



MANAGING STUDENT ORGANIZATIONS: RISKS AND LIABILITIES

One of the most interesting (and potentially confusing) aspects of student life is the management of student organizations. These organizations provide opportunities for students to develop leadership skills and allow students with common interests to meet and engage in activities that are social, support specific causes, support students' academic learning, and other valid purposes. Colleges have different categories of student organizations with different levels of risk.

This Melissa Talks will go over a few of these organizations, the risks involved with each group, and how we can best protect the institution while providing a positive experience for our students.

TYPES OF STUDENT ORGANIZATIONS AND INSTITUTIONAL CONTROL

1. [Student Government Organizations \(SGO\)](#). Participating students are elected by the student body to represent student interests to academic administration. Institutional control over SGOs is generally limited to establishing rules related to eligibility for an elected or officer position, rules for the election, and administrative rules to ensure funds controlled by the SGO are managed in a fair and financially sound manner. Institutions may also have rules related to when SGO's may present to governing boards.
2. [Sanctioned and Recognized Student Clubs and Organizations](#). These student groups typically allow any student to join and are recognized under College policy. These groups range widely in purpose, but have received formal recognition to operate from the College, with ongoing oversight. Common organizations include club sports, academic interest groups, groups supporting various social justice causes, outdoor adventure groups, to name just a few. College control is outlined in the process for recognizing student clubs and organizations.
3. [Student Athletes](#). These students are recruited or otherwise selected to participate in the College's athletic division. Student Athletes often have their own code of conduct and system of sanctions within the athletics department, and must adhere to rules established by the NJCAA. Institutional control is outlined in the process for recognizing student athletes.
4. [Non-recognized and unsanctioned Student Organizations](#). These student organizations operate on the fringes, without formal College ties. In some cases, they may have once been recognized student organizations but may have been de-recognized as a sanction for misconduct or for failure to comply with annual requirements of recognition. These groups may also restrict membership in a manner that is contrary to the institution's non-discrimination policies applicable to student organizations and are thus not eligible for recognition. In some cases, the groups are students affiliated around a cause who self-

proclaim their existence as an organization at your College, but do not have the support or formal recognition from the College itself. There is little College control over these organizations except to say that there may be liability on the part of the College for incidents and issues involving unsanctioned groups or clubs.

RECOGNIZING THE ORGANIZATIONS

Colleges should have an established process by which students who share a common interest may be recognized as an official student club. The process should be published in policy or in a student organizational handbook and involves such criteria as:

- describing the purpose of the student organization;
- demonstrating sufficient student interest to justify expenditure of fees and/or administrative costs associated with group recognition;
- identification of an advisor, who may be a faculty or staff member that will be able to provide guidance and support to the organization (should not be a community member);
- a constitution and/or bylaws for election of officers, conduct of meetings; and
- commitment by the organization to adhere to the College's general policies and regulations, including an express requirement that groups seeking recognition must adhere to the College's non-discrimination policy when admitting members.

Common benefits of recognition for student organizations include the ability to utilize College facilities for meetings and activities, funding for group activities, budgeting assistance, fundraising, and limited use of the College's name and logo in materials. Some College's also provide insurance coverage for certain student organization activities, but many organizations are required to provide evidence of insurance to cover losses specific to the types of activities the group will participate in.

Always consider the **First Amendment considerations** pertaining to student organizations, such as freedom of association, religious freedom, and speech/content neutrality claims. First, remember that clubs recognized by the College must have open-access, meaning that membership cannot be restricted (i.e., refusing club membership to students who are not white), the club cannot violate the College/District anti-discrimination prohibition (i.e., club requires members and officers to sign a "Statement of Faith" and to conduct their lives in accordance with prescribed principles which included the belief that sexual activity should not occur outside of marriage or excludes anyone who engages in "unrepentant homosexual conduct"), and the College cannot restrict club funding based on its agreement or disagreement with the club's purpose (i.e., restricting College funding because the College does not agree with the reason or purpose of the club). The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views.

Applying Conduct and Health and Safety Policies to Student Organizations

All College documentation should state that student groups are required to follow the student code of conduct and other College policies. Documentation should also indicate that where charges are brought for group misconduct, individual members may also be subject to charges for the same conduct. Such policies are recommended to ensure that student affairs professionals apply the standards consistently and to provide guidance on when group, as opposed to solely individual, charges are appropriate. Always remember that like individual student sanctions, organizational sanctions are intended to be educational in nature. Suspension for a period of time or restriction on organizational activities, for example, may result in a change in leadership and membership for the organization that positively impacts the

organization's purpose and culture. If an organization may not operate on campus for the period of time, the institution has a greater likelihood of positively influencing an entrenched culture of non-compliance than sanctions of suspension or no recruiting.

Is a College (or the District) liable for actions of unrecognized or disavowed student organizations?

At any given time, on most campuses, there are a handful of student groups operating without the benefits of College recognition, or whose recognition has been temporarily or permanently removed by the institution. These organizations' lack of recognition does not preclude the hosting of private events or conducting other operations. **What should be considered in relation to these unrecognized groups and potential College/District liability?**

Generally speaking, courts will not find that student organizations are acting as the agent of the College/District and liability is typically reserved for cases where there is liability of the agent imputed to the principal (school). It is advisable to document all efforts to disavow the student organization.

If the College establishes or requires a supervisory relationship with student organizations, it may be liable for the activities of the organization. Colleges need to consider whether its policies and practices require or establish a supervisory relationship. The risk of institutional liability based on the existence of supervision must also be balanced with the risk of harm to students operating with little or no institutional guidance.

Off-campus activities

The location of activities may significantly impact the potential liability of an institution for the conduct of student organizations. It is important to encourage student organizations host events/activities on campus. Always consult Risk Management when addressing club activities/events, particularly if they are off-campus.

Requirement of Institutional Advisor

Recognized student organizations are typically required by College policy to have an advisor - often a faculty member or student affairs professional. The role of the advisor may vary depending on the specific purpose of the organization and its activities, but typically the advisor's role is to meet periodically with the group, or leadership, to review their planned activities, provide administrative guidance and support and to ensure the group is aware of applicable policies. Plaintiffs have asserted institutional liability premised on the requirement of an advisor, asserting that the College thereby controls and is responsible for the conduct of the group. Generally, such claims are not successful. Further, the fact that a faculty or employee acts as an advisor for the club does not mean that the student organization cannot invite controversial or political speakers to campus. If the invitation comes from the students, there is no violation of policy or Arizona statute involved.

Managing the Risk of Student Organizations

The following comes from Kaplin, William and Lee, Barbara, *The Law of Higher Education A Comprehensive Guide to Legal Implications of Administrative Decision Making*, 5th Ed. 2013 at 169.

Risk Avoidance: Eliminate dangerous conditions and activities. I know this is basically impossible to do. Colleges expend significant time, effort, and money to ensure that students have opportunities to be

engaged. Similarly, students select Colleges where organizations exist that reflect the student's interests and types of activities the student enjoys.

Risk Control: Colleges should develop policies and practices that reduce the frequency or degree of risky activities or conditions, including strengthening policies prohibit hazing, discrimination, underage drinking and other illegal activities. Colleges should also offer training for professional staff who advise student organization leaders on acceptable and unacceptable activities.

Shift the risk and potential liability away from the institution: This is accomplished with insurance policies (both institutional policies and requiring student organizations to obtain insurance for their activities), indemnification requirements in third party contracts (such as with independent contractors or third-party vendors providing services to student organizations), and requiring releases or waivers for specific events. This is a good practice and Colleges should involve the Risk Management office and the Office General Counsel to assist in these practices.

Acceptance of risk: Colleges may sometimes accept the risk because it is low and/or when the costs of other means of avoiding liability are high.

Mitigating risks associated with student groups begins with the policies and procedures that govern recognition of student organizations.

Student organizations are a vital part of higher education, but they carry substantial risks. Risks may be greatest when the relationship between student groups and their College is unclear. To protect against potential claims, the first step for a College is to adopt policies that establish the framework for student organizations.

These policies should describe the status of student organizations, the process for recognition (also called "registration"), and the associated privileges and responsibilities. Those who oversee or advise student organizations— including risk managers, business officers, and other staff and faculty as well as student government organizations— should regularly review and update policies, handbooks, and forms to identify issues that the institutions current policies and procedures do or do not address. Below are key elements to include in the institution's policies and procedures for recognizing student organizations:

Organization Information

1. **Name and purpose.** The group's name should not be confusingly similar to that of another entity or student organization. The name must comply with policies governing use of the College name.
2. **Constitution.** Require the group to submit a copy of its constitution and bylaws.
3. **Sponsored groups.** Ask the student group if it is seeking "sponsored" (or similarly titled) status with the College. Sponsored groups have active management, financial, physical, and administrative involvement by the College and as such, may be considered its "agents."
4. **Organization purpose.** Ask the group to classify its purpose by selecting from predetermined categories such as community service, departmental or academic, fraternity or sorority, political issues, international, military, publications, religious, residence life, sports and recreation, student government, and so forth.

5. Affiliations. Ask if the group has affiliations with one or more of the following: a local, state, and national organization or an academic or nonacademic department at the College. Verify that both the student group and affiliated organization are in good standing and that there are no pending civil or criminal matters that may adversely affect the student group.
6. Officers and members. Consider requiring that at least a majority of the group's officers and members be composed of students in good academic standing.
7. Advisor. Consider a requirement that the group have a faculty or staff advisor. Verify that the employee has agreed to abide by stated responsibilities, such as attending meetings and staying knowledgeable about the group's activities and finances. Consider whether the employee's advisory functions fall within the scope of his or her duties at the College.
8. Funding and budget. Ask the group to identify the funding sources it is seeking, such as student activity fees, grants, or discretionary funds. Ask the group to provide a tentative budget for proposed activities.
9. Other privileges. Ask the group to identify other privileges it is seeking, such as access to facilities and vehicles; use of the College name, logo, or artwork; permission to recruit members or fundraise on campus; insurance coverage; bank account; office space; mailbox; web page; or email address.

Activities and Travel

1. Scope of activities. Ask the group to describe the types of activities planned, their frequency, and their participants (members, guests, the College community, the public). Provide a checklist of activity types, such as community service projects, fund raising, lectures and speakers, on-campus and off-campus dances and mixers, conferences and retreats, intramurals or sporting events, concerts, special events, and new member orientation or initiation.
2. Travel. Ask if the group plans to travel in-state, out-of-state, or internationally. Ask how often such travel is anticipated and what means of travel will be used—personal automobiles, College cars or vans, commercial cars or vans, chartered buses, airplanes, and the like. Provide guidelines for approved forms of travel based on the length of trip and number of persons involved. Consider requiring the group to notify the College of specific group-related travel.
3. Risks. Consider asking the group to assign risk levels (for example, low, medium, and high) to their planned activities based on the probability and seriousness of physical, financial, or reputational harm to persons or the College. Such information may affect how close a relationship the College agrees to have with the group. Direct the group to work with a student affairs risk committee or administrator who monitors risks relating to travel, emergency response, event planning, and the like.

Conduct Provisions

1. Individual and group. Affirm that College codes of conduct apply to both individual student and group activities. Affirm that the group must comply with all applicable federal, state, and local laws. State the consequences for violating the conduct rules. Clearly state how violations will be adjudicated if different than individual charges.
2. Alcohol. Affirm that the group must comply with applicable laws and College policies on alcohol use at campus-related events.
3. Hazing. Affirm that the group must comply with the applicable laws and College policy that bans hazing.

4. Nondiscrimination. Colleges should consult the Office of General Counsel in drafting and enforcing policies to protect classes of persons on the basis of age, ethnicity, gender, disability, color, national origin, religion, sexual orientation or veteran status, and other factors.

Training, Events, and Other Policies

1. Training. Consider requiring each recognized student group to send its president and other officers to an annual orientation program to review applicable policies and procedures. Leadership and organizational development training are also recommended.
2. Events and facilities use. Refer student groups to the facilities use policy. Designate areas of campus that may be used without reservation or approval. For reserved areas, require groups to obtain advance approval to ensure compliance with health and safety regulations, adequate levels of police protection and security, accessibility for persons with disabilities, and cleanup after the event.
3. Fundraising. Specify guidelines on such aspects as authorized purposes, approval process, accounting of funds, payment of applicable taxes, and permitted locations.
4. Member recruitment. Specify guidelines on recruitment periods and permissible activities and approval process.
5. Other policies. Affirm compliance with other College policies, such as restrictions on the use of the educational institution's name, logo, and artwork; and advertising, promotion, and literature distribution.

Liability and Insurance

1. Third-party dealings and contracts. State whether or not sponsored organizations can enter into contracts on behalf of the College. If so, require that the educational institution approve all such contracts. Require independent organizations to specify in all contracts that they are independent of the College and responsible for their own contracts, acts, or omissions. Provide guidance to all student groups on contracting issues.
2. Event or general liability insurance. Consider requiring that all student organizations, or at least all "independent" organizations, obtain general liability or event-specific liability insurance. The College may procure a blanket policy to cover all recognized student groups and events; the cost may be recouped from student activity fees or other funding sources. Obtain certificates of insurance and require that the student group liability policies name the College as an additional insured.
3. Indemnification. Include an indemnification agreement for all independent student organizations or those with general or event-specific liability insurance coverage or both. The student groups should indemnify, hold harmless, and release the College from any claim, act, or omission resulting in bodily injury, property damage or alleged harm due to the group's use of the College name, property, or resources.

Special Group Issues

1. Sports clubs. Affirm additional requirements for clubs that include students, faculty, and staff participants who organize for recreation, instruction, or competitive purposes. Consider requiring that they submit injury reports, participant rosters, and assumption of risk and release of liability forms signed by each club participant.
2. Religious and political groups. Public universities are required to remain neutral on religious and political matters. Student activity fees must be distributed in a manner that is neutral to groups'

viewpoints. Reasonable time, place, and manner restrictions may be placed on assembly, speech, and other activities on public streets, sidewalks, and parks.

From the UE Toolbox. Recognizing Student Organizations: A Guide for Higher Education. United Educators' Members have free access to UE's risk management resources. For more information on United Educators' risk management tools, resources and courses, visit <https://www.edurisksolutions.org>



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