Institutional Response to the Changing Legal Environment Regarding Student Safety: A Multi-Campus Case Study

Joy Blanchard
jblanch@fiu.edu
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INTRODUCTION

In today’s legal environment, universities increasingly are being held responsible for ensuring student safety (Bickel & Lake, 1999). From the jury verdict in the Virginia Tech shooting case (Lipka, 2012b), to the newly created legal liability stemming from student suicides, to the U.S. Department of Education’s call for heightened measures to curb campus drinking (Lipka, 2012a), courts—and the American public—are looking to institutions to respond to issues that threaten the safety of college students.

Though courts increasingly are recognizing that a “duty of care” does exist in the higher education setting, the notion that this has signaled a return to in loco parentis (Bickel & Lake, 1994)—and that universities should shy away from attempting to control student behavior as a means to avoid liability— is unfounded (e.g., Booker v. Lehigh University, 1992). Increasingly courts have recognized that enacting institutional rules and policies are not enough. “[A] university cannot make rules and policies. . . and then do nothing to enforce them beyond verbal threats and admonition or fail to give campus police the authority and guidelines to enforce them through intervention” (Bickel & Lake, 1999, p. 130).

Despite courts’ more recent stance that institutions must take proactive steps in addressing and attempting to ensure student safety (i.e. applying the legal standard of a reasonable duty of care), little research has been done to study institutional response to the new legal environment (Olivas, 1992). This article presents a case study of three institutions that examines whether a fear of liability has disabled universities from enacting policies that soundly respond to the changing and pressing problems facing college students today, namely alcohol abuse and mental illness. Based on interviews and site visits conducted in 2008 and again in 2011 with nearly 30 administrators, these cases represent a cross-segment of major research universities: a large state school in a metropolitan area with a culture of drinking; a well-funded private institution with influential alumni that exert control over campus policies and students with the access and means to easily acquire drugs and alcohol; and a state school in a rural area that is steeped in tradition but its students are facing new problems—particularly as they

* Joy Blanchard, Ph.D., is an assistant professor at Florida International University.
relates to mental health and alcohol—but without the medical facilities of a big city to treat them.

**Methodology**

Education law research typically comprises legal-historical analysis and often lacks the in-depth analysis afforded by other methodologies (Permuth, 2006). I used my review of the case law to frame my qualitative study. Much like the constructivist approach (Lincoln & Guba), the interpretive lens of legal scholarship developed by Toma (1997) seeks to find the meaning judicial decisions have for administrators and how they interpret and apply them. Interpretive scholars subscribe to the “postmodern concept that the world is increasingly complex, contextual, and local; understanding is, therefore, indeterminate and subjective, not universal and objective” (Toma, 1997, p. 22). My sample was purposeful—two public institutions and one private—so as to see the application of the law in both settings. Organizational structures and campus cultures differ greatly between the institutional types: private colleges typically are run as corporations, whereas public universities are subject to state law and state governing boards.

To gain access to the sites, I contacted the chief student affairs administrator at each campus and utilized a key informant to then identify potential interviewees. After reviewing organizational charts, I suggested a list of potential subjects to the chief student affairs officer and he or she would then request that the staff be available to my interview requests. Chief student affairs officers, student conduct administrators, residence life professionals, and campus professionals working in mental health and alcohol education were included in this study. The initial study was conducted in 2008 during a nine-day research trip, allowing for two days at each institution. I conducted 20 interviews, each lasting approximately 60-90 minutes. In 2011 I contacted the same administrators (or their equivalent, if they had left that position) to learn more about how they were shaping policy regarding alcohol and mental health.

The chosen participants represented a sufficient representation of campus administrators at these institutions and interviews and follow-ups continued until saturation (Seidman, 2006). I used an open-ended interview style but began with a core list of questions. Informants often offered information that I had not thought to ask or provided information that gave insight into organizational or legal issues to which I had not been privy in other interviews. The direction of the study was slightly altered during the course of the site visits, as the informants provided rich unexpected anecdotes. I tested emerging themes by introducing probing questions to the next participant. Transcripts were coded for emerging themes, and the collective stories of these campuses are conveyed in this article.
All three institutions have many differences yet also many similarities—including major campus incidents that brought local, regional, and even national attention and ignited the impetus to change policy and practice regarding student behavior and safety. Each campus has its own culture, its own issues, and its own organizational structures by which policies are formed. Though this study was limited by geography (as these institutions are within 400-500 miles of each other), these three cases arguably can be utilized by scholars and administrators from many institution types—as many of the legal, organizational, cultural, and policy issues today can be generalized among nearly all colleges and universities.

**THE LEGAL ENVIRONMENT SURROUNDING STUDENT SAFETY**

Typically liability cases are settled under negligence theory, which stems from common law (or law based on case precedents) and, hence, varies from state to state. However, the general components required for a negligence claim to proceed in court are consistent: (1) a plaintiff bringing suit must prove that a duty of care was owed to him or her, (2) there has to have been a breach of that duty, (3) there must be an injury, and (4) there must be proof that the defendant’s negligence and breach of duty was the proximate cause of injury. A plaintiff can establish that a duty was owed either from a “special relationship” or from knowledge that plaintiff’s injury was foreseeable (Blanchard, 2012).

Conversely, institutions can claim that any duty owed to a student was nullified by his or her assumption of the risk. To satisfy an assumption of the risk claim, defendants must show that the student “had some actual knowledge of a risk of injury, understood and appreciated the risk, and voluntarily accepted the risk” (Hekmat, 2002, p. 623). This very often is used in the cases of alcohol-related injuries.

Another defense—perhaps the most common—is that of immunity. In 1964 Congress passed the currently-enforced Civil Rights Act, which holds state actors personally liable for abridging the Constitutional rights of citizens (Eid, 1990). Under the provisions of the Eleventh Amendment, however, state actors and state agencies cannot be held liable for certain actions taken in the scope of official work-related duties. Qualified immunity “shields public officials from suits against them in their individual capacities for torts committed while performing discretionary duties unless the tortuous act violates a clearly established statutory or constitutional right” (Mahone v. Ben Hill County School System, 2010, p. 915).

Prior to 1960, during the era of *in loco parentis*, institutions rarely were held liable for student injury, regardless of the cause (Bickel & Lake, 1999). *In loco parentis*, as recognized by the courts, gave discretion to institutions to decide what was in the best interests of students (Pearson, 1998). *In loco parentis* first
was recognized in American higher education in *Gott v. Berea College* (1913), in which the court held that the College could dictate where students could visit within the town. The court found that the College was indeed acting in the place of the parent and was responsible for the academic, mental, and physical well-being of students.

Though courts today do hold institutions to a reasonable duty of care, during what Bickel and Lake (1999) classified as the “bystander” era of the 1960s and 1970s, courts were reluctant to hold universities liable for the actions of students. The seminal case of the bystander era, an era in which courts sent the message that universities should not get involved in the lives of students or else run the risk of assuming a duty of care, was *Bradshaw v. Rawlings* (1979).

That era was effectively ended by rulings such as the often noted *Furek v. University of Delaware* (1991), in which the court set forth a test not of strict liability but of reasonable care (Bickel & Lake, 1999). The court held the University 93 percent responsible following an incident in which a fraternity pledge suffered serious burns when a lye-based cleaner was poured on his neck and back during a hazing ritual.

*Furek* questioned the reasoning of such cases as *Bradshaw* (1979) that, because college students were adults, the university should not intervene in inappropriate cases of alcohol-use (Bickel & Lake, 1994) The *Furek* court sent “an unmistakable message that a university cannot make rules and policies against hazing (etc.) and then do nothing to enforce them beyond verbal threats and admonition or fail to give campus police the authority and guidelines to enforce them through intervention” (Bickel & Lake, 1994, p. 130).

As a result of *Furek*, some universities posited that if campus administration does not get involved in student life, they would not be held liable by exposing themselves to a duty that does not already exist. This stance seems unfounded, as Bickel and Lake (1999) argue that the mere fact that a university regulates alcohol can not equate to a duty to foresee incidents on an individual basis. Courts are reluctant to hold universities liable when an intoxicated student’s actions can be construed as contributory negligence or as individual actions unforeseeable by the university.

In *Booker v. Lehigh University* (1992), a court did not find that an institution’s “Guide to Social Policy created a special relationship by which the University assumed a duty of care. In that case, a freshman sorority pledge sued after she sustained injuries from falling down an unlit student-made pathway after becoming intoxicated at several fraternity parties. The court found that to require Lehigh to supervise its thousands of students would render null and void the freedom won by adult students and place Lehigh *in loco parentis*. The Social Policy was not an assumption of such duty but rather a policy statement that supposedly
responsible adult students should be aware of their own behavior (p. 241).

**A Duty of Care for Students with Mental Health Problems**

Much like the cases involving college students and alcohol, courts increasingly are holding institutions liable to care for students with known mental health problems (Bickel & Lake, 1999). Until recently, courts have not held universities liable for a student’s death, even when the actions of administrators and counselors could be viewed as negligent, because suicide historically has been considered an intervening act that could not be foreseen or predicted (Bogust v. Iverson, 1960). Like alcohol, the problem is well known, as institutions are enrolling students with mental health issues at a higher rate than ever before (Dickerson, 2006).

In *Schieszler v. Ferrum College*, (2002), summary judgment was denied to the university and dean of students when the court concluded that a jury could find that it was foreseeable that the student would hurt himself yet university employees failed to take appropriate action. (Summary judgment was, however, granted to the residence hall assistant that assisted the student because she did everything in her power per University policy to seek help.)

The case of Elizabeth Shin and MIT (2005) was vastly monitored and forecasted as being pivotal in establishing the right to regain damages from individual campus administrators, as a ruling from a Massachusetts trial judge allowed the individual negligence suits against MIT student affairs staff and psychiatrists to go forth. However, in April 2006 Shin’s parents settled the case with MIT for an undisclosed sum. Citing *Schieszler* (2002), the judge rejected the administrators’ assertion that the absence of a custodial relationship barred them from personal liability and, instead, considered the imminent probability of harm Shin would cause herself, the knowledge the administrators had regarding Shin’s condition, and their failure to act to protect Shin particularly on the day of her suicide.

**The Role of FERPA in Ensuring Student Safety**

It is important to note, just as in the *Schieszler* (2002) case, the court in *Shin* (2005) did not rule that the university must notify parents of their child’s psychological problems but instead administrators must exercise a duty of care when imminent danger is foreseeable (Baker, 2005). However, federal regulations do allow for parental notification in regard to alcohol and mental health-related issues. The Higher Education Reauthorization Act of 1998 (HERA) amended the Family Educational Rights and Privacy Act (FERPA) so as to allow higher
education institutions to disclose information regarding any violation of any federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student’s education records. . .” (20 U.S.C. § 1232g(h)(i)(1)) so long as the student is not 21 years of age. It also allows for parental notification in cases of a health emergency, where knowledge of the information is necessary to protect the health or safety of the student or other individuals (34 C.F.R. 99.36(a)). That amendment, though, is ambiguous, as it is unclear as to what constitutes an emergency and whether hospitalization is requisite before parents are notified.

Campus administrators would be ill-advised to use a fear of FERPA-related litigation (as there is no private cause of action, per Gonzaga University v. Doe, 2002) as an excuse not to act prudently when a credible threat exists that a student might commit suicide. FERPA is the most often cited reason by campuses as to why parents are not notified of suicidal threats and, thus, thwarts legislative intent to allow for such exceptions (Farrell, 2002). The court in Mahoney v. Allegheny College warned,

> [f]ailure to create a duty is not an invitation to avoid action. We believe the University has a responsibility to adopt prevention programs and protocols regarding students’ self-inflicted injury and suicide that address risk management from a humanistic and therapeutic as compared to just a liability or risk avoiding perspective. . . Rather than create an ill-defined duty of due care the University and mental health community have a more realistic duty to make strides towards prevention. In that regard, the University must not do less than it ought, unless it does all that it can (2005, p. 25).

FERPA amendments specify that an institution may utilize parental notification but does not require it; no court has yet to impose a requirement on universities to notify parents even when such a formal policy is in place, such as in Jain v. State (Baker, 2005).

Following the precedent set by Jain (2000), a Pennsylvania court in December 2005 dismissed negligence claims against university administrators as well as contract violation claims against Allegheny College in a lawsuit filed by the family of a student who committed suicide (2005). The student, who hung himself at his fraternity house, had received on-campus counseling for three years. The court found that no Pennsylvania law imposed a duty on non-mental health professionals to prevent suicide or to notify parents of a possible threat of suicide, even though FERPA allowed for this in the event of an emergency. Further the court found that there was no custodial relationship, even though the decedent lived on campus. Rejecting any analogy to Shin (2005) or Schieszler
(2002), the court found that no special relationship existed between the student and the campus administrators (dean of students and associate dean) nor did the administrators have knowledge of a foreseeable risk. The court found that the administrators did not have specific knowledge of the gravity of the situation and relied on the professional deference of the student’s personal counselor to assess the situation.

As was mentioned previously, campus administrators need to be educated regarding FERPA regulations, its modifications regarding mental illness, and institutional practices and policies regarding suicidal threats. Though the Jain decision (2000) failed to assert that failure to notify parents equated to proximate cause in student suicide, changes in common law views of suicide have shifted from that of a criminal act to victim (Lake & Tribbensee, 2002). Having been granted Congressional latitude, institutions may be remiss in not considering instituting parental notification policies.

As Lake and Tribbensee (2002) argued, “it may be appropriate . . . to risk the allegation of a FERPA violation in a good-faith attempt to save the life of a student” (p. 138). Following the Virginia Tech tragedy a report called for changes to alleviate confusion regarding what information can be shared, as administrators, law enforcement, and mental health practitioners often mistakenly believed they could face liability from FERPA and HIPPA for sharing certain types of information on students in crisis (Report to the President, 2007). The following case studies present some of the prevailing thoughts held by administrators about how deeply they should get involved in matters regarding student safety and how much information they feel comfortable—professionally and legally—sharing.

**TECH: THE FACILITATOR MODEL OF RISK MANAGEMENT**

In the contemporary era of duty, to what degree should universities exert control over student behavior? Though alcohol-related injuries and the mental health of students are at the fore of conversations in the media and on campuses today—as well as the main focus of this study—university liability encompasses a myriad of aspects of students’ lives: travel abroad, safe residence halls, facility management and upkeep, off-campus visitors, and sexual harassment for example. Conversations surrounding university liability often balance risk management while attempting to not excessively limit venerated traditions of student life. What are universities willing to allow—or should allow—in order to not encroach upon the social development of college students?

“Tech,” one of the three universities visited during the course of this study, has become a model for Bickel and Lake’s facilitator model by balancing student development with risk management. According to Bickel and Lake, a facilitator university recognizes that a student’s maturation process is not yet
complete during college but strives to provide a safe educational environment by which students can make sound personal decisions, keeping in mind not only the personal consequences but the consequences for others affected by their actions (Bickel & Lake, 1999). Unlike the in loco parentis model, these institutions do “not presume to choose for students but empower[s] students to choose for themselves within a structured environment” (Dickerson, 2006, p. 37). Facilitator universities are “proactive, not reactive,” and seek to foster positive living environments, facilitate decision-making, and train staff members to assist in student development.

Tech is a large coeducational state university situated in a rural area steeped in tradition. Many staff members that I interviewed constantly referred to the Tech students, staff, and alumni as “family” and the lifelong pride that is felt among those associated with Tech. As it has revamped its policies to embrace the Facilitator Model, Tech has taken measures to mitigate risks, but, more importantly, it has created opportunities to teach students about the risks of college life and has empowered them in the decision-making process. “We look at risk management as positive and an enabling tool.” One risk management official explained it “helps them understand responsibility. It’s a great opportunity to partner with students.”

Decision making at Tech is “top-down” but lower-level professionals did express satisfaction with their involvement in the division of student affairs’ policy making processes. When the current risk management model was formulated, some areas within student services also took the initiative to create their own risk management office, such as in residence life. All new employees within residence life receive training on crisis management, confidentiality of records, and other risks specific to their job title. There also is a risk management office specifically for student activities with several full-time staff members to oversee the training and education of all student organization leaders.

Tech, like most campuses, struggles to curb alcohol abuse on its campus. The alcohol education office recently merged with judicial affairs because of the overlap alcohol violations had with violence, hazing, and theft. (Administrators noticed that alcohol was involved in approximately 80 percent of the cases they adjudicated.) Campus geography, according to a judicial officer, plays a role in alcohol abuse on campus. There is a concentrated bar area across the street from the main campus, which has played a part with certain alcohol reduction measures not being as successful as hoped. A Greek affairs administrator commented, “I’ve been here 23 years and it’s pretty much the same.”

Campus culture also serves to perpetuate accepted alcohol use among underage students. As a mid-level administrator explained, several of the venerated traditions on campus involve drinking—and some of these traditions began in the 1980s, at the time current students’ parents were enrolled there. The
fact that parents today participate with their children in these rituals has impaired efforts to curb incidents of binge drinking.

Tech uses a social norming approach (Higher Education Center, 2012) and educates students who violate alcohol policy about how their actions affect not only themselves but the campus community. Tech employs parental notification on first offense for anyone under the legal drinking age. However, Tech has no cooperative relationship with the surrounding community police agencies and only adjudicates those incidents that occur on campus or that come to the attention of the judicial office via the district attorney’s office (typically egregious cases in which other crimes are involved).

In regard to mental health parental notification policy, however, that policy is less fixed. Residence life does not notify parents after suicide attempts out of what one residence life official referred to as “FERPA fear.” Housing officials share information with the campus police department, mental health services, and the crisis management office. From there, however, the decision to allow a student to remain in campus housing hinges on the threat the student poses and the severity of the situation. According to one administrator, referring to the case-by-case decisions for parental notification, “How much are you entitled to be mentally ill and still be here?”

Overall, administrators continually expressed a desire to balance student welfare within the context of higher education law. One residence life director said, “I don’t want to get caught up in what we can’t do. . .The law may impose certain standards for reasonable care but that by no means imposes a limit on student care.”

**STATE: RESPONDING TO TRAGEDY BY SHAPING CULTURE**

When it tried to address the cultural acceptance underage drinking has long enjoyed in the community and among its students, “State” faced considerable resistance. State is a large public land-grant university in the South. There is no residential requirement for students, and many students live in nearby off-campus housing. It perennially is ranked among top “party schools,” with a strong tradition of athletics and tailgating and an active bar scene that borders the campus both to the north and to the east. State recognizes nearly 40 Greek-letter organizations and that system faced local and national scrutiny when, in the mid-1990s, a fraternity pledged died in an alcohol-related hazing incident. As expected, after interviewing several administrators, many reflected on that incident as having a huge impact on student welfare-related policies.

In the 1990s, State was awarded a national grant to pilot an environmental management approach (Wechsler, 2003) to curb underage and binge drinking. To begin its work to change campus and city alcohol-related policy, the
administrators of the grant formed a coalition that included state-level agencies and campus partners such as Greek life, residence life, student affairs, campus police, and student activities. The coalition worked to develop a plan that all entities were comfortable with and were “knowledgeable and committed.” The grant administrator described that the early progress of the coalition was to “work on small successes.” The coalition worked to educate students about local and state alcohol laws, institute mandatory alcohol education for students, increase late night social activities on campus, create a late-night transportation system, and reduce incidents of underage and binge drinking.

The grant administrator explained that the initial efforts of the coalition were well received because it worked on issues “not perceived as threatening to them [campus units or city partners] personally.” During the later phases of the grant, more complex policy initiatives were started: to eliminate alcohol and drugs on the street that borders the campus to the north, to institute alcohol-free family zones for campus events open to the public, to get more police to monitor football games, to install cameras in the student section at football games, and to amend the local ordinance governing drink specials at bars and restaurants.

As the coalition grew more ambitious in its policy efforts, the administrators of the grant faced opposition from former partners. The most notable example was when the coalition lobbied to change local drink special ordinances. Naturally, the coalition faced opposition from the business community. However, the measure also drew ire from the campus newspaper (which is self-governing and publishes advertisements from local bars) and the student government, which passed a resolution withdrawing its support of the coalition and grant project in response to the proposed ordinance. According to the grant administrator, “in their minds it would take away their fun. . . They weren’t understanding that bar owners make a lot of money off of them after they got drunk at their bars.”

At times even the sitting campus president was resistant to several of the initiatives, such as alcohol in skyboxes at the football stadium. “The changes we were suggesting were not radical. They had already been done in other places.” The work of the coalition was made even more difficult by extreme turnover over the course of a decade: three university presidents, five provosts, and seven deans of students. According to the grant administrator, some top-level administrators were not comfortable with the environmental management model in place and were worried how the coalition’s initiatives would affect State’s image. The grant administrator admittedly has had to “mildly confront administration” which is an “uncomfortable place to be as a university employee. The only thing that saved us was that we were part of a grant.”

Buy-in from the community appears to have been tenuous at times as well. When asked about the success of the town-gown efforts, a judicial officer quickly
and bluntly stated, “It failed.” As a Greek life administrator commented on the cooperative relationship her office has had with local police, “In large metropolitan cities, alcohol is the least of their worries.” Multiple administrators noted a break-down in cooperation from local bar owners and in enforcement of city ordinances. Success in State’s residence halls has been mixed as well. A residence life coordinator commented that over the past decade the number of alcohol violations has remained consistent, but there has been an increase in the number of incidents involving high blood-alcohol levels. A Greek life administrator said that the “culture has not changed. They know all the loopholes.”

The alcohol coalition has had a bigger effect on alcohol-related issues through law and policy changes than through education, according to one student affairs professional, who cited the strong culture of drinking and pro-alcohol lobby present in the state. “Education does not change behavior. It tells attorneys you’ve done what you’re supposed to be doing.” Just as consistency in upper administration affected the efficacy of the alcohol education grant, significant turnover in other departments at State have greatly impacted the creation and implementation of policies affecting student welfare.

Parental notification was one of several policies to be changed after a new dean of students and other upper-level student affairs administrators were hired around 2005. The director of judicial affairs indicated that, prior to this, implementation of the parental notification policy was not consistent and was sporadic, usually not implemented until a second offense. However, in 2008, the implementation of the parental notification policy still was not uniform. According to the residence life judicial officer, parental notification was used in approximately one-third of cases, yet the chief judicial officer in the dean of students office indicated that all first-time infractions—whether adjudicated through his office or through residence life—resulted in parental notification. This disconnect in policy and practice can be attributed to the high level of staff turnover—which also affected organizational culture by diminishing institutional memory. (However, the residence life coordinator indicated that in 2010 her office met with judicial affairs to attempt to make the implementation of parental notification more consistent.)

There is currently no parental notification policy for mental health emergencies, but residence life is working with campus police to formulate one. “It’s a ticking time bomb if you are not being as helpful as you can be,” according to a residence life coordinator. Currently the dean of students’ office collaborates with the campus mental health office to refer students and to consult on students known to be at risk. Regarding the decision to intervene, the residence life judicial officer said the standard is to “go by gut” but more policies are needed to outline what to do. “When deciding whether parents should be called, it is a balance
between parental need-to-know over ‘touchy feely’.” The residence life office does not remove a student for a suicide attempt unless another major policy was broken (e.g., threatening other students, weapons, or drugs).

Student affairs administrators indicated there was some confusion regarding privacy law when the student health center was involved, but, as the chief judicial officer explained, State “doesn’t want someone to die in our hands.” In regard to parental notification, the mental health office attempts to protect student confidentiality but, if a student exhibits high-risk behavior, the counselor will work to gain permission to call parents—a practice that was in place before the modifications to FERPA. According to a mental health administrator, younger mental health professionals view parental notification as “black and white” because of confidentiality concerns, and many are reluctant to share information or contact parents. Education is key in diffusing confusion and fear surrounding privacy laws, as different privacy laws and professional standards exist for mental health practitioners than student affairs administrators. According to a mental health professional at State, faculty there also lack knowledge about the referral process and student privacy—as many fear liability instead of sharing information about students in crisis.

**PRIVATE: CONSTITUENT INFLUENCE ON INSTITUTIONAL POLICY AND PRACTICE**

“Private” recently faced tragedy when three students died in one year from alcohol and drug-related overdoses. (There had been none in the previous decade.) The campus reacted by forming task forces to examine policy and practice. Should Private consider notifying parents if students excessively miss class? What programs were needed? Should alcohol be allowed on campus during tailgating? Should alcohol advertisements be allowed in the campus newspaper?

Private enrolls approximately 10,000 students (6,000 of which are undergraduates) and boasts a considerable endowment. Private widely is known for its prominent alumni involved in politics and business, and many connections are formed through the campus Greek system. The campus is located in a large metropolitan area and is situated in a high international drug trafficking area, which has affected the campus: alcohol, marijuana, cocaine, and prescription drugs are easily available to students. Several administrators noted that many students take advantage of the ample bar scene that is near the campus and within the surrounding urban community instead of university-sponsored programming. “Campus shuts down after dark and on weekends.”

In response to the student deaths that occurred in the 2006-2007 academic year, Private instituted several creative programs to offer support to students, including a judicial amnesty program for students who seek medical help when intoxicated (as well as amnesty for any friends who may call to assist the
intoxicated student); an online system in which parents, friends, and faculty can refer someone for counseling and support services; and ambulances on campus at night and on weekends to respond to any alcohol-related emergencies. As one residence hall coordinator said, “Students can get the help they need without punishing them for going through the process.”

Because the programs are new and because some students may still be afraid “to get in trouble,” as several administrators explained, the number of people utilizing these services have been lower than expected. Several campus offices are involved in the initiative and have the support of student affairs and other divisions; however, the upper-level administration had alcohol risk reduction literature removed from the information handed out to freshmen because they felt it sent a “mixed message”.

Administrators from Greek life, residence life, judicial affairs, and other student services offices meet weekly to discuss at-risk students. “We’re trying to connect all the dots on campus,” said an administrator in the campus health center. Any parental notification decisions go through the dean of students’ office. “If anyone will violate it [FERPA], it will be me.” However, a residence life staff member said, in regard to privacy issues, “It’s really hard to validate [to parents] why they can’t know.”

Private’s legal affairs office also plays a significant role in advising staff regarding privacy issues. A campus attorney said, “Look at the facts in front of you at that time. It’s a judgment call.” This attorney commented that other attorneys anecdotally would say that they would prefer a FERPA-related suit any day over wrongful death. “Not only is it okay to share information but you almost have an obligation to do so.” Commenting on recent campus tragedies, the attorney said media attention may not always be accurate and may be sensationalized but a university “would be a fool not to step up awareness.” The Virginia Tech shootings, as well as the 2010 shooting of an Arizona Congresswoman by a former Pima Community College student on suspension for disciplinary reasons, have prompted Private to institute a mandatory administrative withdrawal system for excessive or disruptive behavior. This system is administered by the dean of students, under the consultation of the vice president for student affairs.

As students are of high concern and a priority at Private, they also are highly involved in policy formation. A student representative sits on many boards and the student code of conduct must be approved by the student senate before it is sent to legal affairs and the vice president of student affairs for final review. However, because of the huge deference shown to students, Private has faced problems regarding student behavior. One administrator said, “Some students feel the university should look the other way when it comes to alcohol.”
One area that has been handcuffed by the influence parents, students, and affluent alumni exert on campus life is Greek affairs. Greek-letter organizations are required to register functions only if they occur in houses or campus grounds. As one Greek advisor said, legal counsel has advised them “if we register them, then we know.” Campus police officers will allow drinking on the “down low” if a party does not get too rowdy, which according to the Greek advisor, sends a “mixed message.” In the past campus police did not want to anger Greeks because of the fear of retribution to themselves or the department and because of “significantly connected alums.” Many chapters host bus trip parties in the metropolitan area to circumvent campus policy and oversight.

Parental involvement, though encouraged when seeking to serve students in need, can sometimes impair the work of these educators and administrators. Because of the high cost of Private, parents naturally want to be involved and apprised of their students’ actions. One campus judicial affairs officer noted that parental-notification almost is not a threat anymore; parents are so involved already. “What is our carrot to help students understand personal responsibility?” Another campus administrator noted the consumer-driven attitude at Private has given some parents the sense that they are entitled “to a certain amount of access” [to upper-level administrators]. Because of the convenience of technology, more parents are contacting the president directly to “exacerbate the response.”

Because many parents are alumni of Private themselves and want their children to have a good experience, they overlook a lot, which, according to a campus judicial officer “doesn’t usually translate into teaching students personal responsibility. Parents and students look for someone else to blame.” Another commented, “It’s unfortunate sometimes when students make bad choices, parents want to blame others beside the student.”

However, the affluence of Private can be a boon. For a campus of its size, Private is relatively well staffed in regard to student health services: two alcohol educators and counselors, a health and eating disorders educator, several physicians, several counselors and social workers, five full-time psychologists, and two staff psychiatrists. Wellness classes are required for graduation, and more than 30 sections are offered each semester. At Private, there is no limit on the number of mental health sessions a student may receive. “We try to get them the help they need so that they can be safe,” according to an alcohol educator. The director of the mental health center said, “That’s the mission: to make students successful so that they can go into the outside world after these experimental years and not have too much baggage.”
CONCLUSIONS AND FINDINGS

Borrowing from the Sabatier and Mazamanian Implementation Process Model, Olivas (1992) cites several factors that need to be studied when analyzing university response to legal outcomes: institutional objectives and priorities, adequate funds for implementation, hierarchical integration, commitment, and opportunities for contribution by those at all levels of the organization. The three institutions in this study have several issues in common. They struggle—like many American higher education institutions today—with issues of student safety, constituency demands, resource allocation, organizational change, campus culture, and community relations. Though most professionals interviewed felt that they, to some degree, had a say in policy formation, there were several instances of inconsistent policy implementation.

Administrators at all three institutions commented that, even though policy may not always be changing, their universities constantly are examining practices in light of current challenges. Like any organization, universities must adapt to the environment (Morgan, 1997). However, one professional interviewed in this study said, “You can’t predict everything.” The importance of planning for—not reacting to—crisis and change is nothing new (Keller, 1983).

Limited resources—both financial and human capital—sometimes restrict how well or how quickly an institution may react to change. Though all three schools in this study are relatively well-funded, all three must outsource student mental health services—either because they can not handle certain illnesses or because the system becomes overloaded with students in need of counseling. Limited resources also restrict campuses from adjudicating off-campus incidents involving students, particularly alcohol-related violations. A judicial officer at State commented that the office is looking at forming a cooperative relationship with community police to begin adjudicating off-campus student infractions but asked, “Can we handle that?”

All three institutions, however, seem to be instituting more “hands-on” approaches regarding the care of students. In line with recommendations from the government reports issued after the Virginia Tech tragedy (U.S. Department of Health and Human Services, 2007) all three institutions for some time have had information-sharing committees comprising top-level administrators who meet regularly to discuss campus trends and at-risk students. Still, lower-ranking administrators commented that there is a need for a centralized clearinghouse, particularly when it comes to student discipline. This is where the need-to-know issues surrounding FERPA become gray. Who can be allowed access to student records? How much should be shared? Does an institution risk violating FERPA in order to prevent potential tragedy? Professionals must answer these questions constantly.
In regard to privacy law, most professionals interviewed were familiar with the privacy laws that cover student records and were comfortable with sharing information with colleagues. However, when it comes to parental notification, that policy tends to be centralized through the dean of students or some other high-level administrative office. It did not appear that lower-level professionals felt empowered to decide whether or not parents should be contacted in certain situations. Ideally, policies should be clearly articulated and employees should be empowered to be “clear-minded and fast-acting” (Useem, 1998). Inaction can be more harmful sometimes than inept action.

Organizational structure is significant in deciding who is consulted during policy formation and how much authority is delegated (Lake, 2008). At Tech, departmental directors are the ones consulted during policy formation. However, lower-level administrators did indicate that their opinion is solicited in the process and even students are consulted to vet out initiatives. This practice stands to increase buy-in for new policy initiatives.

Equally important to organizational structure is organizational culture, (Bolman, & Deal, 2003) which stands to institutionalize certain beliefs among members. Culture particularly comes into play in a field like student affairs, which is rife with employee turnover. Culture is a function of its members, and it is important to train and teach organizational culture to members—especially new members—before crisis strikes (Useem, 1998). Culture often gets lost when employees leave, and culture often is not understood by new employees.

Constituents also affect culture and, ultimately, policy decisions. Each constituency promotes its own agenda (Kirp, 2003) and organizational values—derived from culture—are so important in maintaining the integrity of an institution’s mission. For example, students, parents, and alumni exert immense power over Greek affairs at Private. The president at State opposed several of the initiatives started by the anti-alcohol coalition. Culture comes from leaders but acceptance comes from within the organization (Schein, 1992) Institutions that involve more lower and mid-level administrators in decision making can increase buy-in. Soliciting buy-in from other constituents (e.g., parents and students) also can put an institution in good stead to transmit certain values. However, institutions should also be careful to not succumb to the outside pressures of constituents that are antithetical to the beliefs and mission of the university.

Just as parents can be strong allies, peer groups appear to be a powerful force in modifying risky student behavior. For example, at Private there is a group of all-male Greeks on deferred suspension that meet regularly with an alcohol educator to examine their behavior, talk about their struggles and progress, and hold each other accountable. Similar programs have been piloted nationwide and early research indicates that peer groups and intervention programs can help troubled students stay enrolled and avoid further disciplinary consequences.
Finally, education as a deterrent also seems to be under scrutiny at the institutions included in this study. However, all schools do continue to use education as a baseline tool (e.g., all freshmen at State must take the online course, mystudentbody.com, and all students at Private must complete a wellness course for graduation). In regard to student activities, particularly in Greek life, the advisors at all three institutions indicated that they start with education to mitigate risk. Everyone seems to be trying to “push the envelope in alternative education,” said one Greek advisor at State.

**Recommendations for Practice**

Some legal commentators fear that some universities may under-react out of fear of liability. “Our responses to students become defined by the lens of the law and not through our primary responsibility as educators” (Hoover, 2006). As we in education have seen recently, acting with due diligence is no longer an option but mandatory in the current legal environment. (For example, the Department of Education’s “Dear Colleague” of 2011 imposes a heightened standard for institutions to employ when investigating and preventing sexual harassment on campus (United States Department of Education, 2011)). The jury verdict in the Virginia Tech shooting case and the conviction of former Penn State football coach Jerry Sandusky for repeatedly abusing boys in a university-operated facility further illustrate not just the courts’ but the public’s mandate that colleges and universities take greater roles—and be held accountable—in ensuring the safety of students (Gregory & Janosik, 2012). The much-anticipated outcome of the lawsuit against Florida A&M University for the hazing death of a band member may further solidify this current era of duty of care for institutions.

Each institution, when implementing policies, considers different factors unique to its culture and organizational structure—and with each decision comes varying results. College administrators must be educated to make tough decisions that affect not only the educational setting but the lives of their students. When addressing the issue of alcohol abuse, mental health, or other factors affecting student discipline and safety, administrators must consider institutional prerogatives and objectives, as well as individual rights, campus environment, student demographics, values, traditions, and institutional mission. In light of the research conducted in this study, the following are recommendations for practice:

*Improve education and information sharing.* Employees should be educated regarding student privacy rights and the current amendments to FERPA. Also, parental notification policies need to be consistently enforced, particularly when judicial cases are adjudicated by multiple offices (e.g., judicial affairs, residence life, and Greek affairs). Information sharing is paramount. Though there
are professional standards that restrict some information from being divulged (particularly among mental health professionals), campus police, residence life, judicial officers, and other student affairs professionals should meet regularly to discuss student needs and particular students at-risk. Quite often there is no centralized clearinghouse for such information. Also, institutions should send copies of parental notification policies annually to students and parents.

**Formulate threat assessment teams.** Institutions should formalize a group of key administrators to meet regularly to discuss problem students and empower them to act swiftly in instances of emergency (Penven & Janosik, 2012). Such practices as mandatory withdrawal policies often run afoul of the American with Disabilities Act, but institutions are advised to act swiftly when a student becomes a threat to himself or others in the university community. Temporary withdrawals and mandatory mental health assessments are some ways in which institutions can ensure that students get the help that they need. Any disciplinary action, however, should be done with the highest care to due process protections (Penven & Janosik, 2012).

**Maximize personnel resources.** When considering a new policy or while examining existing ones, institutions should organize a planning team to discuss the viability of the plan and to get diverse views from different campus offices and stakeholders (Benton & Benton, 2006). This serves to increase buy-in. Student affairs administrators should partner with academic affairs to educate faculty not only of the correlation between personal matters and academic performance but the important role faculty can have in referring students in need to receive appropriate counseling, as mental health issues can interfere with academic function.

**Reevaluate policy in light of current case law.** The negative ruling in *Furek* (1991) was as a result of policy breakdown. The institution had an anti-hazing policy but failed to enforce it. The University of Delaware is a model case: after that court ruling, the University responded by imposing tougher disciplinary sanctions, parental notification, and alternative programming (Bickel & Lake, 1999). Universities should be diligent to ensure that policy and practice coincide.

**Formulate partnerships.** In addition to the courts, Congress has recognized the growing problem of student welfare on college campuses today and has amended regulations to allow for innovative partnerships. One such measure is the Collegiate Initiative to Reduce Binge Drinking and Illegal Alcohol Consumption (20 U.S.C. §1011h (2000)). This statute outlines methods by which college and universities should address the issue: a task force of faculty and students, alcohol-free residential communities and social programming, and a town/gown alliance. The statute also suggests that the institutions should adopt a zero tolerance approach to underage alcohol consumption on campus.
*Improve campus services.* Campuses should increase the quality of alternative programming options for students, particularly on nights and weekends. Whether in a metropolitan area or small rural community, students at all three institutions did not partake in campus activities in favor of the local bar scene.

In regard to mental health, the increased demand for services has strained the organizational capacity of some campuses to meet the needs of students (Benton & Benton, 2006). If a campus is unable to offer mental health services to its students, administrators should consider formulating agreements with local treatment facilities to provide mental health services for students (Dickerson, 2006). Also, student health insurance plans should have mental health coverage included. Institutions should form suicide intervention teams that have the authority and flexibility to respond quickly in crisis (Benton & Benton, 2006). Students with mental health issues should receive timely care and follow-up consultations from their counselor. Also, it is good practice to only outsource new clients. Existing clients should be allowed to continue treatment with the counselor with whom they have grown accustomed, unless a specialist is needed to treat a particular illness.

In general, institutions are better served when they recognize the issues affecting welfare and safety on their campus and enact policies and practices that aid students. When campus officials know of a potential danger yet fail to act, that is when they are most susceptible to liability. As was previously mentioned, courts recognize the role personal actions and contributory negligence play in student welfare cases. However, unlike in the “bystander” era, courts no longer excuse universities for failing to enact professionally sound policies that address the imminent and potential harms posed to students.
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