Introduction

Effective policies are essential to the success of any educational institution, however, many challenges exist to creating these policies. Often, institutions of higher education (IHEs) develop policies without sufficient consideration of their legal implications. For example, policy development should be informed by a systematic and thorough consideration of the legal risks and liabilities created by the existence of the policy itself and its implementation.

Alternatively, campus policies may focus too narrowly on legal compliance or liability avoidance. While it is essential to ensure that campus policies comply with legal mandates, this focus primarily addresses what is required of campus policies. Legal scholars recently have begun to argue that the ultimate defense against liability (as well as the right thing to do) is to implement proactive efforts designed to protect the health and safety of the campus community. Therefore policy-makers
also must examine what is effective in preventing problems. The question of whether or not policies are effective is answered not by the law itself, but by science.

These two perspectives, taken together, suggest that efforts to develop or revise campus policies should be informed by both legal and scientific perspectives.

**Session Goals and Overview**

The purpose of this session is to provide a systematic approach to the development, implementation, and assessment of IHE policies informed by scientific and legal perspectives. The session is organized into three sections. First, Linda Langford will present an overview of the policy development process from a scientific perspective. Second, Miriam McKendall will offer a "best practices" approach designed to address the legal liabilities inherent in IHE policy development. These presentations will serve as the foundation for participants to work through a case study of a campus policy development process using insights from both perspectives.

**Case Study**

_The president or provost of your college or university prepares a memo, stating: “I read something in the Chronicle about a recent change in federal law requiring disclosure of sex offenders. Make sure we are in compliance.”_

The presenters will lead participants through a series of questions about how best to respond to this request.
Attachments

Summary of a Systematic Approach to Policy Development: A Scientific Perspective. (Linda Langford)

Summary of a Systematic Approach to Policy Development: A Legal Perspective. (Miriam J. McKendall)

Powerpoint slides. (Linda Langford)

Powerpoint slides. (Miriam J. McKendall)


Additional Resources


Guidelines for the Campus Sex Crimes Prevention Act Amendment to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 67 Fed. Reg. 10758 (March 8, 2002).


ATTACHMENTS
Summary of a Systematic Approach to Policy Development:  
A Scientific Perspective

Linda Langford, Sc.D.

From a scientific perspective, policies are considered to be effective if they successfully reduce or prevent campus health and safety problems such as violence, sexual harassment, or high-risk alcohol use. Over the past several decades, a consensus has emerged about the best practices for developing prevention efforts.

Successful prevention initiatives...
- Are designed using a systematic planning and evaluation process
- Respond to specific, well-identified problems
- Draw from existing research, supplemented with theory and logic about what might work
- Use multiple approaches, designed to achieve synergy
- Avoid what doesn’t work
- Build infrastructure and support in support of specific strategies
- Are evaluated and use results for improvement

Critical Errors
The biggest mistake campus officials make in devising prevention policies and programs is failing to answer the following questions:
- What is the problem we are trying to solve?
- How do we envision proposed efforts will solve those problems?
- What evidence exists that these efforts might work?

Recommendations:

1. Improve problem definition.
   In a policy context, problems are often conceptualized as “absence of a policy” or “lack of compliance with the law,” which can lead to a focus on meeting statutory requirements rather solving the underlying problems.

   Campus officials should:
   - Identify the underlying problem the law or policy is intended to address.
   - Identify the “background” goal(s) for the effort, e.g., preventing violence or harassment, fostering student development, assisting students in distress
   - Clearly define the scope of the current task.
   - When possible, create policies and programs that will reduce underlying problems as well as meet statutory and legal mandates.

2. Conduct a thorough problem analysis.
   Before devising policy content, planners should thoroughly understand the extent and nature of the problem by examining the scope of the problem, causes and contributors, and current efforts.
Campus officials should:
- Define the extent and nature of the problem of interest.
- Understand thoroughly how the problem manifests itself locally by reviewing available data and records and collecting more data when necessary.
- Identify individual and environmental factors that contribute to the problems by examining the research literature and local data.
- Take an inventory of existing programs, policies, and services, and understand the precipitating events and political climate for the current effort.

3. **Follow best practices for creating policies and other prevention efforts.**
   - Make sure solutions address the specific contributors identified during the problem analysis.
   - Base policies and programs on research and theory about effectiveness.
   - Decide what measures will effectively address the problems, and *then* ensure they are implemented in compliance with existing laws and regulations.
   - Create a plan for policy implementation, including dissemination of the policy to all campus stakeholders, development of implementation procedures, and training for those charged with implementation.
   - Combine and coordinate policy development with other related efforts, such as educational programs and services to those affected by the problems.
   - Build in evaluation to determine whether problems were reduced and to provide information to revise and improve the policy.
Summary of a Systematic Approach to Policy Development:  
A Legal Perspective

Miriam McKendall, Esq.

A policy will not be effective in preventing legal liability unless the following occurs:

- The purpose and goal of policy must be identified.

- The legal liabilities to be avoided by the policy (and possibly created by the policy) must be identified and understood.

- The institution must be mindful that it serves many roles (for e.g., educator, employer, landlord, contractor) and many “stakeholders” (for e.g., students, employees, faculty, business partners, government, general public) simultaneously. Each role may dictate varying policy goals, and each stakeholder may have varying legal interests.

- The policy must be developed with input from representatives of the impacted stakeholders, including legal counsel, and industry and scientific experts.

- The policy must be disseminated through publication and training.

- The policy must be followed.

- The policy must be updated to reflect changing laws, changes in the university’s environment and changes in the interests of the university’s stakeholders.

- The policy must be revisited to assess if it is meeting all of its purposes, including the avoidance of legal liabilities.

- The policy must receive support from leadership in the drafting, implementation and assessment stages.