

Higher Education Crisis Management Planning

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Preparedness v. Reaction



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Forming a Team: Stakeholders and Roles

- Stakeholders to consider
- Coordination among departments
- Role of counsel
- Crisis management/public relations firm



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Elements of a Plan

- Formation of the team
- Outline roles
 - How will we compile information?
 - How will we store and share information?
 - Who will make decisions?
- Setting a timeline
- Communications



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Managing Communications

- Do we respond?
 - Legal considerations
 - Liability exposure
 - FERPA and other regulatory constraints
 - Options to respond while preserving confidentiality and limiting exposure
 - Optical and strategic considerations
 - Feed the fire or starve it of oxygen?
 - Need to know vs. “right” to know
 - Do we know enough to know what we don’t know?



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Managing Communications

- Who and How?
 - Determining the institutional spokesperson
 - Internal or external?
 - Align level of authority with issue
 - President/Chancellor
 - External Relations personnel
 - Internal owner of impacted area (e.g., Athletic Director, VP of Student Affairs, etc.)
 - Priority audiences and sequencing
 - The need for consistency – “One Voice” (literally or substantively)
 - Media
 - Stakeholder/constituency-targeted communications



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Managing Communications

- Special Considerations for Social Media
 - Correction of misstatements – to engage or not to engage?
 - Alignment of message across social media and other contexts
 - Disabling interactive features?
 - The importance of analytics and the benefit of expert resources
 - Dynamics of public debates without boundaries



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Crises Involving Multiple Stakeholders

- Internal Stakeholders—current students; parents, faculty; staff; labor organizations; alumni; donors; Trustees/Board Members
- External Stakeholders—law enforcement; local politicians; reporters; community members; activist groups



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Crises Involving Multiple Stakeholders

“in the midst of every crisis, lies great opportunity.”*

- Monitoring Social Media
- Dedicated Web Pages
- Developing a remedy that is part of the Mission
- Lessons Learned

*Albert Einstein



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Crisis Management in Action



idea → plan → action



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Student Protests



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Form of Protests

- Campus protests take on many forms:
 - Traditional protests where individuals congregate in a place on campus
 - Heckling a campus speaker
 - Setting up campsites on campus grounds
 - Storming administrative offices and taking them over
 - Social media posts that go viral
 - Letter petitions to campus leadership
 - Online petitions such as those under Change.Org

Let's look at a few examples.....



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Invited Speaker U.S. Representative Toni Brand

- Zen College, a private institution, is located in an area that has experienced severe weather- hurricanes, floods, and hail storms- over the past five years with the number of damaging events increasing each year.
- Many students of Zen College and their families have been hard hit by these catastrophic events with a majority of them losing their homes and some even losing loved ones.
- U.S. Representative Brand is widely known for her views on climate change, which she believes does not exist and has stated that the recent catastrophic natural disaster events can be attributed to normal historical weather patterns.
- Zen College has invited Rep. Brand to speak on a panel addressing climate change.
- The climate change panel consisted of three panel members-two of whom have warned of the dangers of climate change and Rep. Brand.
- Each panelist was given fifteen minutes to introduce themselves and offer their position statements.



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Invited Speaker U.S. Representative Toni Brand

- Rep. Brand was second to be introduced and when she began to speak about half of the audience began shouting at her, berating her for her views and holding up signs which highlighted her campaign donations from the fossil fuel industry.
- The heckling rose to such a deafening level that no one could hear Rep. Brand speak.
- Rep. Brand left the stage and entered a room outside of the auditorium, where she remained behind closed doors.
- About a dozen students followed her to that room banging on the door pleading to speak to her directly. Two members of campus security left the auditorium to intervene but the students would not leave.
- The remaining protesters in the auditorium would not quiet down and the entire event had to be canceled.
- The College is deciding whether to charge the students disrupting the event with disciplinary violations.



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Climate Protests at Pleasant University

- Across town from Zen College is Pleasant University, a public higher education institution.
- Students, faculty and some alumni are pushing Pleasant University and the state to increase efforts to reduce their carbon footprint and cut ties with all businesses they believe are major contributors to the climate crisis.
- This group of individuals sent a petition to the Board of Trustees and President of Pleasant University with a list of demands.
- The students of this group have set up tents in the open areas of the campus and a subset of students have demanded a meeting with the President.
- Some of the tents are blocking the pathways to buildings.
- After receiving the list of demands, the President sent a message to the community, but was weighing her options on whether to meet with the students when about twenty of them stormed her office and refused to leave.



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Governing Law

- Public universities, as arms of their state governments, must ensure their actions comply with the First Amendment, which affords great protection to free speech.
- Private institutions typically offer First Amendment like protections in their policies. Therefore, failure to follow those policies could give rise to a breach of contract claim.
- Also, campuses must look to state law for guidance. Does the state constitution protect speech on private property?
- In California, there is the Leonard law which prohibits the disciplining of students for conduct that would be protected under the First Amendment.



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Governing Law

Not all speech is protected.

- Unprotected speech include: obscenity, true threats, fighting words, child pornography, defamation, incitement to imminent lawless action, solicitation to commit crimes, blackmail, perjury and plagiarism.
- Hate speech that does not fall under these exceptions is protected.
- Courts typically consider colleges and universities limited public forums.
- Courts allow reasonable time, place, manner restrictions.



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Governing Law

- Higher Education Act of 1965, as amended, provides as follows:

(a) PROTECTION OF RIGHTS

(1) It is the sense of Congress that no student attending an [institution of higher education](#) on a full- or part-time basis should, on the basis of participation in [protected speech](#) or [protected association](#), be excluded from participation in, be denied the benefits of, or be subjected to discrimination or [official sanction](#) under any education program, activity, or division of the institution directly or indirectly receiving financial assistance under this chapter, whether or not such program, activity, or division is sponsored or officially sanctioned by the institution.

(2) It is the sense of Congress that—

(A) the diversity of institutions and educational missions is one of the key strengths of American higher education;

(B) individual institutions of higher education have different missions and each institution should design its academic program in accordance with its educational goals;

(C) an [institution of higher education](#) should facilitate the free and open exchange of ideas;

(D) students should not be intimidated, harassed, discouraged from speaking out, or discriminated against;

(E) students should be treated equally and fairly; and

(F) nothing in this paragraph shall be construed to modify, change, or infringe upon any constitutionally protected religious liberty, freedom, expression, or association. *20 U.S.C. §1011a*

There is currently no private right of action under this statute; however, there is proposed legislation to expand this law and afford a private right of action.



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Some Thoughts to Consider

- For Rep. Toni Brand's speech, campus planning is key. Expect the worst and work from there. Work with campus counsel on governing law and ensure all respective departments know the rules and have a plan of implementation.
- Running through a table-top exercise of the high-profile event is a good practice.
- Before the event, remind community of academic mission. An academic institution as the marketplace of ideas is most effective when all points of view can be expressed in a respectful environment.
- Working within campus culture and values is very important.
- Whatever action the institution takes, ensure that it is content neutral. If students are to be disciplined ask: Would the students be disciplined for similar behavior unrelated to an expression of a position?



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Some Thoughts to Consider

- For the protests at Pleasant University, areas could be designated to allow students to set up tents without disrupting campus activities and blocking access.
- Designated areas that are hidden from the community- far away from the center of campus- would most likely face touch scrutiny from a court.
- Consider Presidential messaging. Is it possible to host a town hall meeting immediately after receiving the list of demands? This would offer students an opportunity to publicly air their grievances in a face-to-face meeting with the President and campus leadership.
- Content-neutral policies regarding posting of banners or visiting of the President's office should be clearly articulated.
- Like the preparation before the Rep. Brand's speech, once there was a demand to speak with the President, a crisis management team should begin planning for a sit-in at the President's office. In accordance with campus policy, will the students be allowed in? To stay for a specified time or indefinitely?



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Title IX and Sexual Misconduct



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Title IX – Institutional Response to Sexual Assault

- If the first priority of every institution is ensuring the physical safety of its campus community members, a sexual assault on campus poses a significant risk for crisis level management.
 - Some of the most widely publicized collegiate scandals have centered on sexual assault cases.
 - Crisis management depends, in part, on who is impacted and the ‘human losses.’
 - Accused, accuser and, indirectly, the general student population, administrators, and any staff with knowledge of the alleged assault
 - Impact to the institution’s overall reputation can be devastating. If an institution hopes to “sell” itself, a positive reputation is required.

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Title IX – Institutional Response to Sexual Assault

- Some crisis situations, such as a natural disaster, pose an opportunity for transformation and community bonding (i.e., we will rebuild & come back even better than before), but incidents of sexual violence are plagued with shame, guilt, blame, accountability and fear – all of which shape the crisis response.
- Controlling the message becomes a difficult task.



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Title IX – Legal Background

- Two federal laws enforced by the Department of Education address sexual violence on college campuses: (1) the Clery Act and (2) Title IX of the Education Amendments of 1972.
- Title IX is a federal civil rights law that prohibits sex-based discrimination, including protecting against sexual assault and sexual harassment on college and university campuses.
 - An educational institution is liable for sexual harassment/sexual assault under Title IX if the school had knowledge of the misconduct and acted with deliberate indifference in failing to end the harassment or sexual violence.
 - Liability can include loss of federal funding and/or significant damages awards in court. Students may face expulsion and employees risk termination.
 - Past and current Title IX regulations have shaped the response to sexual assault cases.



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Title IX, the News and Social Media

- National news coverage of a higher education institution seems to appear in the media on a regular basis. The frame that the news media applies is often the frame that stakeholders adopt given the media's implied third-party objectivity to an issue.
- No institution's Title IX process is immune to a scandal.
- Social media is a significant player in the issue of sexual violence on college campuses. Social media has been used in support of victims' claims and the defense of the accused.
- Title IX generates very active constituencies.
 - Who is the priority audience?
- Correction of misstatements – to engage or not to engage?



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Potential Title IX Scenario

- The Revealed “Cover Up” for Student Athletes
- Multiple female students accuse a high-profile football player of sexual assault. The reports never reach the Title IX Coordinator and are handled within the athletics department. The football player continues to play the remainder of the season. The football player is later arrested for sexual assault of one of the female students. The story is blown wide open by the national media. The football player is ultimately convicted of rape.
- Students create a social media site in which further rape allegations are made against other student athletes. The institution responds on its social media site, students post claims of rape and inaction by the college on that site, the institution deletes those posts and directs students not to post allegations on social media but to file a report with the Title IX Office. That generates more media coverage.
- Politicians, the media, and the student body (which has organized a protest on campus) call for the resignations of the football coach and the college President.



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Potential Title IX Scenario

- Faculty's 'Blind and Bold' Support for Accused
 - A revered faculty member is accused of sexually harassing several students and disciplined by the institution as a result.
 - Many members of the faculty population, who learn of the allegations through word-of-mouth and the media, are filled with skepticism, concern over academic freedom and questions related to the confidential nature of the institutional process. A number of faculty publish letters of support for their colleague denouncing the allegations, painting the accused as the victim and criticizing the sanctions against the accused faculty member.
 - Multiple students then bring a Title IX cause of action against the institution in federal court. The vocal faculty now claim they had misguided opinions and attempt to retract their letters of support.
 - In addition to defending a Title IX lawsuit, the institution is now forced to deal with nationwide media coverage and the faculty/student relationship on campus is tainted with deep mistrust.



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Dealing with Confidentiality & Crisis Communications

- Misunderstandings can lead to discontent and controversy. Title IX imposes legal requirements in a host of areas, such as confidentiality, that shape an institution's response to a high-profile sexual assault case.
 - Title IX's confidentiality mandates may lead to misunderstandings that can indirectly contribute to and evolve nearly any sexual violence case into a crisis situation.
 - Title IX's mandates often cause an institution to respond to crisis-level situations involving sexual assault with strict confidentiality, which can, in turn, exacerbate the crisis.
- Are there ways to keep the campus community informed?



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Leadership Traits of the Title IX Crisis Team

- Not every member of a Title IX crisis response team will be called upon in each situation. Each team member should display:
 - Calm resolve, common cooperation, transparency and emotional intelligence for internal communications. College administrations should (1) be prepared, (2) be flexible, and (3) listen.
 - In external crisis communications, they should (1) be timely, (2) tell the truth, and (3) to the extent possible, make information accessible.
- Institutional knowledge of the team players and decision-making
 - What is the appropriate role for the Title IX Coordinator, College President, Bias Response Teams, Student Survivor and Advocacy Groups, local law enforcement?



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Racial Discrimination



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Racial Discrimination Scandal

- A highly-regarded university hosted a theatrical play to display performances by graduate level students in the Masters in Fine Arts (MFA) program. The play featured several rising stars who are on their way to Broadway and the movies. Several media outlets were invited to cover the event, and important guests and alumni were also invited.
- On the night of the big debut, as the play was being performed, some audience members became uncomfortable because they perceived the actors' makeup and accessories to be racist.

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Racial Discrimination Scandal (cont.)

- Some of the actors wore exaggerated large red prosthetic lips and their skin was dramatically darkened with makeup. Some of the actors also wore large prosthetic ears, that were akin to monkey ears.



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Racial Discrimination Scandal (cont.)

- The public backlash to this performance was swift and harsh.
- Some University students publicly expressed that this theatrical performance reflected a pattern of more widespread racist practices at the University. These students were hurt and angry.
- The NAACP held a press conference denouncing the University and demanding accountability.
- Television reporters and newspaper journalists descended on the campus.



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Racial Discrimination Scandal (cont.)

- Current faculty members and administrators were pointing fingers at each other regarding who was responsible for allowing the allegedly racist accessories and “blackface” makeup to be displayed.
- Alumni were very upset that the school’s reputation was being tarnished by a wave of negative publicity, both on the local level and the national level.
- Wealthy donors held off on making contributions until the University demonstrated that it had properly handled its problems.



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Hindsight is 20/20 – What could have been done differently?

- **#1 - Obtain Feedback from Diverse Individuals**
 - a) *Appoint a Committee and Recognize Blind Spots*
 - This scandal may have been avoided by appointing a committee on diversity practices, focused upon ethical standards and practices in the arts, to provide decision-makers in the MFA Program with feedback regarding the play before it was publicly debuted.
 - The only individuals responsible for reviewing the accessories and makeup before the performance were white males, who did not seem to recognize or anticipate the ways in which the accessories and makeup could be perceived by persons in different racial groups.
 - None of the students or tenured faculty members in the MFA Program were African-American. Therefore, the University had certain blind-spots that it may not have fully contemplated prior to the scandal caused by this performance.



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Hindsight is 20/20 – What could have been done differently? (cont.)

- *b) Recognize that everyone doesn't have an equal ability to speak up without consequences.*

The MFA Program had one African-American adjunct professor, who was hoping to become tenure-tracked. The adjunct professor believed that challenging the decisions of senior level tenured faculty members and administrators would have foreclosed her future employment opportunities.



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Hindsight is 20/20 – What could have been done differently? (cont.)

- **#2 – The importance of context**

- During the investigation of the incident, the costume designer (who also selected the accessories and makeup) noted that he has always been fascinated with finding beauty in features that may be typically shunned by the mainstream narrative. The costume designer said that he selected the accessories and makeup with the goal of highlighting the beauty in certain features, and he had a portfolio dating back several years showing his work regarding that concept. However, without that context, the audience was left without the ability to analyze that artistic viewpoint.



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Complications

- Time
- Resources
- Conflicting views from different stakeholders (students, faculty, alumni, community members, etc.)
- Potential for limiting artistic expression
- Potential for perpetuating negative stereotypes “for the sake of art”.
- Potential legal concerns (e.g., racial discrimination claim based upon hostile work environment; student OCR claim; First Amendment claim, etc.)



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After the Storm – cleaning up the wreckage

- University “townhall” discussions were held to allow students and faculty to express their views.
- In the wake of the scandal, after a comprehensive investigation by an outside investigator, a faculty member and administrator in the MFA Program were fired.
- The University required each MFA student to take a course in Arts & Ethics.
- A diverse committee was appointed to “screen” performances and provide feedback.
- The University established scholarships for students of color.



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Thank You

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