



No Good Deed Goes Unpunished: When Well-Intentioned School Policies Actually Create Risks

Insights

6.30.17

There's no question that today's social and political climate has affected school campuses across the country in ways that have not been experienced in decades. A steady increase in the diversification of student bodies coupled with an increase in social and political activism has left schools facing a growing number of bias and discrimination issues, ranging from formal complaints of discrimination to campus protests. Schools from coast to coast are grappling with how best to address these issues while staying true to their missions and values, complying with the law, and simply doing what they consider "the right thing."

"Wanted: Social Justice Activists"

One school that attempted to address these issues in a proactive manner ended up getting caught up in a swirl of controversy over its actions. Earlier this year, the University of Arizona made headlines when it advertised a job posting on its website for "social justice activists." The duties for the position, according to the online posting, included reporting bias incidents or claims to university residence staff, planning social justice programs for the residence halls, and fostering inclusive communities and positive interactions. The position was intended for students, would pay \$10 per hour, and would require 15 hours of work per week.

Despite the well-intended motive behind the action, the university's creation of this position resulted in quite a bit of backlash. Critics argued that the move created a class of "speech police" who were permitted far too much discretion. They complained that this situation could easily create a mechanism for students to improperly target other students for their opposing viewpoints – which could result in unintended harassment, bullying, and intimidation. In fact, the university received so much backlash that it recently announced applications would no longer be accepted while it reevaluates both the job title and responsibilities.

Bias Response Teams Have Proliferated

While the University of Arizona appears to be the first school to create such a paid student position, hundreds of institutions across the country have assembled bias response teams and comprehensive bias reporting policies to carry out a similar mission. These developments have yielded varying responses – both positive and negative. Some believe the creation of such policies and teams blurs the distinction between articulating a position and endorsing it, leading to some of the same problems as created by the social activist position.

For example, the bias response team at the University of Oregon suggested faculty add the following “classroom behavior” statement to their syllabi: “no racist, ableist, transphobic, xenophobic, chauvinistic, or otherwise derogatory comments will be allowed.” Similarly, at Dartmouth College, a student-run team demanded the college ban from campus the use of “any racially charged term” such as “illegal immigrants.”

These types of policies could exponentially increase your school’s legal exposure, as students argue that an ever-widening list of comments and behaviors go so far as to violate school policy. Depending on your school’s handling of these incidents, students could bring discrimination and breach of contract claims against your institution, among many other possible legal actions. In the rush to do the right thing and respond to current events, you must be mindful that you are not creating policies and protocols that may actually increase your exposure and legal liability.

What Should Your Institution Do?

Unfortunately, it is not a question of if a school will have to face a bias or discrimination report, but when. It is critical for your school to begin examining your current policies to determine whether they adequately address these issues, and not rush to create or implement new procedures and protocols that may only create additional areas of legal risk. Investing in a comprehensive audit of your policies and offering training for faculty and students on these sensitive issues are two measures that all schools can and should adopt in today’s climate.

For more information, contact the author at Cpinares-baez@laborlawyers.com or 954.525.4800.

Industry Focus

Education

Higher Education