



# MHEC ANNUAL WORKSHOP

## MANAGING RISK IN TIMES OF ADVERSITY

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# Today's Session

History defines “risk” as “to dare” – a truth newly redefined in 2020.

Let's explore risk management across the entire spectrum of campus operations in the midst of crises and how leadership emerged from unexpected circumstances with new roles. We will review financial distress and economic risk factors, and how to consider navigation of the way forward for higher education. We will include a snapshot of the risk profile changes, new expectations of management at every level, and strategic solutions for both the short and long term.

# Risk Management – The Final Frontier

*“These are the strategies of the starship Enterprise Risk Management. It’s continuing missions, to explore strange new risks, to seek out new mitigation techniques and new claims advocacy. To boldly go where no Risk Manager has gone before”*



*Adapted from Star Trek Enterprise Series, public image, no RM harmed in study*

***LASER FOCUS: WHAT ARE THE RISKS FACING EDUCATION?***



# Resiliency is Paramount.

- Cost pressures coming from unexpected economic losses in tuition, room and board, downturn in endowments, athletic programs and research funding.
- Education experiencing an unprecedented level of uncertainty resulting from the current pandemic event spreading throughout the world.
- Higher Education is under increasing scrutiny to protect their students from campus violence, civil unrest, sport participation and in-person learning.
- M&A, consolidation and school closures are changing the higher education landscape.
- Trade sanctions, political positions and pandemic have directly impacted international students and faculty.
- Innovative technology is changing the delivery of education and demands on IT infrastructure

# In Response Educational Institutions are...

- Focusing on widespread cost reductions and cash management to strengthen liquidity.
- Establishing effective and open communications with professors, staff, students, alumni and community.
- Staying loyal to students and their families and keeping employees safe and healthy.
- Making significant changes to current teaching models - making them more innovative, flexible and cost-effective.
- Engaging in rigorous scenario planning to help map potential damage and devise ways to deal with it.
- Looking beyond the immediate crisis to create effective long-term strategies both to get through the present and to safeguard their futures in the new normal that will follow

# **Pandemic Brings Clarity of Strength and Opportunity**

## **– An Inflection Point**

Forces that are fundamentally reshaping societies—technological innovation, business-model disruption, societal inequality, and workforce automation—and it's clear that an epidemic of stress has been building, with the COVID-19 crisis as the tipping point.

- Different resource deployment for different propose (i.e., COVID working groups, etc.).
- Reinvigorated potential to include “niche” degree that create opportunity to reach new populations via certification, hybrid learning model, worldwide student outreach
- Financial crisis create career changes – adult learners on the move – higher education meets those emerging needs
- Cost of education at the crux of financial strategy – how do you define value of education?

# Digitization of Higher Education – Disruption Creates Opportunity

The pandemic forced schools to move quickly to remote learning and other delivery models, launched affordability initiatives, and found creative ways to support their students.

A new opportunity to fully embrace technology in delivery of core mission is now present.

Business continuity of operations relies on and creates internal demands on IT infrastructure (digital divide)



# Digitization Creates Cyber Risks

- **Cyber risk remains a top level risk for institutions/organizations** – although confidence in ability to respond is down
- **Ransomware incidents** are rapidly increasing and are getting more severe – impacting more institutions, insurer loss ratios, and the current rate environment
- Threat actors have looked for ways to get access to **proprietary research information** (including information related to COVID-19 vaccine studies)
- In the higher education industry **74% have increased focus on cyber insurance**
- **COVID-19** has increased dependence on technology for institutions and is changing the cyber risk profile for higher education
- **Underwriters are getting more disciplined in their processes** - (Requirements for more robust submissions, RDP vulnerability scanning, etc.)
- **Regulatory environment** and **silent cyber** continue to be a critical focus



# De-risking your rapid transformation.

*With progress comes new challenges that must be addressed.*



## RISKS

- Rising cyber dependency
- Data loss and recovery
- Emerging Litigation Management
- Workers Compensation
- Regulatory and Environmental
- Loss of funding



## STRATEGY

- Business Continuity and Crisis Response
- Digital transformation
- Social responsibility
- Alternative Risk Solutions



## PEOPLE

- Employee Practice Liability
- Educators Legal Liability
- Healthy Return to Campus
- Employee Benefit

# Remote Working at its Best



"He's been pretty much insisting on this ever since he got tenure."

# Key Findings—Mercer HR Report 2020



Working remotely appears to be largely successful:

90% report a positive impact or no change on **employee productivity**

75% report a positive impact or no change **on work life balance**

76% report a positive impact or no change on **communication and collaboration**



**Mental health** continues to be a challenge: 54% report a negative impact (improved somewhat from the prior survey)



Despite tight budgets, the vast majority (93%) of institutions are making **little to no changes in their health and welfare plans** – including 58% of institutions reporting no changes to wellbeing programs



As institutions adapt to the continuously changing environment, most are focused on strategic workforce analytics (75%), business processes review (63%), and DEI programs and policies (52%)

# CLAIMS DRIVERS OF INSURANCE COST AND RISK MANAGEMENT



# Dangerous Trends – Inclusion on Risk Management Strategy

Bloomberg  
Law

## NCAA, Colleges Hit With New Deluge of Concussion Lawsuits (1)

Posted Jan. 28, 2019, 10:50 AM; Updated Jan. 28, 2019, 1:09 PM

Steven M. Sellers

Legal Editor

INSIDE  
HIGHER ED

Published on Inside Higher Ed  
(<https://www.insidehighered.com>)

Home > Students sue universities for tuition and fee refunds

## Students sue universities for tuition and fee refunds

Submitted by Greta Anderson on April 20, 2020 - 3:00am

B

## \$60 million settlement proposed in sex abuse lawsuit against New England Jesuits, others

By [Laura Crimaldi](#) Globe Staff, January 25, 2019, 9:04 p.m.

PENN LIVE  
Patriot-News

Unwilling to pay to remove dangerous asbestos, universities across the U.S. claim it's safe to ignore

Updated Aug 17, 2020; Posted Aug 17, 2020

Coloradoan.

## CU athletes criticize administration for handling of sexual misconduct cases

**Miles Blumhardt** Fort Collins Coloradoan  
Published 6:00 a.m. MT Nov. 18, 2020 | Updated 12:41 p.m. MT Nov. 18, 2020

The Washington Post

Higher Education

University of Michigan reaches settlement with women who reported sexual harassment by former provost

By [Susan Svruga](#)

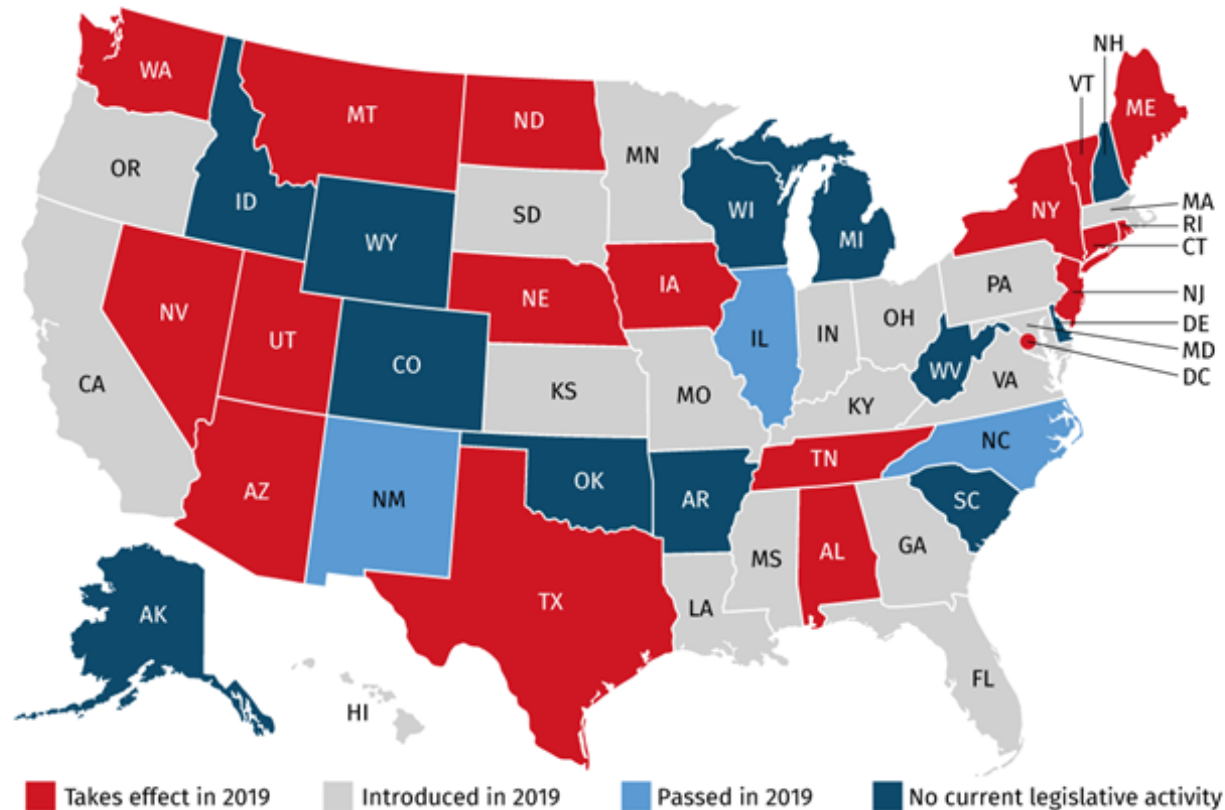
November 18, 2020 at 6:51 p.m. EST

Complex Liability Risks create new expectations around complex claims advocacy to prepare for and deal with complex and high profile claims. Those include, but are not limited to:

- Asbestos
- Environmental Contamination
- Toxic Tort
- Sexual Abuse, Misconduct, and Harassment
- Concussion / Head Injury
- Construction Defect

# Reviver Statutes

## Recent legislative activity — statutes of limitations for child sexual abuse cases



## Large Loss Report 2021 – Context from UE

*When United Educators (UE) initially started reporting these sizable settlements 26 years ago, we considered any six-figure settlement as “large” — outsized compared to typical settlements at that time.*

*This year, for the first time, we are reporting losses over a threshold of \$500,000, with many of these reaching the multimillions. Moreover, of the 38 damage awards and settlements reported below, 31 exceeded \$1 million. This offers a grim reminder of the ways that social inflation impacts education claims, with high escalation of not only settlements, but defense costs as well.*



Words to remember.....

Keep me safe....your duty is...

Known or should have known

Failure to disclose knowledge  
of prior offenses

Protected perpetrator, did you??

Take action

## Numbers to remember.....

\$8.5 Million

\$9.8 Million

\$84.8 Million

\$154 Million

\$14.4 Million

## Education Claim Awards Greater Than \$500K

### UE Large Loss Report – 2021 New Categories

Category of Claim	HE/ K-12	K-12	Higher Education
Asbestos	0/1	850,000	0
Accidents Resulting in Injury	0/1	1.5M	0
Retirement Plans	3/1	117.5M	3.8M-16.75M
Sick Leave Termination	0/1	2.56M	0
Termination Without Cause	2/0	0	2.55M
Title IX	1/0	0	900K-13.5M

## A Perfect Storm?



## BC – Highest Priority of ERM

- 44% --- Ensure risk issues are explicitly considered in decision making
- 40% --- Avoid surprises and “predictable” failures
- 24% --- Align risk exposures and mitigation programs
- 19% --- Institute more rigorous risk measurement
- 17% --- Integrate ERM into other management practices like strategic planning

2019 Survey of 150 HE Risk Managers

## Preparedness Redefined

- ERM – “not that pandemic wasn’t expected or on our top risk categories, but magnitude of the result was a surprise.....”
  - Risk radar prioritization where did pandemic fall?
- First event of its kind that impacted every industry in the US (vulnerabilities in the supply chain) and every Department/Division on our Campuses
- HE as an industry, experienced economic losses never considered in projections
  - Remote learning, research funding, occupancy of buildings, international travel,
  - New expectations around COVID testing, isolation and quarantine, and now vaccines
- Changing mindset – holistic / integrated approach vs. silo point of view

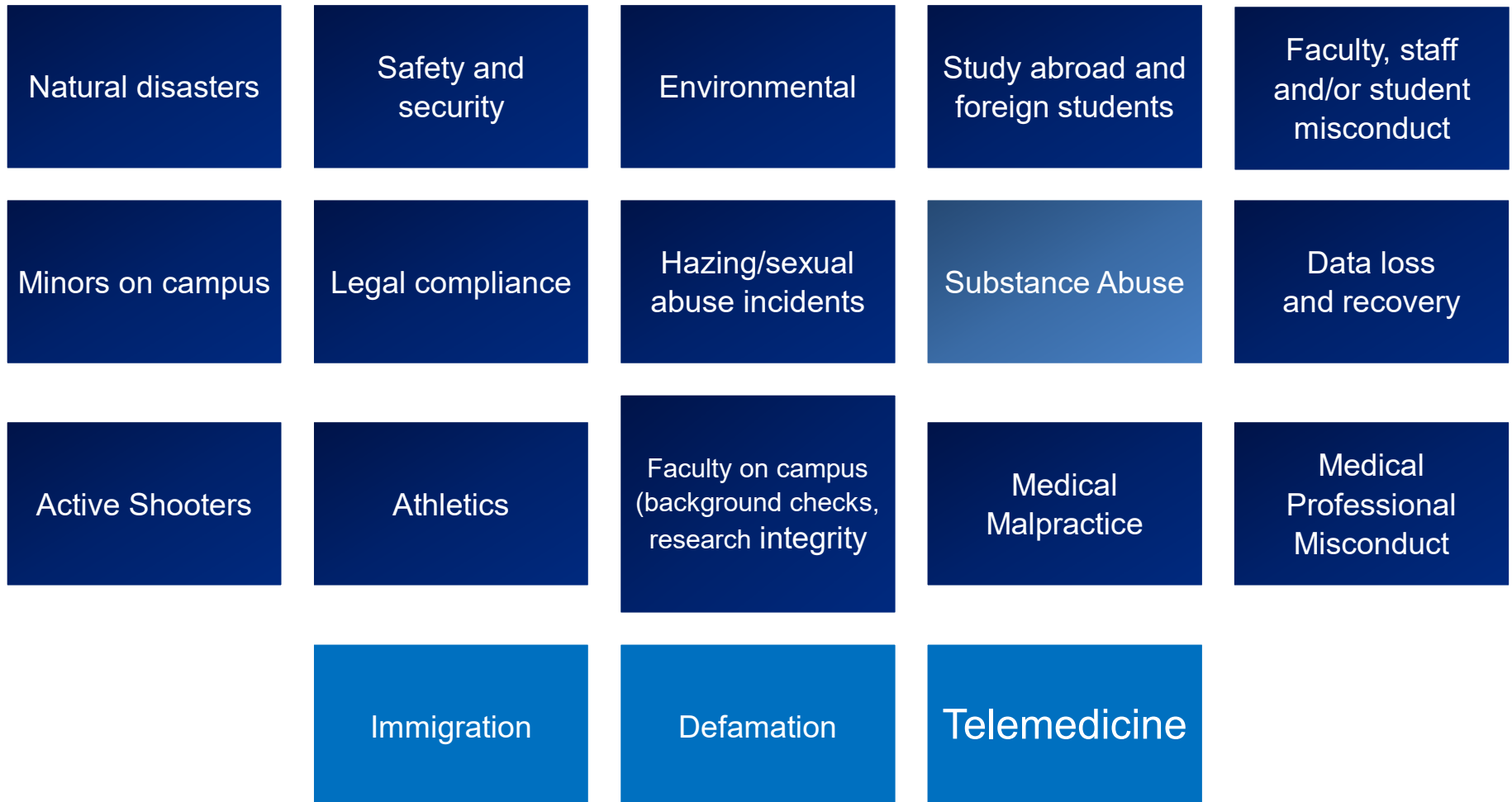
# Managing Risk with a Holistic View

- Risk Tolerance – how much do you accept –  
*Provides unique insights which support risk management decision-making for insurance purchase, quantification of your institutions ability to tolerate risks, capacity implications and appropriate retentions level based on short and long-term strategic finance goals.*
- What is the appetite to assume risk (i.e., SAM – can you assume any of this risk activity)
  - Take into account nuclear verdicts, social inflation, changing economy
  - How will the institution manage non-transferred risks
- Risk Transfer – how much can you transfer
  - Contract certainty
  - Outsourcing or consolidation of services with peers, Vendor compliance
  - Insurance (20% of solution)
    - Insurance capacity, Retention level, Affordability of purchase, Reduction in coverage

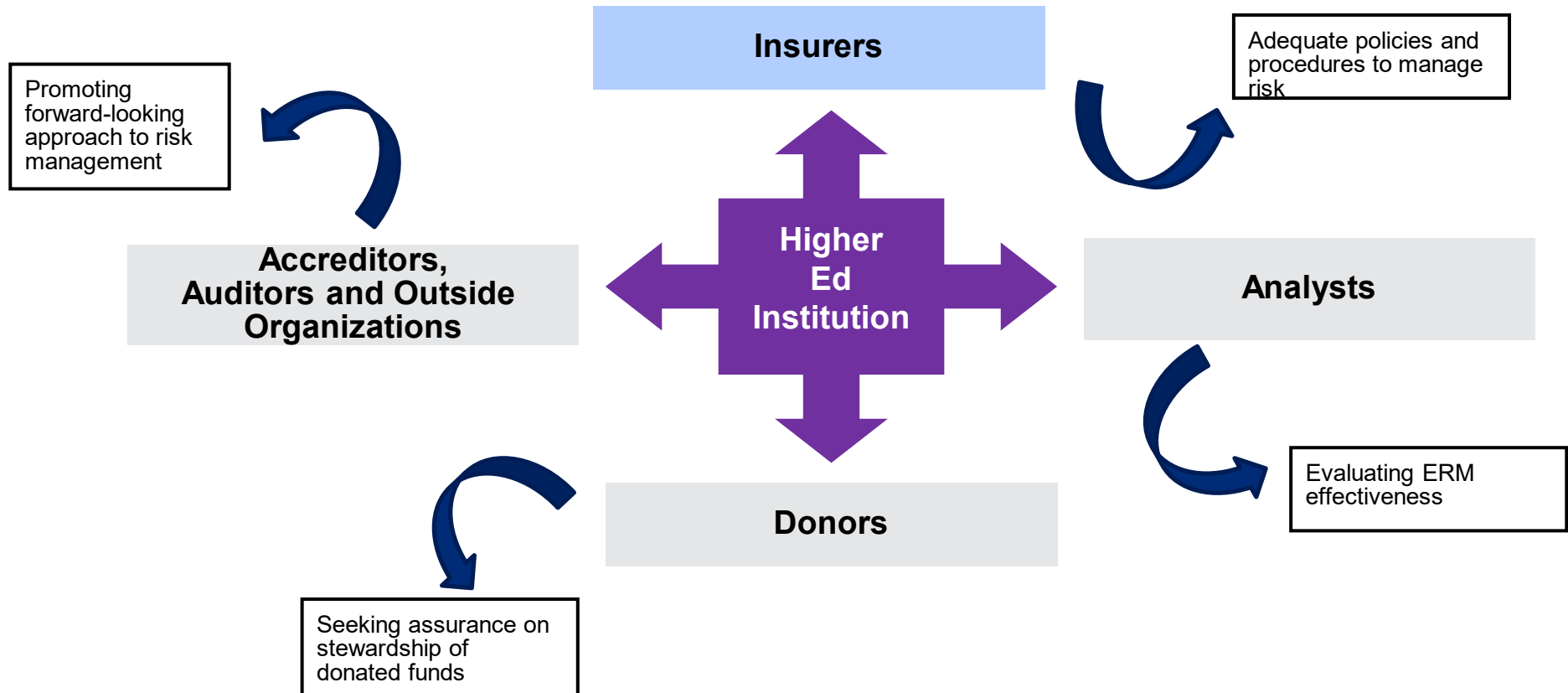
***The widespread economic fallout from COVID-19 has forced risk managers to rethink how and what they monitor to evaluate risks.***



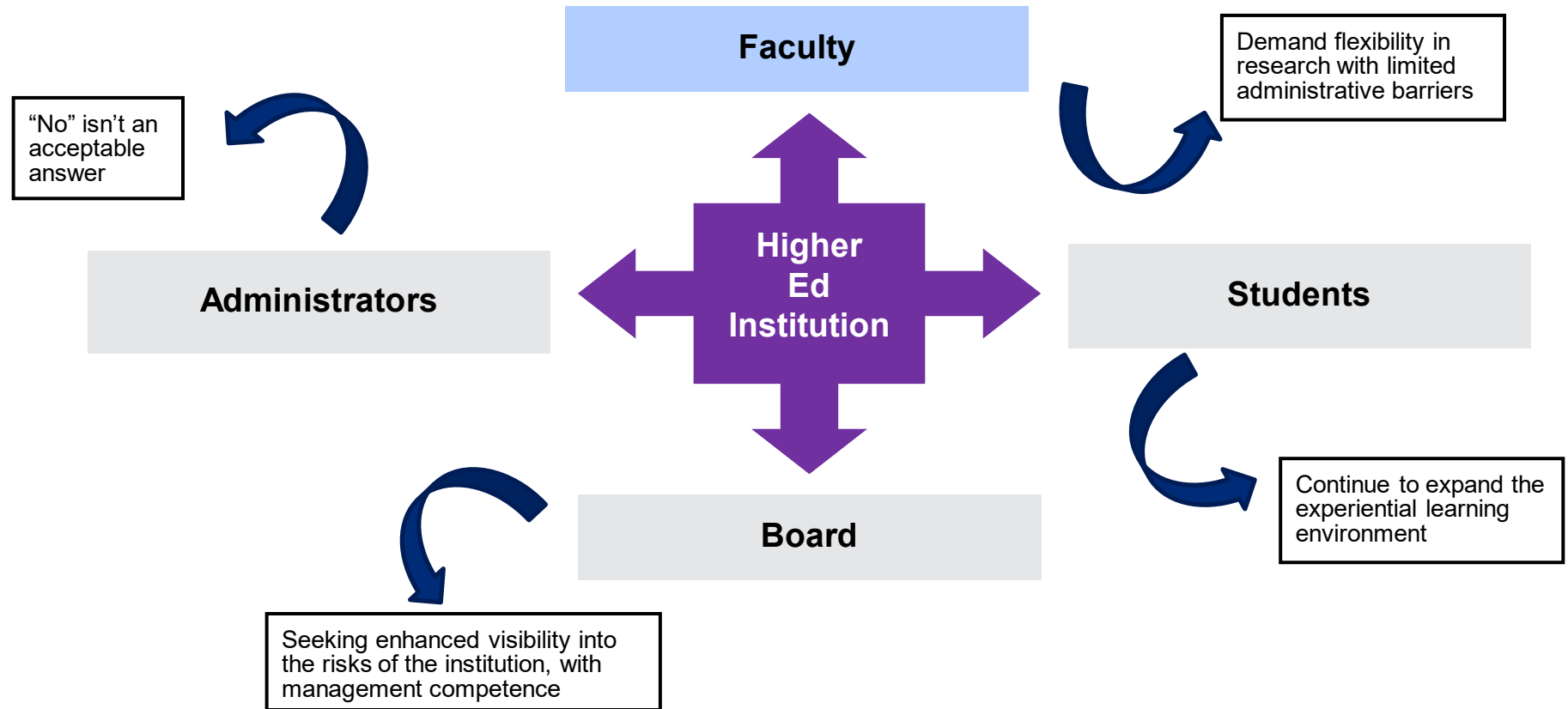
# What's a Risk Manager to Do?



# *External* Stakeholder Expectations Increasing



# *Internal* Stakeholder Expectations Increasing



# New Role – Institutional View of risk

## Financial Challenges

- Appropriate insurance limits
- Predictable losses and claims
- Remove budget uncertainty
- Alternative financing vehicles

## Operational Risk Management

- Allocation of risk amongst parties
- Increased focus on safety of students
- The basics still matter – we still have buildings, cars, and people

## Crisis Management

- New world of social media
- How you manage emergencies will be publicly adjudicated

# Calculated Risk -- Taking Control of Uncertainty?

- Interconnected financial, operational and strategic risks
  - Governance emergence
- Changing risk landscape alters strategy
  - Long-term financial commitments, often putting capital investment and expansion plans on hold
  - Lack the ability to obtain and quantify the data involved
  - Regulatory risks/unfunded mandates impact on costs
  - Reduction/streamlining of staff/role

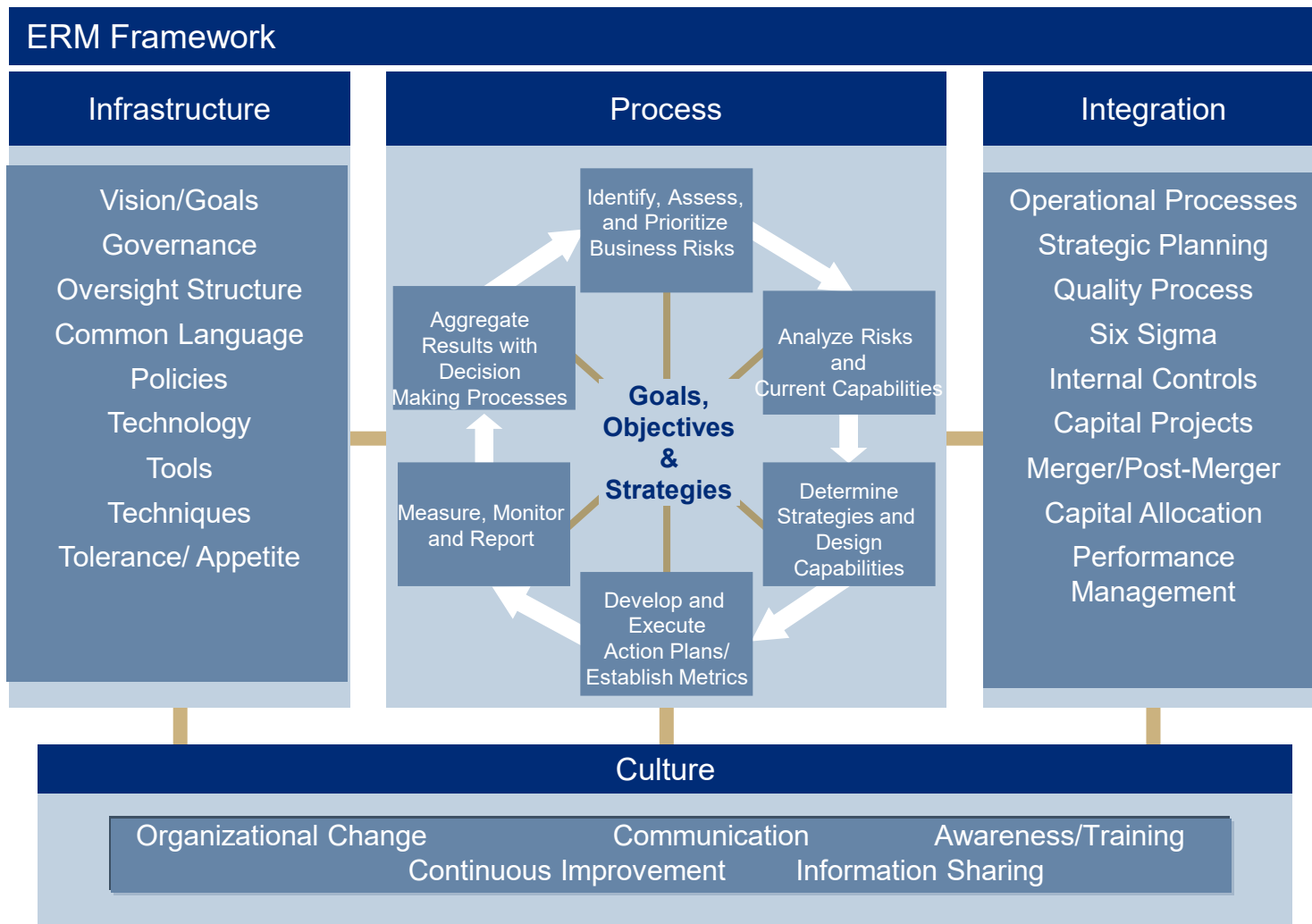
# Boards are Increasingly Accountable

Boards, through Presidential leadership, must adhere to several basic tenets that define fiduciary:

- The Duty of Care
- The Duty of Obedience
- The Duty of Loyalty
- The Duty to Act in Good Faith
- The Duty to Serve the Public Interest



# Develop Supporting Infrastructure



# Risk Assessment and Management Process





# Resiliency in Transformation – Three Ways to Consider

- **Plan ahead.**

- Responding to a crisis like the COVID-19 pandemic requires leaders to take decisive short-term actions. But they also need to dedicate time to develop longer-term strategic thinking. One way to do so is to create plan ahead teams that include people identified as future leaders. The team should be tasked with developing scenarios, recommending actions, and identifying trigger points for escalation to the university's board and administrative leadership.

- **Stakeholder engagement.**

- Universities should engage early and often with important stakeholder groups—including faculty, staff, students, and parents—when making critical strategic decisions. Leaders must be transparent about decision-making processes, establish clear timelines, and meet them. By embedding engagement into decision making, rather than as an afterthought, the shared governance culture of higher education can be respected, while still allowing universities to act quickly.

- **Board governance.**

- in moments of crisis, boards can play a critical role. But that role must not slip into micro-management. Board members should evaluate their operating model—the board's size, structure, and decision rights—to ensure they provide the necessary governance without interfering with administrators.

# Understand Operational Strengths, Weaknesses and Vulnerabilities

## **Return to the Workplace**

Understand operational strengths, weaknesses and vulnerabilities now faced by your institution to better prepare for the future

## **Supply Chain Resilience**

Establishes supply chain impacts on margin reporting tools to quantify potential exposures – regardless of causation

## **Cyber Assessment and Mitigation**

Increased use of technology raises cyber threats and the need to reassess risk mitigation strategies and insurance protection.

## **Medical Consulting**

Develop a highly experienced team of health care professionals to navigate the pandemic and provide customized medical advice.

# Prevention Has Never Been More Important

# Policy and Procedures Without Boundaries

- Emergency management (crisis response)
  - Integrated approach, i.e., Emergency Operations Center (EOC)
    - Executed immediately when pandemic forced closure of campuses nationwide
    - Global response in addressing travelers abroad
  - Coordinates with department and campus representatives to determine key risks for which emergency plans are needed and communication framework

# Policy and Procedures Without Boundaries

- Business continuity plans
  - Ongoing management of operations during height of crisis and going forward
  - Develops integrated business continuity plan
  - Enhanced emergency response plans
- Redefined crisis – no longer a short-term event
  - Blurred lines on beginning, ending, and future implications
  - Does EOC become a standard operating procedures vs just “emergency” and how does this transition into daily operations???

# Observations 2021 and Beyond

- New Expectations of Managing Risk in Higher Education
  - Holistic risk perspective
    - Clarify the interrelationships among risks within an organization and
    - Implement a coordinated risk approach across an organization's operating functions.
  - Develop a process to optimize risk management performance
    - Include Financial Modeling for increased retentions, claims in excess of insurance limits and claims outside of insurance coverage, etc.
    - Shifting insurance landscape
    - Integration of all core competencies
  - Focus on resiliency (nimble)
  - Vulnerability scans – redefined

# Risk Manager's Gambit" Optimizing Your Risk Management Strategy



## **Rethink Enterprise Risk Management**

Efforts based on lessons learned from COVID-19 and increase focus on operational resiliency and emerging risks.

## **Senior Management and Board Pandemic Advisory**

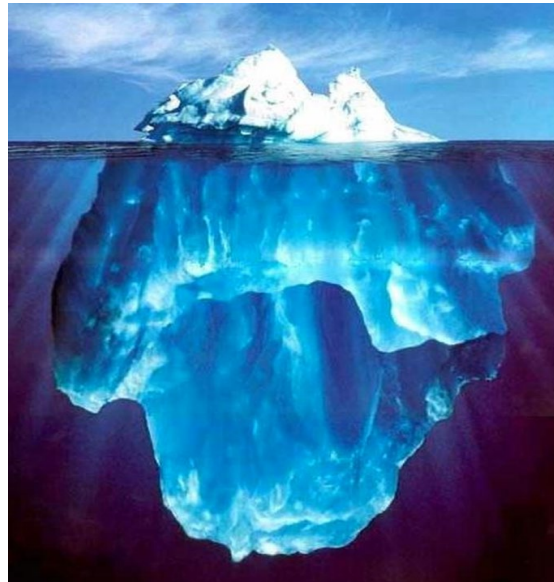
Custom models, frameworks, and analytics for critical business decisions

## **Pandemic Insurance: --Consider future protection**

## **Global Program Design Efficiencies**

Achieve an efficient consolidation of risk financing and insurance programs, manage program cost, establish control and streamline.

*“It wasn’t the risk we knew about that concerned us, but the risks we were unaware of that worried us the most.”*





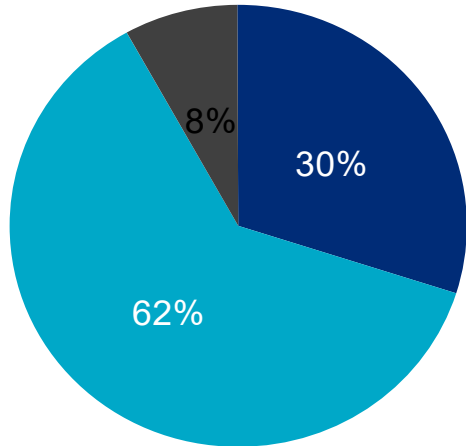
## Sample Goals of an ERM Process

- Increased awareness and consideration of risk in decision-making
- To formally bring risk into strategic decision-making, budgeting and resource allocation
- To bridge departmental silos and develop a center of excellence for managing risk, drawing on the expertise of highly skilled managers
- Assure greater business continuity
- Reduce operational surprises and losses

# Strategic Risk Management: Expectations and Opportunities

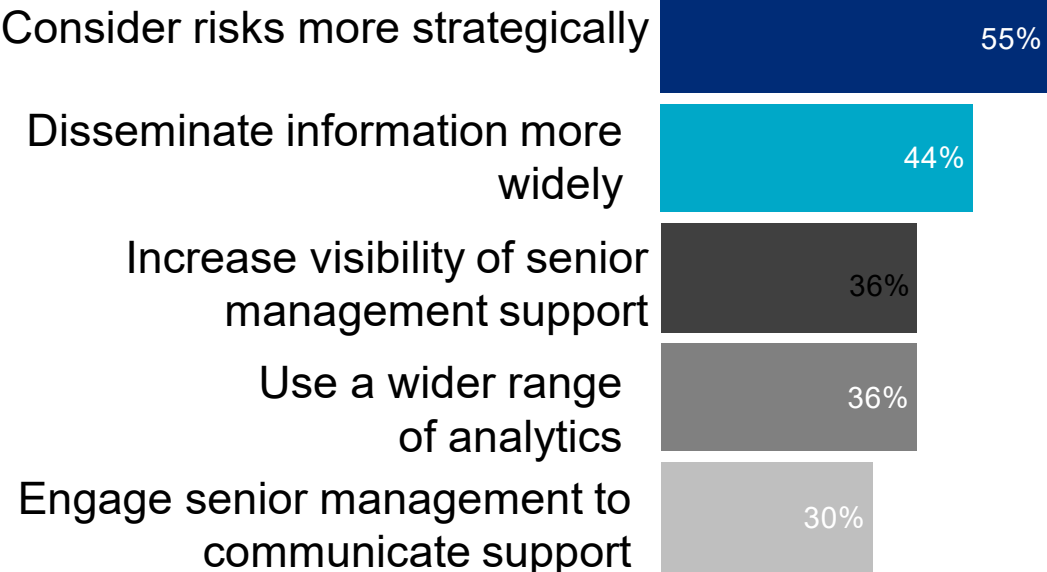
## Effectiveness of risk committees

How effective are cross-functional risk committees?



Very effective=62%  
Somewhat effective=30%  
Not effective=8%

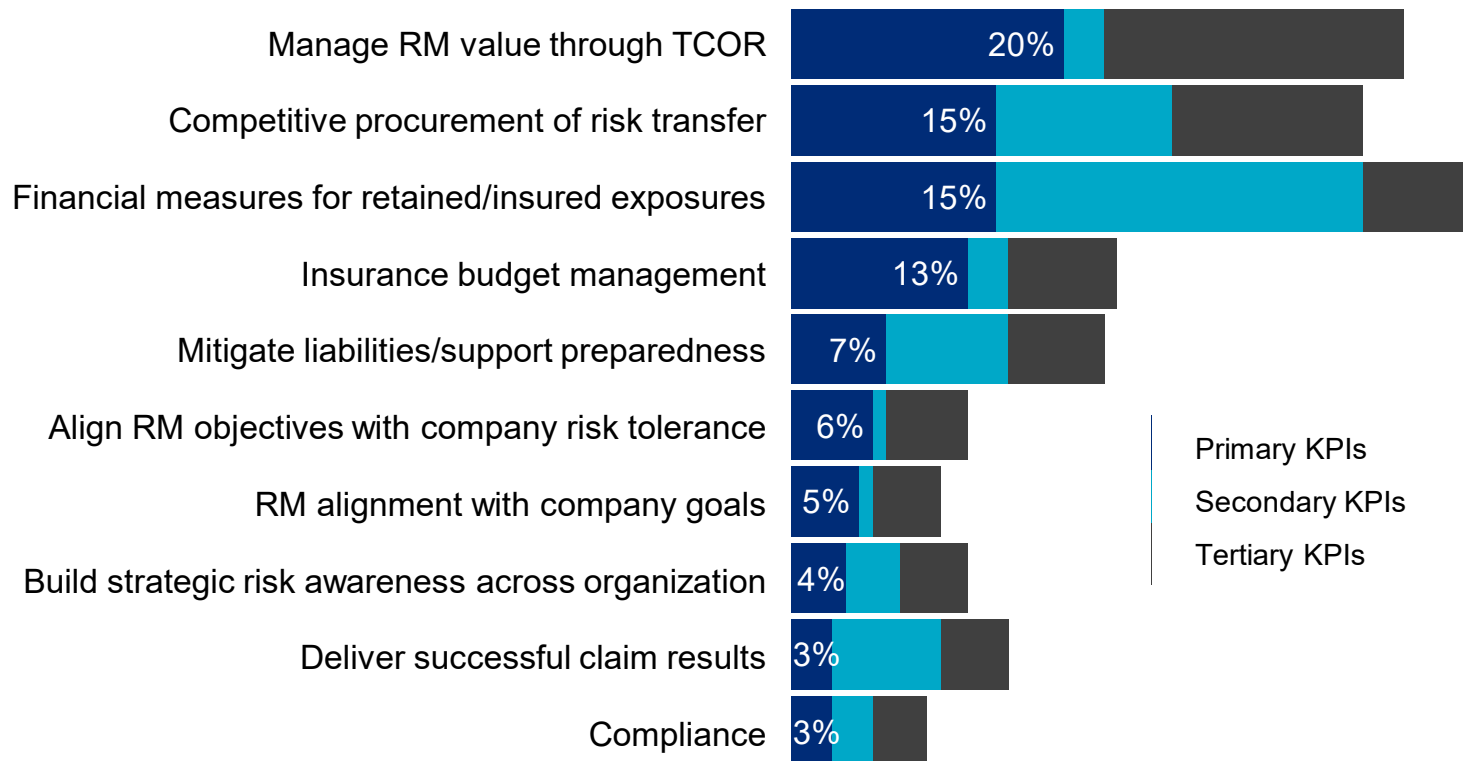
How could your organization’s cross-functional risk committee become more effective?



Source: *Excellence in Risk Management VIII*

# Strategic Risk Management: Expectations and Opportunities

## Key performance indicators (KPIs)



Source: *Excellence in Risk Management VIII*

## 2020 and Beyond--Impact of the challenges that emerged or accelerated in 2020

### “Flexible Work Arrangements”

Remote and flexible working arrangements beyond the pandemic was the #1 response

### “New Hiring Strategies”

Review staffing models and utilizing new sourcing models to represent a more diverse and representative institution

### “Enrollment Decline”

Creatively addressing continued enrollment decline in this ever-changing environment

### “Long-term Financial Concerns”

Many institutions are worried about the negative financial impact COVID-19 will have long-term as the workforce and student population changes

### “Online Learning”

Online learning will continue to be a big part of our academic programming. This will impact staffing models (faculty and staff roles) as well as related HR programs.

Institutions will need to continue to lean into technology to increase agility to the ever-changing environment.

# Risk Management – 2021 and Beyond



# QUESTIONS?

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## Large Loss Report 2021 – Context from UE

*When United Educators (UE) initially started reporting these sizable settlements 26 years ago, we considered any six-figure settlement as “large” — outsized compared to typical settlements at that time.*

*This year, for the first time, we are reporting losses over a threshold of \$500,000, with many of these reaching the multimillions. Moreover, of the 38 damage awards and settlements reported below, 31 exceeded \$1 million. This offers a grim reminder of the ways that social inflation impacts education claims, with high escalation of not only settlements, but defense costs as well.*

# Education Claim Awards Greater Than \$500K From United Educators (UE) Large Loss Report

Category of Claim	HE/ K-12	2021	2020	2019	2018	2017	2016	2015
Discrimination	3/3	800-1.46M	250k-850k	400K-850K	6.5M	750-850K	4.85M	50K-2M
Wrongful Death	1/4	1M-8M	0	423K-14M	1.26M	0	1M-20.5M	375-700K
Negligence			0	INCL WD	0	900K	0	700K-4.5M
Sexual Harassment	5/7		**	0	1M-500k	2.45M	0	250-650K
Sexual Assault/ Molestation	18/43	500K-73M	300K-215M**	250K-500M	20M-275K	250K-88M	4.5M	700K-1.28M
Concussion			0	5.87M	1.1M	10.5M	1-1.03M	75M
Abuse of Special Education			0	0	3.85M-900K	0	2.2-5.3M	920K-8M
Civil Rights			650K	0	0	0	900K	0
Employment			0	0	0	0	335K-4M	0
Free Speech	1/0	505K	0	550K	0	0	325-600K	0
Medical Care/ Research/False Claims	6/0	1M-4.5M	50M-112.5M	0	0	0	840K	9-10M
Unequal Pay			0	250K-2.7M	0	0	0	0



# Education Claim Awards Greater Than \$500K

## UE Large Loss Report

Category of Claim	HE/ K-12	2021	2020	2019	2018	2017	2016	2015
<b>Disabilities</b>		0	0	1M-1.3M	0	0	0	0
Breach of Contract		0	0	425K	0	750K//2.8M Legal fees	0	0
Facilities		0	0	0	0	7.1M	0	0
Hazing		0	0	0	250K	795K-1M	1.1M	0
Hiring & Firing		0	0	0	0	0	0	0
<b>Gender Issues</b>		0	0	<b>780K- 800K</b>	0	0	0	0
Defamation	0/1	1.75M	0	0	375K	0	0	0
Bullying	0/1	500K	0	700K	700- 262K	0	0	0
Slips & Falls		0	0	0	0	0	0	0
Retaliation	1/0	360K	360K	0	0	0	0	0
Whistleblower		0	0	0	275K	0	0	0
Wrongful Termination	2/2	300K- 4.9M	300K- 4.9M	0	750- 250K	0	0	0
Workplace Issues		0	0	500k- 1.25M				

# Enterprise Risk Management – Do's and Don'ts

## How Does ERM Support Success?

- Unmanaged risk can impact an organization's ability to meet its goals and objectives in an efficient and effective manner - i.e., standing in the way of the University's success
- It is a balancing act between:
  - Acceptable risk (opportunities) and unacceptable risk (liabilities)
  - Missed opportunities and unexpected surprises . . .
  - Excessive risk and excessive control

# ERM Compliance Factors:

## Common Elements of ERM Frameworks

- Outline a process for ERM implementation that includes:
  - Risk identification and assessment
  - Risk prioritization
  - Risk solution design and implementation
  - Routine monitoring and reporting
  - Communication
- Recognize that good risk management must be embedded into the organization's day to day activities
- Consider both the 'upside' and 'downside' of risk
- Recognize that not one size fits all

# Getting Started

## Do's

- Secure Sr. Leadership support
- Create linkage to strategic plan
- Focus on high impact risks
- Focus on mitigation planning and results measurement
- Look for quick wins
- Leverage SMEs

## Don'ts

- Embark on ERM just because you “have to”
- Just focus on the Risk Assessment
- Fail to establish a risk framework, or infrastructure, to define, identify, assess, and address risk on an ongoing basis

## Getting Started (cont'd)

### Do's

- Set clear goals and desired outcomes
- Establish a discipline around risk-based decision-making
- Look for quick win opportunities
- Clearly define / establish responsibility and ownership

### Don'ts

- Enable micro-management by board
- View ERM as a project
- Over-emphasize Heat Map
- Be driven by exposure to potential liability
- Inappropriate use of legal counsel

# Keeping Going

## Do's

- Maintain tone at the top
- Engage multiple stakeholders and champions
- Leverage existing management processes and approval pathways
- Maintain clear risk governance structure with defined roles and responsibilities
- Continuous emphasis on value

## Don'ts

- Lose focus on maintaining top level support and engagement
- Rely on a single change agent
- Keep ERM activities “close to the vest”
- Focus on the risk assessment alone

## Keeping Going (cont'd)

### Do's

- Align with strategic objectives and operational priorities
- Diligently pursue continuous improvement
- Maintain predictable cadence

### Don'ts

- Do the same thing every year
- Fail to follow through on risk treatment activities
- Emphasize the punitive aspects of the process



## Failing Forever Vs. Failing Forward

- Your first take on ERM will need to be improved
- Don't let perfection be the enemy of progress
- Need to build an expectation that your ERM efforts are a thoughtful process, but nonsuccesses are inevitable. And not only inevitable, but essential to improving your program
  - Cultural reaction around missteps needs to be managed and mindful → failure does not = total loss

## Common Pitfalls

- Failure to get secure leadership support
- Focus on the Risk Assessment alone
- Failure to focus on both upside and downside risk
- Reluctance to increase accountability and ownership of risk
- Information used punitively instead of constructively
- Forgetting to celebrate successes
- Failure to implement and track controls

