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Staying Out of Court: Leadership Factors for Consideration

As Higher Education Administrators

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Abstract

Higher education leaders have a tremendous responsibility as it relates to legal concerns. This guidebook is intended to assist leaders in higher education by providing factors for which administrators serving in a student affairs or higher education leadership role should consider. This guidebook is designed to offer five recommendations for best practices. The guidebook will also review the 2007 rape and murder of a Eastern Michigan University student in demonstrating how leaders at this institution failed to follow these five factors of best practice and thus providing examples of negligence or tort liability, which has best been defined as civil wrong, other than a breach of contract, for which the court will allow a remedy (Kaplan & Lee, 2007). (Barr & Associates, 1993) inform leaders, “The best defense against tort liability is to know legal duties and fulfill them.” (p. 281). Readers will learn how best to apply the following factors in student affairs and/or higher educational leadership:

1. Avoid unethical behavior
2. Hire good people
3. Establish and follow procedures
4. Be current on legal issues affecting higher education
5. Develop positive leadership skills

Introduction

In light of recent tragedies having occurred at colleges and universities across the United States and globally, implementation of college policies designed to ensure student safety have quickly evolved into a cultural expectation for students and parents. In a recent dissertation, a researcher received comments from participants, which indicated how campus safety would . . . “automatically be provided when they arrived on campus at their particular college” (Nolen-Allen, 2007). In many instances, today’s traditional age college students may view the collegiate climate as one that is sterile from negative consequences. This could not be further from the truth. As many professionals believe, a college or university is a microcosm of our society. In short, bad things happen to good people. In an effort to inform public of the possible negative aspects that may be a part of colleges and universities, the federal government passed legislation in 1990.

The *Clery Act*, named after Jeanne Clery, a woman raped and murdered in her residence hall, requires that all universities and colleges who receive Title IV federal student financial assistance as report crime statistics to avail informative decision making of prospective students and in cases make the campus community aware of such crimes. According to the *Handbook for Campus Crime Reporting* (2005), in order for a post-secondary institution to be viewed as in compliance with this act, the institution will meet several obligations falling under three main categories: policy disclosure; records collection and retention and information dissemination. When initially passed, the Clery Act included the following violent crimes: criminal homicide; sex offenses, forcible and non-forcible; robbery; aggravated assault; burglary; motor vehicle theft; arson; arrests or persons referred for campus disciplinary action liquor law violations, drug-related

violations and illegal weapons possession (Kaplin & Lee, 2007). As per legislation in July of 2010, the Higher Education Opportunity Act (HEOA) added obligations to college and university administrators to include: missing person procedures and notification; fire safety procedures and reporting; emergency notification warning procedures; hate crime additions of larceny, vandalism/damage/destruction of property, intimidation, simple assault (Federal Reserve, October 29, 2009). This statute was passed in an effort to better educate students and parents in regards to the violent crimes at colleges and universities so that informed decisions might be made in relation to the safety of the student. Jeanne Clery's parents argued through their own civil court pursuit that had they known about the violent crimes which had occurred on campus at Lehigh University, they may have made a different decision about having Jeanne attend that particular university and perhaps may have spared Ms. Clery's life. Legislators found that it appeared that colleges and universities were seemingly hiding the violent crimes that occurred on some campuses in order to improve their image in order to avoid decreased enrollment.

This sentiment was a consideration in Dr. Nolen-Allen's dissertation concerning how students select universities and colleges as he observed, "Participants also talked about the need for colleges and universities to accurately portray themselves to prospective students" (Nolen-Allen, 2007).

The Rape and Murder of Laura Dickinson

On December 15, 2006, Eastern Michigan student Laura Dickinson was found in her residence hall room. Custodial staff for the building found Ms. Dickinson's body after several students had expressed concern of a smell emanating from Ms. Dickinson's

room. Upon investigation Eastern Michigan officials released a statement indicating that Ms. Dickinson's death was attributed to asphyxiation and specifically notified the university community, "there was no evidence of foul play." The parents were also notified of their daughter's death having occurred as of natural causes. In February of 2007, a student by the name of Orange Taylor III was arrested as a suspect in the rape and murder of Laura Dickinson. In reviewing a timeline of the event as reported electronically by the Saginaw News staff, the county examiner for the case suggested that upon reviewing the area where the death occurred, the cause of death seemed to be of a suspicious nature. Through two different independent investigations, Eastern Michigan University leaders including the President of the University, the Vice-President for Student Affairs and the Director of Public Safety were found to have not fulfilled their obligations as leaders of the university and were consequently terminated from their respective positions. In the wake of these investigations, another university tragedy occurred within the United States at the Virginia Polytechnic Institute on April 16, 2007. As focus on safety on college and university campuses switched campuses, and investigations considering actions leaders at that Virginia Tech might have implemented towards improved safety, five factors of leadership in higher education can be considered as a guide that the President of Eastern Michigan University, as well as the Student Affairs leaders of EMU might have implemented to have avoided legal issues and avoided the highest fine placed on a university by failing to consider these factors.

Five Leadership Factors for Consideration as Best Practice

Having implemented five factors for consideration the case of Eastern Michigan University following the murder of Laura Dickinson may have assisted in providing a

guide for how leaders should act in regards to campus safety. In this section of this guidebook, readers will specifically review how following these five factors may assist future higher education or student affairs leaders in avoiding similar civil litigation and federal governmental fines, in this case cost Eastern Michigan University well over three million dollars. These five factors include: Avoiding unethical behaviors; hiring good people; establishing and following procedures; being up to date on current issue within profession and developing strong leadership skills as a professional within the field of higher education or student affairs. In the following pages, each factor will be recognized demonstrating how leaders at Eastern Michigan failed to adhere to these practices as well as suggestions for future leaders to implement in serving the various constituencies at a college or university campus.

Avoiding Unethical Behaviors

Ethics has been defined in many fashions as well as ethical behaviors are specifically addressed as certain professional standards within the varied professional organizations. For the layman, the general ethical principle guiding actions is the “golden rule,” which tells us to do to others as you would want to have done unto you. Within the field of higher education and in particular, student affairs, many have identified practices that will best guide ethical conduct. The Association of Governing Boards of Universities and Colleges (AGB) is one organization that is specifically related to the professional association for American university governing boards and chief administrative leaders. While it does not specifically list a code of ethical principles, the organizational website does however state as one of its purposes, “. . . delivers programs and services that monitors issues that affect higher education and governance and provide

guidance for boards and campus leaders” (<http://www.agb.org/about-agb>). It appears that the most common ethical dilemma facing university presidents these days involves being arrested for driving under the influence. In researching ethical principles for university presidents, several recent arrests consisted of driving under the influence.

For student affairs professionals, ethical principles are specifically cited and referred to in any strong higher educational preparation program as well as through the various student affairs national, regional and state professional organizations. College Student Educators International (ACPA) as well as Student Affairs Administrators in Higher Education (NASPA) both list specific ethical and professional performance standards designed to guide the actions of its respective professional members. Both organizations viewpoints are steeped in five ethical principles established by Kitchener (1984). These ethical principles encourage professionals to actions to be consistent in the following areas by: being faithful; being just; respecting autonomy; doing no harm; benefitting others. These values are generally specifically designed for professionals working with a student population, but can be easily adapted to meet the needs of the various constituencies for which a university or student affairs leader may need to consider when making a decision on an important legal issue or in providing action during a university crisis. One key concept among positive ethical performance is to be honest with the constituencies for which a leader serves. Located on the website for the Student Affairs Administrators in Higher Education (NASPA)’s website, the 6th item of *Standards of Professional Practice*, specifically cites when considering legal authority issues,

“Legal Authority. Members respect and acknowledge all lawful authority. Members refrain from conduct involving dishonesty, fraud, deceit, and misrepresentation or unlawful discrimination. NASPA recognizes that legal issues are often ambiguous,

and members should seek the advice of counsel as appropriate. Members demonstrate concern for the legal, social codes and moral expectations of the communities in which they live and work even when the dictates of one's conscience may require behavior as a private citizen which is not in keeping with these codes/expectations.”

In the case involving Eastern Michigan University's administrative leaders, two independent investigations, one sponsored by Eastern Michigan University's Board of Regents and the other by the United State Department of Education, indicated that even though the state in which Ms. Dickinson's body was found presented itself with suspicions to initial investigators of foul play, a statement was released the next day indicating “foul play” was not a factor in Ms. Dickinson's death. Even after Eastern Michigan University police with the assistance of state police investigators later identified the assailant, for ten weeks, the campus and local community were of the impression that no violent crime had been committed specifically related to the press release offered by the institution the day following the finding of Ms. Dickinson's corpse. It is this action provided by the leadership of the university, which constituted a very serious breach of professional ethical judgment. In its findings of the investigation, the Department of Education noted, “The suspect's arrest led to the public outcry about safety on the campus of EMU.” “It also resulted in widespread criticism about the lack of information and/or misleading information that was disseminated about the incident.” (Department of Education Federal Student Aid Preparation Team – Denver, June 27, 2007).

In allowing the public to be misled about the crime that was committed on the campus for ten weeks, the leaders of Eastern Michigan University acted unethically by providing inaccurate information not only to the campus community, but included acting

unethically to the parents of Ms. Dickinson as they too were not notified of the findings until such time as Mr. Taylor's arrest for the rape and murder of their daughter. A better response by the leaders of Eastern Michigan University would have been to be more transparent by informing the various constituents of the campus community that a full investigation is being conducted in an effort to best determine the cause of death for Ms. Dickinson. At this time we are not ruling out any possibility as a cause of death and therefore, as university leaders, we encourage all members of our university community to conduct themselves in a fashion that would allow for the greatest sense of protection on our campus. Our university police department is on a higher alert status for suspicious activities and we also encourage students to continue to participate in campus involvement in a way that best provides for your safety. Some suggestions would include walking with acquaintances and utilizing campus safety's escort system on campus. A statement like this would have assisted in forewarning students about the possibility of a violent crime as well as afforded more time for a deeper investigation into Ms. Dickinson's death. While not changing any outcomes, this action may have led to a more ethical response in this situation.

Hire Good People

Richard Simpson, in addressing this consideration in the first edition of the *Handbook of Student Affairs Administration (1993)*, writes, "Staff members are the critical variable in the success of the student affairs program." While two new additions of this "handbook" have been written, this version of the handbook is still most applicable today in relation to effective student affairs operations. With the speed that issues arise within framework of student affairs work, hiring effective and well seasoned professionals to

assist in decision making and working with an ever changing student population is certainly a paramount consideration for any leader within student affairs. Best practice dictates that position descriptions are created in an effort to match duties of the position with the mission of the university, division, and department. “Trying to hire the right candidate for a position with an ill-defined job description is like trying to find an unfamiliar destination without a road map,” muses Jon Dalton in *Student Services: A Handbook for the Profession*, p. 406 (2003). The functions of student affairs professionals necessitate that professionals are proficient in skill sets listed in an effective job description. The more responsibility within the leadership venue of a student affairs field, the more seasoned the professional should be. For example, the Vice President for a division of student affairs or even the Director of a department should be more qualified and experienced in such a role so that the best decisions and effective decisions are able to be made. As a leader in student affairs, hiring of unqualified individuals can be a detrimental decision for some time. Effective professionals are not only qualified, but are able to challenge the leader based on past experiences and often times provide the best insight on challenging issues.

As the investigation of the rape and murder evolved in relationship to the university’s response, failure of key leaders within the student affairs arena at the university might imply the poor hiring practices of those leaders. According to the Department of Education’s report, Eastern Michigan University did not fully comply with the Clery requirements and specifically addressed issues in the area described as, “Lack of Administrative Capability.” During the investigation, it was found that the university not only lacked any policy for the notification of the campus community for violent crimes

and failed to establish policies specifically related to the compliance of campus crime reporting. “The findings also demonstrate a lack of adequate institutional training, oversight, and supervision in assuring EMU’s compliance with the Clery Act requirements,” (Department of Education Federal Student Aid Preparation Team – Denver, p. 9, June 27, 2007). Given that seven months following the initial incident student affairs leaders were released with separation agreements, such serious breaches of professional proficiency may warrant that these particular leaders were not hired as the best possible candidates. All three positions have since been filled and when visiting the website of Eastern Michigan University, one can identify the compliance of all the aforementioned violation as recognized in the Department of Education’s investigation.

Establish and Follow Procedures

As mentioned above, Eastern Michigan has since established procedures and all indications from website searching indicate compliance with the requests of the Department of Education’s investigations and recommendations. Quickly following the necessity of hiring good people begets the practice of not only establishing procedures in relation to campus safety, but also in assuring that those procedures are followed as well. This is an issue among the various components of student affairs work. From completing administrative paperwork in an accurate and timely fashion, to ensuring due process is followed in the disciplinary actions of students. This aspect of protocol is often rooted in the means the leader implements the training of staff. Another valuable piece of literature within the training of professionals in higher education and in student affairs comes from the Council on the Advancement of Standards (CAS), the *CAS Professional Standards for Higher Education (2009)* provides a variety of professional best practices

for the various components of services offered by universities. “Programs and services must ensure that staff members are knowledgeable about and trained in emergency procedures, crisis response, and prevention efforts,” p. 32 (CAS, 2009). Leaders within higher education need to be prepared and establish policies that relate to the various emergency crises that may arise on a college campus. While no “one-size fits all” procedure establishment can exist to meet all crises, leaders within student affairs and higher education need at the very least take time to visit possibility of catastrophes and crises in order to formulate some basic procedures and guidelines. As is often the case, a national tragedy creates in the student affairs leader, an awareness of these policies and student affairs leaders find themselves revisiting procedures as events happen on other college campuses, thankful the procedures were not tested on their campus this time. Some safety procedures exist from simply checking identification at a residence hall desk to established radio protocol in the case of a natural disaster such as an earthquake. In some cases, and in particular to safety concerns, some procedures are established by the government.

In the case of the student affair leaders at Eastern Michigan University, the federal government had established guidelines for safety and security. After investigating how Eastern Michigan officials attempted to address the issue of Ms. Dickinson’s violent death, the Department of Education found these procedures had not been followed, but more importantly had not even been created. There was not a procedure for mass notification of a violent crime in an effort to notify the campus community of possible danger on the campus. The Department of Education also found that Eastern Michigan University failed to report crime statistics for calendar years 2003 -2005. Today, the

notification is easily found on Eastern Michigan University Department Public Safety's website. Located on page eight, the timely warning system is specified in the following manner,

“Information included in Campus Crime Alerts/Warnings will include, at minimum:

- A succinct description of the incident and type of crime, including location, date and time of occurrence
- A physical description of the suspect, including gender and race
- Composite drawing of the suspect, if available
- Apparent connection to previous incidents, if applicable
- Race of the victim, but only if there was an apparent bias motive
- Sex of the victim, if relevant
- Injury sustained by the victim
- Date and time the campus alert was released
- A notice to the campus community to exercise caution”

Eastern Michigan University's Crime Report now serves as a model for reporting for many other universities and colleges throughout the nation.

Be Current on Legal Issues Affecting Higher Education

(Kaplin and Lee, 2007) point out, “The most rapidly expanding sources of postsecondary education law are the directive of state and federal administrative agencies p. 25.” This provides an ever changing climate that today's student affairs administrators and leaders need to be well-versed. While some suggest that increasing legal staff at the university as the best practice, the effective leader in student affairs or higher education will discipline themselves to remain current on legal issues and seek opportunities to regularly revisit respective university's compliance with statutes and or upcoming legislation. Further, given the financial considerations of hiring a large legal staff, a leader in student affairs or higher education may be a better steward of university's finances by keeping up to date through professional affiliation. Of particular importance to this issue is the recent

addition of requirements in the Higher Educational Opportunity Act (HEOA). Unless an effective administrator is well versed or connected to a professional organization, which regularly updates professionals on these current issues, the opportunity for tort liability may arise. As an effective leader within higher education and student affairs, it is not only important for the leader to be aware of updated regulations, but in many cases, the leader may need to prompt the department, division or university to take the necessary steps to assure compliance with the regulations as well.

In scrutinizing the situation with Eastern Michigan University's handling of the death of Ms. Dickinson, Eastern Michigan University seemingly did not remain current on filling out the crime statistics as required by the Department of Education. One specific area of detail missed was in regards to the daily crime log as part of 34 C.F.R. § 668.46(f). No statistics were kept from 2003 to 2005. This error is an example of a small detail creating a large problem. Had the executive leaders in student affairs been aware of these legal concerns, the Department of Education may not have found against Eastern Michigan University as strictly. Yet another concern for student affairs or higher education leaders need to be conscientious is in regards to court decisions as sent from courts within the district and from the Supreme Court. An example for leaders at Eastern Michigan University closely related to this case is enrollment. Many court decisions in regards to admissions have come from the state of Michigan. A strong student affairs practitioner will be familiar with these cases as well. By being aware of current legal issues, the effective student affairs professional or higher education administrator can best address issues concerning legal issues in a more proactive manner.

Development of Effective Leadership Skills

Effective leadership skills are essential in regards to crises situations in higher education and in particular as related to issues within student affairs. For today's student affairs leaders, forging a leadership style that is collaborative is generally considered a best practice style. Judy Lawrence Rogers identifies collaborative leadership this way, "...collaborative leaders keep the focus on the core purposes of the organization and allow the group members to discover the best methods for actualizing those purposes" (2003). As student affairs professionals begin to establish their style of collaborative or alternative leadership, another author corroborates these sentiments, particularly in regards to being inquisitive as a leader. Dr. Michael Marquardt instructs leaders, "A leader needs to be courageous and authentic, and not intimidated by the rank or character of the person to whom the question is posed" (Marquardt, p. 53 2005). Serving as a leader within the context of higher education or student affairs is not for the weak at heart. In some cases, inquisitive questioning can be a very effective means for accomplishing tasks. Another leadership skill needed by an effective higher education administrator is to take responsibility for actions of self and subordinates. (Clement & Scott, 1992) identify three key attributes needed to provide effective leadership as a leader within the field of student services. The three attributes include; integrity, commitment and tenacity. Of the three, perhaps the most prevalent is integrity, "Integrity, involving trust, honesty, loyalty, courage and risk taking," (Clement & Scott p. 18). These authors through research explained that leaders among the field listed these attributes, which contributed to strong success within the field. (Kouzes & Posner, 2007) have also identified five practices for exemplary leadership. They include the concepts

of: modeling the way; inspire a shared vision; challenge the process; enable others to act and encourage the heart.

In February, when the results from the police substantiated that the death of Ms. Dickinson had been a crime, the leaders associated with this incident began to avoid displaying integrity and in taking responsibility for errors. In this situation, from the President of the university to the Director for Public Safety, it appears that finger pointing and defending self were more the actions selected by these leaders. One may argue that James Vick perhaps attempted to take some of the responsibility as he was placed on administrative leave by the President of the University on March 5, 2007. During the final days of the investigation and observing the overall impact of the three key individuals involved in this case, the Board of Regents offered to separation agreements to no longer have these employees be a part of the university.

Conclusion

Campuses and universities are a microcosm of our society. Thefts, murders, sexual assaults and other criminal activities are going to take place on our nation's colleges and universities. While every administrator on a college or university campus will want to "avoid the pill" of litigation, combating crimes on campus, higher education administrators and student affairs practitioners will need to possess the skills necessary to effectively challenge these negative impacts. While there are numerous influences to distract student affairs and senior level administrators, it is imperative to keep in mind five best practices to assist in providing an academic community, in which campus violence is limited. These five practices include: avoiding unethical behavior; hiring strong and seasoned professionals; establish, train, follow and review effective

procedures for crises at the respective university; become active within a professional organization so as to be current on legal issues in higher education and other topics affecting your purview; and developing your own style of leadership to allow you boldly address concerns that appears to allow for litigation from some member of the university community. Perhaps (Kaplin & Lee, 2007) summarize this best, “Finally, regarding the interrelationship between law and policy, it is important to emphasize that good policy should encourage judicial deference or academic deference by the courts in situations when the policy or the particular application of it, is challenged in court” pp. 58 & 59. The higher education or student affairs administrator who attempts to best meet the aforementioned recommendations as a leader in postsecondary education may avoid frequent litigious situations.

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