Legal Documents that Constrain Strategic Actions in a Financial Crisis
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Preface

Strategic planners need to pay attention to corporate and legal documents that can delimit decisions needed to support strategic change. Corporate documents refer to the charter, by-laws, and mission statement of the college, while legal documents may comprise both explicit and implied contracts. Explicit contracts lay out duties and responsibilities for each party. An example of an explicit contract in higher education is a faculty contract, an endowment donation, or a third-party contract like an agreement with an enrollment agency. An implied-in-fact contract denotes that one party gains a benefit from another party, and a second party is expected to reciprocate the first party. Examples of implied-in-fact agreements include: student acceptance letters, catalogs, syllabi, academic schedules, student club rules, residence hall rules, and work assignments.

Corporate and legal documents are critical when a strategic plan intends to redefine the mission, reduce the number of employees, terminate academic programs, and implement new academic programs. The cost of failing to consider corporate and legal documents can result in a lawsuit that blocks the strategic plan, generates costly judgments and returns the college to its original state of swiftly moving to a financial collapse.

Corporate By-Laws and Charter

By-laws and the corporate charter establish rules that set out the authority and limits to govern the college. It is imperative that the corporate charter clearly state that the board of trustees retains final authority on policies, procedures, strategies, plans, and all matters related to institutional operation. If by-laws or the charter do not support strategic or operational plans, these documents must be revised and submitted to the appropriate state agency for review. If approved by the agency, it will issue the revised by-laws and charter.

Mission Statement

Mission statements frame what the college as a corporation intends to do. The best mission statements are short and to the point. For example, ‘the college provides curricula so that graduates can be either employed in positions generating sufficient income for a reasonable lifestyle or enter a graduate or professional program.

Board Resolutions

Board resolutions are decisions made by the board of trustees to assure that the college can deliver on its mission. Furthermore, records of board resolutions should be easily available to determine if current decisions are compatible with past resolutions or if a new resolution needs to resolve conflicts between current and past decisions by the board.

Authority

Authority is determined by state's laws, corporate by-laws and charter, the mission, and resolutions of the board. Moreover, authority defines the scope of a position's decision authority, and authority relationships across each level of the college. Notably, authority should clearly define who has direct access to the board on policies and procedures.

Boards should only establish independent entities that fall within the normal authority and responsibility channels of the college.

Handbooks

Handbooks, as noted above, are implied contracts. They often delineate job descriptions, processes, policies, communication channels, and expectations. Handbooks are not necessarily confined to employees and students. They can also cover relationships with third parties such as construction contractors, enrollment agencies, the alumni board or associations like sororities or fraternities.

Strategic plans may change handbooks by altering reporting relationships, work requirements, job descriptions, work-flows, decision authority, calendars, curricula, discipline codes, student clubs, student services, course requirements, and a broad range of other actions that may have to occur to implement the strategic plan.

Failure to review and revise handbooks can stop strategic implementation of a strategy in its tracks.

Board Cohesion and Financial Crisis

Board factions can deadlock decisions needed to avert a catastrophic financial crisis. During a financial crisis, expeditious action by the board is essential. Because action cannot be delayed, the board should request that the college's attorney vet all proposals and also be available at board meetings to respond to board members who are apprehensive that a particular plan will fail the test of law.

Final Remarks

Boards of trustees and presidents must be cognizant of the constraints that corporate and legal documents place upon strategic and operational plans, especially, during a time of severe financial crisis. It is not unusual for some college board of trustees and presidents to be pushed to the wall by a series of deficits that rise from $10 to $20 million to $30 million over consecutive years. Colleges going through such disastrous financial crises usually have little time or financial resources to save the college. Only quick action that considers constraints imposed by its corporate structure and contracts can hope to slow the momentum to becoming another failed college. As a final note, these colleges can only be saved by a president with the foresight, will, and the experience to quickly formulate a strategic and operational plan that slows and, with good fortune, stops the momentum toward closure.