considered. These may include activities hosted by a faculty member or student group, those that involve a number of students, or are occurring on campus.

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In evaluating how to address risk, institutions should avoid the temptation to implement a “one size fits all” approach that may be administratively burdensome and may hinder the operations of beneficial programs and activities that are serving an important stakeholder community. By starting with an inventory, an institution can get a sense of the variety of programming and activities for minors occurring on and off campus and the variety of risks, age ranges, supervision levels, and needs of each program. Indeed, the approach for ensuring adequate supervision and structure for a Saturday chess team will differ from an overnight band camp. Armed with this information, institutions can begin strategically evaluating the legal and reputational risks associated with those activities and determine the best approach for mitigating risks across programs in a manner that supports high-quality experiences for minors while imposing the least administrative burden on program staff.

As an aside, there are also other benefits to be gained by conducting an inventory of programs and activities serving minors. By going through this process, an institution has the opportunity to more clearly assess related issues, such as: 1) the types of populations being served (by education level, age range, income level, diversity, etc.); 2) the areas of focus or specialization being offered (e.g., STEM fields, remediation programs, gifted programs, music, arts, athletics); and 3) what data or information exists on each program, if any, that demonstrates quality and effectiveness over time (e.g., anecdotal evidence, program surveys, statistically valid data or longitudinal studies). This assessment can be done at an institutional level and at a programmatic level and can help institutions make strategic decisions about these programs. For instance, institutions can more easily identify high-quality programs with proven track records of success and effectiveness and invest in scaling up those programs. Likewise, this information will help institutions make informed decisions to put resources behind programs with strong anecdotal or program survey information to develop better data for those promising programs over time. Quality programs and activities for minors with valid data showing effectiveness over time may be more competitive for philanthropic, state, and federal grants and charitable contributions from donors. Importantly, highlighting these success stories can also support strong and healthy relations between colleges and universities and their communities.

Key Risk Areas

Supervision of Minors and Releases

The supervision of minors is an obvious and important risk area that institutions must continually assess and evaluate. While on campus, minors participating in programs or activities are in the custody and care of the college or university. While it is strongly recommended that institutions obtain a signed written release and liability waiver from the parents or legal guardian of a minor participating in a program or activity, there is no guarantee that a court will honor that release to absolve the institution from liability should an injury occur. Indeed, state jurisdictions vary greatly with respect to whether they will enforce a waiver or release to protect a school. About a dozen states regularly enforce waivers to protect schools, while nearly 20 states routinely reject enforcing them against schools. This issue is less clear in the remaining states, where there is uncertainty as to whether a state court will enforce a waiver to protect a school.

While there is no legal guarantee that a waiver may protect a program from liability should a minor incur an injury, a well-drafted waiver release can support a useful defense. Moreover, the absence of a release can be more challenging to overcome in litigation. Of course, the best approach is to ensure adequate supervision and monitoring of minors while they are on campus and requires that institutions have eyes and ears in a variety of places.

Internet Use

With an increasing number of minors having their own personal electronic devices, minors have more opportunities to engage in risky activities, right under the watchful eye of trained staff. As an initial matter, institutions must consider whether minors should have unrestricted access to the institution’s network and internet. Many institutions provide an open and unrestricted online environment to its campus community; others have technical capabilities to limit the types of websites that can be accessed through its network. These capabilities can be restricted based on user login or even geography (e.g., specific residence hall or specific classroom space). Each institution should consider balancing its values, its administrative

and technological capabilities, and its interest in protecting and restricting internet access based on the age and maturity of minors accessing its network. In other words, what may be suitable for a campus community of adult students may not be as suitable for minors.

Indeed, many legal and reputational risk issues can be triggered by a minor's misuse of an institution's network. For instance, minors found to have downloaded copyrighted content (e.g., music, images, or pornography) through the institution's network may result in a demand for payment from those online retailers that will billed directly to the network owner through their primary source of identification, the Internet Protocol (IP) address. Even though the institution did not incur the charge, failure to pay such a demand can result in legal action.

Minors operating online may also be engaged in, or the victims of, various forms of harassment such as cyber bullying and "sexting" sexually graphic images over the internet. Minors can also be solicited for illegal sexual activity through an institution's network.

Institutions should ensure that they have measures for preventing these issues, addressing them if they arise, and ensuring minors are safe while utilizing the institution's network. Further, institutions should consider whether they are subject to state and federal laws that govern the online safety of children.

For instance, the Children's Internet Protection Act (CIPA) and accompanying regulations issued by the US Federal Communications Commission address concerns about children's access to obscene or harmful content over the internet.¹ CIPA imposes certain requirements on schools or libraries that receive discounts for internet access or internal connections through the E-rate program, a program that makes certain communications services and products more affordable for eligible schools and libraries. CIPA requires E-rate participants to adopt and implement an internet safety policy that addresses: 1) minors'

access to inappropriate internet content; 2) the safety and security of minors when using e-mail, SMS, and direct communications; 3) hacking and other unlawful activities by minors online; 4) unauthorized disclosure, use, and dissemination of minors' personal information; and 5) measures for restricting minors' access to harmful online materials.² Colleges and universities may participate indirectly through partnerships with school districts and libraries to jointly provide programs to minors. Institutions should consider whether CIPA applies, and if not, whether the standards and principles set forth in CIPA should nonetheless be followed as a best practice and to help ensure minor students are safe online.

In addition, various states have enacted laws regulating publicly accessible computers at certain public institutions.³ For instance, under Kansas law, any school district that provides public access to a computer is required to implement and enforce technology protection measures to ensure that no minor has access to visual depictions that are child pornography, harmful to minors, or obscene.⁴ Missouri has a similar law, which requires that any publicly accessible computer at a public institution or library either be equipped with software or a service to restrict minors' access to material that is pornographic, or they must develop a policy that establishes measures to restrict minors from gaining

access to such material.⁵ Idaho requires school districts to adopt an internet use policy that requires filtering technology to block internet materials that are harmful to minors and requires schools to establish disciplinary measures for violators. Additionally, school districts must provide a component of internet safety to be integrated into the schools instructional program.⁶

Regardless of whether an institution administering a minor-serving program is subject to such state laws, being familiar with these laws has its advantages. They serve as a reference for colleges and universities to establish best practices that can help keep children safe online. Further, they often set a "floor" for expectations within the state; consistency with those expectations,

What may be suitable for a campus community of adult students may not be as suitable for minors.

even when they do not legally apply to colleges or universities, can help protect an institution's reputation and provide it some protection in defending itself, should an issue involving a minor online arise.

"Coming and Going"

While advances in technology have many institutions thinking about the new risks associated with minors using technology, it is still crucial that institutions continue to address the risks associated with minors' off-line activities. One of the day-to-day risks facing staff of programs and activities serving minors is the "coming and going" of minors to a program site or location. Indeed, the degree of risk and potential legal exposure can be extensive in the event a minor is harmed or injured at a time when the minor is entrusted to the institution. This exposure is even more complicated in cases where an injury occurs when a minor leaves a program site on their own accord or where it is unclear whether the minor is under the care of the institution at the point in time or location when the injury occurs.

Of course, the primary concern is the safety of the minor. Institutions have faced litigation and threats of litigation when a minor leaves a program and is harmed or killed (e.g., assaulted by another party, an accident, drug overdose, or drowning). However, it is not only the minor's safety that the institution has to consider. Some institutions have faced threats of litigation by injured parties where the injury occurred at the hands of a minor who was supposed to be in a program or activity at the time. Likewise, other schools have dealt with claims where minors were caught stealing from a nearby convenience store when they were on "free time" away from their enrichment programs. While such claims are attenuated and may not survive a strong legal defense, an institution of higher education will always be a more desirable defendant to a civil plaintiff than an individual.

Inadequate or negligent supervision of a minor's coming and going is a significant legal risk. The surest way to avoid exposure is through policies, practices, and training that help program staff educate parents about expectations and ensure adequate supervision and monitoring of minors' comings and goings. Program staff must be aware of the minors' arrivals

and departures, and the program's policies should put parents on notice as to the clear line of when a minor is under the program's care and custody and when he or she is not. Key issues that should be considered in procedures or guidelines about arrivals and departures include:

- Arrival and pick up locations and time periods
- Alternative arrival location for late drop offs
- Degree of supervision provided at arrival and pick up locations, by age group
- Alternative location for late pick ups and consequences of late pick ups
- Whether the program must be made aware of third parties with authorization to pick up a minor (e.g., caretaker, family member, neighbor)
- The process, if any, for matching minors with their parents/guardians/authorized third parties prior to the minor's release
- A minor's ability to come and go on his/her own (walkers, bicycles, public transportation)
- The process for mid-program departures for appointments
- Whether attendance is taken upon the start of the program and whether a call to the parent/guardian will be made if a student does not arrive on time

These policies should take into consideration the age group of the minors and the nature and duration of the program or activity.

Likewise, universities and colleges with minor-serving programs should consider the amount and degree of supervision that is necessary to maintain a safe and healthy environment for minors on campus. This will often depend on the type of program or activity (day program, overnight camp, academic program, athletic program, etc.), the age of the minors attending the program, and program activities. Generally, programs serving younger minors and programs that include resident or overnight activities will require a smaller staff to student ratio to ensure adequate supervision.

Some states⁷ and independent associations, such as the American Camp Association,⁸ have developed guidelines and recommendations for ratio of program

staff to program participants based on these factors. Institutions should consider such guidelines and any applicable state guidelines to set a standard program staff to program participants ratio for their minor-serving programs.

Adults Working with Minors

Adult participants in minor-serving programs can greatly impact the quality of such programs. These adults do more than just supervise minor participants; these individuals provide mentorship and support to the minors they serve. In times of crisis, adult participants are the first to the scene to maintain the health and the safety of these minors. These individuals develop relationships with minors, serving as confidants to the minors who are under their care. Unfortunately, there have been instances in which adult participants have betrayed the trust of the minors and parents they serve, which have resulted in a number of disputes and legal challenges, some with significant damage to the institution itself. Therefore, institutions should use tools, such as background checks, mandatory reporting, and training, to ensure that they continue to have the highest quality staff working with minors.

Some states require institutions to run background checks on adults who work with minors. While these laws generally apply to school district and daycare personnel, these laws may also be applicable to employees, as well as volunteers participating in minor-serving programs. For instance, in Pennsylvania, employees and volunteers having contact with children must undergo a criminal background screening by Pennsylvania State Police and the Federal Bureau of Investigation (FBI).⁹ In Missouri, background checks are completed based on an individual's fingerprints and are performed by both the Missouri State Highway Patrol (MSHP)

and the FBI. Moreover, the Missouri Department of Elementary and Secondary Education has procedures for schools to submit personnel information so criminal background checks can be updated annually.¹⁰

Not all background check laws involving minors will apply to the unique setting of a college or university. But institutions should work with their counsel to determine if they apply and, if not, whether they provide a useful road map for policies that address how to conduct appropriate background checks on specific personnel who work with minors.

Further, other checks of individuals working with minors may be beneficial and may include: credit reports, public court records, driving records, educational records, employment verifications, personal and professional references, verification of social security numbers, licensing and certification records, and drug testing. Whether to conduct these checks should be considered against a number of variables, including the nature and duties of the position, the degree of risk mitigation such check provides, and the administrative capacity of the institution to ensure the check is consistently and non-discriminatorily utilized. For instance, a driving record check is advisable for staff members who are responsible for transporting minors, but may not be administratively necessary or reasonable for all staff.

Interactions between minors and the adult participants in a program can serve as the basis for a number of employment disputes and legal challenges, some with significant potential exposure. Institutions should consider developing clear rules and disciplinary measures applicable to adult

participants (i.e., a "Code of Conduct") for interacting with minors. Institutions should clearly state in their policy documents and employment materials that any adult participant may be immediately removed from the program or activity for non-compliance. A code of conduct should also address key issues, such as the operation of motor vehicles with minor passengers;

Adults do more than just supervise minor participants; they provide mentorship and support to the minors they serve. Universities and colleges should consider the amount and degree of supervision that is necessary to maintain a safe environment for minors.

the use of social media, text messaging, and e-mail to receive/initiate communication with minor participants; the maintenance of appropriate social, emotional, and physical boundaries with minor participants; the institution's position on violence, sexual abuse, or harassment and conduct that threatens or endangers the emotional well-being, health, or safety of any person; the expectations with respect to professionalism and compliance with the institution's rules; and the prohibition of the possession or use of alcohol, drugs, and tobacco.

other school officials have "legitimate educational interests" in reviewing the records or when the records are in connection with an emergency and the information is necessary to protect the health or safety of the minor or other individuals.¹³

In addition to FERPA, to the extent minors receive healthcare services from the institution while attending a minor-serving program, their health information and medical records could also be governed by the Health Insurance Portability and Accountability

Act (HIPAA). Generally, the HIPAA privacy rules *do not* apply to college or university student records because the institution: 1) is not a "HIPAA covered entity" (health plans, healthcare clearinghouses, and those healthcare providers that transmit health information electronically in connection with certain administrative and financial transactions), or 2) is a HIPAA covered entity but maintains health information only on students in records that are by definition "education records" under FERPA and, therefore, is not subject to the HIPAA Privacy Rule. The interplay between FERPA and HIPAA can be tricky, so institutions should consider with their legal counsel the ways in which it may be receiving and transmitting health information of minor students and whether those transactions may trigger HIPAA requirements.

Video and Photographs

In addition to medical information, an institution should consider the risks and privacy issues that arise with respect

to filming and photographing students. Institutions may want to film or photograph minors participating in their programs for marketing purposes. However, unauthorized and inadvertent disclosures can have substantial legal and reputational consequences. As such, all programs or activities serving minors should utilize a media/photo/video release. This release will not only ensure compliance with FERPA and best

Confidentiality and Disclosures of Information

Medical Information

To provide a safe and healthy environment for minors on campus, institutions may need to be aware of a minor's medical history. Possession of such confidential information can impose a number of legal obligations on an institution since institutions can be subject to various state and federal statutes and regulations governing the privacy of medical information.

As a recipient of federal dollars, an institution is required to comply with the Family Educational Rights and Privacy Act (FERPA). While this federal law clearly applies to enrolled students at a higher education institution, most institutions apply FERPA's privacy protections to the education and health information of minors participating in their programs, as well. Under FERPA, parents and legal guardians have a right to inspect and review minors' health and medical records maintained by institutions because they are considered "education records" under FERPA.¹¹ Additionally, written parental/guardian consent is required in order for these records to be shared unless the disclosure meets one of the exceptions to FERPA's general consent requirement.¹² These exceptions include when teachers and

The interplay between FERPA and HIPAA can be tricky, so institutions should consider with their legal counsel the ways in which it may be receiving and transmitting health information of minor students and whether those transactions may trigger HIPAA requirements.

practices with respect to student privacy, but it will serve as a defense should a minor's likeness be misappropriated by a third party.

The release should first provide parents and guardians with notice of how photos or videos of their minor children could be used. The notice should cover the institution's right to reproduce, use, exhibit, display, broadcast, distribute, exploit, modify, adapt, and create derivative works of such materials and that the minor will receive no remuneration for the material. Institutions should obtain authorization from the parents/guardians that acknowledges such use and waives claims to inspecting materials prior to use. Finally, the release should provide parents/guardians the ability to "opt-out" of such disclosures, so images or recordings of their minor children are not taken or disseminated.

Behavior and Discipline

A common legal trouble area for programs serving minors is where a minor's behavior or non-compliance with a program rule or expectation (or their parent/guardian's non-compliance) results in the minor's discipline or removal from the program activity, or some component thereof. In cases where a parent/guardian, or the minor him/herself, disagrees with the discipline or feels that the discipline was unfair, parents/guardians or the minor may seek to challenge the discipline administratively with program staff or legally through legal counsel.

While K-12 students in public school settings must be afforded due process prior to being removed from an education setting,¹⁴ minors are not provided a "right" under federal or state law to participate in an enrichment activity. Of course, to the extent a public institution is offering educational programming to minor students that results in their matriculation through a traditional K-12 educational system, a participating student should be afforded some degree of due process prior to limiting the minor's access to or removing him/her from the program or activity, or some component thereof.

However, for other minor-serving programs and activities, providing minors a fair disciplinary process derived from principles of due process is prudent to avoid misunderstandings with minors and their parents and to ensure that minors are treated fairly and in a manner consistent with the institution's values. Moreover, failing to follow

established practices with respect to discipline can give rise to a breach of contract claim. Simply applying existing disciplinary procedures that are directed to graduate and undergraduate students to minors is insufficient. Those procedures generally do not take into account the differences in discipline approaches and philosophies given the age difference.

For these reasons, it is recommended that each institution provide guidelines for program staff on disciplining minors. Disciplinary policy should address certain key areas, such as civility and rudeness/ridicule of others, bullying, harassment, discrimination, cellphone use, internet use, academic dishonesty, theft, damage to property, leaving program site without appropriate permission/notification, weapons, drug and alcohol use, and sexual activity and touching. Disciplinary procedures should be expressly communicated to minors and their parents or guardians before the start of each program. Disciplinary procedures should include the manner in which an investigation of any infraction will be handled; the process for notifying minors and parents or guardians of infractions and possible disciplinary actions, which should be proportional to and correspond with the severity of the infraction/violation; and a statement as to whether disciplinary decisions are final or appealable.

Inclusion and Accommodations

A key area that is evolving rapidly is the extension of civil rights protections to transgender and gender non-conforming individuals. These issues are playing out in schools across the country as parties look to the court system for clarity on how laws, such as Title IX prohibitions of sex discrimination, may protect such individuals.¹⁵ Given the legal complexity of this evolving area of law and the increased motivation for legal challenge by individuals alleging discrimination, on one hand, and individuals asserting invasion of privacy claims, on the other, institutions should do a cost/benefit analysis about whether to implement guidelines on how to accommodate transgender and gender non-conforming minors.

In addition, institutions should consider how to address minor participants with disabilities. Higher education institutions are obligated to comply with laws that protect individuals with disabilities from discrimination, including the Americans with Disabilities Act (ADA)

and Section 504 of the Rehabilitation Act of 1973 (Section 504). These requirements prohibit institutions from discriminating against individuals with disabilities and impose obligations on institutions to accommodate individuals with disabilities to ensure equal access to its offerings.

It is unclear how the implementing regulations of Section 504 apply to postsecondary institutions serving minor students. Though there are regulations that apply to postsecondary institutions,¹⁶ these regulations do not clearly address how they might apply to programs and activities that serve minors. Nevertheless, the cautious approach for institutions administering minor-serving programs would be to comply with the spirit of the law and address accommodation requests from any minor who has disclosed his or her disability.

A policy addressing accessibility for disabled minors should include a process to determine if the minor's impairment substantially limits a major life activity, a list of required documents to confirm that the minor has a disability or impairment, a mechanism for notifying parents of the institution's determination on disability, a process to evaluate a minor's support request or other support alternatives to determine if a request can be implemented, and a mechanism for notifying parents or guardians of the institution's decision to implement or deny the minor's support request. It is also important to recognize that the lack of clarity in the regulations creates some uncertainty as to how burdensome those accommodations can be. As such, universities and colleges should seek counsel on how to address the risks associated with having disabled minors on campus.

Finally, it is worth keeping in mind that while the Individuals with Disabilities Education Act (IDEA) establishes a process for determining a child's eligibility for special education services, it is limited in application to K-12 schools. The law requires school districts

to ensure those services are provided to minor students under an individual education plan (IEP) if they are attending another school. Parents are often familiar with these requirements and may believe that they extend to enrichment and academic programs provided by a college or university. However, IDEA does *not* generally apply to postsecondary institutions (unless they are matriculating K-12 students by serving as a school district). But to the extent that an institution is offering educational program-

ming to minor students that result in their matriculation through a traditional K-12 educational system, the program would need to cooperate with the home district to ensure the district can provide any required services under the student's IEP.¹⁷

Promotional Materials and Handbooks

Another risk related to programs and activities serving minors is ensuring that each minor's parent or guardian has received adequate notice of the program or activity in which their child will engage and has authorized the minor's participation. Essentially, this notice and authorization serves as the "contract" that establishes the terms and conditions of the minor's participation in the program or activity. Sufficient notice of program activities ensures that parents or guardians are fully aware of the activities that the minor will experience while engaged in the program and any associated risk. Institutions must ensure that they are providing parents or guardians with enough information that a reasonable person would feel that he or she is suf-

ficiently informed of any potential risks before assuming those risks. The degree of detail that should be included in the notice will vary depending upon the nature of a program or activity.

Simply applying existing disciplinary procedures that are directed to graduate and undergraduate students to minors is insufficient. Those procedures generally do not take into account the differences in discipline approaches and philosophies given the age difference.

Parents/Guardians

While not precisely a legal issue, institutions should consider the risks of having parents and guardians participate in minor-serving programs. It is not uncommon for parents and guardians to want to visit their child during their child's participation in a program, stop by for lunch, observe the class or activity, and/or volunteer in their child's class. Many programs and activities serving minors would be supportive of such active involvement by a parent. However, unannounced parent or guardian visits and involvement can create some administrative burdens and difficulties on program staff and impact staff's ability to properly supervise minor participants. In some instances, unannounced parent involvement can lead to other issues, such as safety and security concerns and child custody and visitation rights.

There have been situations where issues related to custody battles between parents and guardians have bled into programs and activities serving minors. These issues can be burdensome for program staff and institutions, as they have the potential to raise legal complications for institutions in having to respond to subpoenas for information and depositions from parents and guardian ad litem. Further, programs and activities may need to be able to navigate their operations in compliance with court-issued protective orders involving the minors being served. Similarly, they may need to navigate around one parent's request that the other parent have no contact with the minor. While these issues, in theory, are unrelated to the minor-serving programs, whether and how program staff handles these issues can have a significant impact on the institution with respect to the legal and administrative resources needed to manage the institution's involvement in these issues.

Conclusion

Continuous assessment of minor-serving programs is critical to avoiding potential liability and ensuring safe, high-quality programming for children. Program organizers should work closely with legal counsel to identify and address the risks of having minors on campus and ensure that the institution is in compliance with applicable federal and state laws. Inventorying programs and crafting and maintaining appropriate and consistent policies and practices to address the key areas discussed in this article

are just the first steps. To ensure the effective administration of minor-serving programs, institutions must also train program staff to understand their policies and procedures, as well as staff obligations and responsibilities under these policies and applicable state and federal laws. Developing robust policies and procedures and training on the implementation of such policies are critical to mitigating risk and protecting program quality and institutional reputation.

About the Authors



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Endnotes

- ¹ 47 U.S.C. § 254(h)(5) (B) (2012).
- ² 47 U.S.C. § 254(h)(5) (B) (2012).
- ³ See Ariz. Rev. Stat. Ann. § 34-501 (West 2017) (Requires public libraries to install software or develop policies to prevent minors from gaining access on the Internet to materials harmful to minors; requires public schools to install computer software that would prevent minors from gaining access to materials harmful to minors); C.R.S.A. § 24-90-603; § 24-90-401 to 404; § 24-90-603; § 22-87-101 to 107 (West 2017) (Requires public schools to adopt and enforce reasonable policies of Internet safety that will protect children from obtaining harmful material; provides grants to publicly supported libraries, including school libraries, that equip public access computers with filtering software and that have policies to restrict minors from accessing obscene or illegal information; requires public libraries to adopt a policy of Internet safety for minors that includes the operation of a technology protection measure for computers with Internet access).
- ⁴ Kan. Stat. § 75-2589 (West 2017).
- ⁵ Mo. Rev. Stat. §§ 182.825-827 (West).
- ⁶ I.C. § 33-132 (West 2017).
- ⁷ See e.g., “Class Size and Assigned Enrollment,” Missouri Department of Elementary and Secondary Education, <https://dese.mo.gov/quality-schools/mo-school-improvement-program/class-size-and-assigned-enrollments>.
- ⁸ “ACA Standards that Relate to Staff Screening, Supervision, and Training,” American Camp Association, <https://www.acacamps.org/resource-library/accreditation-standards/aca-standards-relate-staff-screening-supervision-training>.
- ⁹ See 23 Pa. C.S.A. § 6344(b) (West 2017).
- ¹⁰ See Mo. Rev. Stat. § 168.133.1 (2016).
- ¹¹ 20 U.S.C. § 1232g (2012); see also 34 CFR §§ 99.10–99.12 (2016).
- ¹² 20 U.S.C. § 1232g (b) (2012).
- ¹³ *Ibid.*
- ¹⁴ See *Goss v. Lopez*, 419 U.S. 565, 574 (1975). Though school officials have broad authority to prescribe and enforce standards of conduct in public schools, their efforts to maintain a safe and secure learning environment are limited by the Fourteenth Amendment, which prohibits any state deprivation of life, liberty, or property without due process of law. The Due Process Clause of the Fourteenth Amendment essentially requires a state actor, such as public universities and colleges, to provide due process (notice and an opportunity to be heard) prior to depriving an individual of a “right” under the law.
- ¹⁵ See e.g., *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 132 F. Supp. 3d 736 (E.D. Va. 2015), rev’d in part, vacated in part, 822 F.3d 709 (4th Cir. 2016), vacated and remanded, 137 S. Ct. 1239 (2017). A transgender high school student brought action against the school board under the Equal Protection Clause and Title IX of the Education Amendments of 1972, challenging the school board’s restroom policy requiring students to use restroom consistent with birth sex, rather than gender identity.
- ¹⁶ See 34 CFR §§ 104.41-47 (2016).
- ¹⁷ 20 U.S.C. 1400(a), *et seq.* (2012).

To dare is to lose one's footing momentarily.

To not dare is to lose oneself.

—SOREN KIERKEGAARD,

DANISH THEOLOGIAN AND THE FIRST EXISTENTIALIST PHILOSOPHER

You don't concentrate on risks. You concentrate on results.

**No risk is too great to prevent
the necessary job from getting done.**

—CHUCK YEAGER,

FORMER US AIR FORCE GENERAL OFFICER AND RECORD-SETTING TEST PILOT

The College Campus: Essence of Strategic and Operational Risk

| Glenn Klinksiek, URMIA

Introduction

The college campus, with its libraries, lecture halls, research buildings, residence and dining halls, student centers, athletic stadiums, and arenas, is the poster child of strategic and operational risk. Institutions of higher education (IHE) understand the operational aspects of campus risk and have staff assigned to address these daily. In contrast, the recognition of the strategic risks of the college campus, particularly as related to its buildings, is far less clear. This article will look at both operational and strategic risk to deepen appreciation of these risks and aid their assessment.

The URMIA Resource Guide defines risk as “any issue that impacts an organization’s ability to meet its objectives.”¹ Strategic risk can be defined as “the uncertainties and untapped opportunities embedded in strategic intent and how well they are executed. As such, they are key matters for the board and impinge on the whole business, rather than just an isolated unit.”² In contrast, operational risk is “typically managed from within the business and often focus[es] on health and safety issues where industry regulations and standards require. These internally driven risks may affect an organization’s ability to deliver on its strategic objectives.”³

Stating the Obvious: The Campus Is Important to Colleges and Universities

Universities are often strongly linked in the public’s mind with the physical structures they occupy. Consider the quadrangles of Oxford and Cambridge, the University of Bologna’s porticoes, and the collegiate Gothic of Princeton and Yale.⁴ The fact that the campus is featured during most college tours given to prospective students and their families illustrates the physical manifestation of the college experience. Many college and university websites prominently display photographs of the campus that symbolize the institution.

The campus is home to millions of faculty and students engaged in higher education in the classrooms, labs, and housing. According to the Department of Education, total undergraduate enrollment in degree-granting postsecondary institutions was 17.3 million students in 2015.⁵ About 1.5 million faculty teach these students.⁶

Everyday Campus Risks

URMIA maintains a risk inventory in its library that lists common risks at colleges and universities. These risks are grouped into 23 categories and identified as strategic or operational risk, as well as reporting, compliance, and reputational risk. A review of the March 2017 edition of the URMIA Risk Inventory shows that, while campus facilities risk is not one of the categories of risk, it falls into at least five different categories. The following table shows the areas of campus operational risk related to facilities.

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Category	Risk Area	Risk Factors
Athletics	Facilities	Adequacy - use, adequacy - athlete recruitment, adequacy - spectator draw, investment, maintenance, spectator control/comfort, naming rights, use agreements, advertising, emergency response, compliance – Americans with Disabilities Act (ADA), compliance - Title IX
Community	Facilities - Use by community members and organizations	Adequate policy, process, and staff to administer; adequate use agreement contract; conflicts with institutional use/mission; insurance requirements; oversight and management by institution/community members; fees and collections; vendors of community members; injury; property damage
Financial	Construction	Capital/construction plan, project prioritization, building design, competitive contracting, skilled contractors, project oversight, scope creep, project delivery on time/budget, fundraising strategy success, construction deficiencies, fraud, capital to pay for projects, vicarious liability for construction accidents
International	Asset protection - Educational and residential facilities	Fire and life safety protection, security, maintenance, government seizure, insurance, ownership title, fit for intended use
Local, state, and federal regulation	Facilities	Building codes, National Fire Protection Association (NFPA), ADA, asbestos, lead paint, insurer requirements, landmark status
Operations	Premises	Injury/liability for accidents related to property conditions, building code compliance, adequate loss prevention programs, maintenance, functional depreciation, competition for students, accidental damage (fire, flood, windstorm, freeze, earthquake, etc.), ADA compliance, transgender facility access, solar storm, nuclear accident
Property	Damage	Accidental damage (fire, wind, earthquake, water, or other cause) to existing buildings/contents/buildings under construction, intentional damage (vandalism/sabotage), insurance, terrorism
Property	Depreciation	Wear/tear, no longer functioning for intended purpose, deferred maintenance, preventive maintenance
Property	Inadequate design	Failure to perform to expectations, cost to remedy, litigation cost to pursue recovery, delay in meeting intended use
Property	Naming	Naming policy, use in fundraising/capital campaign, subsequent revelations about person/organization named that tarnish institution, undue influence of person named

For the most part, these risks are appreciated and addressed by colleges and universities. Facilities are a big part of what happens on campus daily. In the normal course of these operations, problems surface and are addressed routinely. After compensation costs, the second highest expense at most colleges and universities is operating the physical plant, meaning the maintenance and repair of campus buildings and grounds. Every institution has a facilities operation to address the maintenance and upkeep issues, usually with a relatively large staff. Institutions address campus risk through their insurance programs; nearly all purchase property insurance to address the physical damage issues. Risk management staff spend considerable time dealing with the effects of incidents such as water damage, windstorm damage, and more. Protocols address how the institution manages and responds to findings of government building inspectors who tour facilities looking for violations of fire codes, food service regulations, and other regulations.

That is not to say operational risk is easy to address or does not demand significant resources. For example, a significant issue for IHEs is deferred maintenance. Universities and colleges collectively face a shortfall of a record \$30 billion for needed upkeep of deteriorating buildings and other infrastructure, according to an estimate by APPA: Leadership in Educational Facilities.⁷ With inadequate maintenance, buildings deteriorate faster than they would if they were kept up; become inefficient, which increases operating costs and reduces the usefulness of the building; and detract from the appearance of the campus in general.

Campus Risks Impacting Mission and Strategy

To appreciate the strategic risks of the campus and its buildings, the overall long-term goals of the institution must be clear. According to Hover Research, the strategic goals of an IHE can include:

- Ensuring students' academic success
- Diversifying financial resources
- Improving infrastructure and operations
- Promoting community engagement
- Developing institutional branding

- Increasing enrollment and retention
- Improving alumni engagement
- Building sustainable facilities
- Establishing relationships with community organizations
- Creating a marketing strategy⁸

For example, Cornell University, the private Ivy League and land-grant doctoral university in New York, had the following strategic goals in its 2010-2015 plan: faculty excellence; educational excellence; excellence in research, scholarship, and creativity (including maintaining and strengthening infrastructure including libraries and shared research facilities); excellence in public engagement; and staff excellence. Cornell states facilities are one of three "enabling conditions."⁹

Objectives for the campus and its buildings are often implied strategic goals, if not explicitly stated as one. For example, consider the goal "excellence in research." To achieve this objective, an institution would need top faculty researchers who work in a culture that encourages creative inquiry into new and challenging questions. An internal quality peer review process would support the development of research objectives and consideration of the methods for investigation. But what does that research environment require? Obviously, financial resources are required, but libraries, computing resources, and research facilities and laboratories are also necessary. It is

hard to imagine innovative research could be accomplished without state-of-the-art laboratories. Laboratory buildings are expensive to build. Beyond that, planners should also consider the high cost of maintenance that they require and, more importantly, the cost to update facilities as research and technology evolve over the building's life.

Buildings are long-lived assets lasting many decades, often well beyond the normal planning horizon for institution-wide strategic plans. Institutions must consider the total cost of ownership of any proposed building project and the risk the utility of the building ends before the building has reached the end of its life. The cost of ownership includes the significant upfront investment to build and all the costs

To appreciate the strategic risks of the campus and its buildings, the overall long-term goals of the institution must be clear.

of use (maintenance, replacement of worn out systems over time, utilities, etc.) and the cost to demolish the building at the end.

The fact that buildings are important to college and university strategies can be seen by looking at the top reasons for college and university construction projects. *University Business* reports that these include student enrollment growth or meeting student demand, updating outdated facilities (including alternative energy), consolidating related programs and making space for new ones (interdisciplinary studies), and addressing teaching styles and learning outcomes.¹⁰

The Rise of the Online Learning Environment

IHEs could find themselves in the predicament facing the retail industry: the sting of dealing with empty stores for which they cannot find a tenant. Brick and mortar retailers are increasingly losing foot traffic and sales to online retailers as consumers shift to online shopping.¹¹ Consequently, retailers are closing stores to shed expense or as they go out of business. The empty stores left behind may remain that way and either the store chain or the property manager will be stuck with the expense of maintaining empty stores or the loss created by selling in a down market.

Just as the big trend of online sales has impacted the retail industry, trends facing education could reduce or end the college or university's need for campus buildings before their useful lives end. Technological developments and financial forces have led to the increasing prominence of online education, which challenges the value of a physical campus for delivering a college education.¹²

According to an Association of Governing Boards of Universities and Colleges (AGB) blog, "For colleges that rely solely on a campus-based delivery model, some markets are shrinking due to declining regional high school demographics. Concurrently, more students are migrating to online programs due to convenience and cost. More than 7.1 million students have taken at least one online class, representing 33 percent of total higher education enrollment. Moreover, there are more than 3.4 million college students engaged in

fully online programs, representing 17 percent of all college students."¹³

There is a need for faculty and students to come together to learn. As institutions review and revise their strategic plans and determine how to best market themselves, they should carefully consider how to enhance the campus experience as a space where people come together in ways that they cannot online (or at least not yet).¹⁴

Certainly, some university experiences, such as science labs and theater activities, seem to require the physical presence of students together. An article in *Inside Higher Education* asks, "How will online education diminish this need for physical presence? For example, if large lectures can be (and are) delivered over the Internet, is there enough value added

to the students' campus experiences when they sit in a lecture hall week after week? Also, if much or all of what a campus-based institution has to offer is also offered online, why pay the higher cost of going to that place? There are ways to establish a balance between the virtual world and "place" that capitalize on campus-based institutions, ranging from the use of technology in and outside the classroom in support of the on-campus learning experience to hybrid courses and programs that utilize a combination of campus-based and online interactions."¹⁵

Even with the hybrid experience, the Heritage Foundation suggests that "students who try online education are likely to find in the near future that these programs can indeed offer most of a full college experience, albeit in a different format. Many components of the experience can be replicated or even improved online. Other components may not translate directly, but students who are willing to be creative can replace many of these components with similar experiences in their communities."¹⁶

Declining Enrollment

Besides the online education risk, the need for buildings could be affected by declining enrollment. The numbers of high school aged youth are declining. Potential students may be kept from college education because of the escalating cost of already high tuition and fees. Others may stay away from

Just as the big trend of online sales has impacted the retail industry, trends facing education could reduce or end the need for campus buildings before their useful lives end.

colleges and universities if the new advancements in artificial intelligence reduce the demand for studies in some areas.

Continued New Construction on Campuses

Despite these threats to the need for physical campus, IHEs continue to invest in new building construction. Universities and colleges spent \$11.5 billion in 2015 on construction, an all-time high, according to Dodge Data & Analytics, a private company that tracks this. Some of that was for renovations, but it also paid for 21 million square feet of new space.¹⁷

According to the *Atlantic Monthly*, “This building boom has helped to more than double public-university and community-college debt since before the recession to \$151 billion, research by the Center for Studies in Higher Education at the University of California, Berkeley, found. Private colleges and universities have \$95 billion worth of debt.”¹⁸

What motivates campus construction? According to the *New York Times*, “Some call it the Edifice Complex. Others have named it the Law of More, or the Taj Mahal syndrome. A decade-long spending binge to build academic buildings, dormitories, and recreational facilities — some of them inordinately lavish to attract students — has left colleges and universities saddled with large amounts of debt. Oftentimes, students are stuck picking up the bill.”¹⁹ The *Times* further reports, “David K. Creamer, vice president for finance and

business services at Miami University, said the importance of college rankings had pressured administrators to spend more and more. In some rankings, the effect of spending is direct because institutions with ‘the best dorms’ or ‘the best athletic facilities’ are singled out. The effect on other rankings is indirect: better facilities attract better students, and that ultimately raises rankings.”²⁰

Unfortunately, campus facilities hamstring colleges and universities. According to an article in *Inside Higher Education*, “Most would agree that all of higher education, including the elite institutions, must adapt to the changing environment. The question is, how to change? Traditional colleges and universities are located on campuses that are of equal or greater value than their fiscal endowments. Abandoning these assets largely is out of the question. The question for our campuses is how to maximize the value of ‘place’ in the increasingly competitive higher education environment.”²¹

While the strategic risks to colleges and universities of online education, cost, and diminishing need impact the campus buildings, these buildings, in turn, impact other strategic risks of the institutions. A review of the March 2017 URMIA Risk Inventory shows how facilities can be risk factors an institution should consider in different areas of its strategic goals. These are listed in the table below.

Category	Risk Area	Risk Factors
Brand/reputation	Advancement	Capacity of facilities to allow institution to achieve goals, higher levels of “research,” university status, attracting faculty/students
Competition	Competition from diverse education providers	Response to competition with advantages related to facilities, organizational inflexibility due to facilities constraints
Financial	Program changes - Starting and closure	Capital investment (facilities, equipment), closure cost (mothballing building, building sale, lease termination)
Athletics	Program cost vs. revenue	Financial (adequacy - cost vs. revenue), revenue sources, compliance (men vs. women Title IX), facilities (recreation, competition, training, stadiums, and luxury amenities), contracts
Financial	Research funding	Accepting grants that require more resources than available (i.e. no budget for laboratory or other required facilities)
Students	Residences	Adequate/safe/appealing dining options, safe/comfortable/ attractive living facilities, capacity to meet demand, affordability, business continuity plan for damage, insurance

Enterprise Risk Management and Campus Risk

The Committee on Sponsoring Organizations of the Treadway Commission (COSO) defines Enterprise Risk Management (ERM) as “a process, effected by an entity’s board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.”²² In higher education, according to a report published by AGB and United Educators, “ERM, as used by governing boards and senior administrators, combines traditional risk management, strategic planning, and internal controls. The goal of ERM is to move away from viewing risk in a silo, separate and distinct from the institution’s overall mission. Instead, it encourages a more holistic view of risk by considering risks across the institution or enterprise as part of the strategic planning process.”²³

As discussed above, facilities related campus risk is inherent in both the operational and strategic goals of the institution. Certainly, for those institutions practicing sound ERM, risks related to facilities must be considered whenever a strategic goal may be influenced by or dependent upon facilities. However, that may not be happening consistently. According to a survey by PwC, “The linkage between ERM and the strategic planning process is an evolving area of focus and future goal for most institutions.”²⁴

What indications are there that IHEs may not be considering facilities risks related to their strategies? Consider the following:

- New construction exceeds the number of new students. As noted above, in 2015 alone, IHE’s added 21 million new square feet. That works out to more than a square foot per student for 17.3 million students on campus and almost 10 square feet per student that colleges and universities are expected to add in the 10 years ending in 2025.²⁵
- Extensive new construction while existing facilities are inadequately maintained. An article in the *Atlantic Monthly* explained, “After years of budget cuts and continuing austerity, universities and colleges collectively face a shortfall of a record \$30 billion for what they variously call ‘deferred maintenance’ or ‘deferred renewal’ to deteriorating

buildings and other infrastructure, according to an estimate by the national association representing facilities officers. The problem is compounded by the fact that they nonetheless continue to build more, spending a record \$11.5 billion last year, in the hope of attracting students at a time when enrollment is leveling off or falling. That’s further straining maintenance resources and adding billions of dollars of debt for which someone has to pay the interest.”²⁶

- Facilities costs make intercollegiate sports programs unprofitable. The *Washington Post* reports, “Facilities spending is one of the biggest reasons otherwise profitable or self-sufficient athletic departments run deficits, according to a *Washington Post* review of thousands of pages of financial records from athletic departments at 48 schools in the five wealthiest conferences in college sports. In 2014, these 48 schools spent \$772 million combined on athletic facilities, an 89 percent increase from \$408 million spent in 2004, adjusted for inflation. Those figures include annual debt payments, capital expenses, and maintenance costs.”²⁷

On the institutional level, the degree to which facilities risk is baked into its strategic plan indicate whether ERM is working. Does the institution’s strategy address related facilities concerns? Is consideration given to how to manage the cost and use of facilities overtime? If not, the issue of facilities risk should be considered anew, as well as whether the ERM process is as robust as it should be.

Conclusion

Campus buildings present strategic and operational risks to the institution. Because the campus is part of the daily operations of the institution, the operational risks are well appreciated and managed.

In contrast, the changing higher education environment demands that IHEs assess the risks of building ownership over their life, which is typically much longer than normal planning horizons. Failing to consider the adaptability of the building to changing future uses may result in buildings that are functionally obsolete before their time, leaving the institution with higher operating costs and no associated benefit.

ERM and institutional strategic planning are two sides of the same coin. Stated strategic goals often directly or indirectly indicate a need for investment for campus buildings or other facilities changes. Good ERM practices dictate that the strategic plan address any new institutional risks that are created by these changes, including risks associated with facilities.

About the Author



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**Take a course in good water and air; and in the eternal youth
of Nature you may renew your own.**

Go quietly, alone; no harm will befall you.

—JOHN MUIR,

SCOTTISH-AMERICAN NATURALIST, AUTHOR, AND WILDERNESS ADVOCATE

Lead by Example: New York’s Effort to Protect Its Children from Exposure to Lead in Drinking Water in the Post-Flint Era

| Howard N. Apsan, Ph.D., The City University of New York

Introduction

The entrance to the Van Cortland Park Valve Chamber was through a non-descript metal door set in stone block and built into a grass-covered rise in the North Bronx. We entered, signed our waivers, and donned our green New York City Department of Environmental Protection (DEP) hard hats. Then we proceeded through a damp tunnel to a construction elevator that descended 25 floors beneath the city streets to a valve chamber the size of several football fields. When we stepped out of the elevator, we had the sense of walking into some futuristic science fiction scene or onto the set of an old James Bond movie. After several beats, our guide brought us back to the present, reminding us that this valve chamber controls hundreds of millions of gallons of New York City drinking water, some of which was flowing through the cement-lined, 24-foot diameter Third Water Tunnel cut through bedrock hundreds of feet below where we stood.

Futuristic or not, this valve chamber is part of the latest phase of a water system that was started, ironically, as part of a joint venture between Alexander Hamilton and Aaron Burr in 1799.¹ That venture, which turned out to be a bit of legislative sleight of hand on Burr’s part, never met its purported goal of transporting water from the Bronx River to lower Manhattan. Nevertheless, four-and-a-half decades and one very famous duel later, New Yorkers were drinking fresh water from the Croton watershed in Westchester County. Today, New York City consumes more than a billion gallons of water a day, much of which flows courtesy of gravity from mountain reservoirs more than a hundred miles to the north and west.²

Fascinating as the story of New York City’s water system may be, this article is about a small segment of that story: protecting New York’s children from elevated exposure to lead from drinking water. To be fair, exposure to lead in drinking water is significant, but only one of many municipal water quality challenges. Still, the lessons learned from water systems in Flint, Michigan, and elsewhere over the past several years have illustrated how a relatively small amount of lead in the water—15 parts per billion, to be precise—can influence public policy.

Regardless of the reader’s familiarity with New York City’s water system or the recent events leading to elevated lead levels in Flint’s drinking water, this article will provide background on the sources of elevated blood lead levels in children—especially from lead in drinking water—and its health effects. It will then touch on some of the issues that Flint had to address and explore the practices that New York follows to help minimize those risks. In particular, it will include changes that New York adopted in sampling protocols to minimize potential exposure to children in its public schools.

Finally, because this is written with university risk managers in mind, it will touch on the risk implications for colleges, universities, and other institutions where young children may be exposed to

lead in drinking water on a regular, occasional, or seasonal basis. These institutions may have childcare centers, specialized public schools, summer camps, after school programs, and other activities that host these vulnerable populations. Hopefully, this will contribute to the reduction of lead in drinking water in these settings and enhance our ability to protect children from lead exposure.

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Lead and Public Health

Sources of Exposure

Lead is a naturally occurring heavy metal that has been in use for thousands of years. Because it melts at a relatively low temperature and is soft and malleable, it has many commercial and industrial uses. On the other hand, it is a known neurotoxin that bioaccumulates and causes damage to the brain and nervous system. It is especially harmful to young children. To protect children from the threat of exposure, the potential for elevated blood lead levels, and the resulting health and developmental impacts, three common sources of exposure were banned in the United States: leaded gasoline, house paint, and plumbing fixtures.³

By the late 1970s, with the initiation of the Environmental Protection Agency's (EPA) ultimate ban of leaded gasoline—one of the great American environmental success stories—exposure to lead in the air, or in the soil near heavily trafficked roads where lead particles were deposited, was significantly reduced.⁴ In 1978, lead-based paint, another source of lead exposure, was banned, and subsequent regulations were promulgated to protect children—especially in older, poorly maintained buildings—from ingesting lead-based paint chips.⁵ The 1986 requirement for “lead free” piping in public water systems and household plumbing installations, followed in 1991 by EPA's Lead and Copper in Drinking Water Rule, provided further protection from lead ingestion through potable water.⁶ These requirements, however, do not obligate the removal of existing plumbing, and, therefore, many existing lead pipes and fixtures remain.

Lead in drinking water can come from lead in the surface water or groundwater source. It can leach from the water provider's lead supply pipes, joints, pumps, or fixtures. And it can leach from a building's plumbing system—lead pipes, joints, solder, and fixtures. Lead cannot be detected in drinking water without sampling because it has no identifying taste, color, or smell.⁷ All drinking water suppliers must sample for lead under the Safe Drinking Water Act,⁸ and there are state and local sampling requirements for lead in drinking water at schools and childcare facilities. EPA provides guidelines for flushing and other measures to minimize potential exposure, but of course reducing the hazard at the source is preferable.⁹

In the case of Flint, the water supply was corrosive and as a result the lead leaching was exacerbated.

Health Effects of Lead Exposure on Children

As noted, lead is a neurotoxin and, therefore, its primary effect is on the nervous system. Sustained exposure can result in additional health effects, including brain and kidney damage and ultimately death. For children, the impact of lead on the still-forming brain and nervous system can result in developmental issues that will affect the child for life. And while removing the source of exposure is always salutary, some impacts cannot be reversed. This is especially true for children whose bodies cannot reduce enough of the lead through the body's elimination processes to prevent permanent bioaccumulation in bone and tissue.¹⁰

The silver lining in this story is that lead blood levels in children have declined as a result of the aforementioned bans on leaded gasoline, lead-based paint, and lead plumbing fixtures. But again, the events in Flint remind us that the story is far from over.

Lead in the Flint, Michigan, Water System

Historians suggest that the citizens of ancient Rome may have had elevated blood lead levels because of the lead water pipes that were a symbol of Imperial engineering prowess.¹¹ Some even attribute the decline of the Roman Empire in part to lead poisoning.¹² Unfortunately, Flint has become a contemporary synecdoche. In spite of our scientific and regulatory advances, the Flint water crisis demonstrated that even in the 21st century, room for progress in this arena remains.

Like so many aging, economically stressed Rust-belt cities, Flint was under extraordinary pressure to cut costs. Among the “luxuries” that Flint provided to its citizens was Detroit Water and Sewerage Authority water, which was sourced from Lake Huron and the Detroit River. As one of many cost cutting initiatives, Flint decided that it could no longer afford to pay for Detroit water and would instead rely on Flint River water, beginning in April 2014. As everyone now knows, it appears to have been a penny wise and pound foolish decision. The Flint River water was more corrosive and was not adequately treated. This caused lead to leach from the city's many lead service lines and soldered joints. It exposed thousands of Flint

residents, many of them children, to elevated lead levels. The immediate threat has dissipated, but the events in Flint will have public policy ramifications throughout the United States for years to come.¹³

New York Water

New Yorkers (including this author) have been known to boast about the quality of New York City's drinking water. We cannot understand why people would waste energy and precious landfill space on bottled water when all they have to do is turn on any New York City tap. But New York City's water quality is a combination of heavenly blessing and two centuries of human enterprise dating back to before—and some say causing—the duel between Alexander Hamilton and Aaron Burr referred to above. In fact, some of the tap water coursing under Manhattan today flows through aqueducts built in the 19th century that are reminiscent of those providing water to Imperial Rome. What they did not have in Rome, though, is the 21st century quality assurance available to the New York City DEP, which collects and analyzes 630,000 samples a year from 1,000 sampling stations throughout the five boroughs.¹⁴ These sample results, and a wide array of water quality information, are published in the DEP's annual Water Quality Reports.¹⁵ As the 2016 Report highlights:

New York City gets its drinking water from a surface supply system that comprises 19 reservoirs and three controlled lakes spread across a nearly 2,000-square-mile watershed. The watershed is roughly the size of the State of Delaware, extending 125 miles north and west of New York City. The New York City Water Supply System consists of three individual water supplies: the Catskill/Delaware supply, located in Delaware, Greene, Schoharie, Sullivan, and Ulster counties; the Croton supply, New York City's

original upstate supply, in Putnam, Westchester, and Dutchess counties; and a groundwater supply in southeastern Queens. In 2016, New York City received a blend of drinking water from the Catskill/Delaware and Croton supplies. The Catskill/Delaware supply provided approximately 91 percent of the water, and approximately nine percent was supplied by Croton. Water from the groundwater supply was not fed into distribution in 2016.¹⁶

Due to the very high quality of [the] Catskill/Delaware supply, New York City is one of only five large cities in the country with a surface drinking water supply that does not require filtration as a form of treatment. Rather, the Catskill/Delaware supply operates under a Filtration Avoidance Determination (FAD), and the water from the supply is treated using two forms of disinfection to reduce microbial risk. First, water is disinfected with chlorine before arriving at the Catskill/Delaware Ultraviolet (UV) Disinfection Facility. Chlorine is a common disinfectant added to kill germs and stop bacteria from growing on pipes. The UV Disinfection Facility, located in the towns of Mount Pleasant and Greenburgh in Westchester County, is the largest of its kind in the world. It consists of 56 UV disinfection units that contain a total of 11,760 large UV light bulbs. The facility is designed to disinfect more than two billion gallons of water per day.¹⁷

It is nice to think that the best drinking water is chemical free, but that is often not the case. More important—and effective—is for suppliers to ensure that the chemicals are in balance. Anyone who has tried to keep the water in a

swimming pool clear understands that the process is like a summer-long chemistry experiment with chlorine, algacide, pH adjusters, and other chemicals. As noted, one of the underlying causes of the water issues in Flint was the failure to attain proper chemical balance. The lesson was not lost on other water suppliers.

Anyone who has tried to keep the water in a swimming pool clear understands that the process is like a summer-long chemistry experiment with chlorine, algacide, pH adjusters, and other chemicals. One of the underlying causes of the water issues in Flint was the failure to attain proper chemical balance.

New York does not rely solely on the quality of its water source.

[The] DEP also adds food grade phosphoric acid, sodium hydroxide, and fluoride to the water before sending it into distribution. Phosphoric acid creates a protective film on pipes that reduces the release of metals, such as lead, from service lines and household plumbing. Sodium hydroxide is added to raise the pH and reduce corrosivity, which also reduces the potential for lead to enter water from household plumbing. DEP is one of the many water suppliers in the United States that treat drinking water with a controlled, low level of fluoride for the protection of its consumers' dental health. New York City's drinking water has been treated with low levels of fluoride since 1966.¹⁸

For lead in particular, the DEP has specific guidance. Unlike the water supply issues in Flint, New Yorkers have been fortunate that we only have to focus on the plumbing systems inside our buildings for lead contamination. For lead in the drinking water supply, the DEP has very extensive monitoring protocols.

New York City water is virtually lead-free when it is delivered from New York City's upstate reservoir system, but water can absorb lead from solder, fixtures, and pipes found in the plumbing of some buildings or homes. DEP has an active corrosion control program aimed at reducing lead absorption from service lines and internal plumbing. Under the federal Lead and Copper Rule, mandated at-the-tap lead monitoring is conducted at select households throughout New York City. In 2016, based on the results of this monitoring, the 90th percentile did not exceed 15 µg/L [15 parts per billion], the established standard or Action Level for lead.¹⁹

And finally, the DEP seems to follow the universal risk management mantra of hoping for the best while preparing for the worst. After assuring New Yorkers that the water supply is safe, it closes with some practical and cautionary advice about the water in their homes.

It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. DEP is responsible for providing high-quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. DEP offers free testing to New York City residents. The Free Residential Testing Program is the largest of its kind in the nation: DEP has distributed over 113,000 sample collection kits since the start of the program in 1992 and saw an almost 400 percent increase in demand for testing in 2016 compared to the previous year.²⁰

Post-Flint Requirements in New York

Again, New York's sophisticated sampling only checks the billion-plus gallons of water flowing daily through New York City's water mains; it does not address the water flowing from the main to private faucets, a trip that sometimes passes through lead service lines or lead-soldered joints. Prompted in part by the Flint water crisis and a renewed nationwide awareness of the risk of lead

exposure in our drinking water, New York felt that action was warranted. And while nobody should be exposed to any water contaminants above regulatory levels, young children are the most vulnerable to exposure and should receive priority attention. To that end, New York enacted legislation and promulgated regulations requiring its pub-

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lic schools to sample for lead using specific methods and to develop remediation plans where elevated lead levels are found.²¹ Unlike the EPA guidance cited above, which allows for flushing, the New York rules require that the samples be collected “from a cold water outlet where the water has been motionless in the pipes for a minimum of 8 hours but not more than 18 hours.”²²

The requirements are very specific in spite of the enormity of the task. Because of the vast number of schools that have to be tested, a phased approach was developed so that schools with the most vulnerable (i.e., youngest) students would be sampled first. The following summary of the new requirements was issued in a press release from the Governor’s Office.²³

*Previously, schools in New York were not required to test their drinking water for lead, or notify parents or government officials of results. Testing was voluntary and administered by the federal Environmental Protection Agency. This method of voluntary testing without enforceable standards has demonstrated the clear need for direction by the state to New York schools on when, what and how to sample drinking water for lead.*²⁴

*By September 30, 2016, all school buildings serving children in pre-kindergarten through grade five must collect a sample from each identified sampling location for testing. Any schools serving children in grades six through 12 that are not also serving children in younger grades must complete collection of samples by October 31, 2016. For new schools, which begin operations after the effective date of this regulation, initial samples must be performed prior to occupancy.*²⁵

*Under the regulations, schools are required to report all lead test results to the state Department of Health via a designated statewide electronic reporting system. If lead levels are detected above 15 parts per billion at any potable water outlet, the school must discontinue use of that outlet, implement a lead remediation plan to mitigate the lead level, and provide building occupants with an adequate [alternative] supply of water for cooking and drinking.*²⁶

Schools must report the exceedance to the local health department within one business day. Test results must also be provided in writing to all staff and parents no more than 10 business days after receiving the report.

*Schools must post the results of all lead testing and any remediation plans on its website as soon as possible but no more than six weeks after the school received the laboratory reports. Once test results indicate that lead levels are below the action level, schools may resume use of the water outlet.*²⁷

*For schools that performed testing and remediation at buildings after January 1, 2015, and that complies with these regulations, those buildings do not need to be retested. Schools may also be eligible for a waiver for testing school buildings, if the school can demonstrate that they performed testing and remediation that substantially complies with the regulations, and that lead levels in the building’s potable water are below the action level.*²⁸

*Schools will be required to collect samples every five years, at a minimum, after the initial testing or at a time determined by the Commissioner of Health. All samples will be analyzed by a lab approved by the Department’s Environmental Laboratory Approval Program.*²⁹

*Although laws now limit the amount of lead in new plumbing equipment, materials installed before 1986 may contain significant amounts of lead. Federal laws in 1986 required that only “lead-free” materials be used in new plumbing and plumbing fixtures but still allowed certain fixtures with up to 8 percent lead to be labeled “lead free.” Amendments to the Safe Drinking Water Act in 2011 appropriately redefined the meaning of “lead free.” Even so, it’s possible that older plumbing may leach lead into the drinking water.*³⁰

*Facilities such as schools, which typically have intermittent water use patterns, are more likely to have elevated levels of lead due to prolonged water contact with plumbing materials. This source is increasingly being recognized across the nation as a contribution to a child’s overall lead exposure.*³¹

The fact that New York requires sampling in all public schools, including high schools with students who are older, shows how seriously the state is treating this health threat. At this time, colleges, universities, libraries, hospitals, and other institutions have not been included in the requirements, presumably because they do not cater primarily to vulnerable populations.

Drinking Water at Universities and Other Institutions

Although students, faculty, and staff are almost all 18 and older, there are still many occasions where we find minors and even small children on campus. Many campuses have childcare centers for children while their parents are in class. Because of the unique vulnerability of these very young children, the New York City Department of Health and Mental Hygiene and the New York City Department of Education regulate and enforce lead testing in the centers. In fact, childcare centers in New York cannot obtain the necessary licensure without demonstrating that test results proved negative for lead in drinking water.

It is not uncommon, especially at public universities, to have public schools—generally high schools—collocated on college campuses. In New York, any collocated schools must comply with the new lead testing protocols and standards. Because of this more stringent sampling methodology, there have been additional detections, and universities must work with the public schools on their campuses to minimize these risks. Additionally, children use campus cafeterias, libraries, gyms, pools, and other facilities for after school programs and summer camps, which raises additional concerns.

New Yorkers rely on the DEP's testing of the water supply, the results of sampling at our child care facilities, and the results of public school sampling by the Department of Education to provide a water quality baseline. Nevertheless, colleges, universities, and other institutions have become more sensitive to drinking water quality as students, faculty, and staff are becoming better acquainted with the risks. Regardless of the actual threat, which has to be addressed on a case by case basis, student and faculty leaders have been raising concerns, and administrators must be prepared to respond to reports of potential drinking water quality issues. Combined with the recent outbreaks of *Legionella*, which have placed cooling towers and other

water system components in higher relief, water quality will likely remain a high-profile campus concern for the foreseeable future.³²

Conclusion

This story began deep below the hustle and bustle of the Bronx, at the user end of one of the best and most sophisticated water systems in the world. It closes at one of the water system's bucolic sources, the Ashokan Reservoir in the Catskill Mountains, about a two-hour drive north

of the Van Cortland Valve Chamber.

It was built in the early 20th century, holds more than 120 billion gallons of water, and is 180 feet deep at its deepest point. It is fed by the Esopus Creek and the Schoharie Reservoir to the north. Together, these reservoirs supply 40 percent of New York City's drinking water.³³

The trip that the water takes includes the 92-mile Catskill Aqueduct, a stop at the Kensico Reservoir in the Croton system, where the Delaware and Catskill waters are combined, and a final stop at the Hillview Reservoir in Yonkers, just north of the Van Cortland Valve Chamber.³⁴

Unless you are familiar with the area and have hiked or biked around the reservoir—which I recommend—or are a water system buff, the Ashokan is little more than a cultural reference. "Ashokan Farewell" is a haunting lament written in 1982 by Jay Ungar and Molly Mason that is best known as the theme for "The Civil War," the Ken Burns television documentary aired in 1990. And the original Woodstock, New York—after

which the renowned arts colony and the iconic 1969 music festival³⁵ are named—rests at the bottom of the reservoir.³⁶

But if you are a water system buff, or just a concerned citizen worried about the quality of your drinking water in the post-Flint era, the Ashokan is more than the scenic starting point of what Dr. Mary Bassett, New York City's

This story began deep below the hustle and bustle of the Bronx, at the user end of one of the best and most sophisticated water systems in the world. It closes at one of the water system's bucolic sources, the Ashokan Reservoir in the Catskill Mountains.

Health Commissioner, refers to as the “best beverage for your health.”³⁷ It is a symbol of the creativity and commitment of New York’s leaders and builders, from 1799 through today, to provide our children with clean, plentiful water. So if you are lucky enough to get tickets to “Hamilton,”³⁸ the Broadway musical, pass on the bottled water during intermission and take a long swig at the water fountain in his honor. Cheers!

About the Author



Howard Apsan is the university director of environmental, health, safety, and risk management for The City University of New York (CUNY), the largest urban university system in the United States. CUNY has 24 colleges, graduate schools, and professional schools; approximately 520,000 matriculated and non-matriculated stu-

dents; 43,000 full- and part-time faculty and staff; and 26 million square feet of space in approximately 300 buildings located throughout New York City’s five boroughs. The university director is responsible for environmental health and safety management and compliance throughout the university. He also serves as the university’s risk manager, tasked with assessing liabilities and designing systems for minimizing CUNY’s operational and reputational risks and promoting resiliency and continuity of operations. He chairs the university’s Environmental Health and Safety Council; the Risk Management and Business Continuity Council; and the Emergency Preparedness Task Force.

Earlier in his career, he served for several years in New York City government at the Mayor’s Office, the Board of Education, and the Sanitation Department. He left municipal government to pursue a career in environmental and risk management consulting, which included eight years as a principal, and ultimately national director, of a nationwide consulting firm, which led to the founding of Apsan Consulting. He has served industrial, commercial, real estate, government, and not-for-profit clients throughout the United States and has extensive international experience.

In addition to his management and consulting activities, he has been a member of the faculty at Columbia

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He earned his B.A. and M.A. from Brooklyn College and his M.Phil. and Ph.D. from Columbia University.

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Water is life's mater and matrix, mother and medium.

There is no life without water.

—ALBERT SZENT-GYÖRGYI,

HUNGARIAN BIOCHEMIST AND

WINNER OF THE NOBEL PRIZE IN PHYSIOLOGY OR MEDICINE IN 1937

Creative risk-taking is essential to success in any goal where the stakes are high. Thoughtless risks are destructive, of course, but perhaps even more wasteful is thoughtless caution which prompts inaction and promotes failure to seize opportunity.

—GARY RYAN BLAIR,

COACH AND TRAINER FOR ORGANIZATIONAL SUCCESS

OCIP, CCIP, or No ‘CIP: Options to Consider when Managing Construction Risk

| Thomas P. Morrin, The Graham Company

Introduction and Background

When planning construction activity on campus, colleges and universities should carefully consider the available alternatives to manage and finance the associated risks. One such methodology is *controlled insurance programs (CIP)*, also known as “*wrap-ups*.” These structures are purchased and controlled by a program “sponsor,” who can be either an owner, such as a university, in the case of an *owner controlled insurance program (OCIP)*, or a contractor, such as a construction manager, in the case of a *contractor controlled insurance program (CCIP)*.

CIPs offer the sponsor several advantages relative to having each contractor provide their own insurance, perhaps none more important than an increased level of control – control over costs, insurance coverage terms and conditions, claims handling processes, and safety services at the project site(s). While “control” is not a word most owners associate with either construction activity or insurance costs, wrap-ups enable the sponsor to streamline the administrative processes associated with insurance procurement and at the same time to gain greater control over insurance costs both today and in the longer term. When properly managed, wrap-ups enable the sponsor (either the contractor or the owner) to save a significant amount of dollars within the construction budget relative to the cost of each contractor providing their own insurance.

CIPs normally provide general liability, workers’ compensation, and excess/umbrella liability insurance coverage for the duration of a construction project or projects (and ideally for a number of years “post construction,” as well, to cover the “completed operations” exposure). Coverage is provided for all “enrolled” contractors and subcontractors involved in the construction activity, rather than requiring each to provide their own insurance. Wrap-ups can be used to insure a single large project

(with at least \$100 million in construction costs or more, depending upon the insurer) or on a “rolling” basis, which provides coverage for a number of projects completed over a set period of time (with all projects beginning within two to three years of each other and completed within five to six years of the commencement of the first project).

A well-run wrap-up offers an opportunity for significant savings, ranging from 1 to 1.5 percent of hard construction costs. Depending upon which structure is chosen – OCIP or CCIP – any actual savings realized will accrue to either the owner (under an OCIP) or the contractor (under a CCIP) who sponsors the program.

A well-run wrap-up offers an opportunity for significant savings, ranging from 1 to 1.5 percent of hard construction costs.

Cost Control

Wrap-ups enable the program sponsor to benefit from economies of scale because they are buying on behalf of all enrolled contractors and purchase insurance at a discount relative to what each contractor would be able to negotiate on their own. However, in order to achieve truly significant savings, the sponsor is required to “put skin in the game” and purchase the insurance on a “loss-sensitive” basis (i.e., a large deductible).

Under this structure, the sponsor pays all losses below (or “within”) the chosen deductible level, in exchange for reduced fixed premium costs.

Deductible levels generally apply “per occurrence/accident” and range from \$250,000 to \$500,000 or more. The higher the deductible level that is chosen, the greater the premium discount the sponsor receives and, therefore, the greater their potential savings opportunity. To the extent the sponsor is able to minimize losses within the deductible (“retained losses”) through proactive safety measures and aggressive claims management processes, they will directly benefit from the lower retained losses. In contrast, if losses are not contained, the sponsor’s costs can increase dramatically.

Control Over Insurance Terms, Conditions, and Limits

In addition to significantly lower fixed premium costs, the quality of insurance coverage that can be negotiated with insurers when purchasing in bulk is also enhanced relative to what individual contractors will be able to negotiate on their own. As such, wrap-up sponsors gain peace of mind by knowing that all enrolled contractors and subcontractors on their construction site(s) are protected by the same broad insurance coverage terms and conditions, minimizing the chances of an uninsured or underinsured loss.

The broad qualitative nature of the insurance coverage available under CIPs also can increase access for smaller/disadvantaged/local contractors, who otherwise may be precluded from participating because they cannot meet the minimum insurance requirements established for the project(s).

Dedicated, Higher Limits of Insurance

Aside from the lower fixed premium costs and enhanced quality of insurance coverage, the total liability limits (including general and excess/umbrella policies) available through a CIP (usually a minimum of \$100 million) are generally much greater than the limits maintained by even large construction contractors.

In addition, wrap-up program insurance limits of liability are generally dedicated to the sponsor's construction project(s), eliminating the possibility that those limits will be used to fund losses on other, potentially unrelated projects on which the contractors may be working.

Control Over Project Safety

The most successful wrap-ups focus on safety and proactively preventing accidents, realizing that controlling the frequency of claims is the most effective path to achieving savings under a CIP. A well-run safety program will lead to fewer accidents and the project being delivered on time and budget, in the highest quality manner possible. The sponsor has the ability to implement the controls necessary to reduce the potential for accidents on the project site(s). One of the keys to CIP safety is to establish uniform and standardized safety requirements for all contractor and subcontractor employees via a *Project Safety Manual*, which ideally becomes incorporated into the contract documents.

A primary goal of the sponsor should be to establish accountability with all enrolled contractors and subcontractors through the Project Safety Manual. Key elements to be included in the Project Safety Manual are:

- Establishment of stringent drug and alcohol testing program
- A 100 percent fall protection requirement for all trades working six feet or higher above a lower level
- Mandated return-to-work/light duty assignments for all enrolled contractors
- Safety training requirements, including safety orientation, toolbox talks, and daily huddle talks, in addition to OSHA 10-hour and 30-hour requirements
- Daily task planning in a manner that can be reviewed and tracked
- Ongoing, on-site safety audits

Successful wrap-ups also have extensive contractor safety prequalification requirements that must be met prior to a construction contractor being awarded a contract to perform work under the program. This contractor prequalification process should identify and exclude contractors whose safety programs are not adequate for the type of work to be performed or with undesirable loss experience over an extended period of time (generally a three-year rolling average).

The wrap-up must also be monitored on an ongoing basis from a safety standpoint. The best way to do this is to consistently observe and evaluate the behavior of individual contractors and subcontractors on-site with "boots on the ground," in an effort to address safety performance issues *prior* to an accident occurring. If safety performance is not at an acceptable level, the contractor or subcontractor should be required to establish a recovery plan that is monitored until safety performance has improved.

Control Over the Claims Handling Process

Regardless of how effective a CIP's safety program addresses the frequency with which losses will occur, the reality is that there most likely will be claims activity under the program. As a result, the severity of those claims must be aggressively managed and monitored to ensure CIP success. In the event of a claim, having broad

insurance coverage provided by one carrier for all enrolled contractors is beneficial to the claims process for several key reasons:

1. Because the sponsor is assuming a large amount of risk within the deductible and buying the insurance in bulk, they have a greater ability to direct how claims will be handled, including which law firms will defend the claims.
2. The insurance carrier should also be willing to assign a dedicated team of claims adjusters to work on all losses, so the project team will work with the same adjusters for the duration of the program.
3. There should be a reduction in litigation costs, since one insurance carrier defends all enrolled contractors (as well as the sponsor) in a lawsuit.
4. There is less likelihood of having multiple insurers (representing multiple contractors) disagree over whom is responsible to pay for a claim, which also reduces the likelihood of project delays, payment holdbacks, etc.

Deciding on OCIP vs. CCIP

While the sponsor has an opportunity to achieve significant savings under a CIP structure, they also bear the risks associated with poor loss experience. And while an Owner need not employ full-time resources, such as claims and/or safety personnel, to successfully administer an OCIP, owner involvement before, during, and after construction activity is a key ingredient to OCIP success. For example, since it is the owner's money at stake within the OCIP deductible structure, they will be expected to give input on whether and when to settle certain claims.

If an owner does not employ the safety, claims, and administrative staff internally required for OCIP success, it is vital that they partner with an OCIP administrator/broker that has the expertise to negotiate a comprehensive, cost-competitive program with the chosen insurance

carriers, as well as the resources needed to work with the contractors to ensure that losses are minimized (and the potential savings realized).

There are a number of potential advantages to owners under an OCIP when compared to a CCIP, including the ability to exercise an even greater degree of control over the safety and claims management aspects of the construction activity. In addition, the owner has the ability, through their OCIP administrator/broker, to negotiate the most favorable coverage terms and conditions available from the insurance marketplace and to tailor those terms to meet the owner's individual needs. The nuances of insurance coverage are constantly evolving and include exposures such as faulty workmanship, drone utilization, completed operations coverage (including state statute of repose considerations), additional insured, and indemnification coverage, as well as dozens of other constantly shifting risks. Another significant benefit to owners under an OCIP is that the savings accrue to the owner.

Although a well-run OCIP can result in significant savings for an owner relative to a CCIP structure, the owner does enjoy an enhanced level of cost certainty under a CCIP. This is because the contractor who sponsors the CCIP will generally charge the owner a set/fixed amount, based upon a percentage of construction value. In addition, a CCIP will generally require fewer resources from the owner to administer, and the owner will not need to post collateral (as security for losses within the program deductible). CCIPs may also enable the

owner to close out their project budget sooner, since the owner will pay a set amount regardless of loss experience. As such, the owner may not need to wait to close out the project budget until all claims are resolved.

In the end, CIPs offer an opportunity – but by no means a guarantee – to save significant dollars when insuring construction activity. ... The lion's share of savings can only be realized by controlling losses within the program deductible structure.

Conclusion

In the end, CIPs offer an opportunity – but by no means a guarantee – to save significant dollars when insuring construction activity. While a portion of the savings comes from the ability to negotiate favorable premium discounts by buying insurance in bulk, the lion’s share of the savings can only be realized by controlling losses within the program deductible structure. This, in turn, can only be achieved by creating a proactive culture of safety on the project site to minimize the frequency of claims and by aggressively managing those claims that do occur (thereby controlling the severity of claims). Only by addressing both the frequency and severity of claims activity can the potential savings available under a CIP be realized by the program sponsor. In the case of an OCIP, the owner is not required to have dedicated safety, claims, and administrative resources in-house to sponsor a successful OCIP, but it is vital that they partner with an experienced OCIP administrator/broker and contractors who are dedicated to claims and safety management.

About the Author



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The way to develop self-confidence is to do the thing you fear and get a record of successful experiences behind you. Destiny is not a matter of chance, it is a matter of choice; it is not a thing to be waited for, it is a thing to be achieved.

—WILLIAM JENNINGS BRYAN,

AMERICAN ORATOR AND POLITICIAN FROM NEBRASKA

**I will say that I cannot imagine any condition which could
cause a ship to founder. I cannot conceive of any
vital disaster happening to this vessel.
Modern shipbuilding has gone beyond that.**

—CAPTAIN EJ SMITH,
CAPTAIN OF THE *TITANIC*

Enhancing Safety Culture Through the Implementation of a Health and Safety Management System in a Complex, Research-Intensive University

| Philip G. Stack and Rob Munro, University of Alberta

Introduction

The University of Alberta (UofA) is one of Canada's top research-intensive universities and ranked within the top 100 research universities worldwide. With a population of 39,000 full-time equivalency (FTE) students, a staff of 15,000 FTEs, annual research expenditures of approximately \$450 million, and a fully consolidated budget of \$1.9 billion, the UofA is increasingly becoming a leader in world scholarship. As with most institutions this size, the university is very decentralized and highly complex, which presents significant challenges in sustaining a consistent health and safety culture across all areas of the university.

Doctors Block, Eighmy, and McLellan stated in their report, *A Guide to Implementing a Safety Culture in Our Universities*, "As educational institutions and research universities, faculty across the nation should be at the forefront of embracing a culture of safety and adopting or developing best practices that makes this culture foundational to each of our institutions."¹ However, like many organizations, it takes a significant incident to occur before an organization realizes the risks it faces and the work that needs to be done to improve its safety culture. Although the UofA was working diligently in its efforts to improve its safety culture, it, too, experienced significant lab incidents which crystallized the recognition that fundamental change was required. In October and December of 2013, the university experienced explosions in both a chemistry and engineering lab, resulting in significant injuries to two graduate students. These were the wake up calls confirming what we were doing was not enough and that much more needed to be done to dramatically improve the university's safety culture.

This article will highlight the journey that the UofA is undertaking to enhance its safety culture through its focus on leadership and the development and implementation of a health and safety management system. Through this journey, the university has engaged leaders across the institution, transitioned itself from a traditional environ-

ment health and safety (EHS) structure to a new organizational structure, and developed a comprehensive health and safety management system with the fundamental goal of entrenching within the institution a best-in-class safety culture. We will address the changing health and safety environment that we are all working within and the greater accountabilities we face, the university's strategies of engaging university leaders, a comparison of the university's old and new EHS structures, the fundamental elements of the university's new health and safety management system, and the benefits the university is realizing as a result of this transition. Finally, the article will focus on the lessons learned through this journey of implementing such a fundamental change in the university's approach to health and safety.

The Association of Public and Land-Grant Universities' (APLU) Council on Research Task Force on Laboratory Safety identified five events at universities between 2009 to 2015 that resulted in death or significant injury to an individual.

The Changing Health and Safety Environment

The high-profile reporting of severe incidents in our institutions or in our field research activities are substantial. The Association of Public and Land-Grant Universities' (APLU) Council on Research Task Force on Laboratory Safety identified five events at universities between 2009 to 2015 that resulted in death or significant injury to an individual.² Whether it was the death of a laboratory research assistant at UCLA, the severely injured graduate student at Texas Tech University, the recent explosion at the University of Hawaii, Manoa

campus that maimed a postdoc, or the separate lab explosions we had at the UofA, injuring two graduate students, we are all too aware of these types of tragic incidents. In the report by the US Chemical Safety and Hazard Investigation Board (CSB) in response to the Texas Tech University laboratory explosion, preliminary information was gathered on 120 different laboratory incidents that occurred between 2001 and the release of its report in 2010.³ As a result, there is increasing focus and awareness by regulatory bodies, the public, and institutions as to the need to improve health and safety practices in universities and colleges. The CSB report of the Texas Tech incident found that there were “systemic deficiencies within Texas Tech that contributed to the incident.”⁴ The report identified key lessons learned from this incident and made specific recommendations to address the safety culture at Texas Tech. In the *Guide to Implementing a Safety Culture in Our Universities*, there is a specific call to action for “all universities to embrace a renewed commitment to improving the culture of safety for all academic research, scholarship and teaching.”⁵ In the call to action, it makes it clear that attention should not only be directed to the traditional research lab; our attention should be directed at all aspects of our operations, including maintenance, shops, stages, classrooms, and in the field.

Due to past incidents in a range of industries, most jurisdictions now have legislation or criminal codes in place that can result in criminal charges following an incident. This was true in the case of the professor and Board of Regents at UCLA. The journal, *Nature* reported in December 2011 that the district attorney for Los Angeles County brought felony charges against UCLA professor Patrick Harran and the regents of the University of California for willful violations of safety rules that resulted in the 2009 death of 23-year-old Sheharbano “Sheri” Sangji.⁶ A settlement was reached with the Board of Regents along with a separate agreement with Dr. Harran. The agreement mandated that Harran complete multiple forms of community service and pay a \$10,000 fine. The charges were not dismissed. Instead, the case against Dr. Harran is effectively on hold while he completes the terms of the five-year agreement.⁷

The findings from the APLU and CSB reports are clear. In many of our organizations, we lack a true safety culture, and there are too many significant incidents that

are occurring within our institutions. At the same time, regulatory bodies are pursuing much harsher penalties for those organizations who lack strong safety programs. This view was captured in the 2012 report of the American Chemical Society, which stated that devastating incidents in academic laboratories and individual observations illustrate that university and college graduates do not have strong safety skills.⁸

Not only is there a legal requirement for our institutions to take reasonable and prudent steps to create a culture of safety, we all have a fundamental moral responsibility to ensure that our faculty, staff, postdocs, and students are properly trained and oriented to their work. We all have a moral responsibility to ensure that all members of our institutions understand the work that they are undertaking, that they have completed a comprehensive hazard assessment, and that they have implemented the necessary mitigation plans in response to identified hazards. As noted in the ACS report, a strong positive safety culture emanates from ethical, moral, and practical considerations, rather than regulatory requirements.⁹

Leadership and the Development of a Safety Culture

There are two critical interrelated elements to improving the health and safety practices within any organization. The first element is the health and safety culture within the organization. The second element is the systems and processes an organization has in place in support of and in the operationalization of the organization’s health and safety culture.

In a literature review on the effective leadership behaviors for safety, Lekka and Healey speak to the “widespread agreement between industry, regulators, academics, and the press that leadership is a key component of a safe organization.”¹⁰ The lack of a safety culture is often cited as a principle root cause of an incident. Serious incidents within our laboratories and operations are often the result of a weak or deficient safety culture.¹¹ The report goes on to cite nine factors that contribute to a weak or non-existent safety culture. The first is a lack of leadership and institutional commitment from the senior administration. Another factor is the weakness or absence of a safety management system.

Lekka and Healey note that transformational leadership is essential to enhancing an organization’s safety

culture. In the context of health and safety, they define transformational leadership as “acting as a role model, inspiring and motivating employees to work safely and showing concern for employees’ welfare.”¹² Through their literature review, they found that transformational leadership is “associated with a number of safety-related benefits, including reduced levels of occupational injuries, positive perceptions of safety climate, higher levels of employees’ safety participation, safety compliance, and safety citizenship behaviors (i.e. participation in safety committees).”¹³ Furthermore, the study found that high quality leadership and employee relationships or exchanges that are associated with openness, trust, and respect support upward safety communication and result in an overall improved safety culture.

Following the October and November 2013 lab incidents at the UofA, it was clear that the university needed to do much more to engage its leadership in creating a safety culture. Although work had already been initiated to restructure the Department of Environment Health and Safety (EHS) and begin the development of a health and safety management system, it was apparent that the leadership within EHS was not enough and academic leaders across the university needed to be engaged. A multipoint plan was developed that focused on fully engaging the president and senior executive team, the Dean’s Council, department chairs, the Board Safety, Health and Environment Committee (BSHEC), and the Board of Governors. Strategies were built around telling stories of specific incidents that had occurred within our own institution. There is nothing more powerful than illustrating to leaders real incidents that are occurring within their own faculties.

With the full support of the president, provost, and deans, the university established an Environment Health and Safety Senior Administrators Committee (EHSSAC) with the mandate to oversee the implementation of the university’s health and safety management

system and enhance the culture of safety across the organization. This overarching committee is now linked to every health and safety committee in the faculties and major portfolios.

“Health and Safety Moments” were introduced at BSHEC meetings, a standing committee of the board. At each meeting, a committee member must present a brief (three- to five-minute) presentation on any aspect of health and safety. This evolved into health and safety moments at the Board of Governors, where twice a year a member of BSHEC presents to the full board. The first

presentation addressed safety culture and the importance of leadership from the very top of the organization.

In addition, the BSHEC agenda evolved considerably. The agenda was substantially modified to focus specifically on the strategic priorities of the health and safety management system. At each meeting, a detailed presentation is made on a specific priority within the health and safety management system and whether the initiative is on target for implementation. Although various reports and audits are still provided, they form part of the consent agenda, while the real focus is on the strategic priorities of enhancing the safety culture and implementing the university’s health and safety management system.

With the arrival of a new president in 2015, Dr. David Turpin quickly came on board, assuming his leadership responsibility in building a safety culture. He immediately endorsed and signed “Our Safety Commitment” posters, stating our responsibilities to plan our work, obtain

the necessary training, stop unsafe work, report incidents, listen to safety concerns of others, and understand our overall collective responsibilities for safety. There are more than 2,000 posters across the university in labs, classrooms, workrooms, and offices. This was followed by his safety video that again communicates to everyone on our campuses their shared responsibilities for health and safety.¹⁴

High quality leadership and employee relationships or exchanges that are associated with openness, trust, and respect support upward safety communication and result in an overall improved safety culture.

To reach out to all department chairs, the associate vice president for risk management services and the director of EHS are presenting to every faculty and department council on leadership as it relates to safety. The presentation focuses on leadership as a core driver of health and safety and the department chair's responsibility along with individual faculty members to provide the leadership and examples necessary that will build, enhance, and entrench a safety culture into the department.

As with most universities, once the new President came on board he developed a new strategic plan. Again, with the full support of the president, university community, and Board of Governors, the university's new strategic plan, "For the Public Good," was written with specific reference to health and safety articulated in objective 19 strategy iii. It states that the university will "endorse a strong culture of safety awareness, knowledge, planning, and practice to ensure the safety of students, employees, and visitors to our campuses."¹⁵

It is through these examples of institutional leadership and many others that the UofA is making substantial progress in raising the awareness of health and safety and starting to make real inroads in enhancing the university's safety culture.

The Benefits of a Health and Safety Management System

In addition to the creation of a safety culture and the leadership necessary to sustain that culture, an organization must have a robust and comprehensive health and safety management system – one that is designed for their specific organization. Two of the barriers that may prevent building and maintaining a strong, positive safety culture include highly fragmented safety efforts and infrastructure, such as a lack in overall supervision and clear lines of responsibility and accountability.¹⁶ That is why a health and safety system that eliminates fragmentation, identifies clear line of accountabilities, and is developed for the needs of your organization, is so important in developing a safer workplace.

Prior to the development of health and safety man-

agement systems, the welfare of employees was generally managed through adherence to government regulation and internal policies and procedures.¹⁷ As noted by the Australian Transport Safety Bureau (ATSB) report, it was the Robens' Committee in the 1970s in the United Kingdom that determined that an organization's management must assume responsibility for managing risk within the organization and that it must assume a duty of care toward its employees. Robens identified three pillars to improving safety performance: 1) better systems of safety organization, 2) more management initiatives, and 3) more participation by employees.¹⁸ This report led to the development of comprehensive health and safety management systems.

According to the Alberta Department of Labour, a health and safety management system is defined as a process put in place by an employer to minimize the risk of injury and illness. This is made possible by identifying, assessing, and controlling risks to workers in all workplace operations.¹⁹

In Thomas' study, "A Systematic Review of the Effectiveness of Safety Management Systems," 19 studies presented objective performance data on the benefits of a health and safety management system. Of those 19, the majority (15) related to work health and safety performance, primarily focusing on reducing occupational injuries to workers (mostly in manufacturing, construction, and chemical industries). Of these studies, the majority demonstrated significant positive effects with respect to the dimensions of safety management systems.²⁰

It was based on this type of evidence along with the fundamental understanding that the university needed to enhance its health and safety culture that led the university to develop a health and safety management system that would meet its needs and requirements.

The Development of the University's Health and Safety Management System

The literature notes that one of the fundamental issues of creating a safety culture is the fragmentation of safety

Robens identified three pillars to improving safety performance: 1) better systems of safety organization, 2) more management initiatives, and 3) more participation by employees.

systems, processes, and accountabilities within an organization. The UofA was faced with this exact problem starting within its department of environment health and safety. There is a requirement in a research-intensive university to have expertise in all hazard types (biological, radiation, chemical, etc.). In addition, safety legislation tends to be based on hazard types especially as the legislative burden has become much more complex over time. In 2010, the EHS department was divided into seven different divisions, including biosafety, radiation safety, chemical safety, the environment division dealing with transport of dangerous goods, the health division with public health expertise, general safety, and the office of emergency management.

In general, each of these divisions performed inspections at the university and developed unique systems to meet the requirements within legislation. Each division also encompassed subject matter experts and developed excellent individual programs. However, several issues were noted with this structure, as there was little coordination between the divisions. EHS clients voiced frustration in the inspection processes as inspection frequency was not coordinated between the divisions, inspections only addressed certain aspects of lab operations, different definitions were used and different inspection criteria applied, there were multiple databases that were not linked, and different reporting requirements were in place. Additionally, recommendations from one division may not be coordinated with another division, creating confusion, frustration, and credibility

issues with EHS. This structure created inefficiencies and was not risk-based in terms of its application. The process could also result in a significant hazard being overlooked while the inspectors only identified issues within their specific hazard designation. The net effect would be to have areas working on lower risk items while leaving higher risk items unmitigated.

For these reasons and acknowledging that a health and safety system is based on an integrated approach to health and safety systems and processes, it was determined that a health and safety management system must be developed and aligned with a completely restructured EHS department.

After a review of best practices within both academic and nonacademic settings, the university chose to develop a structured, coordinated approach to all EHS activities by implementing its own Environmental, Health and Safety Management System (EHSMS). The use of EHSMS was rare in a university environment but was common in many non-academic environments. Many members of the university community stated that, in general, processes used in industrial or business settings would not work in an academic setting. To address these concerns, the university developed an EHSMS structure specific to a university environment that would still encompass the core elements of recognized standards. The framework for UofA's EHSMS is shown in Figure 1.

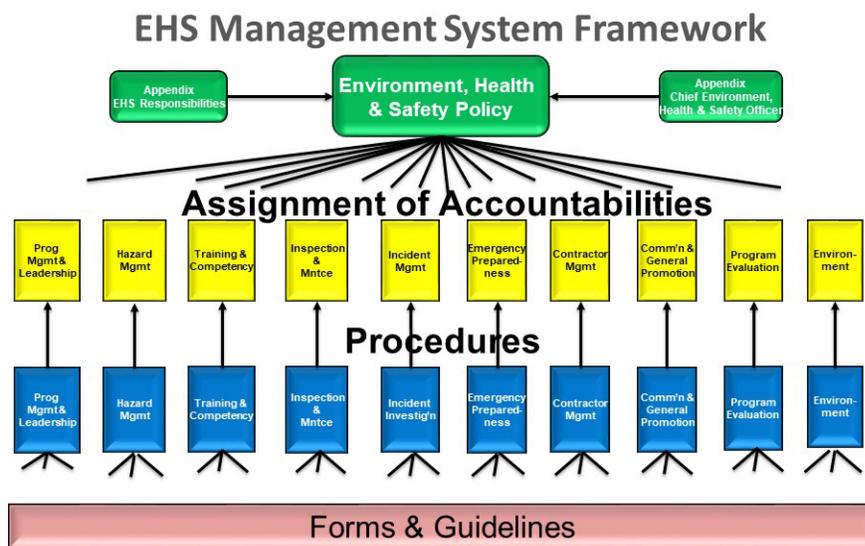


FIGURE 1: EHS Management System Framework

Key elements of the EHSMS included a complete re-writing of the university's existing safety policy and separate environment policy that referenced a safety management system but lacked detailed responsibilities. These policies were combined into the environment, health and safety policy with two appendices (Appendix A: Chief Environment and Safety Officer (CESO) and Appendix B: EHS Responsibilities).²¹ Appendix A established the CESO position with the authority to stop activity and take control of university infrastructure when there is a significant health and safety risk. Appendix B: EHS Responsibilities appendix defined high level responsibilities across the university. For the first time, the university had clearly written statements that articulated everyone's responsibilities and accountabilities regarding safety, from the president to undergraduate students.

As illustrated in Figure 1, the EHSMS assigns accountabilities through 10 pillars of the health and safety management system, including hazard management, training and competencies, incident management, and emergency preparedness. Each of these areas are, in turn, supported by standardized and systematic procedures aligned with standardized forms and guidelines. With this framework, the university now had consistent, coordinated, and integrated health and safety systems and processes across the university.

Another key aspect of the health and safety management system was its committee structure. The new

environment, health and safety policy established the university-wide Environment Health and Safety Senior Administrators Committee (EHSSAC) and required health and safety committees within each faculty and major portfolio. The chair of each faculty/portfolio committee is a member of the EHSSAC. As shown in Figure 2, this structure allows for the communication of university initiatives throughout the university and allows individual faculty/portfolio issues to be discussed at a high level. It also promotes collaboration and consistency to health and safety practices throughout the university. The development of faculty committees was a phased approach with the high-risk faculties being the priority. Although faculty health and safety committees may have existed in the past, they did not have a consistent charge to the committee nor were they part of an overall health and safety management system. At the time of publishing, all high-risk faculties have developed a committee, and EHS is working with the rest of the faculties/portfolios to help them establish/restructure their committees.

A final stage of implementing a comprehensive health and safety management system was an internal analysis of EHS' organizational structure. The review included analyzing all services provided by EHS to determine essential and non-core services. All members of the EHS department were engaged with the process and asked to provide their opinion of an ideal organization structure. At the end of the evaluation, it was determined that EHS should

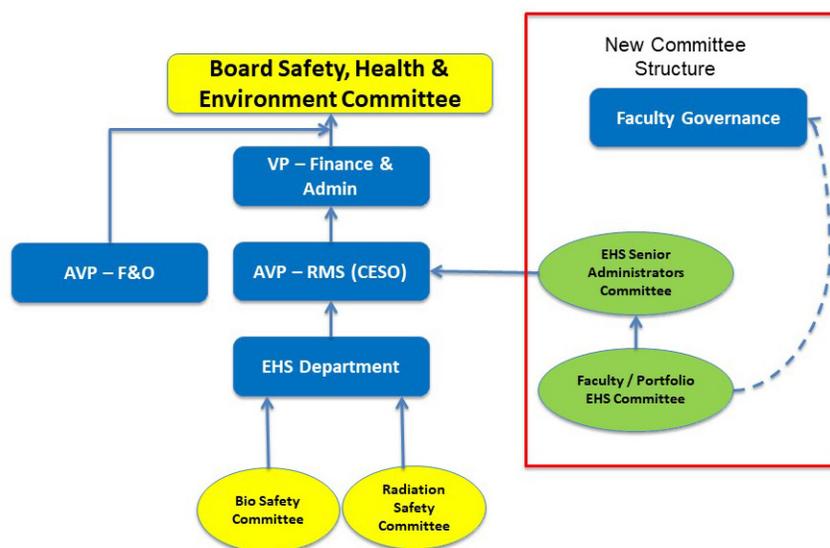


FIGURE 2: New EHS Senior Administrators Committee

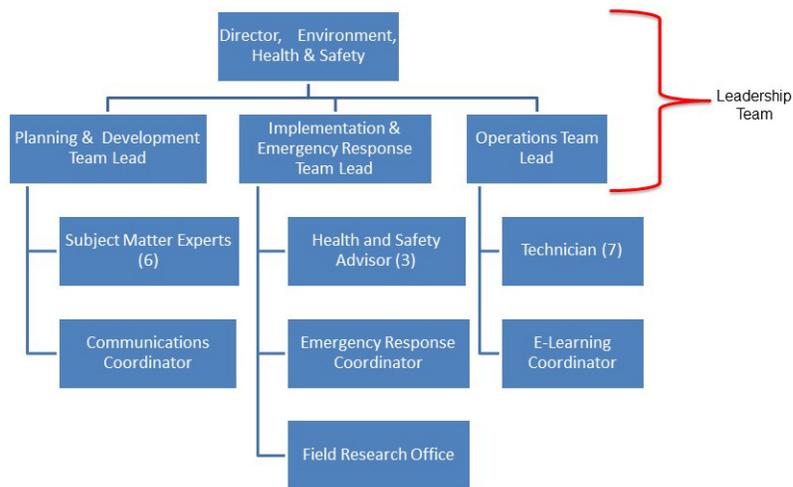


FIGURE 3: New EHS Organizational Structure

be re-organized by activity rather than by hazard type. It was still essential to maintain subject matter expertise, but it was equally important to combine activities into the integrated processes as defined by the EHSMS. The new EHS organizational structure is shown in Figure 3.

The organizational structure was formed around a “Plan, Do, Act, Review,” or continuous improvement structure. A planning and development team was created and tasked with establishing new programs that integrate the structure previously developed by hazard type. The planning and development team includes most of the subject matter experts within the department. An implementation and collaboration team was formed with members of this team working directly with EHS clients to embed EHS programs into university operations. This group includes faculty safety advisors, the emergency management advisors, and the Field Research Office and has specific hazard management expertise. An operations team was formed and primarily includes the technicians that complete inspections and equipment certifications.

Typically, each technician had extensive knowledge in one hazard type and, in the past, only completed inspections associated with that hazard type. While the technicians maintain a higher level of knowledge in a specific hazard, they are also trained on the other hazard types. A common inspection process with a detailed inspection schedule was developed and implemented. The EHS leadership team includes the team leads and the director of

EHS and is responsible for setting the strategic direction for the department.

The new organizational structure was a substantial change for the EHS department, and a change management internal specialist helped the department work through the transition.

Benefits and Challenges of Implementing the EHSMS

The benefits to the university in developing and implementing a health and safety management system that was designed for the UofA have been substantial throughout the entire organization.

The APLU’s “Guide to Implementing a Safety Culture” made 20 recommendations for universities to strengthen and support a culture of safety under the categories of institution-wide dynamics and resources; data, hazard identification, and analytics; training and learning; and continuous improvement.²² Figure 4 illustrates the alignment of the university’s health and safety management system with the APLU’s 20 recommendations.

FIGURE 4: Comparison of APLU Recommendations with University of Alberta EHSMS

Institution-Wide Dynamics and Resources

President/ Chancellor	1. Commits to improving campus safety culture	<ul style="list-style-type: none"> • President’s “Our Safety Commitment” Posters • President’s safety video • Board of Governors “Health and Safety Moments”
	2. Designates a campus lead and leadership team	<ul style="list-style-type: none"> • New health and safety policy identified chief environment and safety officer • Established the Environment Health and Safety Senior Administrators Committee
Campus Lead and Leadership Team	3. Conducts campus dialogues 4. Develops effective safety policies, procedures, and safety management system 5. Clearly articulates roles and responsibilities 6. Embeds safety communication in laboratories, classes, and departments 7. Creates a trusting culture	<ul style="list-style-type: none"> • Leadership message to deans, chairs, and faculty councils • New health and safety policy approved April 28, 2014 • Framework for health and safety management system adopted • Procedure clearly identifies roles and responsibilities from president all the way to students • Safety communications are embedded throughout the university via president’s safety commitment posters • Trusting culture developed by completing investigations with a blame free methodology
Institution	8. Develops a risk assessment process 9. Establishes unified administrative reporting 10. Empowers individuals to voice safety questions 11. Works to strengthen collegial/collaborative relationships 12. Supports effective relationship with first responders	<ul style="list-style-type: none"> • Online hazard assessment tool • Development of a centralized EHS database to store all relevant EHS information • Online reporting tool: Office of Safe Disclosure • Training for EHS staff to reach out to clients/embedded faculty health and safety advisors • EHS customer service standards established to develop a client focused organization • Joint training exercises/access to university facilities for training purposes

Data, Hazard Identification, and Analytics

Institution	13. Implements routine hazard analysis 14. Implements incident and near miss reporting	<ul style="list-style-type: none"> • Online hazard assessment tool • Professional module developed for graduate students • Online reporting tool: Office of Safe Disclosure • Integrated health and safety database
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Training and Learning

Institution	<p>15. Provides laboratory safety and education</p> <p>16. Ensures undergraduate/graduate science and engineering students have safety training</p>	<ul style="list-style-type: none"> • e-Learning programs • Joan and David Lynch School of Engineering Safety and Risk Management • Embedded EHS safety advisor in the science faculty • Leverage this across entire university • Supervisor Training Certificate Program
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Continuous Improvement

Institution	<p>17. Conducts self-assessment and benchmarking</p> <p>18. Develops continuous improvement system</p> <p>19. Develops accountability system, including peer to peer</p> <p>20. Promotes academic and industrial partnerships</p>	<ul style="list-style-type: none"> • Risk Management Services Plan with specific environment health and safety performance targets • EHSMS built on Plan, Do, Act, Review Model • All faculty safety plans are reviewed by the senior safety committee • Joan and David Lynch School of Engineering Safety and Risk Management • Hiring practice within EHS is a combination of individuals with an academic background and industrial background
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The new EHS structure with an integrated all-hazard approach allows both EHS and the university to be more efficient through an online hazard assessment tool and an integrated inspection process. Many of the concepts in how to work in a safe manner are the same regardless of the hazard type. A typical hazard management process identifies the hazards, evaluates the risk associated with each hazard, and identifies and implements controls. The control of the hazard will be unique to the hazard type and many controls are dictated by legislation, but the processes to identify and rate risks are common. The university, in partnership with the Alberta Association of Safety Partners, jointly created an electronic hazard assessment and control application. The system can be used for all hazard types and helps ensure compliance with various legislation.

Through integrated inspections, processes were standardized, and each technician can identify the highest risk items in the environment. Each technician can also have a fulsome discussion of all supports available from EHS to the university community. An inspection schedule was developed with the initial intent of inspecting every lab

once a year. A database was created and implemented to organize EHS information, including inspection results. Ultimately, the inspection process will evolve to include all higher hazard environments (not just laboratories), and the inspection frequency will be determined by the overall risk. Under the old EHS structure, staff visited, on average, 400 labs per year. Under the new structure and processes, the staff plan to reach 1,600 labs per year.

One of the key success factors for the entire program is continual and diverse communication. The university cannot employ new systems developed by EHS if they are not aware of the programs. The EHSSAC structure discussed earlier is a means of communication, but additional communication processes are needed. The primary means of communicating EHS programs is through the EHS website. The university community is made aware of the website through new employee orientation, “pop up” events, Twitter, newsletters, formal and informal presentations, the inspection processes, and our “Risk@” e-mails, which provide timely tips and safety notices reaching over 8,000 recipients. Anecdotal evidence would indicate that individuals have become much more aware

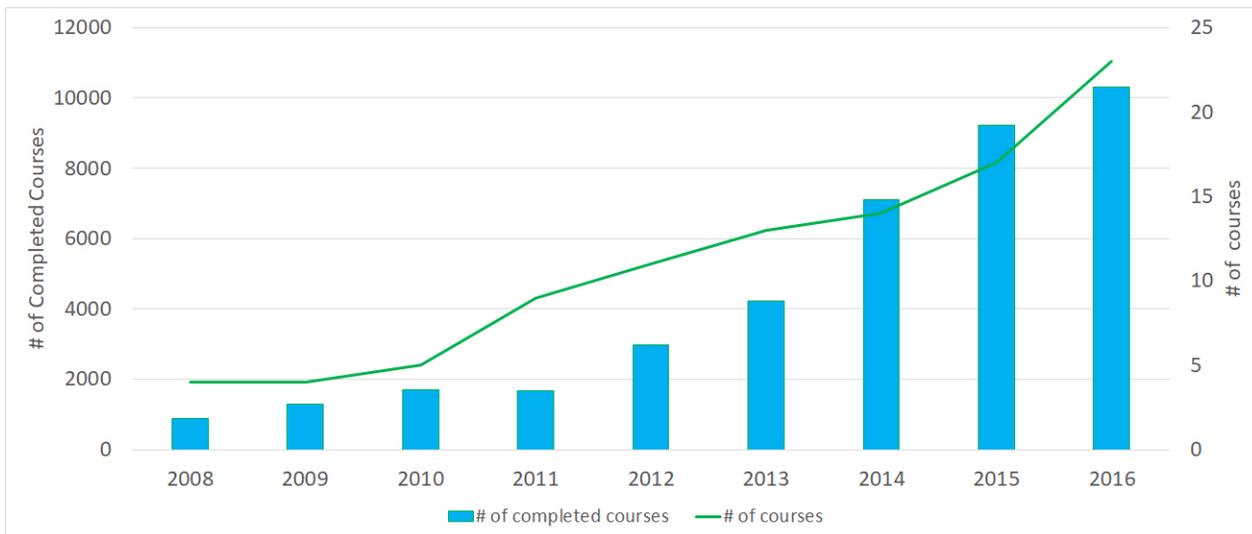


FIGURE 5: Growth in E-Learning Courses

of the programs offered by EHS as a result of these communication methods.

The EHS department also communicates safety programming through training. In 2009, the EHS department adopted e-learning as a means of providing information to the university community. The benefits of these programs are that individuals can take the course any time at their leisure and at their own pace, and they can continually revisit course content to refresh their knowledge. It only requires minimal EHS resources after the initial development. It is not appropriate to provide all training in an online format, and many of the courses include both online and hands on experience. As shown in Figure 5, e-learning courses have been highly successful with the number of courses increasing from 12 to 21 and the number of participants increasing by five times from 2008 to 2016.

As noted previously, additional benefits have been the change in focus of the Board Safety, Health and Environment Committee (BSHEC), which has become far more strategic in its focus. As a result, a dashboard has been created that allows the committee to efficiently monitor lower priority activity while zeroing in on the strategic elements of the health and safety system.

One of the major benefits of the new university-wide health and safety committee is the link to the faculty/portfolio safety committees and the development of annual health and safety plans. Figure 6 illustrates the annual plan for the Faculty of Engineering. This very simple format captures the specific health and safety goals for the

coming year, who is accountable for achieving goals, measurable targets, and specific completion dates. These plans ensure that specific progress is made each year in enhancing health and safety. The faculty health and safety committees are strongly encouraged to keep their plans simple to ensure they achieve their goals and build momentum for health and safety across the faculty.

Lessons Learned

The adoption of a safety management system approach was a significant change for the university. As such, it was extremely important to educate senior leadership on the nature of the change and to have their visible support. Without this support, the changes would not have been successful. It is recommended that senior leadership are engaged early and often throughout the process. The leadership group should be asked to regularly demonstrate their commitment to the process.

Change management experts should also be engaged at the beginning of the process to ensure that the organization is ready for the transformation. A change management professional was used within the EHS department, and even with this approach, a number of individuals struggled with the new concept. Ultimately, all staff members have seen value in the process and are actively working towards the development and the implementation of the EHSMS. However, the transition would have been faster with less stress to department members if there had been even greater emphasis on planning for the change.

Goal	Accountability (who will be responsible)	Measurable	Date for completion
Personal Protective Equipment	Dean, Department Chairs, PIs, Lab Supervisors, Students	Safety and Risk Management Services, Compliance Audits at >85% in 2016, >90% in 2017	2016/2017
Planned inspections, will require department by department context to be reflected in approach	Dean, Department Chairs, PIs, Lab Supervisors	2.5% completion rate YTD (represents 200 inspections), 10% in 2016, 30% in 2017	2016/2017
Lab Safety Module: complete web development and roll out to departments	Engineering Safety Committee, PIs, Lab Supervisors	Web development completion by May 31, 2016. Roll out to labs with higher risk and receptor capacity, 5% in 2016, 20% in 2017	2016/2017
CSTS Training to all undergrads	Dean, Faculty Office	100% completion, all students, approximately 1000+/year	Ongoing

FIGURE 6: Faculty of Engineering 2015-2016 Health and Safety Plan

Institutions of higher education should also consider customizing the development of a safety management system for their institution rather than simply implement an existing standard. The basic principles behind safety management systems are very similar, and the university system has not deviated from these principles. However, customizing the system allowed for greater consultation on the process; this consultation resulted in greater support and buy-in from members of the community. These members appreciated the opportunity to influence the development of the program and became advocates for the program. This approach has been used in the development of all program elements and has been very effective. There are benefits in simply adopting an established standard, too, but customization to fit the needs of the organization should be considered.

Finally, this is a long-term project. Managing expectations throughout the process is critical. To change and enhance any organization's safety culture is a long-term endeavor that takes years. The board, senior leadership, and the community must understand that substantive changes in the culture will not take place overnight.

Conclusion

There is no more important responsibility that we have than to take prudent and reasonable steps to ensure that our students, faculty, staff, and campus visitors can live, learn, and discover in a safe environment. We have a moral responsibility to ensure that this happens. Although there is still much work to do, the UofA will continue to use data in a continual improvement model as we work to engage senior leadership and develop and implement the EHSMS to fully embed a safety culture throughout the university and into all of its activities.

Drawing from best practices, learning from other institutions, and engaging our community has enabled the university to develop a health and safety management system that is designed to meet its needs. Early indications are that the university has made excellent progress in bringing a systems approach to health and safety and in improving its safety culture. But we know that this is a journey, one that is ongoing. It will require constant attention and improvement if we are to ensure every one of our 50,000 students and staff live, work, learn, and discover in a safe environment.

About the Authors



Currently, *Philip Stack* holds the position of associate vice-president (risk management services) at the University of Alberta. He has led the development and implementation of integrated planning and risk management processes across the institution. Mr. Stack has presented extensively on the topics of integrated planning, resource allocation models, and enterprise risk management.



Rob Munro earned a bachelor's degree in chemical engineering from the University of Alberta in 1986. Since that time, he has spent more than 20 years in the chemical processing industry in a wide variety of roles, including product development, operations management, and quality management. For the last five years in industry, Mr. Munro was responsible for all health and safety activities in a complex safety sensitive organization, where he has gained considerable experience in implementing health and safety systems.

In 2009, Mr. Munro joined the University of Alberta as the director of environment health and safety. In this role and through a diverse management team, Mr. Munro takes a leadership role in maintaining and improving safety performance and emergency management throughout the university.

Mr. Munro is also a member of the Alberta Occupational Health and Safety Council of Alberta since 2011. The council advises the provincial government on matters concerning occupational health and safety and hears appeals with respect to the OHS act.

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For safety is not a gadget but a state of mind.

—ELEANOR EVERET,

SAFETY EXPERT

**Online learning is not the next big thing,
it is the now big thing.**

—DONNA J. ABERNATHY,

AUTHOR AND PAST EDITOR OF TRAINING + DEVELOPMENT MAGAZINE

Innovative Risk Management Solutions Award: Iowa State University’s “SafeFood 101”

| Susanne Johnson and Kurt Beyer, Iowa State University

Introduction

Created in 2007, URMIA’s Innovative Risk Management Solutions Award has three primary goals: to recognize creative efforts, share solutions, and promote innovation among risk management professionals in higher education. In 2016, URMIA recognized Iowa State University’s (ISU) Student Organization Food Service Training, “SafeFood 101,” for its innovation, ingenuity, and usefulness as a model for other campuses facing similar risks.

The Challenge

What risks or exposures were addressed by your solution?

ISU has a long history of dedicated and vigorous student organizations and activities. At this time, there are nearly 900 active recognized student organizations at ISU, and many of them plan events that involve food service to the public. Events range from small gatherings of students to food sales as fundraisers for clubs to large student-run celebrations serving food to 10,000 people or more over a period of days. Foodborne illness is a risk when food is being handled and served, and training those who handle/serve food is a priority for mitigating this risk. As a result of these large food events and the necessity to train over 1,000 students annually regarding food service and safety, the ISU Office of Risk Management (ORM) has always taken an active role in providing training to student organizations regarding the proper methods for handling and serving food at public events. However, with the frequency of events, number of students involved and staffing requirements for trainings, a new method for educating and approving students to participate in food service events was necessary.

What makes your solution a unique or innovative approach?

Annually training over 1,000 students about food safety in a traditional in-person setting was a daunting task, requiring a great deal of time, space, and effort to successfully accomplish. The ISU “SafeFood 101” training was developed as a method to allow students to be successfully trained in consistently safe food handling and serving procedures while engaging those students effectively and at their convenience. The training is an online video module with additional informative supplements that includes an online instantly graded quiz that allows students to gain competency in food service and handling. Upon successful completion of the course, students are able to acquire a SafeFood 101 card to certify they are approved to participate in a food service event on campus. In order to develop the best training possible, ISU ORM collaborated with the Iowa State College of Human Sciences and University Extension to co-develop the training and video modules with faculty who are content experts. SafeFood 101 has allowed the Office of Risk Management to accomplish an essential public safety service within the most advantageous environment to connect with and engage current

students while at the same time helping the many ISU student organizations implement safe events that include food service.

Budget and Solution

What was the total budget for this project?

The original video modules were recorded and edited by Extension IT staff at a cost of \$775, while subsequent updates and edits have been handled by ORM staff and

The ISU “SafeFood 101” training was developed as a method to allow students to be successfully trained in consistently safe food handling and serving procedures while engaging those students effectively and at their convenience.

posted to YouTube at no cost. The training module is hosted at ISU for no cost and has recently been migrated to the university's BlackBoard platform, also for no additional cost. The printing of over 1,000 SafeFood wallet-sized cards for students cost less than \$100 annually.

How many staff were allocated to this project and for what length of time?

The course was initially created through the work of two faculty within the ISU College of Human Sciences and one ORM staff member. Ongoing edits and improvements to the training materials are coordinated by one ORM staff member in collaboration with two faculty.

Results

Is your solution scalable for smaller/larger campuses?

The SafeFood 101 training is nearly infinitely scalable as the actual SafeFood cards are the only limiting factor. The training modules and videos can handle the demands of thousands of students simultaneously, although students take the training as needed throughout the year.

What resources were utilized/needed to develop the program?

The ORM collaborated with a college on campus, as well as our University Extension, collaboratively drawing on institution programmatic strengths to develop a suitable training that mitigated the risk of students handling and serving food on campus. The training was initially hosted by Extension for no cost within training modules that already existed. SafeFood 101 was recently migrated to BlackBoard, which ISU has a license to use for courses and on which the training could be hosted for no cost.

Was buy-in from an executive group required for success? Why or why not?

Senior-level authorization was not required, though staff from the Business and Finance and Student Affairs divisions were kept informed by their respective teams through implementation of the program. Moving to an electronic version of the training was effective, efficient, and accomplished at a low cost, which all lent itself to natural support across campus.

Although there is always room for improvement on course materials and a desire to maintain up to date information, it is clear that hosting the training on the primary online course website used by students was a good choice towards making the training easy to understand, as well as accessible.

Moving Forward:

Successes and Lessons Learned

Apparently, the migration to Blackboard this year was a success over the old system, as over 4,000 students completed the SafeFood 101 training over the 2016-2017 academic year at ISU, which is over twice as many as had ever completed the training before. Although there is always room for improvement on course materials and a desire to maintain up to date information, it is clear that hosting the training on the primary online course website used by students was a good choice towards making the training easy to understand, as well as accessible.

We will continue to host the training within the online academic course system and update to and switch vendors along with the university whenever necessary. We've learned that accessibility and ease of use of a training system such as this drastically improves the number of students on campus that have a degree of food safety training that they will use during their campus events and beyond.

About the Authors



As the director of risk management at Iowa State University (ISU), *Susie Johnson* is responsible for directing the activities of the Office of Risk Management, as well as developing and managing a comprehensive risk management program that serves the university community. Ms. Johnson holds an ARM-E designation and represents ISU as a member of URMIA and RIMS. She is married with three young children and enjoys live music and attending community events.



Kurt Beyer has been working as risk analyst within the Office of Risk Management at Iowa State University (ISU) for just over two years, primarily focusing on student organization events and programs as well as online systems management. Before working in the ORM, Mr. Beyer advised student organizations and programming on ISU's campus for the previous eight years.

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Boldness has genius, power and magic in it.

— JOHANN WOLFGANG VON GOETHE,

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