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BRIBERY

The arrests in the college admissions bribery scandal, involving schools such as Yale, Georgetown, and the University of Southern California, have drawn wide-spread scrutiny and may be only the beginning. Perkins Coie attorneys anticipate questions that prosecutors, civil litigants, and the public may ask in the weeks ahead, and offer six key foundational steps all institutions of higher learning should take immediately to evaluate their own admissions process.

INSIGHT: Admissions Scandal Wake Up Call—Why Hitting Snooze is a Bad Idea



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The wave of federal charges against some 50 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 spotting 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 have things they can do to

update internal controls, detect problems, disclose violations and remediate 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.

Many people are suddenly wondering how some of the finest educational institutions in the world left themselves open to what in retrospect might seem like such 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 you consider the reputational, career choice, and salary rewards that often result.

With this reality in mind, and benefiting 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 the Department of Justice 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.

Other countries, moreover, are also no stranger to corruption in education; 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

Other people 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 DOJ charged and arrested dozens of coaches, facilitators, and many others involved in these racketing 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 when applying. Not only does the lawsuit 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 lawsuits 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.** 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?

■ **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 now 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 of our renowned institutions should be take the steps necessary to root out any ongoing problems, implement new safeguards, and protect their good reputations.

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