A Case Study of the Intersection Between Policy, Law and Science: Sex, Alcohol and Athletic Recruiting on College Campuses

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POP QUIZ: Which thinker is more highly valued by America’s institutions of higher learning?
Systematic Approach to Policy Development: Legal Perspective

The Stakeholder Model
Stakeholders’ Interests
Sources of Legal Liability

• Statutory Violations

• Tort

• Breach of Contract
Sources of Legal Liability

Statutory Violations

Title IX: No person shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance
Sources of Legal Liability

Title IX and U.S. Supreme Court

• **Gebser v. Lago Vista** (teacher to student)
• **Davis v. Monroe** (student to student)
• **Holdings**
  - Private right of action against funding recipient under Title IX
  - Conduct so severe, pervasive and objectively offensive so as to deprive victim access to educational opportunity based on gender
  - Deliberate indifference by funding recipient with actual knowledge of conduct
Sources of Legal Liability

Deliberate Indifference under Title IX

• Control over harasser
• Control over context in which harassment occurs
• Knowledge of harassment
• Authority to take remedial action
• Caused student to undergo harassment
• Made student vulnerable to harassment
• No imposition of Title IX liability solely because of existence of bad conduct
Sources of Legal Liability

Tort Claims

- Negligence
- Defamation, Slander, Libel
- Invasion of Privacy
- Infliction of Emotional Distress
Sources of Legal Liability

Breach of Contract

• Written or Implied Contract
• Failure to “Deliver” on Promises Made
• Failure to Follow Policies/Handbooks
THE COLORADO REPORT

The Primary Lessons: Legal Perspective

Failure to view athletic programs in context of “Stakeholder Model”

- Isolation of interests of athletic programs
- Disregard of institutional structure
- Disregard of multiple stakeholders
- Disregard of legal liabilities
- Lack of accountability
- Lack of follow-through
Successful Approaches to Policy Development

- Consistency
- Centralization
- Education
- Accountability
- Prevention
- Effectiveness
Successful Approaches to Policy Development

- **Consistency - Students**
  - One standard of conduct for all students
  - One disciplinary process for all students

- **Consistency - Administrators**
  - One standard of conduct for all administrators
  - One disciplinary process for all administrators
Successful Approaches to Policy Development

• Centralization
  – Knowledge of behaviors
  – Knowledge of complaints
  – Knowledge of policies
  – Knowledge of investigation process
  – Knowledge of discipline process
  – Knowledge of sanctions
  – Knowledge of compliance
  – Knowledge of assessments
Successful Approaches to Policy Development

• Education of expected standards of conduct
  – Those enforcing policies
  – Those with notice of conduct
  – Those causing conduct
  – Those subject to conduct
  – Those taking responsive action
  – Those needed for “buy-in”; lead by example

• Education about unacceptable conduct
  – Programs, discussion groups, speakers
  – Required readings
  – Community experience
  – Consequences
Successful Approaches to Policy Development

- Prevention
  - Establish clear limitations
  - Pre-emption precautions ("vulnerable" days – championships, end of semester, etc.)
  - Police for on-going compliance
  - Creative education
Successful Approaches to Policy Development

• Accountability
  – Administrators with notice of conduct must be held to reporting mechanisms
  – Administrators charged with enforcing policies must demonstrate effective implementation
  – Administrators charged with disciplinary process must be objective
  – Checks and balances among administrators
  – Consequences to administrators for non-compliance
Successful Approaches to Policy Development

- Effectiveness
  - Assess individual compliance – student(s)
  - Assess individual compliance – administrator(s)
  - Assess collective compliance on institutional-wide basis
In response to the Colorado Report, you have been given the broad assignment to prepare policies necessary to make certain that similar behavior and liabilities will not be an issue for your educational institution.
1. Identify impacted stakeholders
2. Identify representatives impacted stakeholders
3. Identify existing policies invoked by conduct
4. Identify potential legal liabilities
5. Identify policies needed to address legal issues
6. Identify (and balance) stakeholders interests and potential liabilities