



## **Protecting Home Field**

Universitywide coordination in the oversight of athletics

By:

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A popular tradition has taken place on many college campuses on Saturday mornings this fall. Students meet with visiting alumni and share storied traditions while preparing to cheer their football team against a rival school. As the marching band plays the school song and kickoff arrives, attention may be drawn to the entrance where the home team will take the field. Fans notice that the star player has not and will not join the sidelines. They ask questions as to why, and too often the reason will not involve health or a personal emergency, but some bad decision, which not only rendered the student ineligible for competition, but also cast embarrassment, bad publicity, or even legal risk upon the institution. The resulting investigation will be campuswide and “all hands on deck,” but if proper risk management had been implemented, the incident may have been avoided.

In today’s media, compliance officers do not need vivid imaginations to consider issues that can arise for an athletics program. Allegations of misconduct are reported on a continuing basis. A booster reports that he has provided hidden benefits to members of a team for a decade, including personal loans and funded trips to adult night clubs. The derailment of a popular sport because two team members saw fit to enter into competitions for prize money in total disregard for the NCAA’s amateurism standard. An esteemed university system that is subject to investigation for allegations of academic fraud related to student-athletes and additional claims of funds being directed to their relatives.

These examples would be noteworthy on their own. Collectively, they are a source of widespread concern when one considers that each of these issues became subject to NCAA investigation or inquiry in the past year and all from schools of the same conference. While there has been a popular belief that the problems of managing the athletic function is relegated to the athletics director, compliance officer, and coaching staff, the wake-up call has sounded to coordinate efforts in managing intercollegiate athletics.

It is likely that an institution's director of financial aid, head of campus security, vice president of human resources, and vice president for legal affairs would each cite dozens of responsibilities for their respective job description without mention of the athletics function. Yet each of these leaders has an important role to maintain the successful management and operation of athletics within the NCAA rules.

Let's first consider the mass of rules that is the NCAA Manual. It is over 400 pages long with countless articles and bylaws. Of course, there is a separate NCAA manual for each of the three divisions of institutions (Divisions I, II, and III) which are governed by the NCAA. An administrator familiar with the rules at one level must become knowledgeable about the rules at another level if he or she changes institutions. The NCAA further challenges its member institutions by issuing a new and different version of these voluminous documents each year.

The general principles of the NCAA Manual are focused on addressing two fundamental principles, which are stated in Bylaw 2.1 of the Division I Manual. First, each member institution holds responsibility to control its athletics program in compliance with the rules of the NCAA, with ultimate responsibility held by the president or chancellor. Second, the scope of responsibility includes the actions of the institution's staff members and those of any other organization or individual who is involved in activities promoting the institution's athletics interests.

These principles are as broad in practice as they sound in theory. While many schools found the Freeh Report and Recommendations arising out of the Penn State investigation to be sobering, it served to highlight just how integrated the athletics function is within university operations. As an example, consider the conversation an incoming president may have on expectations for management of athletics with each of the four senior-level administrators that are mentioned above.

### **Office of Financial Aid**

The Office of Financial Aid is among the first departments of an institution to be affected by a student's participation in intercollegiate athletics. Depending on the student's academic profile and the athletics classification of the university, the institution may or may not be able to provide a scholarship based on athletics participation. However, because of the federal and state funds that may be involved in a financial aid package, the failure to exercise care on which students are eligible for grants-in-aid (either in whole or in part) could cause violations based on excess amounts when considered in combination with government aid.

A notice from the Office of the Inspector General that an institution's financial aid practices have drawn the attention of the Department of Education is an unwelcome piece of mail. However, the coordination between the compliance officer working in the athletics department and the persons charged with the financial aid packages for new student enrollment can often limit errors. For example, the implementation of systems to

flag certain student profiles where the provision of an athletic scholarship is based on conditions that may change between acceptance and enrollment is vital. In any investigation, the ability to outline a quality control process which is designed to flag issues known to be related to financial aid eligibility status will be helpful.

## **Campus Security**

Generally, colleges and universities participating in federal financial assistance programs must report information about criminal activity occurring on or near campus under the Clery Act. Beyond the Clery reporting obligations, the ability to quickly collect information, process the threat of imminent harm and disseminate public safety information is essential. As reports of violence on various college campuses continues to occur, this has gone from the category of best practice to necessity.

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The criminal investigation of lacrosse players at Duke University highlighted the issue of response to a potential safety issue in relation to an athletics program. The ability of campus security to investigate a confidential matter with the full cooperation of the athletics department is essential. The removal of barriers to that process must include an understanding by athletics and campus security of the obligations of the university. A successful co-partnership can help identify unlawful elements who are seeking to influence on a sports program and enhance protection of the student-athletes most likely to be targeted.

## **Human Resources**

By charging each member institution with being responsible for all individuals engaged in the promotion of their athletics program, the NCAA has made the human resources function more difficult. The background checks and training of all persons involved in athletics activity will often reflect on the institution's ability to maintain institutional control of its athletics program down the road. Yet it is shocking how many institutions do not maintain a true dotted-line relationship in the personnel functions occurring universitywide and within the athletics department.

In many instances, human resources can further empower those involved in athletics by helping them become more knowledgeable on performance management and institutional policies. Their extended participation in the operation of athletics can help reinforce ethics training and whistleblower practices where appropriate. It also will provide persons acting as managers with the appropriate skills to spot potential risks before they are realized.

## **Legal Affairs**

In considering administrative structure, the legal function often cannot be further removed from the athletics function. That is interesting—and probably counter-intuitive—when one considers that on any given day the operation of an athletics program could involve liability arising from personal injury, employment rights, privacy obligations, fraud, breach of contract, and a host of other causes of action. Because of this wide exposure, the term “compliance” within athletics must go beyond NCAA compliance and incorporate legal compliance.

Compliance officers should not act as lawyers. They should, however, be aware of when the involvement of a lawyer is a necessity and not a luxury. An institution’s legal affairs unit can help by serving as a resource both in training and crisis response. They can also help by providing external resources when an investigation is such that it cannot be evaluated objectively by in-house resources.

Without question, the worst allegation the NCAA can place on a college is “lack of institutional control.” However, control of the institution can be maintained by broadening the scope of who is responsible for athletics compliance.

Comprehensive risk assessment and prevention in the operation of athletics programs must be wide in scope and encompass various functions of an institution. Successful efforts will require training for administrative units to highlight their respective job functions and how they correlate with certain obligations under the NCAA rules. Dedicated commitment to implement these strategies will decrease the likelihood of institutional risk and embarrassment, with the main story in the next edition of the campus newspaper focused upon the actual performance of the star player in victory.

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