

**FIRST ANNUAL 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  
AND AS EXTERNAL MONITOR APPOINTED BY  
THE PENNSYLVANIA STATE UNIVERSITY**

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## I. INTRODUCTION AND SUMMARY

This is the first annual 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. This report also includes our first annual account of the University’s progress in implementing the recommendations made in the report by Freeh Sporkin & Sullivan LLP dated July 12, 2012 (the “Freeh Report”), pursuant to our separate role as the external monitor under the Freeh Report.<sup>1</sup>

Throughout the first year of the Consent Decree, Penn State has demonstrated its commitment to fulfilling the requirements of the AIA and to implementing the recommendations made in the Freeh Report. The amount of resources, time, and energy devoted to these efforts has been notable. We have been impressed by the professionalism of those leading this undertaking and their open and forthright communications with us. Where we have identified issues, they have been relatively minor and have been quickly addressed. These achievements have been accomplished notwithstanding heightened public scrutiny and continuing debate throughout the past year about the Consent Decree and its impact.

As of this first anniversary of my appointment as Monitor, Penn State has substantially completed the initial implementation of all of the Freeh Report recommendations and of its annual obligations under the AIA. During this most recent quarter, we verified that Penn State

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<sup>1</sup> One of the recommendations in the Freeh Report was for the University to appoint an external monitor to evaluate the implementation of the other recommendations made in that report. *See* Freeh Report, ch. 10, Recommendation 8.2. The University requested that I perform this additional role rather than retaining a separate monitor, and the NCAA consented to that arrangement.

trained and received certifications from “Covered Persons” as to their duties and responsibilities with respect to athletics compliance with only a handful of exceptions.<sup>2</sup> The athletic director certified the Athletics Department’s efforts to comply with the NCAA Constitution and Bylaws and Big Ten Conference Handbook, including the principles of institutional control, responsibility, ethical conduct, and integrity. His certification relied in part upon the attestations of the team monitors designated for each of Penn State’s varsity athletics programs who likewise certified their teams’ compliance with the NCAA and Big Ten Conference rules.

With the exception of several initiatives that necessarily will require a multi-year effort, Penn State has completed (or, in a few instances, has been excused from completing) all of the recommendations that were made in chapter 10 of the Freeh Report, as the AIA required. Among the notable achievements this past quarter, the Director of University Ethics and Compliance Regis W. Becker continued to staff his new department with the hiring of a new compliance specialist for youth programs. In collaboration with her colleagues, that compliance specialist has compiled an inventory of all youth programs and has published safety and security information for the parents of children who participate in them. Penn State also approved a new policy addressing financial conflicts of interest and introduced a crisis management plan. The Office of Human Resources and the Center for Workplace Learning and Performance have launched an electronic platform to track completion of mandatory training sessions. Representatives from the Athletics Department, the Office of Physical Plant, and the University Police have continued to lead various ongoing projects to enhance security at University facilities frequented by minors.

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<sup>2</sup> 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 athletics director’s executive committee.

While much has been accomplished, important work remains to be done. Penn State must maintain its focus on these ongoing initiatives while also fostering an environment in which its many undertakings will take root and thrive. By all indications thus far, the University has positioned itself well to meet this challenge.

## **II. THE MONITOR'S ACTIVITIES**

This quarter, we conducted numerous visits to the University Park campus to meet with Penn State administrators, faculty, and staff. We also visited Penn State's Fayette and York campuses. We have continued to attend meetings of the administration response team, the Freeh Response Advisory Council, and the Subcommittee on Ethics and Core Values.

Persons we met with since our last report include, among others: President Rodney Erickson; Vice President and General Counsel Stephen S. Dunham; Senior Vice President for Finance and Business David Gray; Vice President for Administration Thomas Poole; Vice President for Human Resources Susan Basso; Director of the Center for Workplace Learning and Performance Susan Cromwell; Athletic Director David Joyner; Associate Athletic Director for Compliance Matthew Stolberg; Associate Athletic Director for Facilities and Operations Mark Bodenschatz; Director of Internal Audit Daniel Heist; Athletics Integrity Officer Julie Del Giorno; Director of University Ethics and Compliance Regis Becker; Director of Penn State Sports Camps Ed Franks; Youth Programs Compliance Specialist Sandy Weaver; Clery Compliance Coordinator Gabriel Gates; Athletic Director for Penn State York Chris Beaverson; Director of Business Services for Penn State York Holly Lynne Gumke; Penn State York soccer coach Rich Chilcoat; Athletic Director for Penn State Fayette Vince Capozzi; representatives of the Office of Physical Plant; and several head coaches of Division I varsity teams.

During the past quarter, we attended the July 12, 2012 Board meeting held at Penn State Fayette – The Eberly Campus, the quarterly meeting of the Athletics Integrity Council, and a

meeting of the Ethics and Compliance Council. Members of our team attended annual compliance training sessions held for trustees and student-athletes designed to satisfy the AIA's annual athletics compliance training requirement.

A member of our team observed Penn State York's youth soccer camp held during the week of July 22, 2013 to verify the implementation of University-wide policies designed for the protection of minors on campus. As part of that process, we spoke with the director of business services at York, the athletic director, and the head coach of the soccer program and camp.

Members of our team met with Director of Internal Audit Daniel Heist to discuss the procedures for testing the implementation of the University's new policies related to background checks, access revocation for departed employees, document retention, Clery Act training, and, more generally, Clery Act compliance. We also reviewed Penn State's records of its work to meet the 119 recommendations in the Freeh Report and worked with Penn State to supplement those records where necessary.

We continued our work with Guidepost Solutions, LLC to review physical security developments at Penn State's athletics and recreational facilities. Our team conducted regularly scheduled visits throughout the quarter and met with Athletics Department administrators, design and construction professionals from the Office of Physical Plant, and others to review the progress toward implementing access restrictions and security measures at relevant facilities. We also continued to tour the facilities to observe changes being made.

We continued to collect and review pertinent documents from Penn State and have issued supplemental document requests based on the University's reported progress and activities. To date, the University has produced more than 47,000 pages of documents in response to our

requests and remains cooperative in this process. We also continued to review publicly available information to the extent we deemed relevant.

### **III. OBSERVATIONS AS TO SPECIFIC AREAS**

#### **A. Penn State's Efforts to Implement the AIA**

Penn State completed a number of annual requirements this quarter with respect to its obligations under the AIA. These obligations included completion of annual certifications of compliance by team monitors and the athletic director and completion of annual compliance training for all "Covered Persons" under the AIA.

##### **1. Activities of the Athletics Integrity Officer**

This past quarter, Athletics Integrity Officer Julie Del Giorno continued her efforts to establish her role and ensure the University fulfills its obligations under the AIA. Ms. Del Giorno met with head coaches, faculty, and administrators within the Athletics Department and other relevant units across the University to develop working relationships and establish expectations for ethical conduct within the Athletics Department. She also continued to meet regularly and work closely with Associate Athletic Director for Compliance Matthew Stolberg, helping the athletics compliance staff to improve record-keeping, maintain the list of "Covered Persons," refine the training curriculum, and complete all other AIA requirements. She meets at least monthly with Faculty Athletics Representative Linda Caldwell and continues to attend bi-weekly head coaches meetings, Dr. Joyner's weekly executive staff meetings, and meetings of the Freeh Response Advisory Council and administration response team. She also is in regular contact with our team to discuss her work and share pertinent information.

Ms. Del Giorno coordinated and oversaw the annual certification process for team monitors and the athletic director. She attended the NCAA Regional Rules Seminar in Indianapolis, Indiana. On June 4, 2013, she met with NCAA President Mark Emmert, members



of his executive staff, and members of our team to provide a report to the NCAA of her activities and plans, as required under the AIA.<sup>3</sup>

To support oversight of and compliance with the AIA's obligations, Ms. Del Giorno developed a matrix identifying 26 independent requirements under the agreement as a tool to track their completion. The organizational document lists which group or individual is responsible for overseeing each particular obligation, indicates the status of implementation, and describes any ongoing actions that may be required. Its purpose is to ensure that no AIA requirement falls through the cracks. Ms. Del Giorno identified several areas of ongoing effort, including work to refine protocols to ensure that all policies and procedures are distributed to "Covered Persons" within 30 days and that annual training is tracked in a more organized and accessible manner.

On June 12, 2013, Ms. Del Giorno chaired the quarterly meeting of the Athletics Integrity Council. At that meeting, the Council reviewed and discussed the content of the Quarterly Monitoring Report, which serves as the disclosure log that the Council maintains to track all athletics-related compliance concerns and investigations. Ms. Del Giorno reported on her June 4, 2013 meeting with the NCAA and provided the Council and us with a copy of her presentation. She informed the Council that she plans to develop a private website for the Council to facilitate access to documents and meeting materials and has since done so. The Council also discussed the annual team monitor and athletic director compliance certification process, indicating plans to review the results at the next quarterly meeting.

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<sup>3</sup> See AIA § III.B.1.

## **2. Team Monitor Annual Certifications**

The AIA requires Penn State to appoint a team monitor for each of the University's 31 NCAA-sanctioned, intercollegiate athletics teams. The team monitors annually must certify in writing to the athletic director and the Athletics Integrity Council that their teams complied with NCAA and Big Ten Conference rules and principles. They also must report annually on "any issues or problems that have arisen during [the] year and any corrective action taken in response."<sup>4</sup> As previously reported, Penn State appointed the head coach of each varsity intercollegiate athletics team to serve as its team monitor. Their annual certifications were due by June 30, 2013.

Penn State developed its Team Monitor Annual Certification form in consultation with the Monitor. The form requires each team monitor to certify to the best of his or her knowledge that the sports program complied with the NCAA's Constitution and Bylaws and the Big Ten Handbook, including, in particular, the principles of institutional control, responsibility, ethical conduct, and integrity. When necessary, team monitors attach documentation about any secondary violation that occurred within the program during the academic year. The form concludes with a representation that the team monitor took reasonable steps and made a good faith effort to become informed of relevant matters prior to certification and an acknowledgement that the athletic director's certification of Penn State's compliance with NCAA and Big Ten Conference rules and principles depends on the veracity of the team monitor's representations.

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<sup>4</sup> AIA § III.B.3.

Each of the 31 team monitors provided the required certification on or before the June 30th annual deadline.<sup>5</sup> There were reports of 24 secondary violations of NCAA or Big Ten rules across the 31 teams.<sup>6</sup> Fourteen teams certified that there were no secondary violations during the 2012-13 academic year. Nine of the secondary violations that were identified were self-reported by teams. The remainder either were discovered by the athletics compliance staff or reported by outside sources. Many of the secondary violations involved infractions such as impermissible text messages, calls to or contacts with potential recruits, recruiting activity during impermissible time periods, or inadvertent failure to complete all paperwork properly. Each infraction was reported to the NCAA and the Big Ten Conference, and appropriate corrective measures were taken internally. Responses are still pending from those organizations as to certain of the reported violations. Over the past few years since Mr. Stolberg's arrival, Penn State has seen a rise in the number of secondary violations it has reported. It should be noted that the self-reporting of secondary violations by an institution generally is viewed positively by the NCAA as a sign of an effective compliance program.

### **3. Athletic Director's Annual Certification**

The AIA requires the athletic director to review the reports submitted by team monitors and to certify in writing to the Athletics Integrity Council, the NCAA, and the Big Ten Conference that "the Athletics Department is in compliance with the NCAA Constitution and Bylaws and the Big Ten Handbook, and the principles regarding institutional control,

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<sup>5</sup> Associate athletic directors for baseball and softball served as team monitors for those teams because of the recent departures of those teams' head coaches.

<sup>6</sup> "A secondary violation is a violation that is isolated or inadvertent in nature, provides or is intended to provide only a minimal recruiting, competitive, or other advantage and does not include any significant impermissible benefit (including, but not limited to, an extra benefit, recruiting inducement, preferential treatment, or financial aid)." NCAA Const., § 19.02.2.1.

responsibility, ethical conduct, and integrity reflected” in those documents.<sup>7</sup> In a letter to the NCAA, the Big Ten Conference, and the Athletics Integrity Council dated July 11, 2013, Athletic Director David Joyner provided that certification. The letter further certified that, to the best of his knowledge after due inquiry, and with the exception of the secondary violations reported to the NCAA and the Big Ten Conference and remedied, “The Pennsylvania State University Department of Intercollegiate Athletics is in compliance with the NCAA Constitution and Bylaws and the Big Ten Handbook, and the principles regarding institutional control, responsibility, ethical conduct, and integrity reflected in the Constitution and Bylaws and the Big Ten Handbook.” The letter attached a chart describing the 24 secondary violations reported during the course of the 2012-13 academic year. Dr. Joyner’s certification also acknowledged that a recent incident reported to the NCAA on June 28, 2013 remained pending and awaited final disposition. That incident later was resolved as a secondary violation requiring no further action.

#### **4. Annual Training**

The AIA requires Penn State to provide annual training addressing the NCAA Constitution and Bylaws, the Big Ten Handbook, and the principles of institutional control, responsibility, ethical conduct, and integrity. The training program must cover the disclosure program required by the AIA and by the University’s and Athletics Department’s non-retaliation policy and commitment to maintaining confidentiality and anonymity with respect to disclosures. The Board of Trustees also must receive training on its specific relationship, role, and responsibilities regarding athletics. The Athletics Integrity Council is responsible for oversight

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<sup>7</sup> See AIA § III.D.1.

of the annual training program.<sup>8</sup> The AIA further requires each “Covered Person” who is required to receive annual training to certify in writing their completion of this obligation.<sup>9</sup> This annual training is due to be completed by June 30 of each year. In a letter to the NCAA dated July 11, 2013, Ms. Del Giorno reported Penn State’s timely completion of these annual training requirements. The Monitor concurs that Penn State substantially met this obligation by the June 30, 2013 deadline with certain immaterial exceptions noted below.

Student-athletes received their annual training and acknowledged their awareness of their athletics compliance obligations at a compliance meeting in September 2012. At that meeting, students were required to execute a series of compliance statements and authorization forms required by the NCAA, the Big Ten Conference, and Penn State. Mr. Stolberg also introduced the compliance office staff and discussed ethics, integrity, and, among other topics, rules relating to: gambling activities; interactions with local businesses and promotional activities; pro-sports counseling resources and agents; recruiting; eligibility; outside competition; employment; extra benefits; awards and memorabilia; complimentary admissions; meals; drug testing; practice hours and seasons; and best practices to avoid a rules infraction. We reviewed Penn State’s files containing the certifications obtained from student-athletes, and we verified that Penn State obtained certifications from each of them.<sup>10</sup> The University completed its annual training certification requirement with respect to the student-athletes.

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<sup>8</sup> See AIA § III.D.1.

<sup>9</sup> See AIA § III.D.2.

<sup>10</sup> The certifications were not maintained in an easily accessible manner. We have worked with Penn State to enhance the accessibility of student-athlete and staff annual training certification forms for the 2013-14 academic year and anticipate no such issues in the future. Penn State has created an annual training certification form that Covered Persons will sign once training has been completed and which the University will share with the Monitor. The Monitor observed this process in action at a student-athlete annual training session for the 2013-14 academic year held on August 9, 2013. The athletics compliance staff also is now making use of

Mr. Stolberg and his staff also conducted annual training sessions throughout the year for athletics-related staff. Members of the Monitor’s team attended several of these training sessions. This process included tailored training for each of the following groups: coaches; team managers; athletics administrators; communications staff; equipment and facilities staff; events staff; football support staff; sports camp staff; medical staff; athletic trainers; strength and conditioning staff; Morgan Academic Support Center for Student-Athletes staff; the Nittany Lion Club; and other miscellaneous staff classified as “Covered Persons.” Each training session included the common elements of: introducing the compliance staff; presenting the principles of institutional control and ethical conduct; covering probationary status and its impact on student-athletes; explaining procedures for requesting rules interpretations and reporting violations; reviewing the Athletics Department’s Code of Conduct and NCAA standards and expectations of conduct; and general compliance issues such as gambling prohibitions, limitations on boosters’ activities, extra benefits for prospects and student-athletes, and reporting athletically-related outside income for athletics staff. Mr. Stolberg additionally provided specialized compliance training for each group addressing topics relevant to their function. Each group received written materials on all of the topics discussed. Mr. Stolberg timely obtained and provided the Monitor certifications from the majority of these staff members.<sup>11</sup>

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its recently acquired software application from Jump Forward LLC, which will be used to enhance compliance with applicable rules and to streamline records management. It allows for online completion of many compliance forms previously maintained in hard copy files. We expect that the implementation of this new records management system will solve the accessibility issue, but we will test this assumption following implementation.

<sup>11</sup> Two staff members inadvertently did not receive annual training as a result of a record-keeping error. They received the training materials by email on August 2, 2013 and confirmed in writing their receipt and understanding of the materials.

In addition, fifty-seven athletics-related staff members designated “Covered Persons” were unable to attend a live annual training session. Mr. Stolberg provided them the training materials by email and electronically confirmed their receipt of the materials. Penn State,

At an executive session of the Board of Trustees meeting on May 3, 2013, Director of Compliance Andy Banse provided annual training to the trustees present. A member of the Monitor's team attended the training session, which covered the topics required under the AIA, in addition to standards and expectations of conduct based on NCAA rules and the Athletics Department's Code of Conduct, Penn State's relevant policies and procedures, and NCAA and Big Ten Conference rules and regulations. Trustees received handouts addressing each of these topics. A sign-in sheet was circulated to all trustees present for purposes of certification.

Six trustees were not present during the training session. They received the training materials by email on May 20, 2013, and five of those six trustees verified in writing their receipt, review, and understanding of the materials. One of these trustees declined to certify his completion of the annual training citing his disagreement with the Consent Decree and the AIA. In a letter dated July 11, 2013, Ms. Del Giorno informed the NCAA of Penn State's good faith efforts to obtain this trustee's certification and enclosed a copy of the trustee's earlier letter describing his reasons for refusal.<sup>12</sup>

## **5. Ethics and Compliance Hotline Reporting**

To continue to publicize its ethics and compliance hotline, the University issued an email reminder at the beginning of each academic term to all students, faculty, and staff "to be mindful of their individual responsibility to help keep the University a safe and ethical institution" and enumerating the various mechanisms available on campus for reporting suspected illegal or

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however, did not obtain written certifications from these individuals. In the future, Mr. Stolberg plans to offer "Covered Persons" annual training sessions to staff on a bi-monthly basis to improve accessibility to live training on this topic. At these meetings, participants will certify their attendance and understanding of the material presented, which certifications will be made available to the Monitor. If it becomes necessary to email training materials to staff members, they will be asked to confirm in writing their receipt and understanding of the materials.

<sup>12</sup> See Letter dated July 11, 2013 from Julie Del Giorno to Donald Remy and Jonathan Barrett regarding the Athletics Integrity Agreement.

unethical conduct. Ms. Del Giorno maintained responsibility for responding to and investigating athletics-related compliance complaints reported through the University's ethics and compliance hotline. She received three complaints from persons who identified themselves and four anonymous complaints in the second quarter of 2013. She is investigating and addressing the issues raised in the complaints.

**B. Penn State's Efforts to Implement Recommendations in the Freeh Report**

Under the Consent Decree, Penn State must adopt all of the recommendations set forth in chapter 10 of the Freeh Report "in spirit and substance" by no later than December 31, 2013. As a result of the University's continuous efforts throughout the course of the first year of the Consent Decree, Penn State has completed or substantially completed 83 of the 119 recommendations. Work on an additional 32 recommendations is complete or largely complete, but because of the nature of the reforms called for in those recommendations they have been designated "ongoing and continuous." One of those recommendations involves enhancing security and access protocols at athletic, recreational, and camp facilities and is on track for completion after December 31, 2013. Another recommendation, for adoption of a Human Resources Information System, remains in progress and on track for completion after December 31, 2013. One additional recommendation, to relocate the Office of Human Resources within the University's administrative structure, was not adopted after consultation with the NCAA, the Big Ten Conference, and the Monitor. With the publication of this report, which constitutes the 12-month status report required by recommendation 8.3, only one additional recommendation remains entirely outstanding—the 24-month status report of Penn State's progress, which is not due until August 2014.

In summary, Penn State has addressed or is addressing all of the Freeh Report's recommendations that can be addressed at this time. As evidenced by the large number of



“ongoing and continuous” actions, the University’s work will continue. In this regard, we note that recommendations deemed satisfied based on a literal interpretation of the recommendation itself, such as the institution of mandatory training or organization of a review of Penn State’s culture, will require continued attention to ensure their maintenance and improvement over time.

**1. Completed Recommendations**

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

As noted in our last report, Director of University Ethics and Compliance Regis W. Becker commenced his duties on April 1, 2013; this satisfies the University’s obligations under both recommendations 2.1 and 4.1. This quarter, Mr. Becker continued to build his new department by hiring a youth programs compliance specialist expressly responsible for overseeing University programs involving minors. Mr. Becker’s search for an ethics specialist is ongoing. The ethics specialist will be responsible for developing and communicating Penn State’s ethical values, standards, and policies to a broad range of University constituents. Other structural changes to the Ethics and Compliance Department have included ensuring that the athletics compliance team has a direct line of reporting to that department and placing the Privacy Office under its supervision. Mr. Becker currently is evaluating the Privacy Office’s resources, focus areas, and functions.

Mr. Becker also is leading Penn State’s work with the Ethics Resource Center on a multi-year survey of University constituencies to collect information about the University’s core values. Based on these data, Penn State will develop a statement of core values. While the “Penn State Principles” already exist, and many segments of the University have their own core values statements, the University does not have a single, unified statement of values applicable to all of its constituencies. The survey process, which is obtaining data from all constituencies

except alumni (who periodically receive surveys through other mechanisms), is the foundation upon which a statement of a unified set of values will be based.

In addition, Mr. Becker attended a higher education compliance conference including over 200 ethics and compliance officers from universities and colleges around the country. While there, he conducted informal benchmarking with four of his Big Ten Conference colleagues.

On August 7, 2013, Mr. Becker chaired the third meeting of the Ethics and Compliance Council. This past quarter, the Council completed drafting its mission statement, which is “to serve as the advisory board with oversight responsibility for all University ethics and compliance matters.” The mission requires the Council to “review and advise on ethics and compliance program content, help develop strategy, evaluate results, suggest improvements and updates and provide oversight for the overall ethics and compliance program.” In addition, the Council discussed the charter and operating guidelines for the Board of Trustee’s Committee on Legal and Compliance, received an update on the Ethics Resource Center’s culture and values survey, and reviewed the various changes and additions to the Ethics and Compliance Office, development of its website, and its plans for developing program metrics on training, misconduct incidents and investigations, and compliance risk assessment. The Council also discussed developing appropriate sanctions for individuals who refuse to comply with their compliance obligations such as completing mandatory trainings.

**b. Policy AD83: Conflict of Interest Policy  
(Recommendation 1.2.2)**

On July 8, 2013, the President’s Council approved Policy AD83: “Institutional Financial Conflict of Interest.” The new policy will be presented to the Academic Leadership Council in September. While substantively complete, the policy will not be published until after that

presentation. It supersedes Policy RA21, expanding the scope of that policy from a focus on research activities to a University-wide policy. The policy establishes standards and procedures for identifying, disclosing, and reviewing potential institutional financial conflicts of interest and provides a process by which to manage, reduce, or eliminate conflicts. It defines the activities and ownership interests that constitute institutional financial conflicts of interest and requires University officials to disclose all institutional financial interests at least annually and to update disclosures as needed. The policy also includes a provision for disciplinary action in the event of non-compliance or failure to disclose conflicts.

**c. Crisis Communications Plan (Recommendation 3.6)**

This quarter, the University finalized the Penn State Crisis Management Plan. The plan serves as a reference guide for the Board of Trustees and key administrators in managing Penn State's responses to an array of potential crises. The final plan is now being printed for distribution at the September Board meeting. Distinguished from and used in conjunction with the University's All Hazards Emergency Operations Plan, which addresses natural and man-made disasters and hazards, the Crisis Management Plan applies to all other, non-emergency events. It provides for ranking the severity of crises along a spectrum of five levels: routine incidents; contained local incidents; broad/uncontained incidents; critical incidents; and sudden loss/incapacity of key leadership. Depending on the severity level of the crisis, the plan identifies a chain of command, clarifies which University leaders must be included in the response team, delineates the role of the response team, and determines when the Board must be informed. The response team must notify the Board as appropriate for the first three levels of crises. The plan establishes that level four crises require Board notification and inclusion of the Board chair in the response team as appropriate. Level five crises must be elevated to the Board as a whole.

The Crisis Management Plan further includes a threat matrix that charts types of crises, provides specific examples of types of crises, lists the administrative or on-site managers responsible for responding to each type of crisis, and outlines the crisis management team's expected course of action. The list of potential crises anticipates a broad range of possible events including, among others, financial crises, legal and compliance crises, terrorism, research-related events, athletic-related events, labor disruptions, and technological outages.

The Crisis Management Plan includes a current contact list for the Board of Trustees, the President's Council, academic deans, and Commonwealth Campus chancellors. The plan also includes contact information for the current members of the Crisis Management Policy Group, which includes the president, the provost, the senior vice president for finance and business, and the vice president for administration. That group must be included in the response team for all level four and level five crises. It also sets forth contact information for the Crisis Management Command Staff, which includes the general counsel, the associate vice president for university police and public safety, the director of emergency management, and the vice president for marketing and communications. That group must be included in the response team for all crises classified as level two and higher. These contact lists will be updated regularly.

**d. Track Training (Recommendation 2.2.10)**

Recommendation 2.2.10 called upon Penn State to provide and track mandated employee training. This function will be included in the new human resources information system that Penn State plans to develop. As discussed elsewhere, however, that system will take some time to complete. As an interim measure, Penn State has introduced SkillSoft software to serve as a learning management and tracking system for compliance training and the subsequent implementation of Penn State's online training courses on "Reporting Child Abuse" and the Clery Act.

While in-person training sessions continue upon request and for special needs, the majority of training on “Reporting Child Abuse” now is conducted online. New employees continue to receive live Clery Act training and undertake annual training thereafter online. Penn State is in the process of creating a new Clery Act online training video featuring national leaders on the subject with the goal of having the most comprehensive Clery Act training at any university. The Office of Human Resources is evaluating whether other compliance training can be provided through similar online programs.

To date, 11,562 employees, students, and volunteers have completed the online mandated reporter training in addition to the 18,266 people who completed the in-person, classroom training in 2012 and 2013. Another 1,422 employees, students, and volunteers have taken the online Clery Act training, in addition to the approximately 3,000 individuals who completed the in-person, classroom training in 2012 and 2013.

The automation of Penn State’s training for Reporting Child Abuse and for the Clery Act has not occurred without some growing pains. Unanticipated technological issues have resulted in difficulties for many individuals attempting to access the programs. Penn State is aware of these issues, and the Office of Human Resources has devoted considerable manpower to addressing them and helping employees resolve such issues and complete the trainings.

**e. Management of Child Programs and Access**

This quarter, Penn State completed Freeh Report recommendations 7.3, 7.3.4, and 7.3.5 while deeming recommendations 7.1 and 7.3.1 to be “ongoing and continuous.” One of the main developments in this area involved the hiring of a new Youth Programs Compliance Specialist to oversee and support programs for minors.

**(1) Oversight of Programs for Minors  
(Recommendation 7.3)**

On July 1, 2013, Penn State hired Sandy Weaver to fill the new position of Youth Programs Compliance Specialist within the Department of Ethics and Compliance. Ms. Weaver graduated from Mansfield University with a bachelor's of science degree in education and later earned a master's degree in psychology from Shippensburg University. Her previous experience has included work for North Carolina's Administrative Office of the Courts in a guardian ad litem program overseeing advocates promoting the best interests of abused, neglected, and dependent children. Ms. Weaver also served as director of program development and compliance for Northwestern Human Services where she developed policies, procedures, and training programs throughout Pennsylvania to ensure ethical interactions by staff with children in their care. She also has worked as a behavioral counselor, a mental health training and education coordinator, and in children's mental health services. Ms. Weaver reports directly to Mr. Becker. Members of our team interviewed Ms. Weaver shortly after her arrival.

Ms. Weaver's responsibilities include validating and maintaining a comprehensive inventory of all youth activities occurring on Penn State campuses as well as University-sponsored activities off-campus.<sup>13</sup> She also is responsible for ensuring that youth programs and their participants comply with University policies and procedures, particularly those related to the safety and security of non-student minors. Ms. Weaver is expected to develop template forms and instructional materials for use by youth programs to ensure consistency and create and communicate educational materials to areas sponsoring youth programs. She will work with personnel in the Ethics and Compliance, Human Resources, Risk Management, and General Counsel's Offices to recommend and apply any policy changes.

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<sup>13</sup> See Freeh Report, ch. 10, Recommendation 7.3.1.

Since her arrival, Ms. Weaver has focused on learning the universe of youth programs offered at Penn State and developing relationships with the director of the Center for Workplace Learning and Performance, the university risk officer, and the assistant vice president of professional education, among others. To date, she has conducted over 75 meetings with individuals she identified as stakeholders involved in the development, implementation, and oversight of policies related to youth protection. She has used these meetings to gather information on the history of policies, review relevant protocols, visit youth programs, and gather information to assist her in her role. She has attended camp staff compliance meetings and meetings with 4-H and other extension groups to discuss their concerns about new youth-related compliance obligations.

Ms. Weaver has begun to review relevant policies and procedures to ensure that they are operational and pragmatic. She is in the process of drafting recommended changes to Policy AD72 on Reporting Suspected Child Abuse and has been working with the Office of Human Resources to identify improvements in the training for reporting child abuse. She has begun to gather prototypes of best practices and conduct benchmarking with comparable institutions. Ms. Weaver further is working with the senior director of continuing education at Penn State Abington to assist her with coordinating youth programs across the Commonwealth Campuses.

Ms. Weaver will co-chair a Facility Access Workgroup, a sub-committee of the Policy Compliance Implementation Committee overseeing the implementation of Freeh recommendations 7.1 and 7.3, to develop best practices and implementation tools for all facilities to address access. She is in the process of creating a Penn State Youth Programs Council to review current practices and recommend standardization of forms, codes of conduct, and other

activities that are currently diffuse across campuses. The council will rely on American Camp Association standards.

Finally, Ms. Weaver has integrated herself into the daily operations of the Ethics and Compliance Department, developing a tool for department staff to track delivery of presentations and training, developing templates to track investigations, ChildLine reports, and inquiries related to youth protection, privacy, and athletics integrity, developing templates for reporting the intake, investigation, and outcome of investigations, and participating herself in several investigations.

**(2) Inventory of Children’s Programs  
(Recommendation 7.3.1)**

This quarter, Penn State compiled an inventory of over 750 youth programs held across the University’s campuses during the 2012-13 academic year. The list states the titles of the programs and their dates, along with contact information for an individual responsible for their operation. Penn State also maintains separate lists of summer youth sport and academic camps for both University Park and the Commonwealth Campuses, much of which is incorporated into the youth programs inventory. The inventory remains a work-in-progress, however, with Ms. Weaver responsible for validating its completeness and maintaining and updating it on a regular basis so it may serve as a centralized registry for ease of access and oversight. Since her arrival, she has updated the pre-existing inventory and reached out to all program contacts and directors via email to request additional information to ensure that the inventory remains current.

**(3) Parent Information for Youth Programs  
(Recommendation 7.3.5)**

This past quarter, Penn State organized the information available to parents of youth program participants related to University safety protocols and reporting mechanisms for suspicious or improper activities. Basic information has been posted on several University



websites, including the Sports Camps page and the Outreach page for youth.<sup>14</sup> These pages contain a statement of commitment to providing a safe environment for youth participating in campus activities and indicate that policies have been put into place to ensure that safety is not compromised. They also contain contact information for Director of Penn State Sports Camps Ed Franks and Youth Programs Compliance Specialist Sandy Weaver as well as the University's ethics hotline. Parents are encouraged to notify the University by any of these channels of any concerns that may arise. Parents also receive safety information in their camp-specific registration materials depending upon the program in which their children participate.

**(4) Policy AD39 and Programs for Non-Student Minors on Campus**

This quarter, the Policy Compliance Implementation Committee tasked with overseeing implementation of Freeh Report recommendations 7.1 and 7.3 regarding oversight of youth programs and minors on campus, reported on its efforts to date. This committee, co-chaired by the vice president for human resources, the assistant vice president of professional education, and the university chief risk officer, identified a number of general locations where youth are likely to gather on campus and prioritized those areas for attention. These areas include campus facilities where students and minors mix, such as public event venues, student-union facilities, residential commons buildings, and libraries. They also include outdoor recreation facilities such as ball fields, swimming pools, buildings with easily accessible rest rooms and vending machines, museums, and other special-use facilities.

The committee also worked to enhance internal policies relating to minors on campus. It is reviewing an internal policy promulgated by the Dean of Libraries applicable to children

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<sup>14</sup> See <http://www.gopsusports.com/camps/information-for-parents.html>; see also <http://www.outreach.psu.edu/for-youth.html>.

making use of the library facilities to ensure consistent behavior. Under Policy UL-AD28: *Safety and Well-Being of Children in the University Libraries Policy*, children under the age of 12 are expected to be accompanied by a parent or caregiver and procedures are established for unaccompanied minors.

Finally, the committee tracked the progress of the many projects underway to improve access controls and physical security at recreation facilities. These projects include both activities at University Park to improve access control, staffing, and training at numerous recreation facilities as well as a six-month study being conducted by the Office of Physical Plant on the Commonwealth Campuses on all recreation facilities to develop specific recommendations to improve electronic access controls at each campus.

Overseeing the activities of minors on campus is no small task. This year, Penn State held more than 350 summer athletic and academic programs for minors on its many campuses. The Sports Camps Office, which is part of the Athletics Department, is led by new Director of Penn State Sports Camps Ed Franks. Mr. Franks reports directly to Dr. Joyner and also reports to Director for Facilities and Operations Mark Bodenschatz. He leads a staff of five individuals. His office provides a joint training session for all coaches running sports camps at University Park. Mr. Frank's office supports youth camps occurring at University Park only. Camps held on Commonwealth Campuses are overseen locally by their respective athletic directors, human resources representatives, and camp directors.

All staff members at all youth camps annually must complete background checks as well as the online Clery Act and "Reporting Child Abuse" training sessions. The Office of Human Resources tracks completion of these three obligations, sends reports to the camps, and requires the camps to obtain certificates of completion of online training from the camp's staff prior to the

commencement of a program. On July 8, 2013, Penn State launched a compliance tracking tool accessible to all human resources representatives. This tool makes it possible for them to track which camp personnel have completed the requisite trainings and background checks without having to consult with the central human resources office at University Park.

A member of the Monitor's team observed a youth soccer camp held at Penn State York during the week of July 22, 2013. The Monitor, not the University, selected the satellite site to observe. The purpose of our review of the camp was to witness the implementation of University Policy AD39: *Minors Involved in University-Sponsored Programs or Programs Held at the University and/or Housed in University Facilities*. We sought to understand how changes made in the past year to enhance security for children on campus have affected programs. As such, we spoke with the director of business services, the athletic director, and the head coach of the soccer program and soccer camp director at Penn State York.

This camp demonstrated exemplary effort and attention to satisfying all of the requirements of Policy AD39. The coaches stressed the importance of adhering to these obligations, ensuring that no adult was alone with a camper at any time. The coaches established a system for staggered, group bathroom breaks to limit the number of times minors needed to separate from the group. We repeatedly observed teams of two coaches waiting outside of bathrooms for campers or accompanying them to the playing fields. The head coach met with his staff one week prior to camp to review with them their obligations under Policy AD39, as well as other safety obligations and to conduct a group Clery Act training. He also reviewed these obligations again on the camp's first day. The director of safety and security further addressed the group about reporting mechanisms and how to address any security or safety issues that might arise.

According to the athletic director, the head coach, and the director of business services at Penn State York, its soccer camp already had put into practice at least five years ago many of the safety policies newly required by the University, including the required ratios of campers to coaches and the prohibition on one-on-one contact with minors. They each described the recent policies as requiring little to no change to the camp's daily operation. Because most of the camp's staff are volunteers, the changes have had little financial impact. For some camps held at University Park, finances have been affected due to the need to increase paid staff members to comply with Policy AD39.

Penn State York also worked diligently to ensure that all background checks were completed for staff members before the first day of camp. One assistant coach was not yet cleared by the first day, and that individual was not permitted to work at the camp until the Office of Human Resources confirmed successful completion of the background check. All staff members received in-person Clery Act training. All staff members also were required to complete the "Reporting Child Abuse" training session online before the beginning of the camp.

This camp and others, however, faced challenges relating to the online training process. While demonstrating diligence in their efforts to complete the online trainings in a timely fashion, many staff members experienced technical difficulties that required time to resolve. In addition, several staff members encountered problems with printing the certificates of completion required as evidence of their clearance to work at the camp. As a result, the director of business services worked with the Office of Human Resources at University Park to verify which individuals had completed the online training. One additional hurdle was the time it took to update SkillSoft's records of completed training sessions. As a result, those records at times were not up to date at the time camp started. To minimize operational challenges, the camp's

organizers sent all staff members hard copies of last year's training on mandatory reporting of child abuse. They also worked closely with the Office of Human Resources and discussed their concerns with the director of the Center for Workplace Learning and Performance.

The director of the Center for Workplace Learning and Performance acknowledged that Penn State has faced a variety of unanticipated technological issues while implementing the online training. The Office of Human Resources has worked with its representatives on various campuses to help employees resolve these technological issues.

#### **f. Internal Audits**

A number of the Freeh recommendations either call upon the University to audit administrative functions or by their nature require audits to test compliance with procedures and policies.<sup>15</sup> Working in conjunction with Penn State's Office of Internal Audit, we verified the University's efforts to conduct required background checks, to ensure that departing employees return their keys and have their access to University facilities revoked, to retain records for an appropriate period, to identify employees who must complete Clery Act training, and to assess the sufficiency of Penn State's Clery Act compliance program.

##### **(1) Background Checks (Recommendation 2.2.13)**

Just prior to the publication of the Freeh Report, Penn State adopted Policy HR99, which requires a background check to be conducted as to every individual over the age of eighteen who works with the University. The Office of Internal Audit recently completed a University-wide audit of its background check procedures, which it determined complied in all material respects with Policy HR99. Penn State shared with us its audit plan, sampling plan, quality assurance review checklist and preliminary report.

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<sup>15</sup> See Freeh Report, ch. 10, Recommendations 2.2.13, 2.2.15, 2.6, 4.2.2, and 4.2.8.

In support of the audit, the University randomly selected two sample populations—individuals engaged to provide services since adoption of Policy HR99 (*i.e.*, “new hires”) and existing employees in what the University deemed “sensitive” or “critical” positions. The Office of Internal Audit tested whether background checks had been performed as necessary and appropriate, evaluated processes for addressing background check exceptions, assessed the adequacy of mechanisms for communicating background check results between the local and central human resources offices, ensured that contracts used to engage third parties include language assuring that non-University employees will abide Policy HR99, and validated the sufficiency of privacy protections and access controls bearing on the storage of digital information, such as background check results. The audit revealed only a single exception among the tested population. Further review of the noted exception revealed it was triggered by a policy interpretation issue that since has been clarified.

**(2) Employee Roll-Off and Access Revocation  
(Recommendation 2.2.15)**

Recommendation 2.2.15 in the Freeh Report called on Penn State to “develop a procedure to ensure that the University immediately retrieves keys and access cards from unauthorized persons.”<sup>16</sup> The Office of Internal Audit audited one of the Commonwealth Campuses and one administrative unit for compliance with this practice and plans to conduct additional audits in the future. The audit revealed inconsistencies that warranted remediation. The administrative unit had a procedure in place to ensure the immediate retrieval of items, including keys, from departing employees. There were no discrepancies noted among the sample of former employees of the unit who had left service during the last full fiscal year. The

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<sup>16</sup> Freeh Report, ch. 10, Recommendation 2.2.15.

Commonwealth Campus, however, did not have a standard procedure in place to collect keys and other property from departing employees, and Internal Audit noted a forty percent exception rate.

To standardize protocols across the University, Penn State has developed and is in the process of approving a new Human Resources policy entitled “Separation and Transfer Protocol.” The new policy will include as an appendix a checklist of procedures to perform when an employee leaves employment with the University. Penn State expects the policy will be adopted and take effect before the end of September 2013.

### **(3) Records Retention (Recommendation 2.6)**

Policy AD35 sets forth Penn State’s records management protocols and includes document retention and destruction schedules. The policy requires the appointment of “records liaisons” who are “assigned by their Unit to serve as a conduit for policy, procedure, and information between the University Records Management Program and their respective offices.”<sup>17</sup> Records liaisons, in turn, report to the University’s archivist, who has University-wide responsibility for records retention compliance. During the last reporting period, Penn State’s Office of Internal Audit performed agreed upon procedures at one Commonwealth Campus and in one of the University’s administrative units to test the designation of records liaisons, whether they had been trained, their methods for ensuring compliance with Policy AD35, and whether the financial officer, human resources representative, and five other randomly selected individuals working at the campus and unit had complied with the policy.

The audit revealed that neither the campus nor administrative unit had designated a records liaison as required. A review of the files selected for testing among the targeted campus and unit, however, revealed only one exception. In response to this audit, the Office of Internal

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<sup>17</sup> Policy AD35 <http://guru.psu.edu/policies/AD35.html>.

Audit and the University's archivist developed a plan for ensuring that a records liaison is appointed for every campus and unit across the University, and that such liaison understands and fulfills her responsibilities.

**(4) Clery Act Master List (Recommendation 4.2.2)**

Penn State identified approximately 3,000 employees who are "campus security authorities" as defined by the Clery Act. The University continues to review and refine that list and expects that this will be a constant process. The University has developed procedures to ensure that the Master List is consistent with the University's internal Clery Act policy, with Policy AD74, and with the Clery Act itself. These include internal audit procedures, which are underway, to test the accuracy of the list of employees identified as campus security authorities and to ensure that each campus security authority has been notified of that designation and the responsibilities that accompany it. Once the University has completed its current audit procedures, it will publish the Clery Act Master List.

**(5) Clery Act Compliance Audit (Recommendation 4.2.8)**

The U.S. Department of Education is reviewing the University's program for complying with the Clery Act. The Department of Education recently announced that it issued to Penn State a preliminary and confidential report. The University currently is preparing its response. As part of this response process, the University is reevaluating all of its Clery Act practices and procedures. The University's Office of Internal Audit has begun to develop a proposed audit plan that it will modify as appropriate and implement once the Department of Education program review is complete.

Although subject to change, the University's draft audit plan contemplates testing the preparation of its annual security report to the federal government for 2011. For 2012, Penn



State plans to audit the completeness, accuracy, and validity of its Clery Act reporting, its notification system, and other required measures. Penn State also may retain a consultant to assist it with these audits of Clery Act compliance in 2012 so that the University will be better positioned to conduct an audit of Clery Act compliance in 2013 without outside assistance.

The consulting firm Margolis Healy worked closely with the University to draft the Annual Security and Fire Safety Reports submitted in October 2012 to the Department of Education. That firm also reviewed the contents of the report with the Department of Education before it was submitted to obtain in advance any comments from the Department regarding the report's compliance with Clery Act obligations. Our review of the 2012 report demonstrated its close adherence to the Clery Act's expectations.

## **2. Key Ongoing Recommendations**

Several of the Freeh Report recommendations by their nature require substantial time and financial resources including, for example, the development of a new human resources information system and construction projects to improve facility security. Other activities will require a significant amount of time to take root, such as examination of the University's culture, and efforts to ensure the inculcation of Penn State's values and principles in its decision-making processes. Finally, some recommendations were focused on ensuring that the Board of Trustees receives timely information about significant issues. Penn State has been transparent about its many ongoing efforts to satisfy these recommendations. While not yet complete, Penn State has stated and demonstrated its commitment to continue to pursue the objectives at the heart of these recommendations.

**a. Penn State Culture (Recommendation 1.1)**

Penn State's subcommittee on ethics and core values continued to meet regularly to address recommendation 1.1 in the Freeh Report, which calls for an organized effort to examine and understand Penn State's culture, the establishment of ethics-based decision making, and adherence to the Penn State Principles. Toward the end of this quarter, the subcommittee formally was combined with the Freeh Response Advisory Council. Their combined efforts have been focused on Penn State's collaboration with the Ethics Resource Center, a Virginia-based nonprofit research organization dedicated to the advancement of high ethical standards and practices in public and private institutions which Penn State retained in April 2013.

The Ethics Resource Center continued to work with the subcommittee and the Freeh Response Advisory Council to draft four, tailored surveys to be distributed to all Penn State undergraduate students, graduate students, faculty, and staff respectively. The Ethics Resource Center then issued a pilot survey to a limited population in August 2013 to help hone the survey language and effectiveness. After analyzing the results of the pilot survey, Penn State and the Ethics Resource Center will amend the survey accordingly in September, with the goal of releasing the four surveys in October. Penn State expects to receive an analysis of the survey results in December 2013.

As a result of its establishment of a careful process for evaluating its culture with the goals of reinforcing its commitment to protecting children, creating a sense of accountability among leadership, establishing values and ethics-based decision-making based on a core values statement, promoting a transparent environment, and ensuring integration of the athletics program into the broader community, Penn State has substantially met the organizational requirements of Recommendation 1.1. The University recognizes, however, that full implementation of this recommendation will involve years of ongoing effort.

**b. Human Resource Information System  
(Recommendation 2.2.7)**

The Freeh Report required Penn State to adopt a new Human Resource Information System (“HRIS”) with sufficient growth capacity for use at University Park and all Commonwealth Campuses. To date, Penn State has invested considerable resources and effort into meeting this obligation. The project is expected to require a multi-million dollar expenditure for the University. Penn State is using this opportunity to undertake a comprehensive review and overhaul of its human resources function to streamline delivery of services. The project is being termed the Human Resources Transformation Project. As previously reported, Penn State engaged the consulting firm Towers Watson in March 2013 to support a three-phase implementation process.

Penn State completed Phase I of the project this quarter, which included in-depth analysis of the current state of the University’s human resources capacity through a survey of human resources personnel. On June 18, 2013, Penn State and Towers Watson entered into a second agreement for Phase II, which officially began on July 8, 2013.

At the outset of Phase II, the Office of Human Resources explained the proposed new service delivery model to groups such as the President’s Council, the Academic Leadership Council, human resources representatives, the Commonwealth chancellors, and academic deans to discuss potential savings and reallocation of resources and provide an opportunity for input and dialogue. The new service delivery model is intended to better align and streamline human resources administrative and transactional services, standardize processes, result in investment in modern HRIS solutions, establish a shared service center to be responsible for the core, routine operational services currently handled across University units, and implement effective self-service solutions for managers and employees. Penn State anticipates that this new human

resources model will result in significant cost savings and increased efficiency as well as greater alignment under and accountability to Vice President for Human Resources Susan Basso. Phase II also will include future process design workshops, development of technical requirements, and refinement of the implementation roadmap. It also will involve the development of different human resources work streams, review of human resources processes, policy harmonization in advance of implementing the HRIS, work on organizational design, and a change management component.

Penn State plans to develop and issue an RFP for the prospective vendor of the HRIS technical system by the end of this summer with a goal of presenting Penn State's vendor choice to the Board in January 2014 for its approval. Under the current timeline, the new HRIS and all other elements of the Human Resources Transformation Project are scheduled for full implementation in January 2015.

**c. Recommendations Concerning Facilities Security**

The evaluation and modification of security and access protocols at the University's athletic, recreational, and camp facilities is another long-term, capital-intensive undertaking. During the past quarter we continued to work with Guidepost Solutions, LLC to monitor Penn State's enhancement of safety and security protocols and mechanisms at relevant facilities. As previously reported, Penn State designed a multi-phase approach to accomplish the many projects that are underway. The University remains on target to complete work as scheduled.

Over the past quarter, we and Guidepost reviewed relevant documents and attended multiple meetings to review the status of various physical security projects. Guidepost toured the University police department's command center and relevant facilities to assess first-hand the progress made toward implementing security measures and met with Penn State personnel responsible for overseeing such work. In addition, Guidepost met with athletics department and

sports camps administrators, as well as the newly hired youth programs compliance specialist, to review security protocols for camp activities and operations and observe them in action.

Over the last reporting period, the University made significant progress towards completing Phase I projects that will improve access controls and perimeter security. Of the facilities designated for priority completion in Phase I, half are finished and the balance are on schedule to be completed by the end of January 2014. Penn State also received a feasibility study of certain planned Phase II projects to consolidate entry points and enhance the University's ability to monitor the circulation of patrons and staff within facilities. It also secured funding for those projects, which are targeted for completion in 2015.

The nature of the Phase I and II projects has posed challenges to the University's compliance with Policy AD73, which Penn State is working to address. Penn State also empowered Director of Strength Training and Fitness Paul C. Harrison, to oversee hiring staff for the University's many athletics and recreational facilities and to develop operational guidelines for their posts. Mr. Harrison will oversee building coordinators to enhance communication among those charged with maintaining and operating the University's many recreational facilities and further refine staffing models.

From a security perspective, Penn State has a well-organized and properly staffed sports camps registration and check-in process. Camp counselors, coaches, and staff receive an orientation in advance of camp during which security procedures and relevant policies are reviewed, and they are required to complete Clery Act training and a background check before starting work. In addition, the current system of security and access controls employed at the dormitories adequately safeguards campers and personnel involved in overnight programs, but Penn State continues to evaluate the system.

**d. Board of Trustees Reporting  
(Recommendations 3.4.1 and 3.4.4)**

To exercise appropriate oversight, the Board of Trustees must be informed promptly of significant issues affecting the University and make reasonable inquiries regarding such issues. Our team has had the opportunity over the last year to observe both plenary and committee Board meetings, and we have spoken to Board Chair Keith Masser about the operations of the Board.

Senior University management provide reports directly to committees at each Board meeting: Rodney Kirsch (Senior Vice President of Development and Alumni Relations) to the Committee on Outreach, Development and Community Relations; Damon Sims (Vice President for Student Affairs) to the Committee on Academic Affairs and Student Life; Daniel Heist (Director of Internal Audit) to the Committee on Audit and Risk; David Gray (Senior Vice President of Finance and Business) to the Committee on Finance, Business, and Capital Planning; Susan Basso (Vice President for Human Resources) to the subcommittee on human resources and the Compensation Council; and Stephen Dunham (General Counsel), Regis Becker (Director of University Ethics and Compliance), and Julie Del Giorno (Athletics Integrity Officer) to the Committee on Legal and Compliance. Thomas Poole, Vice President for Administration, has replaced the president as the secretary to the Board. Between meetings, the chair and vice chair of the Board have biweekly calls with the president to stay apprised of recent developments.

We have not attended those portions of Board meetings where attorney-client privileged information is communicated to avoid any assertion of waiver of that privilege to the University's detriment. Mr. Masser has reported, however, that the discussions in these sessions as to sensitive legal issues are far more robust than occurred during the prior administration, and

he praised General Counsel Stephen Dunham for his thoroughness and candor during such briefings.

### **C. Annual Report**

As evidenced by our quarterly reports, the Monitor's team has observed, scrutinized, and reported on the many efforts and projects Penn State has undertaken during the first year of the Consent Decree and the AIA as they have unfolded. We have noted the consistent good faith effort by Penn State's administration, staff, and student body to take the sanctions seriously and to implement the many Freeh Report recommendations with the stated goal of improving the University. As reported, we have met with numerous University leaders to discuss their work and observed much of that work first-hand. We have interviewed over 200 individuals and conducted multiple interviews of many key personnel and University leaders.

As noted, 116 of the recommendations can be deemed implemented or ongoing and continuous in nature. Based on our observations, Penn State remains on track to complete its obligations by the December 31, 2013 deadline with the exception of the handful of capital-intensive projects that require more time to execute properly and its numerous ongoing obligations that will, by their nature, exceed that deadline and persist for years to come.

To further satisfy ourselves that Penn State completed the many recommendations it claimed to have accomplished and to verify the activities Penn State claimed to have undertaken with respect to ongoing projects, the Monitor's team conducted a systematic review of the back-up files maintained by the University to document its work on each of the 119 recommendations in the Freeh Report. We also interviewed administrators and other personnel responsible for implementation of those recommendations. Where appropriate, we worked with Penn State to augment files that lacked sufficient documentation to support known achievements.

Through this process, we confirmed that Penn State has conducted the projects as represented. We also have pinpointed a handful of areas where Penn State needs to offer greater evidence of the actions it claims to have taken. These areas include: greater evidence of benchmarking conducted; professional development activities; and documentation of police training activities. While we await additional documentation, we feel confident based on meetings and observations that Penn State has accurately represented its activities to date.

While significant progress has been made in implementing the recommendations as well as the obligations under the AIA, much of that work remains ongoing and of a long-term nature. For instance, Penn State's numerous renovation and construction projects to enhance security at athletics and recreational facilities is considered ongoing and continuous. We have no doubt that Penn State will finish these complex projects, which go above and beyond literal compliance with Freeh Report recommendation 5.2, and we have observed its efforts to do so. However, much work remains. Completion of a recommendation also does not necessarily mean that Penn State's work with respect to that requirement is finished. For instance, we have noted that the online trainings require some attention to resolve certain technological complications and better facilitate their successful completion. Similarly, while completion of organization of a plan to study Penn State's culture satisfies the strict language of recommendation 1.1, we will continue to monitor activities to ensure that that plan is realized.

#### **IV. OTHER EVENTS DURING THE REPORTING PERIOD**

##### **A. Lawsuits, Investigations, and Legislative Activity**

We have kept informed of developments in the lawsuits, investigations, and legislative activity arising in the wake of Jerry Sandusky's prosecution and conviction that bear on the sanctions in the Consent Decree and the University's obligations under the AIA.



Just before we issued our last report, the family of former head football coach Joseph Paterno, some members of the University's Board of Trustees and faculty, former Penn State football players and former coaches filed a lawsuit against the NCAA, its president Mark Emmert, and the former chairman of its executive committee, Edward Ray, alleging that the NCAA unlawfully imposed sanctions on the University. On July 23, 2013, the NCAA filed a motion to dismiss the complaint, and the court has set a briefing schedule for that motion. Arguments will be heard on October 29, 2013.<sup>18</sup>

Recently, student trustee Peter Khoury announced his intention to withdraw from the lawsuit. Mr. Khoury declined to comment on his rationale for doing so other than to suggest that his role as a plaintiff threatened his continued service as a member of the Trustee Presidential Selection Council. The Board of Trustees' leadership issued a press statement clarifying its position that the five trustees' participation as "plaintiffs in the litigation against the NCAA creates conflicts of interest under the trustees conflict of interest policies in the University's bylaws." The Board's leadership addressed the matter with the trustee plaintiffs to try and resolve the conflicts pursuant to the conflicts of interest policy in its bylaws. With respect to Mr. Khoury, the Board's leadership expressed the view that his dual status as a plaintiff in the lawsuit against the NCAA and as a member of the Trustee Presidential Selection Council presented an irreconcilable conflict of interest that would have demanded his recusal and abstention from significant parts of the Council's duties. Thus, Mr. Khoury had to choose "between his personal interests as a plaintiff in litigation and his role as a trustee member of the presidential search committee."<sup>19</sup>

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<sup>18</sup> See Docket, *Paterno v. Nat'l Collegiate Athletic Ass'n*, No. 2082-2013 (Ct. Com. Pl. Centre Co. May 30, 2013).

<sup>19</sup> Press Statement issued August 20, 2013.

On June 6, 2013, the judge presiding over Governor Corbett's lawsuit alleging that the sanctions imposed on Penn State violate federal antitrust laws granted the NCAA's motion to dismiss the case. The Governor elected not to pursue an appeal of that decision, thereby ending that litigation.<sup>20</sup> In a separate federal lawsuit, the NCAA is challenging the constitutionality of a Pennsylvania statute that requires payment of the \$60 million monetary penalty assessed against Penn State into a trust fund for disbursement solely to organizations and programs in Pennsylvania. The NCAA contends that the Consent Decree provides that the funds should be available for nationwide distribution and that the provisions of the Consent Decree should control. The parties have fully briefed their positions with respect to Governor Corbett's motion to dismiss this lawsuit and await the Court's decision on whether the civil action may proceed.<sup>21</sup>

Senator Jake Corman, who sponsored the legislation, initiated a lawsuit in state court to bar use of the monetary penalty assessed against Penn State in the manner contemplated in the Consent Decree. On June 19, 2013, a panel of judges heard oral argument on the NCAA's preliminary objections to Senator Corman's lawsuit. On September 4, 2013, the Court overruled the NCAA's preliminary objections, allowing Senator Corman's civil action to proceed.

The criminal proceedings against Graham B. Spanier, Gary C. Schultz, and Timothy M. Curley, respectively the University's former president, vice president of finance and business, and athletic director, advanced during the last reporting period. Following a two-day preliminary hearing, the presiding judge ruled that the three men would stand trial on charges of perjury,

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<sup>20</sup> See Docket, *Corbett v. Nat'l Collegiate Athletic Ass'n*, No. 1:13-cv-00006-YK (M.D. Pa. Jan. 2, 2013).

<sup>21</sup> See Docket, *Nat'l Collegiate Athletic Ass'n v. Corbett*, No. 1:13-cv-00457-YK (M.D. Pa. Feb. 20, 2013).

conspiracy, obstruction of justice, and endangering the welfare of children. They are set to be arraigned on September 20, 2013; no trial date has been set.<sup>22</sup>

Consistent with the University's stated desire to avoid litigating the multitude of claims made against it by Jerry Sandusky's victims, press reports have indicated that Penn State has set aside approximately \$60 million for possible settlements. This past month, Penn State settled several claims.

There has been no further action on any of the bills introduced in the Pennsylvania General Assembly to enact governance reforms affecting Penn State's Board of Trustees. Representative Conklin hosted a town hall meeting in State College last July to encourage support for the legislation he proposed and to discuss the University's governance structure. Several members of the Board of Trustees and former auditor general Jack Wagner participated in the discussion.

On August 1, 2013, Charlie Dent, a member of the U.S. House of Representatives from Pennsylvania, introduced the National Collegiate Athletics Accountability Act with the support of eight co-sponsors.<sup>23</sup> If enacted, the legislation would bar "an institution that has an intercollegiate athletic program" from membership in a "nonprofit athletic association unless such association:" requires student-athletes who participate in certain contact sports to undergo "baseline concussion testing" before they may practice or compete; affords member institutions and their student-athletes a hearing, at least one appeal, and other "due process procedures" deemed necessary or appropriate before enforcing a remedy for a claimed breach of the

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

<sup>23</sup> National Collegiate Athletics Accountability Act, H.R. 2903, 113th Cong. (2013).

association's rules or policies, which remedy must be suspended pending exhaustion of the adjudicative process; compels member institutions to guarantee "athletically related student aid" offered to student-athletes who participate in identified contact sports for up to four years and make such aid irrevocable "for reasons related to athletic skill or injury of the student athlete"; and does not preclude member "institutions from paying stipends to student athletes."<sup>24</sup> This bill has been referred to the House Committee on Education and the Workforce.

## **B. Athletics**

### **1. Sanctions**

Penn State reached a milestone during the last quarter when the window closed for football student-athletes to transfer schools without such move impacting their eligibility to compete. As reported elsewhere, head football coach Bill O'Brien spoke to the University's Board of Trustees concerning the impact of the sanctions on the football program and strategies that Penn State might employ to modify the aspect of the sanctions that reduces the number of grants-in-aid that Penn State may offer.

At the time of the Consent Decree, the Big Ten Conference Council of Presidents and Chancellors also announced a separate set of penalties that the conference would levy against the University. Among other things, the Big Ten Conference declared that Penn State would not receive its share of Big Ten Conference bowl revenues until after 2015 because it was ineligible to participate in postseason competition during that time. The Big Ten Conference directed that its member institutions, including Penn State, donate the University's share of bowl revenues—approximately \$2.3 million from the 2013 bowl season—to charitable organizations dedicated to the protection of children in each school's local community. Penn State recently announced that

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<sup>24</sup> National Collegiate Athletics Accountability Act, H.R. 2903, 113th Cong. §§2(30)(A)-(D) (2013).

it would donate its share of the forfeited bowl revenues to the Centre County United Way with instructions that it equally divide the funds between the Stewards of Children program and the Children's Advocacy Center.<sup>25</sup>

## **2. Head Coaches**

During the last reporting period, four head coaches – Robin Petrini (softball), Robbie Wine (baseball), John Hargis (men's and women's swimming and diving), and Emmanuil Kaidanov (men's and women's fencing) – departed Penn State. The University completed national searches to fill three of these vacancies, in accordance with policy HR101 and recommendation 5.3 of the Freeh Report. At the conclusion of the 2013-14 season, Penn State plans to conduct a national search to fill the head coach position for men's and women's fencing.

For each position, the University posted a position description online that also was circulated to prospective candidates via national athletics, coaching and administrator, and sport-specific associations. Each of the search committees empaneled to screen and interview applicants and select new leaders for these sports programs was comprised of six members including one head coach of a varsity sport and one faculty member. Each committee was led by either an associate athletic director or the Faculty Athletics Representative.

Penn State's efforts to publicize the coaching vacancies and solicit qualified candidates yielded 73 applicants for the position of head softball coach, 42 applicants for the head swimming and diving coach position, and over 100 applicants to lead the baseball team. The search committees winnowed these candidate pools to three finalists for each position who were then interviewed in person. In August, Penn State introduced Amanda Lehotak as the head

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<sup>25</sup> See "Penn State and others to use bowl revenues for child protection," available at <http://progress.psu.edu/resource-library/story/penn-state-and-others-to-use-bowl-revenues-for-child-protection>.

coach of the softball team, Rob Cooper as the head coach of the baseball team, and Tim Murphy as the head coach for men's and women's swimming and diving.

Also during this past reporting period the University amended and restated Coach O'Brien's employment contract to adjust, among other terms, his compensation schedule which increased his salary for this coming academic year by nearly \$1 million.

### **3. Finances**

As Penn State enters its second football season since the Consent Decree, focus remains on the economic well-being of the University's Athletics Department and the sports programs it sponsors. As we reported last quarter, Penn State continues to be among the few Division I schools whose intercollegiate athletics program is financially self-sufficient. Our work confirms that the monetary penalties assessed against the University as part of the sanctions imposed by the NCAA and Big Ten Conference have not resulted in a reduction in the budget for, or elimination of, any varsity team.

But we also noted last period that the surplus generated by the Athletics Department has diminished in each of the last three fiscal years for which financial data are available. Further evaluation of last football season's ticket sales revealed the lowest average attendance at home football games since the University expanded Beaver Stadium in 2001. Last season, Penn State's average attendance was 96,730 per game. Notwithstanding implementation of the Seat Transfer and Equity Program in 2011, which requires a donation to the Nittany Lion Club in addition to the purchase of season tickets, and pressures from the secondary ticket market, however, the rate of season ticket renewals appears to be consistent with last year's rate.<sup>26</sup>

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<sup>26</sup> "Penn State Football: Ticket Sale Renewals On Pace with Normal Averages," available at <http://www.statecollege.com/news/local-news/penn-state-football-ticket-sale-renewals-on-pace-with-normal-averages.1328443/>.

The University's alumni have undertaken initiatives to increase financial support for Penn State's athletics programs. For the 2012-13 academic year, the Varsity S Club, Nittany Lion Club and Athletics Department sponsored the Penn State Alumni Challenge for Former Student-Athletes.<sup>27</sup> Pitting one team against another, the program urged former student-athletes to lend financial support to Penn State sports programs. Two \$6,000 prizes were available: one was given to the team with the most former student-athletes participating in the fundraiser; the other was given to the team with the greatest percentage increase in giving from alumni. The women's soccer team won both prizes and earned \$12,000 to help pay for travel, equipment, and other expenses in the upcoming year. The challenge raised more than \$400,000 for the University's sports teams, which reflects both a 28% increase in the number of former student-athletes who gave and in the amount they gave, as well as a nearly 64% increase in the number of alumni who supported the team for which they played.

#### **4. The Athletics Department's Sports Medicine Model**

We are continuing to review the change in medical personnel for the football program which occurred in early 2013. We also want to observe how medical care is provided to the football team during the upcoming season. We will include our findings on this issue in the next quarterly report.

#### **5. Academic Support for Athletes**

The educational resources and assistance made available to Penn State's student-athletes through the Morgan Academic Support Center for Student-Athletes continues to be part of the University's formula for achieving academic success on par with its athletic accomplishments. Notwithstanding the achievements of the past year, many with whom we have spoken have

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<sup>27</sup> <http://www.gopsusports.com/sports/c-varsitys/spec-rel/alumni-challenge.html>.

communicated concern with the growing number of unfilled positions within the Morgan Center, which has resulted in increased workloads for the remaining academic counselors. In the coming quarter, we intend to explore further the expressed apprehension that academic support may need reinforcement.

The completion of the first year of the Faculty Partner Program offers an opportunity to comment on that program's effectiveness. The voluntary program matches a faculty member with a varsity sports team for the course of the academic year. The faculty member, coach, and student-athletes are free to develop whatever form of relationship they deem best. The Athletics Department surveyed participants at the end of the year to gauge the program's effectiveness. All ten respondents agreed that they interacted with their partners in a meaningful way, and all would like to continue to participate in the program next year. While some individuals indicated a lack of clarity regarding the program's purpose, several participants commented that they found the program beneficial and enjoyable. Several coaches with whom the Monitor's team met also praised the program, noting that faculty supported the student-athletes at games and practices and in some instances helped them to prepare for job interviews. While still in its infancy, the program promises to enhance relations and understanding between Penn State's academics and the Athletics Department and to benefit its student-athletes.

### **C. Board of Trustees**

The Board of Trustees met once during the most recent quarter, on July 12, 2013. During that meeting, the Board elected Paul H. Silvis its new vice chair and granted emeritus status to former trustees Anne Riley and David Jones. The Board approved a resolution authorizing the University to offer settlements to several individuals who filed claims against Penn State as a result of Mr. Sandusky's actions. In addition, the Board reviewed plans for a new Compensation



Committee to govern human resources and executive compensation programs relating to senior leadership positions at the University.

The Board also invited head football coach Bill O'Brien to address the executive session regarding his understanding of the Consent Decree and NCAA sanctions. He presented his understanding of the long-term impact of the sanctions, what to expect in the coming years, and his recommendations for how best to function under the circumstances. As reported in the media, he further recommended that his superiors ask the NCAA to temper certain aspects of the sanctions relating to the number of scholarships available.

With respect to continued efforts to reform Board governance, the Committee on Governance and Long-Range Planning discussed its plan to engage a governance expert in the coming months to facilitate further changes. New Committee Chairman Keith Eckel expressed his view that governance reform remains a "work-in-progress." While acknowledging that significant progress has been made with respect to reforming Board governance at Penn State, he expressed his commitment to completing reforms in a methodical and inclusive fashion. Additional reforms that the Committee is considering include changes addressing the Board's size, composition, membership qualifications, and committee operations.

Trustee Karen Peetz updated the Board on progress made in the search for the next president of Penn State. The process is being spearheaded by the combined efforts of a 13-member Trustee Presidential Selection Council chaired by Ms. Peetz and an 18-member Presidential Search and Screen Committee chaired by Ann Cruter, dean of the College of Health and Human Development. Penn State also continues to work with the professional firm of Isaacson, Miller to assist its nationwide search. Ms. Peetz reported that the position has

attracted a high degree of interest from the qualified applicant pool. The committees are refining their slate of candidates in preparation for interviews.

As reported above, trustee Peter Khoury announced his intention to withdraw from the Paterno family's lawsuit against the NCAA in order to continue his involvement with the Trustee Presidential Selection Council. On August 23, 2013, Secretary of the Board of Trustees Thomas Poole issued to the trustees a letter requesting their completion of the annual conflict of interest disclosure and certification contemplated by Sections 8.03 and 8.04 of the Board's bylaws. The University advised that information reported in the certification will be made public in accordance with the bylaws. Trustee responses are due by September 6, 2013. We will continue to observe and report on further developments as they occur.

#### **V. AREAS OF FUTURE FOCUS AND CONCLUSION**

Penn State has completed nearly all of the recommendations in the Freeh Report and continues to abide by the AIA. The University's administrators, staff, and trustees continue to provide us with their full cooperation.

In the next quarter, we intend to meet with the three new head coaches recently hired by Penn State and to explore the level of academic support provided by the Morgan Academic Support Center for Student-Athletes to ensure that staffing levels continue to meet the student-athletes' needs. We will also observe the finalization and implementation of the culture survey and track Ms. Weaver's progress in overseeing youth programs.

We also will observe how Penn State transitions into what its administrators refer to as Phase II of the implementation process, which focuses on the University's plan for "change management and continuous improvement." That plan involves augmenting the work already accomplished with respect to many of the Freeh Report's recommendations and ensuring that the University maintains its momentum.

Penn State will cease to track those recommendations that involved one-time changes. Other recommendations will continue to receive attention, even though “completed,” to ensure that progress made does not regress. Recommendations deemed “ongoing and continuous” because they require sustained attention over a longer period of time will remain the focus of attention. Penn State also has incorporated its own, independent projects for self-improvement into the Phase II process.

While parties may continue to argue about the history that led to the Freeh Report and the AIA, a consensus has developed that the principles at the heart of these reforms are best practices for the governance of any large university.<sup>28</sup> Penn State’s Phase II plan of action assures the Monitor that the University has embraced the Freeh Report’s recommendations as a roadmap supporting long-term enhancement. It demonstrates that, even after the December 31, 2013 deadline for completion has long-since passed, Penn State plans to continue to be guided by the recommendations in its mission to establish effective ethics, compliance, and governance programs, support the physical safety of all individuals on its campuses, and promote athletics integrity.

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<sup>28</sup> See <http://www.centredaily.com/2013/05/31/3635130/penn-state-trustee-mccombie-ncaa.html#storylink=cpy>.