

Higher Ed Admissions Scrutiny—The Road Ahead

The wave of federal charges against some fifty individuals for college admissions fraud and testing bribery schemes caught numerous universities and much of the United States by surprise. This growing scandal has already ensnared dozens of universities, exposing control failures, damaging reputations and undermining brands. And, based on early indications (in the form of class action lawsuits), for the foreseeable future the associated litigation costs will only mount.

But these observations do little more than spot the pig in the python. Experience teaches that, given the thousands of colleges, graduate schools and institutions of learning nationwide, these are likely not isolated cases. Other schools may soon come under a magnifying glass, and many may need to take action to update internal controls, detect problems, disclose violations and remediate for any damage done.

Red Flags and Foreseeability

When most lawyers think of high-risk areas for corruption, and red flags for compliance, they don't think of U.S. institutions of higher learning—until now. People are wondering how some of the finest educational institutions in the world left themselves open to what in retrospect might seem like an obvious avenue for bribery and cheating. After all, the years of effort and preparation that go into being admitted to elite universities is a high-stakes and high-priced endeavor, particularly when considering the reputational, career choice and salary rewards that often result.

With this reality in mind, and benefitting from an oversized dose of 20/20 hindsight, *the* central question that will be asked by board members, executives, courts, journalists, students, governmental authorities and the larger public is "was this foreseeable?"

Just as DOJ has been expecting more in terms of compliance from corporations, prosecutors will certainly want to know what colleges were doing to protect the integrity of their admissions process, particularly related to athletes, whether they missed warning signs, and if they could have done more to prevent and detect this scandal. While this is the first scandal of this nature in the United States, other countries have long had experience with corruption; in fact, concerns over fraud have already caused tech companies to propose blockchain solutions to track course attendance, grades and the issuance of diplomas.

Civil Litigation Builds on Dismay and Frustration

Others are doing much more than wondering about how this corruption could have happened—they are taking independent legal action to express their dismay and frustration. Just days after the Department of Justice charged and arrested dozens of coaches, facilitators and the others involved in these racketeering schemes and conspiracies, lawsuits were filed by parents whose children were denied admission.

One of the lawsuits, a class-action filed by two California college students, names eight universities and includes claims that the students did not get the fair application process that they paid for when applying. Not only does the suit seek \$5 million in damages, but by implication may raise broader questions about admissions processes,

and will certainly be a vehicle for very broad and potentially uncomfortable discovery requests. These suits may also be just the beginning of civil litigation and regulatory inquiry.

Immediate Assignment: Internal Controls and Compliance

Whether by choice or not, as institutions begin the task of self-scrutinizing their admission processes, a number of key, foundational questions will likely arise:

- **Assess Current State of Internal Controls.** What—if any—internal procedures or controls governing the admissions function are currently in existence? Are those procedures and controls formally documented or simply informally operational?
- **Map Formal Division of Responsibilities.** Who—departmentally and individually—within the institution is formally charged with overseeing and administering admissions?
- **Vetting/Oversight of Personnel.** What—if any—certifications or training are admissions personnel required to undertake or execute, including disclosures relating to potential financial conflicts of interest, nepotism, use of electronic devices or overall compliance with prevailing laws, regulations and internal procedures?
- **Determine Sources of (Informal) Admissions Influence.** Who—departmentally and individually—within the institution is not formally charged with overseeing and administering admissions but nevertheless has the ability to provide input, recommendations or final approval over applications on an informal or ad hoc basis?
- **Independent Testing of Controls.** What—if any—internal or external oversight function currently oversees the admissions function? What—if any—audits, tests or assessments are regularly conducted to ensure that the admissions process has complied with prevailing laws, regulations and internal procedures?
- **Understand the Complaint Process.** Is there a complaint procedure in place allowing internal or external parties to report concerns relating to the admissions process? If so, how are those complaints tracked and/or investigated?

The Road Ahead

The DOJ investigation has revealed not only expansive criminal conduct, but gaps in the process that need to be filled. While organizations are often hard pressed to stop determined rogue employees, prosecutors (and the public) are often skeptical of claims that employers had no way of discovering the wrongdoing within, particularly when it has been ongoing for some time.

This episode is still unfolding, with many wondering what other problems may be revealed and watching what steps colleges will take at self-assessment and change. Turning a challenging situation into something positive is hard to do, but the goal of all renowned institutions should be to take the steps necessary to root out any ongoing problems, implement new safeguards and protect their good reputations.

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