Freeh: Implications for Higher Education

*Ethics and Values Based Compliance & Procedural Justice*

S. Rebecca Holland, J.D.
Deputy Chief Compliance Officer
New York University

Elements of an Effective Compliance Program

U.S. Federal Sentencing Guidelines
§8B2.1(a)(2) As Amended 2004

To have an effective compliance program, an organization must establish and maintain an organizational culture that “encourages ethical conduct and a commitment to compliance with the law.”
“...in order to avoid the consequences of bad publicity, the most powerful leaders at the University...repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the...Board of Trustees, the Penn State community, and the public at large.”

-- from the Freeh Report

The Difference Between Compliance & Ethics
**COMPLIANCE** focuses on:

- Following laws, regulations and policies
- Detection and punishment
- Mitigating risk of penalties, litigation, or other legal action, such as govt. agency investigations

**COMPLIANCE PROGRAMS** tend to:

- Enforce through “command and control” approach
- Function as in-house law enforcement
- Emphasize threat of detection and punishment to control behavior.

**ETHICS and VALUES BASED PROGRAMS** go broader and deeper than legal compliance. They:

- Seek to enable responsible conduct.
- Reflect an organization’s shared values and standards.
- Encourage employees to define responsibilities and aspirations that make up organization’s ethical compass.
- Are more strongly voluntary – employees defer rather than simply complying.
- People are socially motivated to follow rules, less surveillance and sanctions are needed.
A 1999 study showed that when employees perceived their employer’s ethics program to be values-based, they were more likely to seek ethical advice within the organization and to believe that it was acceptable to tell supervisors about problems in the organization. Most strikingly, less unethical behavior occurred within the organizations that were considered values-based environments.


• PROCEDURAL JUSTICE refers to the idea of fairness in the processes that resolve disputes and allocate resources.
  
  • It communicates that all members of the university community are valued.
  • Members of the community behave ethically because they feel connected to shared organizational beliefs.
  • Assures that all members of the community will be treated fairly.

“If a company does not establish a ‘culture that encourages ethical conduct and a commitment to compliance’, all the positive work done to establish formal ethics and conduct programs would be at risk...If organizations want to build a culture that encourages ethical conduct and a commitment to compliance, the research shows that they should focus on fairness.”


“Creating an organization that encourages exemplary conduct may be the best way to prevent damaging misconduct.”

To achieve an Ethics and Values Based Compliance Program, know your institution’s:

- Values, standards and ethics priorities.
- History of Ethics and Compliance violations.
- Management style and ability.
- Informal values and shared understandings.

Employees Follow the Leaders

The Freeh investigation revealed a “President who discouraged discussion and dissent.”
Senior Management should:

• Promote and model an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

• Be knowledgeable about the content and operation of the compliance and ethics program.

Employees Follow the Leaders

Lockheed Martin asked for and received the resignation of its vice chairman, president and COO after he had a “personal relationship” with a subordinate, violating the company’s Code of Ethics and Business Conduct.

The Chairman and CEO stated that the behavior was “inconsistent with our values and standards” and the “swift response to his improper conduct demonstrates our unyielding commitment to holding every employee accountable for their actions.”
Senior Management (cont.)

Enlisting the support of the top executives, including the President and Provost, is a fundamental piece of the equation.

• Determine their priorities, concerns, and what keeps them up at night.

• Develop a strategy for top-down communication about goals, values, and commitment to the ethics and compliance program.

Involve the University Community

• Conduct focus groups and surveys with faculty and staff.

• Find out their priorities, concerns, and what keeps them up at night.

• Develop understanding of how different factions within the organization view organizational integrity, values and ethics.
Contact Information

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Freeh Report: What is the Role of the Board?

What is the role of Compliance in relation to the Board?

Freeh Report

- “No one is above scrutiny.”
- Freeh had complete reign to conduct his investigation in order to “… get to the bottom of what happened and then make recommendations to ensure that it never happens again.”
- BOT included themselves in the review, as well as administrators, staff, etc.
- Complete unfettered access, independence, and no vetting or review of final product.
- What does this mean for higher education and non-profit boards?
What is the responsibility of the Board: Where it come from?

- Corporate Statutes: ABA Model Business Corporations Act: "All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation . . . .")
- Enabling Statute, Board Charter, Committee Charters (e.g. Audit, Compliance & Legal Committees), likely oversight is reserved to the BOT
- Federal Sentencing Guidelines
- Common Law: Caremark
- Moody’s, Rating Agencies
- Federal Agencies, in audit, investigation and corporate integrity agreements, settlements
- SOX
- Best Practice

Statute

- All trustees so appointed and elected as hereinbefore provided, shall, together with his or her Excellency, the governor of the state, and the president, who shall be, ex officio, a member, constitute an entire board of trustees of the corporation known as the University of Vermont and State Agricultural College, who shall have the entire management and control of its property and affairs,
By-laws

• Section 4.4. Duties and Powers: The Board of Trustees shall have the entire management and control of the property and affairs of the University. All corporate powers shall be exercised by or under the authority of the Board of Trustees. The trustees may adopt such rules and regulations for the conduct of their meetings and the management of the University as they deem proper, not inconsistent with law or these By-laws. These By-laws and resolutions of the Board of Trustees shall take precedence over other documents and policies of the University.

Reservation of Rights

• WHEREAS, in making such delegation, the Board also assigns to such officers responsibility to make informed and prudent decisions in the best interests of the University and to maintain accountability to the Board through prompt and accurate reports on University programs, activities and operations, including their financial status and impact;

• NOW, THEREFORE, BE IT RESOLVED that, subject to its retained authority and responsibility for the general oversight of the University, and reserving to itself the power to act on its own initiative as necessary to the fulfillment of its own fiduciary and legal duties, the Board hereby delegates to the President ....
Audit Committee or Compliance Committee Charters

The principal responsibilities of the Committee shall include:

- promoting the development and monitoring the effectiveness of an institutional system of risk assessment and internal controls;
- reviewing and, as appropriate, making recommendations to the Board, regarding institutional policies relevant to the scope of Committee responsibilities, including conflict of interest, ethical and fraudulent conduct, whistleblower protection, and documents retention;
- review with the Office of Compliance Services, the effectiveness of the University’s practices related to monitoring compliance with laws and regulations; the results of management’s investigation and resolution of any reported, or otherwise discovered, significant instances of non-compliance;... the findings of any compliance examinations by regulatory agencies and any auditor observations; the process for communicating the code of business conduct to University personnel and for monitoring compliance therewith; receive quarterly reports from the Office of Compliance Services on its activities; updates from the Office of Compliance Services and management on new and emerging compliance issues, including their impact to the University; and, as needed, through the Audit Committee Chair, compliance matters communicated directly by the Chief Compliance Officer.

Federal Sentencing Guidelines

What 2010 revisions said:

- the individual(s) with day-to-day operational responsibility for the program typically should, no less than annually, give the governing authority or an appropriate subgroup thereof information on the implementation and effectiveness of the compliance and ethics program.

- For purposes of subsection (f)(3)(C)(i), an individual has "direct reporting obligations" to the governing authority or an appropriate subgroup thereof if the individual has express authority to communicate personally to the governing authority or appropriate subgroup thereof (A) promptly on any matter involving criminal conduct or potential criminal conduct, and (B) no less than annually on the implementation and effectiveness of the compliance and ethics program.
Federal Sentencing Guidelines

• “The underlying message ... is clear: There is a strong expectation for boards to be directly involved in compliance and ethics (C&E) oversight, and the reporting relationship between the board and the manager of the compliance and ethics function, the ... CECO is viewed as central to that responsibility.”

• Consistent with Deferred Prosecution Agreements and with a set of “key judicial precedents dating to the Delaware court’s 1996 Caremark decision.”

• Greenberg and Boehme, December 2010, Board Have an Important Role as Guardians of Ethics and Compliance.

Action Items for Boards

To meet heightened expectations for compliance and ethics oversight, a board should:

- Ensure it has received an up-to-date targeted briefing on the rapidly evolving director-oversight role for compliance and ethics.
- Install a senior level, experienced chief ethics and compliance officer (CECO), empowered with clout, resources and adequate autonomy from management to do the job.
- Insist on periodic unfiltered updates (i.e., executive session) from the CECO on the compliance and ethics program, and not just helpline statistics.
- Adopt a resolution requiring that certain important matters, such as allegations against senior managers, be escalated to the attention of the board.
- Understand the key legal and ethical risks of the company (including the risk assessment process) and the measures in place to address them.
- Request periodic, independent evaluation of the effectiveness of the firm’s compliance and ethics program. Ask what visible, active steps senior and line management are taking to support the compliance and ethics program.
- Scrutinize compensation. Many leading companies link top managers’ compensation to ethical leadership.

Greenberg and Boehme, supra.
Case Law: Oversight and Monitoring

• Fiduciary Duty: Directors must act in good faith and in the best interest of the corporation

Professor Eisenberg characterized four duties: the duty to monitor, the duty of inquiry, the duty to employ reasonable decision making, and the duty to make reasonable decisions) as comprising the corporate directors “moral obligation to exercise care.”

“Although there is no precise definition of ‘oversight,’ it is clear that directors have a duty, in carrying out the statutorily mandated duty of directing the management of the corporation, to see that the officers of the corporation are properly managing its business and affairs.”

Lowell, citing Veasey & Seitz

Oversight Responsibilities of the Board

Oversight responsibilities of the Board, include

• approving fundamental operating, financial, and other corporate plans, strategies, and objectives
• evaluating the performance of the corporation and its senior management and taking appropriate action, including removal;
• selecting, regularly evaluating, and fixing the compensation of senior executives;
• requiring, approving, and implementing senior executive succession plans;
• adopting policies for corporate conduct, including compliance with applicable laws and regulations, and maintenance of accounting, financial and other controls;
• reviewing the process of providing appropriate financial and operational information to decision-makers

Corporate Director’s Guidebook
Oversight = Controls and Compliance

• Active monitoring through the installation of an internal control structure, and oversight of the corporation’s policies and procedures regarding compliance with the law. (Lowell)

• Lowell quoting Lawler, [As Professor Edward Lawler has observed], “[A]s the ultimate oversight body, the board must be sure that the company has adequate information, control, and audit systems in place to tell it and senior management whether the company is meeting its business objectives. And it is also the board’s responsibility to ensure that the company complies with the legal and ethical standards imposed by law and by the company’s own statement of values.”

Caremark

• Global settlement for criminal and civil actions from various governmental agencies, insurance settlements and then a derivative suit filed against the BOD for breach of duty of care.

• Caremark:
  Landmark case dicta addressed the board’s duty to oversee a corporation’s legal compliance efforts. As part of its duty to monitor, the Board must make good faith efforts to ensure that a corporation has adequate reporting and information systems. Has to be “a sustained or systematic failure to exercise oversight” or “[a]n utter failure to attempt to ensure a reporting and information system.” Recognized a cause of action for failing to take minimal steps to achieve legal compliance.

• The suggestion in Caremark, that a director could face personal liability for the board’s failure to take steps to assure the corporation’s compliance with the law, represented a departure from precedent.
Freeh: Role of the Board

- Freeh found a number of items as discussed in the report
- Failed to exercise oversight and reasonable inquiry responsibilities
- No regular reporting procedures or committee structures in place to ensure disclosure to the BOT
- BOT did not demand regular reporting
- “Tone at the Top” environment not created and no accountability for senior officials
- Lack of genuine of communication between the administration and the BOT, scripted meetings & rubber stamped decisions already made by Pres and small group of trustees
- No independent assessment of information or further inquiry related to investigation once it became known until much later
- No reasonable inquiry until much later
- Lack of a process for information to be given to the BOT
- Discusses the idea of “rainbows” or scripted presentations, rather than meaningful discussion

Freeh: Meaningful Discussion & Transparency

- Thorough and forthright reports on the affairs of the University by the President
- Reasonable oversight in a sustained or systematic fashion
- Not enough questions asked or follow up
- Spanier allegedly complained (as reported by Freeh), “the Trustee desires near total transparency.”
Dealpolitik: The Freh Report on Penn State

Lessons from Happy Valley
Penn State’s missteps offer four important lessons for any organization that finds itself in a criminal investigation
The National Law Journal, September 10, 2012 Ty Howard

- When under government investigation, conduct your own investigation
- Prepare your witness & advise employees to get separate counsel
- Ensure investigating counsel remain the organization’s advocate
- Manage the media

The National Law Journal, September 12, 2012, Ty Howard
Manage the Media

- Ty Howard: Mishandling of the Freeh report. “After *naively* allowing the report to be released without review, the board erred again by, tacitly or expressly, accepting the report in full. By doing so, it undermined any principled objection to the media's rubberstamping the report's opinions regardless of whether they were supported by facts in the report. Having lost control of the media *narrative*, the university was left defenseless, largely by its own doing.  

Differing Views

- Protiviti Report, By the Book: Perspectives on Compliance in Higher Education: Institutions should strive to achieve the following objectives in establishing and maintaining their compliance programs:
  - Create the appropriate "tone at the top" by establishing a climate that supports discussing compliance issues openly and with integrity, even if doing so may create short-term exposure for the institution.

- Ty Howard: Institutions must ensure that investigating counsel remain the organization's advocate—"Organizations should use counsel’s findings to craft a strategy and insist that counsel advocate for them while government scrutiny continues. "Unfortunately, Penn State lost control of its would-be best advocate. [The Freeh Report] was protected by the attorney-client privilege and work-product privileges and could not have been disclosed without the board's consent. Nonetheless, the board allowed it to be disclosed publicly without prior review—a *serious tactical error*. Regardless of media clamoring, it’s entirely appropriate for a client to review materials prepared by its own lawyers to determine if and how they are to be released. It could have limited release to factual findings and recommendation. "Moreover, by removing the usual attorney-client constraints, ... the board enabled its own attorneys to become its attackers instead of its advocates."  The National Law Journal, supra.
How do Boards get to know??

- Training
- Reports

Assessing Your Board’s Performance—Key Questions to Consider

Robert Kaplan and Keith Meyer

- Does the BOD play a significant role in setting the agenda for its meetings?
- Has the BOD squeezed out time for discussion and debate?
- Is the BOD culture tailored to achieve high performance?
- Does the BOD exert independent leadership?
- Does the BOD have an accurate assessment of CEO performance (beyond performance metrics)? Does the BOD conduct a 360 performance review of senior leadership or is this too sensitive a step to implement?
Pennsylvania Association for Non-Profit Organizations

- Penn State has 350 policies
- What is our system of policy oversight
- Review of Policies should take place yearly by staff or through a committee
- What do we need to know for risk management purposes
- Boards must take responsibility for identifying and cultivating an organization’s cultural values and beliefs
- Assertive, collaborative leadership role

Central Pennsylvania Business Journal, August 17, 2012, Tish Mogan

What is the role of Compliance?

- “For corporations operating in regulated industries, particularly those with a governmental body as its primary or sole customer, compliance with the laws and rules applicable to the corporation’s business is essential. Violation of these laws and rules may materially affect the corporation’s financial standing, may result in foreclosure of the corporation’s ability to continue its operations. Thus, the avoidance of a regulatory crisis may be as significant to the corporation’s long-term well-being as is strategic planning and product innovation.”
- “Therefore, should the corporation’s directors be responsible for ensuring that the laws and regulations regarding the corporation’s business are obeyed?” (Lowell Brown)
- YES.
COSO

- Everyone in an organization has some responsibility for internal control. The board of directors or equivalent oversight body guides and directs management in the development and performance of internal control. Management is responsible for the establishment and performance of the entity’s internal control system, with the chief executive officer, supported by senior management, being ultimately responsible.
- Various business-enabling functions communicate, enable, and evaluate adherence to requirements defined by external laws, regulations, standards, internal policies, and standards of conduct.
Moody’s

- Rising political and regulatory scrutiny of the industry (higher education) and tougher accreditation standards, are making it difficult for colleges and universities to grow revenue and are intensifying the focus on governance, operating efficiency and revenue diversity.
- As the scrutiny of higher education intensifies, we expect to see more of a shift toward outcomes-driven state and federal funding, increased federal regulation of the industry, continued reevaluation of the not-for-profit higher education tax-exempt status and a demand for better disclosure from all colleges and universities.
- As congress and the general public continue to focus on affordability and measurable outcomes for higher education, we expect accrediting organizations, which are independent, non-governmental bodies, will enforce higher standards and issue a greater number of warnings and sanctions in order to avoid tighter regulations from Congress.

Moody’s and Governance at Penn State

Governance Changes Likely to Improve Business Outlook at Penn State

Moody’s and Governance at Penn State

- Moody’s, the global credit ratings agency, has raised its outlook for Pennsylvania State University (PSU) from negative to stable, reflecting the university’s improved financial performance and increased transparency in governance.
- The upgrade comes as PSU has made strides in improving its financial health and governance practices, including enhanced financial disclosure and accountability measures.
- Moody’s analysts noted that the university’s new leadership and the implementation of a comprehensive governance framework have helped to address past financial challenges and improve the university’s operational efficiency.
- The agency also praised PSU’s dedicated efforts to enhance transparency, reduce costs, and improve academic outcomes, which have positioned the university well for continued success.
- Moving forward, Moody’s remains optimistic about PSU’s ability to maintain its financial stability and further strengthen its reputation for excellence in higher education, thereby supporting the university’s mission to provide world-class educational opportunities to its students.

The University of Vermont
Grant Thornton:
Business insights and trends for trustees and higher education administrators
December 2011

- Published what they believed were the top 10 business imperatives in higher education for 2012.
- Includes: Staying abreast of the changing regulatory environment Legal and regulatory requirements affecting higher education institutions. Colleges and universities need to have reliable and consistent processes in place for identifying and complying with applicable laws and regulations. Most audit committees now see monitoring compliance as a key responsibility.
Deconstructing Freeh: A Case for Developing An Effective Framework for Child Maltreatment Reporting and Prevention in Institutions of Higher Education

Leyda L. Benitez
Senior University Counsel for Compliance, Governance and Knowledge Management
June 4, 2013

Introduction

• Freeh Report as a Wake-Up Call to Institutions of Higher Education
• Define/Discuss the Risk and the Role of Compliance and Ethics
• Mandatory Reporting Law Implementation Challenges and Opportunities
Issue of Child Maltreatment in the United States is Not New

• U.S. was the first country to establish laws and leads the world in abuse reporting laws (Mathews & Kenny 2008)
• Children are vulnerable subjects in that they cannot advocate for themselves

The Problem of Child Maltreatment

Estimated 3.4 million referrals, involving the alleged maltreatment of approximately 6.2 million children, were received by CPS agencies in 2011.

(U.S. Department of Health & Human Services, Administration of Children & Families, 2011)
Why the Importance Now?

- Jerry Sandusky was charged with 45 counts of sexual assault—many of which he committed on university grounds.
- Prior to these charges, he was seen as a champion of children, beyond question or challenge.
- Founded The Second Mile charity to help at-risk children find "life excellence," but Pennsylvania Attorney General Linda Kelly claimed he used the organization to find his victims.

Turning A Blind Eye

- The most saddening finding by the Special Investigative Counsel is the total and consistent disregard by the most senior leaders at Penn State for the safety and welfare of Sandusky’s child victims. As the Grand Jury similarly noted in its presentment, there was no “attempt to investigate, to identify Victim 2, or to protect that child or any others from similar conduct except as related to preventing its re-occurrence on University property.”
- (Freh Report, 2012)
Defining the Risk for Institutions of Higher Education (IHE)

Against this backdrop:

• Protection of Vulnerable Persons Act, Florida HB 1355, Chapter 2012-155, is enacted on April 27, 2012 to be effective October 1, 2012

• Freeh Report is issued on July 12, 2012

Defining the Risk for IHE

• First step in developing an effective child maltreatment reporting framework is to know what your State law requires

• All States, territories and the District of Columbia have statutes identifying persons who are required to report child maltreatment under specific circumstances

• Florida—One of 20 states wherein “any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned or neglected must report this information”

• In all other States, territories and the District of Columbia, any person is permitted to report

  • Child Welfare Information Gateway (2012), current through June 2012, is available online at: https://www.childwelfare.gov/systemwide/laws_policies/state/
Mandatory Reporting of Child Maltreatment

CURRENT LEGISLATION that Provides All Persons Must Report and/or Higher Education Institutions

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TOTAL: 20

Source: WestlawNext (23-May-13)

LEGISLATION INTRODUCED IN 2013 SESSION TO REQUIRE THE PERSONNEL TO REPORT CHILD ABUSE

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<td>Higher education officials</td>
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<td>Connecticut</td>
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<td>Any administrator, faculty, staff, athletic director, athletic coaches or athletic trainers employed by a constituent unit of the state system of higher education or private institution of higher education who is eighteen years of age or older</td>
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<td>Coaches and school volunteers</td>
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<td>MI HB 4493</td>
<td>All persons employed in public or nonpublic schools</td>
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<td>NY AB 4662</td>
<td>Higher education setting including any employee or volunteer, administrators, professors, sports coaches, or athletic directors of a college</td>
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<td>NY AB 6330</td>
<td>College coaches, athletic directors, professors, graduate assistants, college administrators, and college presidents and paid staff members of children's camps, summer day camps and travel camps</td>
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<td>PA HB 673</td>
<td>School staff members, school faculty, and staff members of an institution to make a report directly to a law enforcement official and an agent for child protective services, instead of the person in charge of the institution</td>
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LEGISLATION INTRODUCED IN 2013 SESSION TO REQUIRE ALL PERSONS TO REPORT CHILD ABUSE

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<td>South Carolina</td>
<td>SC HB 3024</td>
<td>Any person</td>
</tr>
</tbody>
</table>

Source: National Conference of State Legislatures (NCSL) / Updated May 15, 2013
Florida Mandatory Reporting Law for IHE is Broadest in Scope/Reach:
Effective October 1, 2012 any IHE (public/nonpublic college or university) in the State of Florida-
• whose administrators knowingly and willfully, upon receiving information from faculty, staff, or other institution employees, fail to report known or suspected child abuse, abandonment, or neglect
• committed on the property of the institution or during an event or function sponsored by the institution or
• who knowingly and willfully prevent another person from doing so, shall be subject to fines of $1 million for each such failure
• same obligation imposed upon the IHE’s law enforcement agency

Defining the Risk for IHE

• New Florida law expands the reach of the child protective system with the assistance of IHE
• Expanded requirement to report of known or reasonably suspected abuse of a child by any adult
• As it relates to IHE, reports are to be made not only based on “knowledge or reasonable suspicion,” but on information an administrator (or IHE law enforcement agency) learns from another employee or faculty member
• FIU tackled this risk in three separate, major initiatives which are ongoing:
  - Implement and train administrators /staff on the new Florida law requirements
  - Thoroughly review and assess the Freeh Report
  - Complete, as a separate phase, a policy on camps and enrichment programs
## Defining the Risk for IHE

### STATUS OF MINORS ON CAMPUS—UNDERSTANDING THE WHO AND WHERE OF THE RISK

<table>
<thead>
<tr>
<th>MINORS</th>
<th>STUDENTS</th>
<th>NON-STUDENTS</th>
<th>MANAGED CENTRALLY (YES / NO)</th>
<th>CURRENT PRACTICE REGARDING BACKGROUND CHECK (Level 2 - Fingerprinting) FOR AUTHORIZED ADULTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENROLLED - REGULAR</td>
<td>X</td>
<td></td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>ENROLLED-DUAL</td>
<td>X</td>
<td></td>
<td>YES</td>
<td>AS REQUIRED</td>
</tr>
<tr>
<td>ENROLLED - NON-DEGREE SEEKING</td>
<td>X</td>
<td></td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>EMPLOYEES</td>
<td>X</td>
<td>X</td>
<td>YES</td>
<td>AS REQUIRED</td>
</tr>
<tr>
<td>VOLUNTEERS</td>
<td>X</td>
<td>X</td>
<td>MOVING TOWARDS CENTRALIZATION</td>
<td>AS REQUIRED</td>
</tr>
<tr>
<td>PROGRAM/ACTIVITY PARTICIPANTS</td>
<td>X</td>
<td>X</td>
<td>NO</td>
<td>AS REQUIRED (NOT MONITORED FOR 3rd Parties)</td>
</tr>
<tr>
<td>VISITORS</td>
<td>X</td>
<td></td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>CREATIVE LEARNING CENTER PRE-SCHOOL</td>
<td>X</td>
<td></td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>PATIENTS</td>
<td>X</td>
<td>X</td>
<td>NO</td>
<td>AS REQUIRED</td>
</tr>
<tr>
<td>RESEARCH SUBJECTS</td>
<td>X</td>
<td>X</td>
<td>NO</td>
<td>AS REQUIRED</td>
</tr>
</tbody>
</table>

### Benchmark Against What Other Institutions Were Doing

<table>
<thead>
<tr>
<th>INSTITUTION</th>
<th>WHO APPROVES REQUEST</th>
<th>CENTRALIZED VS. DECENTRALIZED</th>
<th>BACKGROUND CHECK</th>
<th>TRAINING REQUIREMENT</th>
<th>STATE REPORTING (External)</th>
<th>UNIVERSITY REPORTING (Internal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penn State University (Public)</td>
<td>Sponsoring Unit (University Relations approves use of facilities)</td>
<td>Decentralized</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>Campus Police, OGC &amp; Risk</td>
</tr>
<tr>
<td>Indiana University (Public)</td>
<td>Sponsoring Unit (The Division’s facility use committee approves use of facility)</td>
<td>Decentralized</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
<td>Campus Police</td>
</tr>
<tr>
<td>University of Houston (Public)</td>
<td>Coordinator of Campus Programs for Minors</td>
<td>Decentralized</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>Campus Police and OGC</td>
</tr>
<tr>
<td>University of Arkansas (Public)</td>
<td>University Units</td>
<td>Decentralized</td>
<td>YES</td>
<td>SHOULD CONSIDER</td>
<td>YES</td>
<td>Campus Police</td>
</tr>
<tr>
<td>Belmont University (Nashville, TN - Private)</td>
<td>Area VP, Office of the Administration and OGC</td>
<td>Centralized</td>
<td>YES</td>
<td>YES</td>
<td>NOT MANDATORY</td>
<td>Admin. &amp; OGC</td>
</tr>
<tr>
<td>Saint Joseph’s University (Philadelphia, PA - Private)</td>
<td>Area VP, OGC &amp; Director of Employment</td>
<td>Centralized</td>
<td>YES</td>
<td>YES</td>
<td>NOT MANDATORY</td>
<td>Campus Police</td>
</tr>
<tr>
<td>Florida State University (SUS)</td>
<td>Risk Management</td>
<td>Decentralized</td>
<td>YES</td>
<td>BM CHECKLIST RECOMMENDED</td>
<td>YES</td>
<td>None</td>
</tr>
<tr>
<td>University of West Florida (SUS)</td>
<td>USCA Conference Services Unit</td>
<td>Centralized</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>None</td>
</tr>
</tbody>
</table>
### No Single Model or Best Practice Emerged

- No single or best practice model emerged in terms of risk ownership, reporting or training requirements
- One of the areas, in university governance, where “accident of history” seems to lead the way
- Three basic forms of policies:
  - Children in the Workplace Policies (HR): Consideration for issues of safety, confidentiality, disruption of services, and presence of physical/environmental hazards
  - Camps/Enrichment Programs Policies (Various): Consideration of approval processes, criminal background checks, releases/waivers, consent to treatment
  - Mandatory Reporting Policies:
    - Federal Law—Primarily the Clery Act
    - State Laws—Comprehensive summary, current through June 2012, available online at: [Child Welfare Information Gateway](https://www.childwelfare.gov/systemwide/laws_policies/state/)

### Implementation Plan

- **Primary Focus**
  - Mandatory Reporting Policy & infrastructure
  - Internal assessment based on Freeh Report recommendations
- **Secondary Focus**
  - Policy/process regarding camps and enrichment programs
Quick Journey through the Implementation of Fla. Stat. § 39.205

Three Levels of Concurrent Activity:

**Level I**
- FIU Internal Work Group
- Implement New Fla. Law
- Assess the Freeh Report
- Develop policy/process for camps and enrichment programs

**Level II**
- BOG-SUS Work Group

**Level III**
- BOG-SUS-DCF

Quick Journey through the Implementation of Fla. Stat. § 39.205

Level III-BOG-SUS-DCF (CPS)

- Develop better understanding of Florida’s child protective services agency and abuse hotline
- Work together to develop common language and interpretation of new law
- Participate in workshops that initially included the public college and university systems and the Florida Department of Law Enforcement
Quick Journey through the Implementation of Fla. Stat. § 39.205

Level II-BOG-SUS Implementation Efforts

- Work group of SUS counsel and compliance officers assisted the BOG as it developed the process (in the form of a regulation) BOG will utilize to enforce this new law
- Served as panel members in a workshop sponsored by BOG at which DCF legal counsel provided training—workshop attended by representatives from all public state institutions
- BOG regulation defined “administrator” as the following high level personnel who have been assigned the responsibilities of university-wide academic or administrative functions: university president, provost, senior/executive vice presidents, vice presidents, associate vice presidents, associate/vice provosts, deans, chief of police, equal opportunity programs director, intercollegiate athletics director, internal audit director, Title IX coordinator and university compliance officer
- Efforts led to BOG online video to train administrators

Quick Journey through the Implementation of Fla. Stat. § 39.205

Level I-Internal Work Group-Florida Law

- UCO tasked with overall responsibility
- Developed comprehensive timeline (October 1, 2012 effective date)
- Met with local DCF representatives
- Convened internal group with representatives from Academic Affairs, Athletics, Counseling, General Counsel, Human Resources, Student Affairs, University Police
- Researched risk and benchmarked against other institutional policies
- Developed Mandatory Reporting Policy—presented to senior leadership in late September, 2012
Quick Journey through the Implementation of Fla. Stat. § 39.205

Level I—Internal Work Group—Florida Law (Continued)

- Identified Subject Matter Expert, Dr. Maureen Kenny, Professor, Director of Counselor Education Program, College of Education, Florida International University
- Provided guidance on:
  - child maltreatment and mandatory reporting requirements to senior leadership, work group, UCO
  - difficult policy issues such as reporting structure and division of responsibilities and roles
  - the development of a sustainable education and training program
- Provided initial education and training to senior leadership, administrators, law enforcement personnel, and the University community at large

Quick Journey through the Implementation of Fla. Stat. § 39.205

Level I—Internal Work Group—Freh Report Assessment

- Led by the Office of the General Counsel
- Initially reviewed and assessed by OGC and UCO
- Divided by major university areas to conduct assessment regarding any gaps or need for improvement
- To date, has also included:
  - Review (second year in a row) of Clery Act compliance
  - Review of sexual offenders/predators laws
  - Human Resources specific practices review
    - Volunteers-new policy and software tracking
    - Criminal background checks
  - Survey to create current inventory of camps/activities involving minors sent to VPs and Deans
  - Second survey to be sent to employees identified by VPs and Deans
IHE Initial Challenges and Opportunities

- Know your risk areas & your State’s reporting requirements
- Determine whether you will develop a policy (e.g., nothing in Florida law provides institution must have a policy in place)
  - Pros - Formal notice regarding reporting processes/consequences
  - Cons - Developing a policy that detracts from the integrity of the CPS processes (e.g., CPS should investigate/interview child, not the IHE)
- Assess whether mandated reporters are receiving education/training
  - As part of their curriculum?
  - On-the-job training?
- Develop a sustainable education/training program
- Understand the consequences
  - Failure to report
  - Retaliation
  - False reporting

IHE Initial Challenges and Opportunities

- Lessons Learned:
  - Senior leadership is paying close attention to developments
  - While no single or best practice model yet, new policies (and laws!) beginning to emerge
  - Employees who have frequent contact with minors as part of their jobs are grateful to have an opportunity to ask questions
  - Education and training is preferable in person and frequent
  - Background checks should cover everyone, including volunteers, but are not enough (remember Sandusky would have passed one)
  - Review your State’s “Romeo and Juliet” laws with law enforcement personnel
  - Review your State’s sexual offenders/predators laws with law enforcement personnel
IHE Initial Challenges and Opportunities

- Know your internal communication plan as it relates to--
  - Day care facility on campus
  - Elementary, middle or high schools on campus
  - Student residential facilities
  - Dual enrollment students
  - Camps and enrichment programs
  - Orientation activities

- Know that the more transparent you are, the more policies you have in place, the more you will deter people at risk of abusing youth from applying to staff or volunteer positions at your IHE.


Questions
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