

KEY COMPONENTS OF PREVENTIVE LAW

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5.1 OVERVIEW

The processes and strategies discussed in this chapter are central to the preventive law process. They bridge the discussion of the five stages of the preventive law process in Chapter 2 and the application throughout Chapters 6 through 15 of these stages to eliminate, reduce, or at a minimum manage the risks of particular activities.

Employed properly, the processes and strategies outlined in this chapter are the key components of the preventive law plan; they are integral to managing a wide variety of risks threatening a number of serious claims. For example, implementing fair complaint procedures is vital to managing the

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risks of sexual-harassment claims by employees¹ and controlling the risks of student claims, such as those relating to academic discipline² or accommodating a disability.³ Although complaint procedures will differ significantly depending upon the context, they share basic characteristics to ensure due process, such as an impartial hearing officer and the right to be advised of the charges.⁴

Conversely, where the key processes and strategies are deficient or absent, they create serious risks themselves! This is one reason why they are a prime focus of the legal audit.

The most important components of any institution's preventive law program are:

- promulgating unambiguous policies and efficient procedures (Section 5.2);
- adopting fair complaint procedures (Section 5.3);
- conducting thorough and reliable investigations (Section 5.4);⁵
- preparing accurate documents and implementing a reliable records-management program (Section 5.5);
- drafting clear and workable contracts, and administering them consistently (Section 5.6);
- designing effective training programs (Section 5.7); and
- developing a positive institutional image, especially from positive media relations (Section 5.8).

Developing and implementing a comprehensive preventive law program can follow more manageably, less expensively, and more successfully, if a school or college first devotes its attention to mastery of these key components.

Given this chapter's focus on policies, procedures, and contracts, we note at the outset how *careful and selective borrowing* of the work product of others can be helpful. Almost every school and college has confronted the same intractable problems discussed in this book, and many have developed

1 Section 7.6 discusses sexual harassment in employment.
2 Section 9.6 addresses student discipline.
3 Section 10.4 highlights considerations about student disabilities.
4 Section 4.3 lists elements of due process.
5 Chapter 15 provides in-depth information about the investigation process.

strategies to manage these risks. An institution can learn much from the successes and failures of others. Instead of reinventing the wheel, institutional policymakers can take advantage of sample policies, contract forms, and training materials available from other institutions and from professional organizations, such as the American College Personnel Association, the Association of Governing Boards of Universities and Colleges, and the other organizations listed in Appendix 2-1.

It would be a serious mistake, however, to adopt wholesale any model policies, standard contracts, or other form documents. No one policy, contract, or other document—including any in the appendices of this book—is appropriate for every institution or situation. Because laws change over time and differ considerably from state to state, institutions need to consider whether any borrowed policy, contract, or document is appropriate to the statutes, regulations, and judicial decisions of its state.
