Recent U.S. Department of Justice Indictments Highlight Need for Greater Internal Controls over Athletic Admissions

Wednesday, March 20, 2019

On March 12, 2019, the U.S. Department of Justice (“DOJ”) announced indictments against 50 individuals in one of the largest and most complex college admissions scandals in recent years. The allegations relate to a scheme involving a college preparation company, The Key Worldwide; parents seeking to find a means of “guaranteeing” admission of their children into competitive universities; and college coaches using a little-understood means of placing students on admissions lists for athletes. There also are allegations that The Key Worldwide facilitated fraudulent administration and proctoring of the SAT and ACT exams. The case has raised significant questions regarding the vulnerabilities of the college admissions process to potential fraud and abuse.

While important to note that no college or university has been charged with any legal wrongdoing, or been found to have knowledge that these activities were occurring, the case likely will result in many postsecondary institutions closely reviewing their admissions activities, particularly with respect to athletics.

According to the indictments, eight colleges and universities were victims of this fraudulent scheme. Athletic department coaches and employees from Yale, Stanford, USC, the University of San Diego, UCLA, the University of Texas, Georgetown, and Wake Forest allegedly accepted bribes to falsely represent to admissions departments certain individuals as student-athletes when in fact they were not. In some cases, the individuals represented by athletic departments to be student-athletes did not have any meaningful background in the sport on which their admission was based. The allegations of fraud involving the SAT and ACT exams focused on William “Rick” Singer, the owner of The Key Worldwide, arranging for students to take tests at sites with compromised proctors who corrected answers prior to test submission, as well as the hiring of individuals to take the exams on behalf of students. While the DOJ alleged nearly 800 families paid Mr. Singer approximately $25 million to bribe coaches and other university athletic employees, only a fraction of those transactions were noted in the recently unsealed charges. It therefore is likely that additional institutions will be named in the ongoing investigation. [To view the DOJ’s criminal complaint and related materials, click here.]

The participants in this scheme are charged with violations of a number of federal criminal statutes. Rick Singer, among others, is charged with racketeering conspiracy (18 U.S.C. § 1962(d)), money laundering conspiracy (18 U.S.C. § 1956(h)), conspiracy to defraud the United States (18 U.S.C. § 371), and obstruction of justice (18 U.S.C. § 1512(c)(2)). In addition, defendants associated with the targeted colleges and universities, including athletic coaches, are charged with honest services wire fraud (18 U.S.C. §§ 1343 and 1346), conspiracy to commit wire fraud and honest services wire fraud (18 U.S.C. § 1349), and conspiracy to commit racketeering (18 U.S.C. § 1962(d)). With respect to the parents of prospective students, each individual was charged with conspiracy to commit mail fraud and honest services mail fraud (18 U.S.C. § 1349). No students have been charged.

The allegations in this case are likely to be closely scrutinized by agencies comprising the higher education regulatory triad, including the U.S. Department of Education (“ED”), accrediting bodies, and state higher-education regulatory agencies and officials. To that end, ED Secretary Betsy DeVos recently announced that ED would closely examine the matter to determine whether any of its regulations have been violated. Each of ED, accreditors, and state higher-education authorities have traditionally viewed admissions fraud as a serious matter, and there are numerous prior precedents of such fraud resulting in regulatory scrutiny by these agencies.
Since the filing of charges by the DOJ, civil lawsuits have been filed against each of the eight universities, as evidenced by one such complaint against Stanford University. That action was filed on behalf of two Stanford University students who claimed that they had been harmed by submitting applications for admission to universities where the alleged admissions fraud occurred. The plaintiffs are seeking class certification for every student who submitted an application to the named universities between 2012 and 2018. Plaintiffs’ attorneys have become increasingly aggressive in seeking ways to sue educational institutions, and it is not entirely surprising that they would seek to involve themselves in the present controversy. Such litigation can be time-consuming and expensive, even if brought without any legitimate basis.

The case is clearly a wake-up call to colleges and universities that admissions fraud can take many forms and can occur at any type of institution. Employee misconduct is often difficult to uncover, particularly when those engaged in it take active steps to hide their wrongdoing. For instance, according to the indictment, admissions representatives at one institution apparently did raise questions about the backgrounds of some of the admitted students. Specifically, an admissions officer apparently asked the athletics department about an alleged water polo recruit, because the admissions office had heard from the student’s high school admissions counselor who cast doubt on the student’s athletic prowess. Those concerns allegedly were explained away by the associate athletic director, who allegedly accepted bribes to ensure that various students would be admitted as recruited athletes. The allegations reveal how a somewhat decentralized process can provide a foundation for potential abuse of admissions decisions.

Strong internal controls and policies are critical to the higher-education admissions process, particularly with respect to the admission of student-athletes, to mitigate against the possibility of such conduct occurring in the future. Doing so also is essential to protect the integrity of the admissions process, to stave off regulatory inquiries, and to prevent potential civil litigation that may result from conduct such as that just announced by the DOJ. Steps that colleges and universities can take to minimize their potential exposure include the following:

- **Require athletic departments to provide complete lists and supporting documentation of any prospective student-athlete who is placed on a preferred admittance list**: This might include a resume of the student’s athletic accomplishments, as well as documentation from the prospective student’s high school.
- ** Routinely audit athletic department rosters to insure that those recruited as student-athletes actually become student-athletes**: This advice also holds true for other areas where prospective students may receive preferences in the admissions process, such as music and theater. Certainly, legitimate explanations exist when a student-athlete comes to campus and subsequently decides not to remain with a sport. Injury, disinterest, unmet expectations, and other reasons can all rationally explain why a recruited athlete drops out of a sport. Only through investigation, though, will such legitimate reasons emerge.
- **Examine athletic department financials**: Again, this advice holds true for other areas where prospective students receive preferences in admissions. In the case of one institution, parents allegedly were directed to write checks to “Women’s Athletics” and send them to the associate athletic director. Routine audits of those records could have led to hard questions about what was happening within the athletics department.
- **Ban receipt of personal gifts by university personnel connected to the admissions process**: Coaches, admissions personnel, and others who have a role in admissions should be clear of potential conflicts of interest that might arise from such gifts.
- **Consider independently verifying claims of student athletic achievements**: Rather than relying solely on the athletics department, other institutional officials responsible for admissions might be required, for instance, to contact a student’s high school for verification before an admission is granted to the student on athletic grounds.
- **Where fraud is suspected, consider using an independent third party to conduct an investigation**: Colleges and universities generally have an obligation under applicable regulations and accreditation standards to report fraud when it is uncovered. Using an outside third party to review suspected fraud can be particularly helpful to ensure that an investigation has full independence and that it is viewed with integrity should the investigation determine that fraud has occurred and to ensure that relevant authorities are notified.

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