

**SIXTH QUARTERLY REPORT OF THE
INDEPENDENT ATHLETICS INTEGRITY MONITOR
PURSUANT TO THE ATHLETICS INTEGRITY AGREEMENT AMONG
THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
THE BIG TEN CONFERENCE AND
THE PENNSYLVANIA STATE UNIVERSITY**

George J. Mitchell
DLA PIPER LLP (US)
February 28, 2014

Table of Contents

I.	INTRODUCTION AND SUMMARY.....	1
II.	THE MONITOR’S ACTIVITIES THIS QUARTER	2
III.	OBSERVATIONS AS TO SPECIFIC AREAS	4
A.	Penn State’s Efforts to Implement the AIA.....	4
1.	Activities of the Athletics Integrity Officer.....	4
a.	General Activities.....	4
b.	Athletics Integrity Council Quarterly Meeting.....	5
c.	Coaches Forum.....	6
d.	The Athletic Integrity Officer’s Quarterly Meeting with the NCAA and Big Ten Conference	6
e.	Ethics and Compliance Hotline Reporting.....	6
B.	Phase II—The Plan for Continuous Improvement	7
C.	Penn State’s Efforts to Comply with the Recommendations in the Freeh Report.....	8
1.	Director of Ethics and Compliance (Recommendations 2.1, 4.1).....	8
2.	Oversight of Programs for Minors (Recommendation 7.3).....	9
3.	Ethics Specialist (Recommendation 1.1, 1.2).....	11
4.	Tracking Training (Recommendation 2.2.10)	12
5.	New Online Clery Act Training	13
6.	Penn State Culture (Recommendation 1.1)	13
7.	Human Resources Information System (Recommendation 2.2.7)	14
8.	Recommendations Concerning Facilities Security.....	15

IV.	OTHER EVENTS DURING THE REPORTING PERIOD	16
A.	Athletics.....	16
1.	National Searches	16
a.	Football Head Coach	16
(1)	The Selection Process	16
(2)	The Coaching Staff’s Compensation	17
(3)	Strength Coaches	19
(4)	New Hire Orientation.....	21
b.	Associate Athletic Director for Business Relations and Communications	22
c.	Women’s Tennis Head Coach	22
d.	Women’s Volleyball Associate Head Coach.....	22
2.	The Sanctions	23
3.	Finances.....	23
4.	The Morgan Academic Support Center for Student-Athletes	23
B.	Lawsuits, Investigations, and Legislative Activity.....	24
1.	Litigation Update.....	24
a.	The Paterno/Individual Trustees’ Lawsuit	24
b.	Other Pending Civil and Criminal Actions	27
2.	Investigations.....	28
3.	Legislation Update.....	30
C.	Penn State Governance.....	31
1.	Presidential Search and Hiring.....	31
2.	The Board of Trustees	31
a.	Elections	31

b.	Compensation Committee	31
c.	Training Sessions.....	32
d.	Governance Consultant	33
e.	Trustees Involved in the Lawsuit Against the NCAA and Penn State.....	34
V.	AREAS OF FUTURE FOCUS	35

I. INTRODUCTION AND SUMMARY

This is the sixth quarterly report of the independent athletics integrity monitor (“Monitor”) pursuant to section III of the Consent Decree between the National Collegiate Athletic Association (“NCAA”) and The Pennsylvania State University (“Penn State” or the “University”), and article IV of the Athletics Integrity Agreement (“AIA”) among the NCAA, Penn State, and the Big Ten Conference.

We note at the outset two events that received widespread attention this quarter. On February 18th, Penn State announced a new President, Dr. Eric Barron, to succeed Dr. Rodney Erickson, who is retiring later this spring. As previously reported, Dr. Erickson steadfastly adhered to the letter of and principles underlying the Consent Decree and the AIA, and he provided forward-looking leadership during a challenging period in the University’s history. I thank Dr. Erickson for his cooperation and commendable service to Penn State. On January 11th, Penn State announced James Franklin as its new head football coach, succeeding Coach Bill O’Brien, who left to coach the Houston Texans in the National Football League.

During this reporting period, Penn State maintained its focus on compliance with the AIA and continued to work towards the implementation of the few outstanding recommendations made in the report by Freeh Sporkin & Sullivan LLP dated July 12, 2012 (the “Freeh Report”). The University also continued to execute on its plan to improve in areas outside the scope of the Freeh Report. These steps forward came amid personnel changes within the Athletics Department that highlighted the need for heightened diligence in following the policies developed as a result of the Freeh Report recommendations. At the same time, the fact that policy issues were immediately reported to my team and addressed by the University suggests a developing culture in which self-improvement and self-reporting is valued and encouraged.

We have kept informed of other events that bear on the University's performance under the AIA, including the activities of the Board of Trustees, developments in the Commonwealth's General Assembly, and pending lawsuits. These happenings give context to our work, which remains focused on Penn State's compliance with the Consent Decree and AIA.

II. THE MONITOR'S ACTIVITIES THIS QUARTER

This reporting period, we continued to visit the University Park campus to meet with Penn State administrators, faculty, and staff. We participated in regularly scheduled meetings of the administration response team, the ICA Facilities and AD73 working group, and the Freeh Response Advisory Council, recently renamed the Advisory Council for Continued Excellence. We continued to participate in quarterly meetings of the Athletics Integrity Council, and we monitored several new committees formed by the Office of Ethics and Compliance, including its new Compliance Training Committee and Youth Programs Council.

I personally met with both former head football coach Bill O'Brien and new head football coach James Franklin, President Rodney Erickson, Provost Nicholas Jones, Director of University Ethics and Compliance Regis W. Becker, Athletics Integrity Officer Julie Del Giorno, Vice President and General Counsel Stephen S. Dunham, and Associate General Counsel Frank Guadagnino. I also spoke with President of Florida State University Eric Barron, who will succeed Dr. Erickson as president of Penn State.

Persons we met with since our last report include: Mr. Dunham; Mr. Guadagnino; Senior Vice President for Finance and Business David Gray; Vice President for Administration Thomas Poole; Athletic Director David Joyner; Vice President for Human Resources Susan Basso; Vice President for Student Affairs Damon Sims; Mr. Becker; Ms. Del Giorno; Youth Programs Compliance Specialist Sandy Weaver; Ethics Specialist Timothy R. Balliett; Faculty Athletics

Representative Linda Caldwell; Associate Athletic Director and Senior Woman Administrator Charmelle Green; Assistant Athletic Director Jan Bortner; Associate Athletic Director for Facilities and Operations Mark Bodenschatz; Associate Athletic Director for Finance Rick Kaluza; Manager of Internal Audit Judy Mudgett; Clery Compliance Coordinator Gabriel Gates; Associate Athletic Director for Compliance Matthew Stolberg; Director of Athletic Compliance Andy Banse; Assistant Athletic Director for Student-Athlete Services Bruce Ellis; Assistant Director of Athletics Compliance Tiffini Grimes; and Director of Human Resources for the Athletics Department Troy Fisher.

Members of my team also met with athletics, compliance, and human resources administrators, and with Coach Franklin, to better understand the orientation process for the new football coaching and strength and conditioning staffs. These meetings included attendance at the orientation session for new members of the Athletics Department held on February 11, 2014, and a coaches' meeting on February 26, 2014.

We attended the Board of Trustees meeting held on January 16-17, 2014, which included several training presentations as well as a public session with the Board's newly hired governance consultant, Holly J. Gregory. We also attended a meeting of the Faculty Senate's Intercollegiate Athletics Committee on January 28, 2014, and an open house held by the Office of Ethics and Compliance.

We continued our work with Guidepost Solutions, LLC to monitor progress in the introduction of access controls and other enhancements to physical security at Penn State's athletics and recreational facilities. Our combined efforts included participation in meetings with Athletics Department administrators, design and construction professionals from the Office of Physical Plant, and others to discuss the status of projects Penn State has undertaken.

We collected and reviewed pertinent documents from Penn State and publicly available sources, issuing supplemental document requests as needed. To date, Penn State has produced more than 55,000 pages of documents and continues to cooperate fully. Most notably, Penn State disclosed to us issues relating to the hiring of the new football staff discussed later in this report.

III. OBSERVATIONS AS TO SPECIFIC AREAS

A. Penn State's Efforts to Implement the AIA

Penn State continued to focus on maintaining its ongoing obligations under the AIA, including annual training for all "Covered Persons," maintenance of its disclosure log and reporting mechanisms, the quarterly meeting of Penn State's Athletics Integrity Council, and quarterly meetings between the athletics integrity officer and NCAA leadership, among other requirements.¹

1. Activities of the Athletics Integrity Officer

a) General Activities

Athletics Integrity Officer Julie Del Giorno maintained her many standing meetings and committee participation this quarter. She participated in the process of hiring new head football coach James Franklin and met with Coach Franklin after he arrived at the University. She also met with new interim head coach of the women's tennis team Chris Cagle and the new director of performance enhancement, Dwight Galt III. She conducted her regular, quarterly meeting with President Erickson. She attended training sessions on NCAA rules education. Ms. Del

¹ The AIA defines "Covered Persons" to include all student-athletes participating in NCAA-sanctioned intercollegiate athletics teams, coaches, team managers, University staff and employees who directly interact with those teams, the Board of Trustees, the president of the University, and members of the athletic director's executive committee.

Giorno also was invited to serve on the Athletic Director's Leadership Institute's Advisory Board, and she attended and addressed its programs on January 28, 2014 and February 11, 2014.

b) Athletics Integrity Council Quarterly Meeting

On December 11, 2013, Ms. Del Giorno chaired the quarterly meeting of the Athletics Integrity Council. The Council discussed all new content in the Quarterly Monitoring Report, which serves as Penn State's disclosure log of athletics-related compliance reports and investigations under the AIA, and reviewed the status of ongoing investigations.

Mr. Stolberg updated the Council on his efforts to comply with the AIA's annual requirement that all "Covered Persons" be trained on NCAA, Big Ten Conference, and Penn State athletics compliance policies. Mr. Stolberg further explained to the Council the new "Athletics Code of Conduct Notification Procedures" instituted during the last reporting period to ensure that new "Covered Persons" certify their compliance with the Code within the required 30-day period.

The Council discussed the practice by a handful of fifth year student-athletes who have only one remaining semester of eligibility of failing to complete 12 credit hours in accordance with Penn State policy. While NCAA rules only require the completion of six credit hours for these students, the Council felt that the University's more stringent standard should be enforced. Mr. Stolberg is working with coaches to ensure they promote adherence to Penn State policy, and he also is including provisions in scholarship agreements to curtail this practice. The Council meeting concluded with a discussion about the Council's own composition. The AIA requires the Council to include at least three at-large faculty members and senior administrators. The Council discussed methods of rotating faculty members on to the Council's membership.

c) Coaches Forum

Ms. Del Giorno continued to hold her regular head coaches forum, which affords head coaches the opportunity to meet informally to discuss current topics of importance to intercollegiate athletics programs. At the meetings held this quarter, Ms. Del Giorno led discussions on coaching student-athletes of the current generation and on how coaches handle stress and scrutiny of their activities and performance.

d) The Athletic Integrity Officer's Quarterly Meeting with the NCAA and Big Ten Conference

During the NCAA convention in San Diego, California, on January 14, 2014, Ms. Del Giorno conducted the quarterly meeting with the NCAA that is required under the AIA. Her scheduled meeting with the Big Ten Conference's Associate Commissioner of Compliance Chad Hawley was canceled due to illness.

e) Ethics and Compliance Hotline Reporting

Penn State received eight complaints during this reporting period. Three of the reports were made through anonymous hotline calls, a fourth anonymous complaint was forwarded via letter from the NCAA, and Ms. Del Giorno received four complaints directly. The reports related to issues including: complaints of inappropriate language used by staff; concerns of conflicts of interest and undue influence involving staff; potentially improper communication with a prospective student-athlete; illegal participation of a student-athlete at a tournament; a violation of a human resources policy; employee concerns about a supervisor; and concerns about the course registration process for student-athletes. Four of the complaints remain under investigation, and four have been resolved and closed.

On January 21, 2014, President Erickson reissued his e-mail to all students, faculty, and staff detailing the various resources available to the community to report wrongdoing. This term,

the e-mail was modified and reorganized by newly hired Ethics Specialist Tim Balliett and included information on how to make reports about: a crime or emergency situation; child abuse; behavioral threats; bias or discrimination; or suspected ethical or policy violations. The message separately detailed the resources available to assist victims of sexual violence, abuse, or harassment or of other types of alleged wrongdoing. It referred to training opportunities on the topics included in the e-mail.

B. Phase II—The Plan for Continuous Improvement

As previously reported, the senior administrators responsible for coordinating Penn State's implementation of the Freeh Report's recommendations and satisfaction of the requirements of the AIA created a plan to follow-through with the remaining commitments imposed as part of the Consent Decree and to address an array of other initiatives of similar import to the University. In furtherance of their "Plan for Continuous Improvement," those administrators continued to meet this past quarter with administrators to whom oversight of discrete projects has been delegated, including representatives from the Office of Human Resources ("OHR"), the Athletics Department and its compliance unit, University Ethics and Compliance, the Office of Internal Audit, the Risk Management Office, and University Police & Public Safety. As discussed elsewhere in this report, a number of projects identified by this group that originated with initiatives first undertaken in connection with the Freeh Report recommendations have moved forward, such as the values and culture survey, the publication of a revamped sexual harassment policy, and implementation of a new tracking system for University-wide training.

C. Penn State's Efforts to Comply with the Recommendations in the Freeh Report

Penn State continued to implement the remaining outstanding Freeh Report recommendations, including the adoption of a Human Resources Information System ("HRIS"), the institution of physical security measures, and a review of the University's culture and ethics. The Office of Ethics and Compliance also remained heavily active this quarter.

1. Director of Ethics and Compliance (Recommendations 2.1, 4.1)

Director of University Ethics and Compliance Regis W. Becker continued to organize and develop the Office of Ethics and Compliance. On January 14, 2014 and February 11, 2014, he chaired meetings of the Ethics and Compliance Council. The Council is scheduled to meet ten times in 2014, and each unit with compliance functions will present to the Council over the course of the year. The Council continues to offer support in the development of Penn State's values statement, working with the Ethics Resource Center to analyze the ethics and culture survey as well as with committees being formed to distill the survey data for use in the final values statement. In addition, the Council has created and is overseeing a number of subcommittees, including the Youth Programs Council, the Ethics Committee, the Compliance Training Committee, and the Privacy Council.

On January 1, 2014, administration of the ethics and compliance hotline transitioned from the Office of Internal Audit to the Office of Ethics and Compliance. Mr. Becker is assembling an informal working group to review Penn State's investigative needs.

Mr. Becker is testing the effectiveness of compliance software that enables him to monitor the seven elements of the compliance program. The software program utilizes a survey to be completed by University units with compliance responsibilities that generates information

on how the unit's activities relate to compliance program elements. It is then used to calculate a risk rating and analyze potential compliance gaps.

2. Oversight of Programs for Minors (Recommendation 7.3)

This quarter, Youth Programs Compliance Specialist Sandy Weaver focused her work on physical security, abuse awareness training, and oversight responsibilities for the University's more than 700 youth programs. She also chairs the Penn State Youth Programs Council, which has met four times to date. The Council has drafted a mission statement for use by youth programs. It is also developing a guide for youth program orientation sessions.

Ms. Weaver continues to develop a database to maintain an inventory of all youth programs at Penn State. She also collaborates with the Commonwealth Campuses to coordinate and streamline best practices across the state. On January 24, 2014, she made a presentation on youth protection obligations during the Penn State Youth Program Manager's Meeting.

Ms. Weaver works closely with Director of the Center for Workplace Learning and Performance Susan Cromwell to promote completion of the annual, mandatory "Reporting Child Abuse" training offered by Penn State. Penn State was unable to complete training for every employee on this topic in 2013 (as discussed below), but it did complete training of approximately 24,000 employees. Ms. Weaver and Dr. Cromwell continue to enforce training of youth program staff prior to any work with minors.

On December 18, 2013, Pennsylvania Governor Tom Corbett signed into law bills designed to enhance the Commonwealth's child abuse laws. These new laws require minor changes to the "Reporting Child Abuse" training. A number of additional bills pending in the General Assembly could result in more prescribed training content and could redefine who must receive training annually. Ms. Weaver and Dr. Cromwell are closely monitoring legislative activity that may affect the content of existing training and of Penn State's policies related to

youth protection. They also met in February 2014 with Professor Lucy Johnston-Walsh, the supervising attorney at the Children's Advocacy Clinic of the Dickinson School of Law, to discuss the implications of the new laws and review the details of changes they may need to make to trainings and policies in response.

Ms. Weaver also is involved in projects being carried out on the Commonwealth Campuses to heighten security and access controls at athletic and recreational facilities. Penn State collaborated with a security consultant to determine the scope and nature of the physical security improvements needed on each campus. A meeting was held on January 29, 2014 with representatives from all of the campuses to address any questions or concerns they might have had regarding the implementation of Policy AD73 and the electronic security systems being installed in their facilities. A member of our team participated in that meeting. The majority of these installations were completed in January.

In conjunction with the implementation of these security measures, Penn State will conduct training for staff to ensure that they understand the processes needed to support the new technology and how it will affect their daily lives. Ms. Weaver's Facilities Access Subcommittee developed and distributed to all of the campuses guiding principles for implementation of Policy AD73 (the facilities access and guest policy) and facility analysis questions to help determine needed changes based on the policy.

Ms. Weaver participated in the Presidential Task Force on Child Care at Penn State, a group charged with reviewing child care services at Penn State. It completed its review of child care at all campuses and presented a full report to President Erickson on January 9, 2014.² The Task Force benchmarked Penn State's child care centers against those of peer institutions,

² See Presidential Task Force on Child Care at Penn State, Findings and Report to President Rodney Erickson, available at http://www.psu.edu/ur/2014/PTFoCCaPS_012113b.pdf.

reviewed current child care policies, and studied the roles of the College of Health and Human Development and the OHR in providing oversight for the child care centers. The report contained five major findings with accompanying recommendations.

3. Ethics Specialist (Recommendations 1.1, 1.2)

On December 2, 2013, Ethics Specialist Timothy R. Balliett started work with the Ethics and Compliance Office, reporting to Mr. Becker. As the ethics specialist, he will help develop and communicate the University's ethical values, standards, and policies to all University constituents.

Dr. Balliett participates in the Ethics and Compliance Council and the Compliance Training Committee. He also is active in the Advisory Council for Continued Excellence (formerly known as the Freeh Response Advisory Council), and he is responsible for coordinating with the Ethics Resource Center to obtain the survey data that will help Penn State identify specific issues and priorities on different campuses and within different constituencies. On February 25, 2014, he received a report from the Ethics Resource Center providing a more detailed breakdown of that data.

This quarter, Dr. Balliett and Mr. Becker established the University Ethics Committee to further support compliance with Freeh Report recommendation 1.2.1. The Committee is composed of eight high-level administrators and academics from across the University with ethics experience. Dr. Balliett drafted the Committee's mission statement, which states the Committee's purpose to serve as an advisory board for the development and implementation of policies, standards, programs, and education concerning the University's ethics, values, and culture. The Committee is expected to improve coordination of ethics activities across all

campuses and advise the Office of Ethics and Compliance, the Board, the president, and University administrators on issues of ethical import.

As part of Penn State's efforts to address Freeh Report recommendation 1.1, Dr. Balliett also is working with Mr. Becker to draft a Code of Responsible Conduct for the University that will establish ethical standards for all students, faculty, and staff. In addition, Dr. Balliett is scheduling meetings with the directors of 46 units across Penn State to assist them in the development of their submissions to the University's 2014-19 Strategic Plan. Penn State has required all units to address ethics and integrity in their individual strategic plans, and he is responsible for helping each unit consider and draft those plans.

4. Tracking Training (Recommendation 2.2.10)

Freeh Report recommendation 2.2.10 requires Penn State to provide and track mandated employee training. In 2013, a total of 24,080 employees completed the "Reporting Child Abuse" online training; in addition, 3,241 employees, students, and volunteers completed online Clery Act training and 3,217 individuals completed in-person training. All individuals who are designated "campus security authorities" are required by Penn State policy to complete the training annually. These individuals have a statutory duty to notify the University when they learn of alleged crimes falling under the Act.

Mr. Becker and Ms. Basso both met with me in December 2013 and discussed the difficulties they face in completing annual mandated reporter training for every employee as currently required by Penn State policy but not by Pennsylvania law. These difficulties are inevitable for any organization with tens of thousands of employees and the corresponding continuous turnover of personnel. Since that meeting, Penn State has implemented a new system

to track all mandatory trainings and to notify all Penn State employees of their training obligations and status.

The University also has formed a Compliance Training Committee to review, prioritize, and provide oversight with respect to University-wide training programs. One issue the Committee identified that already has been addressed by Penn State was the need to strengthen the University's sexual harassment policy. On January 27, 2014, Penn State published Policy AD85: "Discrimination, Harassment, Sexual Harassment and Related Inappropriate Conduct" in response to a recognized need to better address this area of compliance.³

5. New Online Clery Act Training

On January 24, 2014, Penn State introduced its new online Clery Act training course. In the past, Penn State has conducted Clery Act training both in-person and online. With the introduction of the new Clery Act online training course, however, Penn State will no longer conduct any in-person training sessions on this topic. "Campus security authorities" must pass a post-training test with a minimum score of 80 percent in order to be certified. A member of our team reviewed the new training and found it to be informative and thorough. The training also is available online to the general public, and Penn State hopes to be able to share this resource with other educational institutions.⁴

6. Penn State Culture (Recommendation 1.1)

Last quarter, Penn State conducted its values and culture survey as part of its response to Freeh Report recommendation 1.1.⁵ On December 16, 2013, the Ethics Resource Center provided Penn State with a draft summary of that survey process. The report described the

³ See Policy AD85, available at <http://guru.psu.edu/policies/AD85.html>.

⁴ See <http://creativegroup.psu.edu/client/clery/index.html>.

⁵ See Monitor's Fifth Quarterly Report at 16.

development of the survey, provided the response rates for faculty, staff, undergraduate students, and graduate students, and summarized response rates by campus. The total response rate for all of Penn State's campuses was 13.2 percent, with higher response percentages for faculty and staff.

The Ethics Resource Center has issued two detailed reports on the survey. These reports offered a breakdown of the results of values-related questions by group (faculty, staff, undergraduate students, and graduate students) and by campus. They further tentatively identified the highest ranked values. The report offered recommendations for the gathering of additional community input to review these values and develop an overarching, concise statement of values for the University. The Ethics Resource Center provided samples of effective values statements to further support Penn State's process. It also continues to work on a report addressing the results of ethics-related survey questions.

This quarter, the Freeh Response Advisory Council, which had taken the lead on responding to Freeh Report recommendation 1.1 (fostering an ethical culture), voted to rename itself the Advisory Council for Continued Excellence, or ACCE. The ACCE plans to reconvene the sub-committee on ethics and core values led by Chancellor Karen Wiley-Sandler to assist in the initial drafting of a University-wide values statement and in developing suggestions for how to implement a final values statement.

7. Human Resources Information System (Recommendation 2.2.7)

Penn State made progress this quarter toward satisfying the Freeh Report recommendation that it adopt a new HRIS with sufficient growth capacity to use at University Park and all of the Commonwealth Campuses. Penn State has narrowed the field of vendors for the new HRIS to three finalists. An executive steering committee will make the final vendor

selection with the intention of presenting its choice to the Board of Trustees for approval at its May 2014 meeting.

The overarching Human Resources Transformation Project remains in its second phase, which entails the creation of a detailed future state design. Five work streams are operating simultaneously to develop: organizational design and talent management; process redesign; policy harmonization; change management; and technology improvements. Their efforts include gathering feedback from key stakeholders and drafting a talent strategy, evaluating 15 human resources-related processes identified for evaluation and potential amendment, creating a human resources policy inventory, identifying relevant policies across the University system for harmonization, developing and coordinating outreach and socialization efforts, and driving the HRIS vendor selection process.

8. Recommendations Concerning Facilities Security

With support from Guidepost, we continued our evaluation of Penn State's work to enhance security at its athletics and recreational facilities. This past quarter, the University substantially completed Phase I security projects at the first group of facilities it targeted. The University also made progress towards the completion of design work to install electronic card swipe access technology and security cameras at a second set of facilities. The Penn State team overseeing these projects is studying software solutions that will integrate control of access credentials with existing human resources systems. In addition, that team will ensure that the personnel who manage athletic and recreational facilities are trained to use this technology and to enforce protocols such as Policy AD73. Representatives from across the University continue to collaborate with Penn State's design services team, architect, and general contractor to finalize

plans for Phase II renovation projects that will reduce the number of entry points and further secure access to athletic and recreational buildings.

IV. OTHER EVENTS DURING THE REPORTING PERIOD

A. Athletics

1. National Searches

Freeh Report recommendation 5.3 calls for Penn State “to conduct national searches for candidates for key positions, including head coaches and Associate Athletic Director(s) and above.” As we have reported, the University adopted Policy HR101 to guide the process for completing national searches.⁶

a) Football Head Coach

On January 11, 2014, Penn State named James Franklin as the head coach of the football team. After Coach Franklin was hired, members of my team and I met with him and with the athletic director, other members of the search committee that selected him, other Athletics Department administrators, compliance staff members, the athletics integrity officer, the provost, University counsel, and the vice president for human resources.

(1) The Selection Process

Consistent with Freeh Report recommendation 5.3 and Policy HR101, Dr. David Joyner, the athletic director, served as the Hiring Executive and led the search committee formed to find Penn State’s next head football coach. In addition to Dr. Joyner, the search committee had a diverse composition including Faculty Athletics Representative Linda Caldwell, Associate Athletic Director and Senior Woman Administrator Charmelle Green, Vice President for Administration Thomas Poole, Director of the Penn State Letterman’s Club Wally Richardson, and head coach of the Penn State men’s soccer team Bob Warming.

⁶ See Monitor’s Second Quarterly Report at 15.

The search committee interviewed a number of candidates. The full committee met in person with Coach Franklin following the conclusion of Vanderbilt University's football season. Among other things, the search committee members reported asking direct and probing questions about the 2013 incident that resulted in four former Vanderbilt football players being charged with rape. Coach Franklin forcefully denied that he engaged in any inappropriate conduct in response to the incident. In addition, the University conducted a thorough background check and made inquiries with a number of sources about the alleged rape. The search committee became satisfied following this due diligence that Coach Franklin did not engage in any questionable conduct following the reporting of the alleged rape, and that he met the standards that Penn State was seeking.

Dr. Poole, Dr. Joyner, President Erickson, Mr. Guadagnino, Ms. Del Giorno, and Mr. Stolberg held a second, in-person meeting with Coach Franklin prior to making an offer. It is notable that Penn State had Coach Franklin meet with its athletics integrity officer and NCAA rules compliance officer before selection, and the University's obligations under the AIA and Consent Decree were discussed.

(2) The Coaching Staff's Compensation

Freeh Report recommendation 2.2.9 called on Penn State to grant the OHR full access to executive compensation information and to empower that unit to conduct benchmarking and, in conjunction with the University's Budget Office, advise the administration and the Board of Trustees with respect to executive compensation issues. In response, Penn State assigned oversight of executive compensation matters to the vice president for human resources. Her office coordinates with administrators who have budget and finance responsibilities in support of the retention and development of compensation for executive and staff positions. In addition,

she also spearheaded the creation in November 2013 of the Board's new Compensation Committee.⁷

Penn State followed its protocols in the development of Coach Franklin's compensation package. Both the vice president for human resources and the associate athletic director for finance analyzed head coach salaries in the Big Ten Conference and at other peer football programs. They supplied this information to the senior vice president for finance and business and the associate general counsel who took the lead in negotiating Coach Franklin's contract. The University's controller, among other senior administrators, also was made aware of the market data and was kept abreast of the negotiations. The final terms of Coach Franklin's compensation fell within the range of compensation of other head football coaches that had been identified by the University. Ultimate authority to approve Coach Franklin's contract rested with the Compensation Committee of the Board, which approved the contract in a telephonic meeting on January 11, 2014. Penn State published Coach O'Brien's contract on its website, but the University has stated that it will not publish Coach Franklin's contract. Instead, it has published a summary of its terms.⁸

Freeh Report recommendation 2.2.9 calls for the University to:

Provide the OHR [Office of Human Resources] with complete access to executive compensation information and utilize the OHR, in conjunction with the University Budget Office, to benchmark and advise the administration and Board of Trustees on matters of executive compensation.

The Freeh Report does not define "executive." Thus, it is not clear whose compensation information is subject to this provision. If the definition is based, in whole or significant part, on

⁷ See Monitor's Fifth Quarterly Report at 30.

⁸ See "Penn State selects James Franklin to lead football program," available at <http://news.psu.edu/story/299963/2014/01/11/athletics/penn-state-selects-james-franklin-lead-football-program>.

the amount of compensation, then assistant football coaches would be covered as they are among the highest paid personnel at the University.

In Coach Franklin's contract, he was given authority to set assistant coach salaries within a negotiated budget. We understand that this is a common practice. The Athletics Department did not consult with OHR with respect to the aggregate amount of the budget approved for Coach Franklin's use, or for the setting of any assistant coach's salary. The Athletics Department's financial officer, however, researched assistant coach budgets among peer football programs, and that information was used to negotiate Coach Franklin's contract. That research revealed that the allotted budget pool was at the high end of the range for such pools in the Big Ten Conference; it was the second largest of such pools. Further investigation by Athletics Department and human resources administrators, and our own discussions with Coach Franklin, revealed a rational basis for these compensation decisions. In its continuing effort to act in full compliance with the recommendations in the Freeh Report, the University is reviewing the extent to which OHR should play a role in benchmarking Athletics Department staff compensation.

(3) Strength Coaches

Policy HR59 governs the employment of relatives. Penn State's policy requires approval in advance by the University's provost of any employment relationship that would result in one employee having supervisory authority or influence over a related employee's compensation or eligibility for advancement, or access to confidential information that might give rise to an uncomfortable working environment.⁹

When Coach O'Brien resigned, Director of Strength and Conditioning Craig Fitzgerald and other strength coaches who had worked with him at Penn State joined his staff with the

⁹ See Policy HR59, available at <http://guru.psu.edu/policies/OHR/hr59.html>.

Houston Texans. To fill these positions, Penn State hired Dwight Galt III as director of performance enhancement on the recommendation of Coach Franklin, as well as several strength coaches from Coach Franklin's Vanderbilt staff. The Athletics Department also re-hired Mr. Galt's son, Dwight Galt IV, who was among the strength coaches who originally had left to work for the Texans, as assistant director of performance enhancement. Mr. Galt IV was re-hired at a higher salary than he had previously earned at Penn State.

This hiring decision was approved after-the-fact by the provost, subject to the conditions that Mr. Galt IV not report to Mr. Galt III, that Mr. Galt III have no influence over human resources issues concerning his son, and that the athletics integrity officer monitor the reporting relationship. University officials have expressed to me the importance of obtaining prior approval from the provost of hiring decisions in the future that might implicate this policy.

Under Coach O'Brien, the strength and conditioning coaches who worked with the football team spent approximately 20 percent of their time working with at least one other varsity sport. Coach Franklin requested that the football strength and conditioning coaches work exclusively with the football team; in support of his request, he noted that this practice is followed at other Big Ten Conference schools and other peer institutions. His request was approved by the athletic director. As a consequence, the other varsity sports will lose 4/5 of a full time equivalent strength and conditioning coach, while football will gain that additional coverage. The athletic director has pledged that the Athletics Department will compensate for the reduced coverage for other sports by, among other practices, hiring additional personnel and making more robust use of graduate assistant interns.

Both the Policy HR59 and strength coach resource allocation issues were reported by the University to my team.

(4) New Hire Orientation

Multiple Freeh Report recommendations and AIA obligations bear on the orientation process for the new football coaching and support staff. As “Covered Persons” under the AIA, Penn State must distribute to each of the new coaches the Athletics Code of Conduct within 30 days of their date of hire and obtain their certification to abide by it.¹⁰ Freeh Report recommendation 5.5.4 calls on the University to “[e]nsure that new hires and incumbent compliance personnel have requisite working knowledge of the NCAA, Big Ten Conference and University rules.” Other Freeh Report recommendations and Penn State policies require that each of the new members of the Athletics Department pass a background check. Penn State satisfied each of these commitments.

As discussed above, the search committee that identified Coach Franklin performed an extensive background check during its selection process. Vice President for Human Resources Susan Basso confirmed to my staff that the University completed background checks of the remainder of Coach Franklin’s staff before they began work. In addition, less than a month after arriving on campus, Coach Franklin and his staff certified that they had received, read, and understood the Athletics Code of Conduct.

On February 11, 2014, the Athletics Department hosted an orientation session, which a member of my staff attended. The newly hired personnel in attendance included the new football and strength and conditioning coaches, the baseball coaching staff, softball coaching staff, swimming and diving coaching staff, interim men’s and women’s fencing coach, interim women’s tennis coach, and new men’s tennis assistant coach. Representatives from key units across the Athletics Department and University addressed the new personnel.

¹⁰ See AIA § III.C.1.

The new coaches were briefed on the AIA, the Consent Decree, the ethics and compliance hotline, the Athletics Code of Conduct, and each head coach's responsibilities as a Team Monitor. Mr. Stolberg confirmed to my staff that his presentation on athletics compliance satisfied Freeh Report recommendation 5.5.4. He noted, however, that further in-person training sessions would be conducted with the newly hired coaches to cover NCAA rules compliance in more depth.

b) Associate Athletic Director for Business Relations and Communications

Last August, Greg Myford left his post as associate athletic director for business relations and communication. Pursuant to Freeh Report recommendation 5.3 and Policy HR101, Penn State advertised the job opening, composed an internal search committee, and engaged an outside firm to help it identify candidates for this position. A number of candidates have been identified, and the search committee is actively interviewing applicants.

c) Women's Tennis Head Coach

Dawna Denny-Wine resigned as head coach of the women's tennis team on December 6, 2013. Athletic Director David Joyner announced that Chris Cagle, an assistant coach of Penn State's men's tennis team, will serve as the interim head coach of the women's team pending a nation-wide search for Ms. Denny-Wine's replacement, which will occur following spring competition.¹¹

d) Women's Volleyball Associate Head Coach

On February 13, 2014, Penn State announced the hiring of Salima Rockwell as associate head coach of the women's volleyball team. Vice President for Human Resources Susan Basso

¹¹ See "Dawna Denny-Wine Resigns as Penn State Women's Tennis Head Coach," available at <http://www.gopsusports.com/sports/w-tennis/spec-rel/120613aad.html>.

stated that her department was not consulted or given a chance to advise the Athletics Department with respect to compensation matters before Ms. Rockwell's contract had been negotiated. Subsequent analysis of the contract by OHR, however, determined that the compensation terms were reasonable.

2. The Sanctions

This past quarter, Penn State deposited into a segregated account a second installment of \$12 million towards the \$60 million monetary penalty imposed on the University as part of the Consent Decree.

3. Finances

Penn State's Athletics Department operated at a financial deficit for the 2012-13 academic year, as expenses exceeded revenues by \$5.9 million.¹² The Athletics Department used existing reserves to make up for the shortfall but anticipates expenses will continue to exceed revenues over the next three-to-four years requiring a loan approved by the Board of Trustees last fall to cover operating costs, make capital and programmatic investments, and maintain full funding for all 31 of its varsity teams.¹³

4. The Morgan Academic Support Center for Student-Athletes

Since our last report, the University has made some progress in its efforts to alleviate the staffing short-fall in the Morgan Center. In January 2014, the Morgan Center hired a new academic counsellor who has taken over the provision of academic services to six of Penn State's varsity sports programs. A search committee is working to fill another academic

¹² See Penn State's 2012-13 NCAA Financial Report, available at <http://www.gopsusports.com/genrel/021414aaa.html>.

¹³ See "Penn State Athletics Addresses NCAA Annual Reporting; Takes Steps to Remain Self-Supporting Unit," available at <http://www.gopsusports.com/genrel/021414aaa.html>.

counselling position, and the Morgan Center also expects to pursue a life skills specialist in the coming weeks.

There has been little progress made in efforts to address concerns raised by the separation of facilities and the state of the accommodations out of which academic services are provided. Last fall, we reported that the University would compose a working group to study and make recommendations regarding the feasibility of reducing the number of locations out of which the Morgan Center operates. That body, however, has met just once since its inception last November and remains in the initial stages of collecting the information.

B. Lawsuits, Investigations, and Legislative Activity

We have continued to monitor the lawsuits, investigations, and legislation related to Penn State's compliance with the Consent Decree and AIA that have arisen following the prosecution and conviction of Jerry Sandusky.

1. Litigation Update

a) The Paterno/Individual Trustees' Lawsuit

On January 7, 2014, the court presiding over a civil action filed by the Paterno family, four members of the Board of Trustees, and others ruled on preliminary objections asserted by the NCAA. The court held that the University's participation in the lawsuit was necessary for the plaintiffs to pursue their contract claims, which seek to void the Consent Decree.¹⁴ The court also curtailed the scope of the plaintiffs' claim that statements made by the NCAA as part of the Consent Decree were defamatory. Of the five statements at issue, the court reasoned that only

¹⁴ See Opinion & Order dated January 7, 2014 at 5-13, *Paterno v. Nat'l Collegiate Athletic Ass'n*, No. 2013-2082 (Ct. Com. Pl. Centre Co. May 30, 2013).

two met the legal requirements to survive the NCAA's challenge—one actionable by Trustee Clemens and the other actionable by two former coaches.¹⁵

The court allowed the Paterno family to proceed with its claim for commercial disparagement, which alleges their interest in Joseph Paterno's name and reputation has been diminished in value.¹⁶ The court also allowed the plaintiffs to proceed with their allegations that the NCAA improperly conspired with Judge Freeh's law firm.¹⁷ The court, however, dismissed the claims of two former Penn State football coaches who charged that the NCAA was responsible for their inability to secure suitable employment.¹⁸ The Court permitted the plaintiffs to file an amended complaint.

Following the court's ruling, the Board's leadership urged the four remaining trustee plaintiffs to withdraw from the lawsuit and reiterated its earlier position that the trustees had created a conflict of interest by virtue of their participation.¹⁹ The trustee plaintiffs nevertheless elected to continue to prosecute the suit, but agreed to recuse themselves from Board discussions of the litigation.

On February 5, 2014, the plaintiffs filed their first amended complaint, adding Penn State as a defendant and adding new allegations.²⁰ Trustee Clemens asserted that:

As a member of the Board [of Trustees], he has a fiduciary responsibility to take actions that are in the best interests of the

¹⁵ *See id.* at 14-18.

¹⁶ *See id.* at 18-20.

¹⁷ *See id.* at 22-24.

¹⁸ *See id.* at 20-22.

¹⁹ Prior to the court's ruling, trustee Khoury withdrew as a plaintiff in the lawsuit. *See* Monitor's Annual Report at 38, 47. The remaining trustee plaintiffs are Messrs. Lubrano, Clemens, McCombie, and Taliaferro.

²⁰ *See* First Amended Complaint, *Paterno v. Nat'l Collegiate Athletic Ass'n*, No. 2013-2082 (Ct. Com. Pl. Centre Co. May 30, 2013).

entire University community. He and his fellow trustees are parties to this action with that intention and in that spirit.²¹

The plaintiffs again asserted in the amended complaint that President Erickson did not have authority to enter into the Consent Decree and stated that:

The members of the Board of Trustees, as fiduciaries of the University, are responsible for the governance and the welfare of the institution. They have been rendered unable to fully carry out their administrative and other functions in managing and governing the University because of the NCAA's interference, and have suffered substantial injuries due to a negative impact on Penn State's budget and the University's ability to attract high-caliber students and faculty, whether associated with the football program or not.²²

Through the amended pleading, the plaintiffs seek "equitable relief as against the NCAA Defendants and Penn State" in the form of a declaration from the court that the "Consent Decree was unauthorized, unlawful, and void *ab initio*."²³

In a press release issued after the amended complaint was filed, Penn State stated:

Penn State is deeply disappointed that the Paterno family, four individual trustees and others have added Penn State as a party in their lawsuit against the NCAA. Penn State will do its best to mitigate the expense, disruption to its operations and harm to its mission and interests, which are caused by the forced and unwilling inclusion of the University as a defendant in a dispute between private parties.

The Board has not authorized the individual trustee plaintiffs to sue as trustees or to bring claims on behalf of the University. Due to concerns with serious conflicts of interest that already exist, Board leadership urged the trustee plaintiffs to end their involvement in the lawsuit. Instead, these conflicts of interest and the harm to the University have been made worse by the actions of the four

²¹ *Id.* at ¶ 10.

²² *Compare* Complaint at ¶ 88 *with* Amended Complaint at ¶ 95; Amended Complaint at ¶ 114(c).

²³ *Id.* at ¶ 169(1)(c).

Trustee plaintiffs and others in seeking to force the University to be a party in this litigation.[²⁴]

Penn State remains committed to full compliance with the Consent Decree and the Athletics Integrity Agreement. We look forward to continuing to work with Sen. George Mitchell in pursuit of these objectives.²⁵

The NCAA has until March 7, 2014 to respond to the amended complaint.²⁶ Penn State's response is due at a later date.

b) Other Pending Civil and Criminal Actions

A ruling on Governor Corbett's motion to dismiss the NCAA's suit to invalidate the Pennsylvania Institution of Higher Education Monetary Penalty Endowment Act remains pending in federal court.²⁷ In a separate, state court lawsuit against the NCAA, two Pennsylvania elected officials have asked the court to direct disbursement of the monetary penalty imposed on Penn State as part of the Consent Decree according to the Endowment Act. Pursuant to the Consent Decree, the \$60 million penalty is to be used for an endowment for programs preventing child sexual abuse and/or assisting the victims of child sexual abuse. The

²⁴ The press release implicitly implicates University Standing Orders, which prescribe trustee conduct. Standing Order V(1)(d)(v) promotes open and candid discussion within the Board but requires public support of decisions ultimately reached by the Board, noting that "it can be counterproductive and damaging to the University for individual trustees to publicly criticize or subvert Board decisions." Standing Order V(1)(d)(vi) provides that, unless specifically authorized, no individual trustee has the authority to act on his or her own on behalf of the University or the Board. Standing Order V(1)(d)(xi) obligates trustees to advocate for the University's interests but only to speak for the University or the Board when authorized to do so in order to support the conveyance of a consistent message.

²⁵ See "Penn State clarifies: It is not a willing party to NCAA lawsuit," available at <http://news.psu.edu/story/302906/2014/02/05/progress/penn-state-clarifies-it-not-willing-party-ncaa-lawsuit>.

²⁶ See Joint Stipulation Regarding Defendants' Response to Plaintiffs' Complaint, *Paterno v. Nat'l Collegiate Athletic Ass'n*, No. 2013-2082 (Ct. Com. Pl. Centre Co. May 30, 2013).

²⁷ See Docket, *Nat'l Collegiate Athletic Ass'n v. Corbett*, 1:13-cv-00457-YK (M.D. Pa. Feb. 20, 2013).

Endowment Act would require that those funds be used solely within Pennsylvania. This matter is fully briefed and now before the court for decision.²⁸

On January 17, 2014, the court presiding over the criminal actions against Penn State's former president, athletic director, and senior vice president for finance and business denied as "premature" the defendants' request to prohibit the use of Cynthia Baldwin's grand jury testimony, which the defendants contend violated their attorney-client privilege.²⁹ Baldwin is the former general counsel of the University. On February 18, 2014, the Commonwealth and the defendants submitted briefs addressing whether, and if so, what, requested relief may be had with respect to Ms. Baldwin's conduct.³⁰

2. Investigations

On February 5, 2014, Pennsylvania's Attorney General reported that the internal review into the investigation of Jerry Sandusky's child sexual abuse is ongoing, but has been slow-moving because of the volume of information that requires analysis and difficulties obtaining documents. Attorney General Kane reiterated her intention to publish the results of the investigation when it has been completed.³¹

²⁸ See Docket, *Corman v. Nat'l Collegiate Athletic Ass'n*, 1 MD 2013 (Pa. Commw. Ct. Jan. 4, 2013).

²⁹ See Order dated January 17, 2014 (denying motions to preclude testimony), *Commonwealth of Pennsylvania v. Curley*, CP-22-CR-0003614-2013 (Ct. Com. Pl. Dauphin Co. Aug. 1, 2013); *Commonwealth of Pennsylvania v. Spanier*, CP-22-CR-0003615-2013 (Ct. Com. Pl. Dauphin Co. Aug. 1, 2013); *Commonwealth of Pennsylvania v. Schultz*, CP-22-CR-0003616-2013 (Ct. Com. Pl. Dauphin Co. Aug. 1, 2013).

³⁰ See Docket *Commonwealth of Pennsylvania v. Curley*, CP-22-CR-0003614-2013 (Ct. Com. Pl. Dauphin Co. Aug. 1, 2013); *Commonwealth of Pennsylvania v. Spanier*, CP-22-CR-0003615-2013 (Ct. Com. Pl. Dauphin Co. Aug. 1, 2013); *Commonwealth of Pennsylvania v. Schultz*, CP-22-CR-0003616-2013 (Ct. Com. Pl. Dauphin Co. Aug. 1, 2013).

³¹ See Press Release: "Sandusky case review: Attorney General Kane provides status update," available at <http://www.attorneygeneral.gov/press.aspx?id=7434>.

On January 23, 2014, the U.S. Department of Education issued a letter to Penn State announcing its intention to conduct a Title IX compliance review focused on the University's treatment of sexual harassment and sexual assault complaints. A number of media outlets reported on this matter, including a statement issued by Assistant Secretary for Civil Rights Catherine Lhamon, that the Department's concern was triggered by its examination of the University's sexual harassment policy and increase in "forcible sex offenses" reported in Penn State's 2013 Annual Security & Fire Safety Report ("ASR"), which reports information from the prior year.³²

We conferred with Penn State administrators regarding the Department's letter and Assistant Secretary's statement. The Clery Act requires that ASR's include all alleged offenses reported in a given year, even if the reports were made years after the alleged offenses took place.³³ As indicated by an asterisk in Penn State's 2013 ASR, the disclosed statistics include forcible sex offenses that occurred in prior years, but that were not reported to the University campus security authorities until 2012.³⁴ The 2013 ASR reported that 36 of the 56 forcible sex offenses reported to have occurred in 2012 actually occurred in prior years, and the majority of those were related to the reporting in 2012 of Jerry Sandusky's sex offenses. In addition, Penn State states that increased awareness and publicity of the University's ethics and compliance hotline has resulted in increased reporting overall.

³² See, e.g., "U.S. agency eyes sex assault reports at Penn State," SI.com, reported at <http://sportsillustrated.cnn.com/2014/football/ncaa/wires/01/26/2060.ap.fbc.penn.state.sex.offenses.1st.ld.writethru.0650/>.

³³ See U.S. Code of Federal Regulations, 34 C.F.R. § 668.46(c)(2) "*Recording Crimes*. An institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to a campus security authority."

³⁴ The University Park Annual Security & Fire Report referred to in the article can be found at <http://www.police.psu.edu/clery/security-reports/index.cfm>.

3. Legislation Update

On January 23, 2014, State Senator Yudichak introduced a bill referred to as “The Pennsylvania State University Board of Trustees Reorganization Act.” If it becomes law, the legislation would make the Pennsylvania General Assembly “the sole and exclusive authority to determine the composition” of the University’s Board of Trustees.³⁵

Among other things, Senator Yudichak’s bill would reduce the size of the Board of Trustees from 30 to 23 voting members and would adjust the Board’s composition and the manner in which trustees are selected.³⁶ The proposed law would allow for eight alumni members to be elected by the alumni, five members who would represent the agricultural community, five members who would represent business and industry, and five gubernatorial appointees.³⁷ The business and industry trustees would be selected by a newly instituted committee comprised of the chairman of the Board and one trustee from each of the four categories of trustees that would be charged with reviewing and recommending candidates for the approval of the full Board.³⁸ If enacted, the Secretaries of Agriculture and of Education would become non-voting, ex officio members of the Board.³⁹ Moreover, the Governor and the Secretary of Conservation and Natural Resources would be removed from the Board, and the

³⁵ See S.B. 1240 at § 3(c).

³⁶ See *Id.* at §§ 3(a)-(b), 4.

³⁷ *Id.* at § 3(a). At present, the 30 voting members of the Board are comprised of nine alumni trustees, six gubernatorial appointees, three ex officio members (the Secretaries of Education, Agriculture, and of Conservation and Natural Resources), six trustees representing agricultural societies within the Commonwealth, and six trustees representing business and industry who are elected by the Board. See Corporate Charter of The Pennsylvania State University, “Membership of the Board.”

³⁸ See S.B. 1240 at § 4.

³⁹ *Id.* at § 3(b).

University's president and certain public officials, including the Governor, would be prohibited from serving as trustees during their terms of office.⁴⁰

C. Penn State Governance

1. Presidential Search and Hiring

On February 17, 2014, Penn State announced that Dr. Eric J. Barron, President of Florida State University, will succeed Dr. Erickson and become the University's eighteenth president on May 12, 2014. I have spoken with Dr. Barron, who pledged his full support for the activities surrounding my monitorship. I look forward to working with him.

2. The Board of Trustees

a) Elections

The Board held interim elections for several key positions on January 17, 2014. The Board re-elected the current chair, Keith Masser, who ran unopposed and will retain this post for the next six months, and eight other officers. The Board also elected three at-large members to its executive committee: Kathleen Casey; Donald Cotner; and Richard Dandrea.

b) Compensation Committee

As noted earlier, the Compensation Committee met telephonically on January 11, 2014 to review and approve Coach Franklin's contract, and on January 16, 2014, held its first in-person meeting. The Committee reviewed and approved its operating guidelines, which outline its purpose, meeting obligations, responsibilities, and reporting duties. The guidelines clarify the Committee's responsibilities with respect to oversight of compensation for five tiers of executives. The Committee further discussed its executive compensation strategy, which outlines Penn State's effort to maintain competitive salaries in the five tiers of executive

⁴⁰ *Id.* at §§ 7(a)-(b), 8(1).

positions, including the president, senior executive officers, prominent athletics positions, vice presidents, and other academic and administrative executives. It supports comparison of compensation among peer groups at comparable educational institutions. The Committee approved the executive compensation strategy with the intention of presenting it to the full Board in March 2014. Sibson Consulting, which assisted Penn State in establishing the Compensation Committee, also is conducting a custom study of Penn State's peer group, sponsored by Penn State and several other institutions. The study will compare salaries, bonuses, compensation, retirement, and benefits across approximately 60 institutions.

c) Training Sessions

The trustees present at the January 17, 2014 Board meeting received presentations on the mandatory training programs and risk management processes, in compliance with Freeh Report recommendation 3.4.2. As required by Freeh Report recommendations 3.4.6 and 4.2.6, Clery Compliance Coordinator Gabriel Gates presented to the Board on the Clery Act's requirements, the main changes and improvements to the University's Clery Act training program, and the 2013 ASR. The Board also received an overview of the mandatory "Reporting Child Abuse" training from Ms. Weaver and Dr. Cromwell.

University Risk Officer Gary Langsdale also provided an overview of Penn State's enterprise risk management and the Board's oversight role. He identified fifteen specific risks assigned to the various Board committees. The trustees engaged in a detailed discussion regarding the potential addition of other risks and requested an annual report to the Board on the status of all categories of risks.

The majority of the trustees present completed their AIA-mandated annual “Covered Persons” training on athletics compliance.⁴¹ The training included all of the substantive elements typically included for all “Covered Persons,” and incorporated several additional topics of potential relevance to trustees: activities of boosters; recruitment of prospective student-athletes; contacts with current student-athletes; donations; fundraising activities; and what activities constitute extra benefits to student-athletes under NCAA rules.

All trustees present certified in writing that they received this training, as mandated by the AIA.⁴² Four trustees did not attend the January Board meeting and must still complete this training before the June 30, 2014 deadline.

In addition, two trustees left the room for an extended period of time during which NCAA sanctions and “Covered Persons” responsibilities were covered. Based upon the amount of time missed, their training has not been adequately completed. Those trustees also must cure this deficiency by the June 30, 2014 deadline.

d) Governance Consultant

Holly J. Gregory, a governance consultant recently hired by the Board, attended the January Board meeting. Her work with the Board is intended to advance its efforts under Freeh Report recommendation 3.1 to review and reform the Board’s composition and function.

At the January 16, 2014 session, Ms. Gregory provided an overview of appropriate corporate governance, including a description of the trustees’ fiduciary duties of obedience, care, and loyalty. The trustees then conducted a private retreat session under her leadership for approximately four hours. The private retreat included an extended self-assessment process as required under Freeh Report recommendation 3.7. In the remaining session time, the Board

⁴¹ See AIA § III.D.1.

⁴² See AIA § III.D.2.

received information and began to discuss potential issues, including Board size, composition, membership selection procedures, and appropriate methods of communicating and interacting. Ms. Gregory will continue to meet with trustees in the coming months, and she intends to return to the full Board at its March and July 2014 sessions to continue her work.

e) Trustees Involved in the Lawsuit Against the NCAA and Penn State

The Estate of Joseph Paterno, along with four trustees and others, filed a first amended complaint on February 5, 2014, adding the University as a defendant. This litigation is discussed in more detail in Section IV.B.1.a.

As previously reported, in accordance with Freeh Report recommendation 3.2, Penn State amended its conflict of interest policy for the Board in 2013.⁴³ The policy encompasses Article VIII of its Bylaws. Its definition of a conflict of interest includes, among others, situations in which trustees have “an interest that may lead the Trustee to act in a way that is incompatible with or a breach of the Trustee’s fiduciary duty to the institution”⁴⁴ Trustees are required to disclose in writing any such actual or apparent conflicts of interest to the Office of the Board of Trustees and to the chair and to recuse themselves when matters relating to that conflict are discussed and voted upon by the Board.⁴⁵ The four trustee plaintiffs did not report this litigation in their required written disclosures. The University, however, has included in the public disclosure the following statement:

Trustees Clemens, Lubrano, Taliaferro and McCombie are among the named plaintiffs in a lawsuit filed against the National Collegiate Athletic Association. The University believes that the

⁴³ See Monitor’s Third Quarterly Report at 8-9.

⁴⁴ See Bylaws, Article VIII, Section 8.01(a).

⁴⁵ See Bylaws, Article VIII, Section 8.02, 8.04. To date, the trustee plaintiffs have recused themselves during privileged discussions concerning this litigation.

trustees' status as plaintiffs in this litigation constitutes a conflict of interest.⁴⁶

V. AREAS OF FUTURE FOCUS

This reporting period, we observed progress in implementation of facilities security projects, attention and adherence to the AIA, and the continued expansion of the Office of Ethics and Compliance. Penn State's administration has remained forthright and cooperative throughout this time, both self-reporting and supplying information about issues as they arise.

In the coming quarter, we will continue to monitor the integration of Penn State's new football staff, the University's response to trustee participation in the Paterno suit, the installation process of the new University president, as well as progress in implementing the HRIS, completing athletics facility security projects, and drafting of a University-wide values statement. We also will continue to observe Penn State's efforts to improve its mandatory training programs and tracking system, updates to its trainings and policies in response to pending Pennsylvania legislation, the continued development of the University's new compliance office, and efforts to uphold Penn State's obligations under the AIA.

⁴⁶ See "Conflicts of Interest Disclosure and Certification Summary Report," issued December 18, 2013, available at <http://www.psu.edu/trustees/>.