

5 Things College Lawyers Must Do Now

By Ilene Jaroslaw | March 2019

Operation Varsity Blues, the FBI investigation that resulted in the nationwide takedown of dozens of parents who bribed university employees for an admissions spot for their kids, exposed the Achilles heel of the college admissions process: athletics. Revenue sports? Non-revenue sports? NCAA Division I, II, or III? In each case, the widespread practice of delegating admissions decisions to a college's Athletics Department has provided fertile ground for corruption. Consider that, at Stanford, one of the universities caught up in the illicit scheme, the admissions rate for all college applicants is 5%. It is easy to appreciate, then, the power of an athletic director, a football coach, and even an assistant water polo coach, to bestow upon an applicant a guaranteed spot in the incoming freshman class. As we learned in the aftermath of the take-down, that power can be sold on the open market.

What should college and university lawyers do to determine whether employees of the school's athletics department have in the past abused their positions of trust and sold admissions slots to the children of the highest bidder? Equally importantly, how can they ensure the integrity of the school's admissions process going forward?

1. **Collect the data.** How many admissions slots are reserved for athletes of all sports? Which sports at the university are granted these slots? Sport by sport, how many slots are set aside for athletes? Which athletics officials have the authority recommend that the admissions committee grant a spot to an applicant? Who are they? Who, if anyone, must approve these recommendations? Of all student-athletes admitted each year, who fails to show up for practice in the fall or drops out of the sport after a semester?
2. **Analyze the patterns and anomalies.** Are there clusters that stand outside the norm for all sports? Are there recurring patterns of no-shows in particular sports? Are there anomalous rates of students in any one sport reporting career-ending injuries during the summer before freshman year?
3. **Remediate.** Implement controls. Remove the discretion of athletics officials to effectively admit applicants into the freshman class. Require the admissions office to perform due diligence on all recommended student-athletes. Implement new safeguards to stop other employees exploiting the same weaknesses. Remove for cause any employees found to have abused their position of trust for personal gain. Make referrals to law enforcement in appropriate cases.

4. **Prevent.** A robust investigation may assure the university that its employees have not improperly exercised their authority in regard to prospective student-athletes. Going forward, procedures to prevent future corruption should be implemented, or reviewed and updated, including appropriate employee training on an annual basis.

5. **Hire independent outside counsel.** The importance of conducting an *independent* investigation cannot be overstated. Independent investigators must have access to all employee-witnesses and all paper and electronic documents. One common misstep in initiating such an investigation is retaining a law firm with which the university has an existing attorney-client relationship. Such an approach compromises the independence of the investigation, which must be conflict-free and above reproach. A law firm familiar with university officials may depend on their good will to maintain the relationship. Punches may be pulled in employee interviews. The law firm may not look hard enough or dig deep enough to reveal unpleasant facts that reveal serious legal exposure for the university. An internal investigation inoculates the university against future legal liability but only if it is independent and perceived as such.

The college admissions crisis has taken hold of the imagination of high school students, their parents, and guidance counselors. No university will have an excuse, going forward, to claim it was unaware of the threat that sports recruiting poses to the integrity of the admissions process. The key for college and university lawyers is to get ahead of the curve now. Or they can learn that their house is not in order from the newspaper.

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