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*Law and Science Perspectives on a Systematic Approach to Policy Development: Overview and Case Study*

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Effective Policies: Essential Steps

→ Identify policy goals and issues
→ Identify “legalities”
→ Identify and consult resources
→ Identify and eliminate impediments
→ Follow-through
→ Generate leadership support
Effective Policies: Identify Goals and Issues

“You got to be careful if you don’t know where you are going because you might not get there.” — Yogi Berra
Effective Policies: Identify Goals and Issues

Watch out for road-blocks

- Existing policies
- Unintentional consequences
- Different perspectives
  - Identify “stakeholders”
  - Identify “stakeholders’ interests”
Government Contractors

Public

Other
• Parents
• Alumni
• Trustees
• Bondholders

Educational Institution

Faculty

Stakeholders

Employees

Students
Educational Institution
Stakeholder Interests

Faculty
- Employee Interests – PLUS
- Tenure
- Academic Freedom
- Proprietary Rights
- Intellectual Capital
- Constitutional Rights

Employees
- Compensation
- Livelihood
- Safe Environment
- Privacy
- No Discrimination
- Reasonable Accommodation

Contractors
- "Deliverables"
- Safe Environment
- Contract Compliance
- Possibly non-disclosure

Students
- Education
- Safe Environments
- Residence
- Privacy
- Student Groups

Government
- Compliance
- Use of Funding
- Conflict of Interest
- Reporting
- Protect Privacy

Other
- Financial Security
- Reputation
- Disclosures

Public
- "Deliverables"
- Safe Environment
- No Discrimination
- Reasonable Accommodation
- No unreasonable intrusions

Stakeholder Interests
Effective Policies: Essential Steps

→ Identify policy goals and issues

→ Identify “legalities”
Effective Policies: Identify “Legalities”

- “Uses” of applicable laws
- Sources of legal liabilities
- Consequences of legal liabilities
Effective Policies: Identify “Legalities”

Uses of Applicable Laws

- Unity between legislative goals and policy goals
- Mandated language for drafting
- Mandated methods for implementation
- Necessary for compliance
- Beginning point or ending?
Effective Policies: Identify “Legalities”

**Identify Sources of Liability**

- **Statutory Violations**
  - Federal, state, local statutes and regulations
  - Claims by multiple stakeholders (student, government, employee, etc.)
- **Breach of Contract**
  - Written or implied contract
  - Failure to follow policies, handbooks, etc.
- **Tort**
  - Invasion of privacy
  - Negligence (breach of duty)
  - Defamation, slander, libel
  - Misappropriation
  - Infliction of emotional distress
Effective Policies: Identify “Legalities”

Consequences of Legal Liabilities

- Time, resources involved in litigation
- Loss of funding, contract, grant
- Loss of valued student, faculty, employee
- Reputation, good will, morale
- Distraction to core mission
Effective Policies: Essential Steps

→ Identify policy goals and issues
→ Identify “legalities”
→ Identify and consult resources
Effective Policies: Identify and Consult Resources

- **Cannot identify goals or legalities without consulting resources**

- **Consult stakeholder representatives (internal)**
  - Students: Dean of Students, Director of Health Services
  - Faculty: Academic Dean
  - Employees: Director of Human Resources
  - Generally: General Counsel, Director of Security, Director of IT

- **Consult “industry” experts (internal or external)**
  - Technology
  - Security
  - Science
  - Law
  - Mental Health

- **Incorporate consultants’ input and harmonize with institutional purposes, goals and “legalities”**
Effective Policies: Essential Steps

→ Identify policy goals and issues
→ Identify “legalities”
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→ Identify and eliminate impediments
Effective Policies: Identify and Eliminate Impediments

Legal paralysis and legal servitude

**Solutions:**

• Do not leave it all to just the lawyers

• Imagine *(just for a moment)* the issue without laws or lawyers

• Use legalities to identify common purposes

• Work with, not against, legal requirements

• Never abandon common sense

• Which lawsuit would you prefer to defend?
Effective Policies: Identify and Eliminate Impediments

“Borrowing” policies (and calling them your own)

Solutions:

• Do not leave it to another institution

• Review comparable policies as part of resource consulting, not for your institution’s final product

• Policy depends on institution’s own assessment of goals, needs, interplay among policies, etc.

• Seldom “one size fits all” policy
Effective Policies: Identify and Eliminate Impediments

False issues of confidentiality

Solutions:

- What does “confidentiality” mean?
- Very limited circumstances permit person to dictate total non-disclosure
- Make no promises of confidentiality
- Say what you mean (“will handle with utmost discretion”; not “my lips are sealed”)
Effective Policies: Identify and Eliminate Impediments

Lack of centralized knowledge

Solutions:
• Recognize institution has a centralized need to know
• Necessary for effective policy development
• Constructive knowledge is source of legal liabilities
• Establish mechanism to centralize knowledge base
Effective Policies: Identify and Eliminate Impediments

Institutional paralysis

Solutions:
- Identify reason for paralysis
  - Wrong committee members
  - Other priorities
  - Need for consensus dilutes policy
  - Other?
- Work through the reasons for paralysis
  - Revisit policy purposes and goals
  - Revisit stakeholders and stakeholders’ interest
Effective Policies: Essential Steps

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→ Follow-through
Effective Policies: Follow-through

“However beautiful the strategy, you should occasionally look at the results.”

- Sir Winston Churchill
Effective Policies: Follow-through

• **Implement**
  - Disseminate and train

• **Assess effectiveness**
  - Achieve goals?
  - Prevent liability?

• **Update policy to address**
  - Inefficiencies
  - Changes in institutional needs
  - Changes in legal requirements
Effective Policies: Essential Steps

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Effective Policies: Leadership Support

Generate active leadership support at all stages

- Development
- Eliminating impediments
- Implementation
- Assessment
- Updating
Conclusion

Effective Policy Development Requires:

• Identify policy goals and issues
• Identify “legalities” to understand applicable laws, sources of liability and consequences of legal actions
• Identify and consult resources
• Identify and eliminate common impediments
• Follow-through
• Generate leadership support
CASE STUDY

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