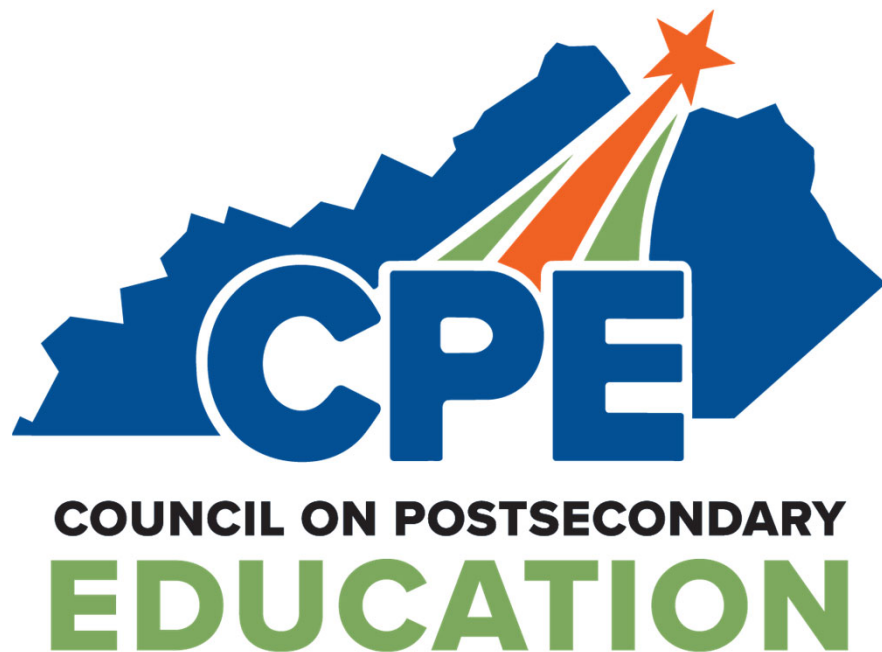




# *Legal Insights in Higher Education*

**Travis Powell - Moderator**

Executive VP & General Counsel - CPE

**Judge Wilson**

General Counsel – Berea College

**Dana Fohl**

Vice President, Compliance and University Counsel –  
Eastern Kentucky University

**Jim Newberry**

Member – Steptoe & Johnson, PLLC

# Who Is the Client?

When a lawyer represents a university,  
who exactly is the client?



The Board?



The President?



Faculty?



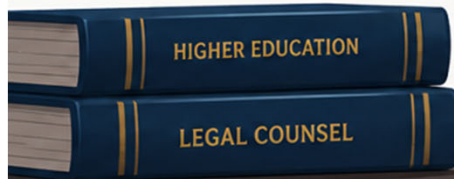
Staff?



Students?



The University?





## Higher Education – A Highly Regulated Industry

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- 100s of Federal, State, and Local Laws and Regulations
- [https://www.nacua.org/compliance-matrix/?mg\\_page=1&taxonomies=](https://www.nacua.org/compliance-matrix/?mg_page=1&taxonomies=)



# **2026 Top Risks Report:** Insights for Higher Education

*Each year, United Educators (UE) members share their institution's most pressing risks in the Top Risks Survey. This report reflects responses from 267 colleges and universities that completed the survey between May and October 2025.*

### Top 10 Risks



1. Admissions and Retention



2. Data Security/Cybersecurity



3. Compliance (Non-Title IX/VAWA)



4. Operational Pressures



5. Facilities and Deferred Maintenance



6. Funding/Financial Stability



7. Student Mental Health



8. Recruitment and Hiring



9. Public Safety



10. Athletics



## 01. Admissions and Retention

72%

### Mitigation Efforts:

- Launch innovative academic programs aligned to market demand.
- Update online program, course strategy, and offerings.
- Change discounting and pricing strategies.
- Reduce admission selectivity.
- Strengthen relationships with local schools and transfer partners.
- Enhance student retention programs and tools, including mental health support.

### UE Resources:

[Reputational Risk Toolkit](#)

[Avoid Misrepresentations to Prospective and Current Students](#)

[Ensure Integrity in Your Admissions Process to Help Avoid Claims](#)



## 02. Data Security/Cybersecurity

52%

### Mitigation Efforts:

- Increase compensation to hire and retain cybersecurity staff.
- Train employees and students more frequently on data security.
- Create or update data governance strategy.
- Conduct third-party risk assessments.
- Practice ransomware and network outage response plans.
- Implement artificial intelligence policy and/or usage guidelines.

### UE Resources:

[Data Security Course Collection](#)

[Tabletop Exercise Library](#)

[Generative Artificial Intelligence Use Policy or Guidelines for Employees](#)

[Don't Take the Bait: Defending Institutional Data From Phishing](#)

[Manage the Risks of Remote Learning in Higher Education](#)

[Are You Prepared for "Smart" Glasses?](#)



### 03. Compliance (Non-Title IX/VAWA)

41.5%

#### Mitigation Efforts:

- Centralize compliance functions.
- Evaluate compliance policies and procedures in complex areas.
- Seek specialized outside counsel.
- Create process for monitoring statutory and regulatory changes.
- Update electronic privacy and record retention policies.

#### UE Resources:

Identify Barriers to Completing  
Mandatory Employee Training

Manage Faculty Who Resist Disability  
Accommodations Requests

Understand Your Duty to Make  
Technology Accessible

Recent Executive Orders and  
Actions Impacting Education

Recent Federal Agency Actions  
Impacting Education

Checklist: Federal Stop Campus  
Hazing Act



## 04. Operational Pressures

30%

### Mitigation Efforts:

- Consider partnerships, mergers, and acquisitions.
- Evaluate budget model and budgeting practices.
- Review tuition pricing model and financial aid strategy.
- Expand auxiliary revenue streams and leverage campus assets.
- Reorganize institutional operations.

### UE Resources:

[Enterprise Risk Management  
Resource Collection](#)

[Guide to Manage Risks Associated  
With Program Change](#)

[Checklist: Program Reduction or  
Discontinuance](#)

[Checklist: Change of Institutional Control](#)

[Checklist: Institutional Closure](#)

[Considering Staffing Reductions?  
Know Your WARN Act Obligations](#)

[Checklist: Employee Layoffs Driven  
by Financial Pressure](#)



## 05. Facilities and Deferred Maintenance

27%

### Mitigation Efforts:

- Conduct routine campus hazard walkthroughs.
- Implement hazard reporting system.
- Launch capital campaign for maintenance and new construction.
- Review and update contracts pertaining to facility maintenance.
- Partner with property management and development companies.
- Create prioritized or strategic deferred maintenance plan.

### UE Resources:

[Slips and Falls Resource Collection](#)

[Checklist: A Guide for Reviewing Contracts](#)

[Reduce Serious Injuries in Residence Halls Through Informed Facility Management](#)

[Good Signage = Good Risk Management](#)

[Take Care During Campus Repairs and Construction](#)

[Campus Parking Lots: Common But Risky Locations](#)

[Climate Change Requires Reevaluating Tree Maintenance Plans](#)

[Rooftops and Other Dangerous Places](#)



## 06. Funding/Financial Stability

24%

### Mitigation Efforts:

- Invest in enrollment and retention strategies for new demographic groups.
- Accelerate or launch fundraising campaigns and increase outreach to alumni network.
- Consider corporate/nonprofit grants or sponsorships.
- Launch or expand auxiliary revenue sources, such as online programs.
- Diversify sources of funded research.
- Evaluate renewable energy investments or sustainability initiatives.

### UE Resources:

Enterprise Risk Management  
Resource Collection

Charge Back the Cost of Risk

Considering Staffing Reductions?  
Know Your WARN Act Obligations

Checklist: Employee Layoffs Driven  
by Financial Pressure



## 07. Student Mental Health

22%

### Mitigation Efforts:

- Train faculty and staff to support students' mental health.
- Launch social skill development programs for students.
- Hire remote counseling providers to expand capacity.
- Create mental health programs to support marginalized identity groups.
- Practice substance misuse and suicide response plans.

### UE Resources:

[Student Mental Health Resource Collection](#)

[Student Mental Health Course Collection](#)

[Tabletop Exercise Library](#)

[ProResponse®](#)

[Prevent and Respond to Fentanyl Overdoses](#)

[Evaluating Your Mental Health Policies: A Series of Checklists](#)



## 08. Recruitment and Hiring

20%

### Mitigation Efforts:

- Increase pay, benefits, and work schedule flexibility.
- Conduct compensation study and act on its findings.
- Outsource administrative functions to third parties.
- Refocus performance evaluations on engagement and career growth.
- Conduct offboarding interviews to find ways to improve employee experience.
- Offer employee mental health support.

### UE Resources:

[Employee Offboarding Guide](#)

[Using Artificial Intelligence Tools in the HR Lifecycle: Risks to Consider](#)

[Considerations in Skills-Based Hiring](#)

[Checklist: Assessing Your Employee Performance Evaluation System](#)

[Avoid Sex-Based Faculty Pay Discrimination](#)

[Employee Burnout Is a Risk Management Issue](#)

[Create Clear Faculty Offer Letters](#)



## 09. Public Safety

17%

### Mitigation Efforts:

- Train employees on violence de-escalation.
- Increase monitoring of campus grounds and facilities.
- Implement new campus safety technologies.
- Enhance campus and building access security.
- Install barriers between campus and public areas.
- Practice crime and safety incident response.

### UE Resources:

[Campus Violence Resource Collection](#)  
[Prepare for Violent Protests on Campus](#)  
[Integrating Threat Assessment Into Event Planning](#)  
[Tabletop Exercise Library](#)  
[ProResponse®](#)  
[Checklist: Preventing and Preparing for Active Shooters on Campus](#)  
[Identify Campus Security Authorities](#)



## 10. Athletics

11%

### Mitigation Efforts:

- Convene athletics strategy committee.
- Reimagine athletics financial model.
- Hire more athletics administrative staff.
- Change athletic conferences or divisions.
- Ensure risk management involvement in athletics operations.
- Provide athletics personnel with appropriate training.

### UE Resources:

[Athletics Resource Collection](#)

[Athletics Course Collection](#)

[OCR Guidance on Accommodating Students With Disabilities in Athletics](#)

[The House v. NCAA Settlement and its Effects on Higher Ed Athletics](#)

[Severe Weather at Outdoor Athletic Events](#)

[Concussions in Clubs and Intramural Sports](#)

## Ranking Changes Over Five Years

| Rank | Current Top Risks                   | Rank in 2024 | Rank in 2023 | Rank in 2022 | Rank in 2020-21 |
|------|-------------------------------------|--------------|--------------|--------------|-----------------|
| 1    | Admissions and Retention            | 1            | 2            | 2            | 1               |
| 2    | Data Security/Cybersecurity         | 2            | 1            | 1            | 2               |
| 3    | Compliance (Non-Title IX/VAWA)      | 5            | 8            | 7            | 7               |
| 4    | Operational Pressures               | 3            | 4            | 4            | 4               |
| 5    | Facilities and Deferred Maintenance | 6            | 6T           | 8            | 6               |
| 6    | Funding/Financial Stability         | 8            | 6T           | 11           | 15              |
| 7    | Student Mental Health               | 7            | 5            | 5            | New in 2022     |
| 8    | Recruitment and Hiring              | 4            | 3            | 3            | 14              |
| 9    | Public Safety                       | 9            | 11           | 9            | 10              |
| 10   | Athletics                           | Not ranked   | Not ranked   | Not ranked   | Not ranked      |

T- ranking tie



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