

# Holland+Knight

Stetson University College of Law

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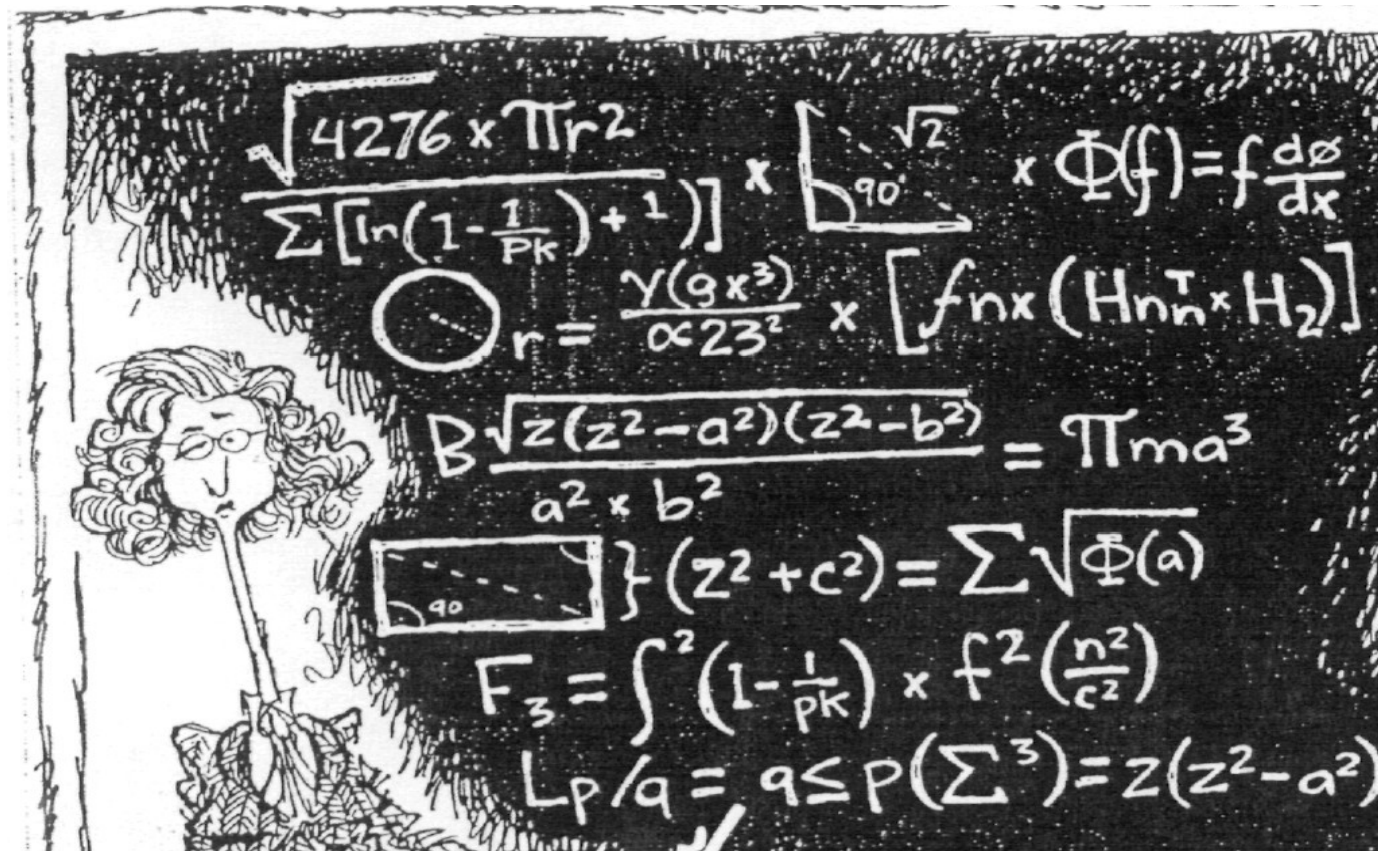
*A Case Study of the Intersection Between  
Policy, Law and Science: Sex, Alcohol and  
Athletic Recruiting on College Campuses*

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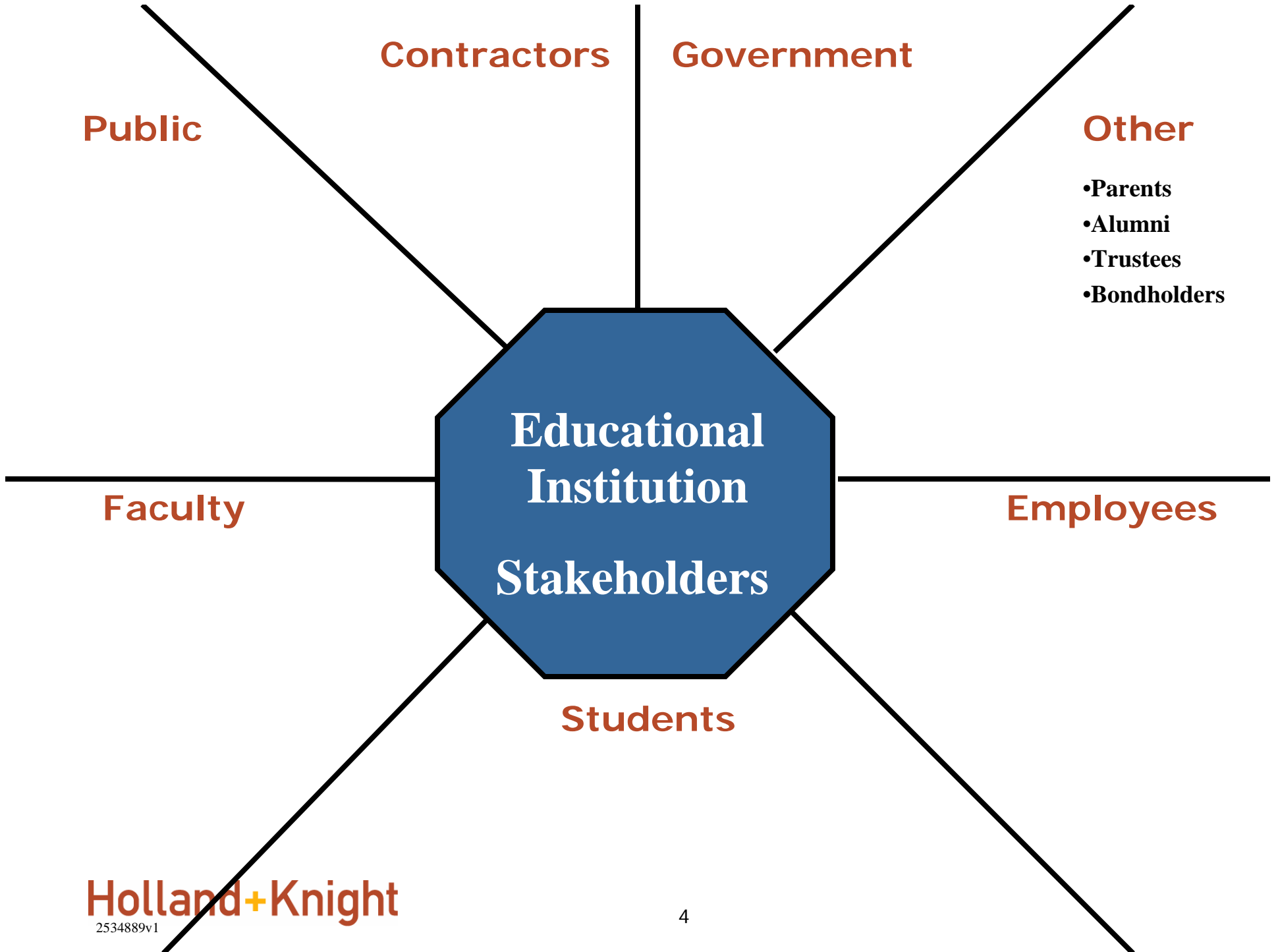
# POP QUIZ: Which thinker is more highly valued by America's institutions of higher learning?



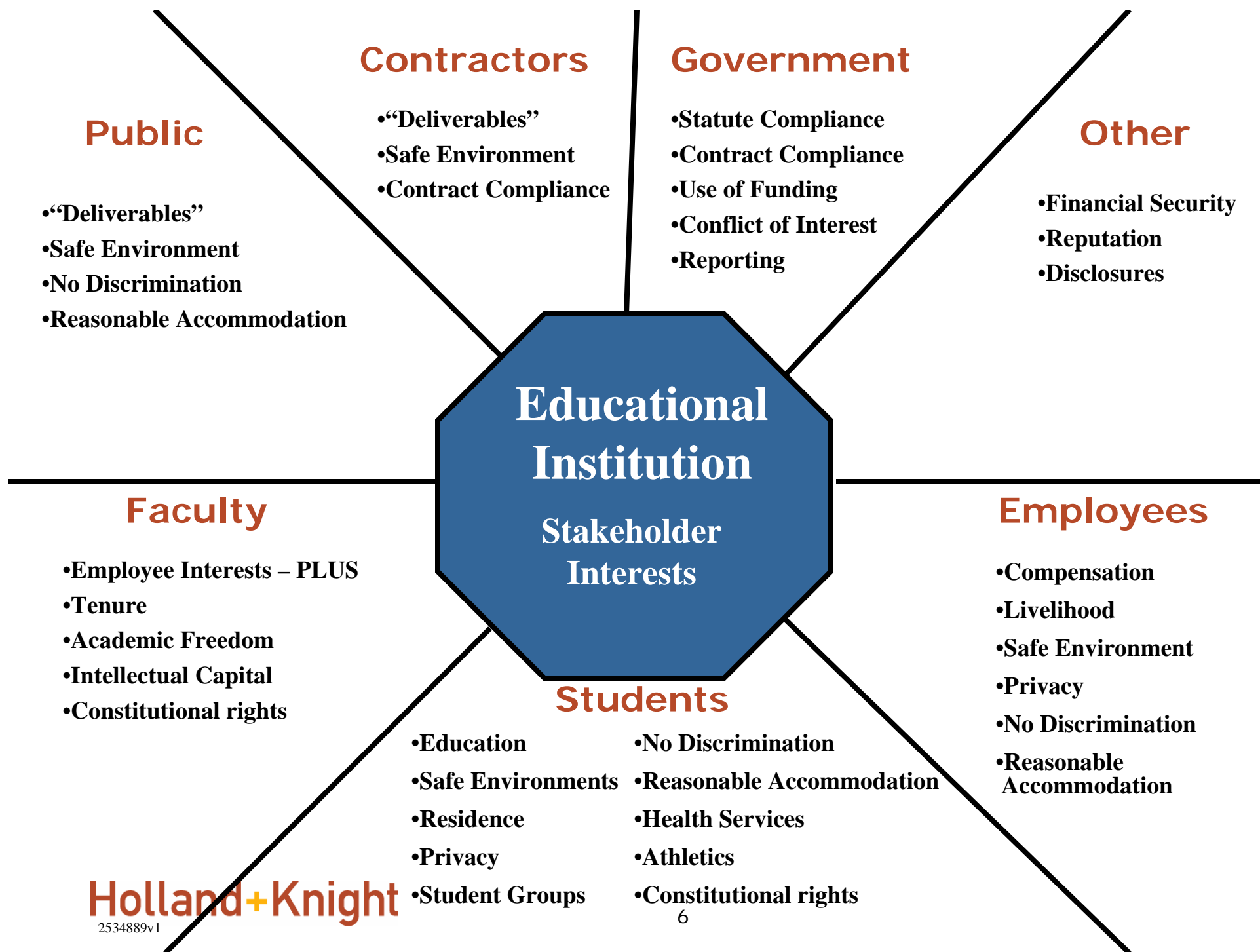
The Boston Globe, January 8, 2005, page A-13.

# **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**

# Case Study

**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.**

# Case Study

- 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**