

**THIRD 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**

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Table of Contents

I.	INTRODUCTION AND SUMMARY	1
II.	THE MONITOR’S ACTIVITIES THIS QUARTER.....	8
III.	RENEWING TRUST: MAKING THE UNIVERSITY MORE ACCOUNTABLE TO THOSE IT SERVES	9
A.	Incorporating Accountability of Senior Administrators Into University Governance Structure	9
B.	Enhanced Administrative Oversight and New Leadership.....	11
C.	Efforts to Make All Personnel Accountable to the Institution They Serve.....	12
1.	The Office of Ethics and Compliance.....	12
2.	Office of General Counsel	14
3.	New Policies	15
4.	Enterprise Risk Management and Crisis Management Enhancements	17
D.	Enhancements to Board Accountability and Improvements to Board Governance and Oversight.....	18
E.	The Athletics Integrity Program	21
1.	The Athletics Integrity Officer.....	22
2.	Athletics Integrity Council.....	23
3.	Code of Conduct for Intercollegiate Athletics	23
4.	Policies and Procedures in Support of the Athletics Integrity Program.....	24
5.	Disclosure Program.....	24
6.	Team Monitor and Athletic Director Certifications of Compliance	27
7.	Football	29
8.	Annual Training.....	30
F.	Enhancements to Athletics Compliance Office	32
G.	Reorganization of the Athletics Department.....	33
H.	The Morgan Academic Support Center for Student-Athletes.....	34
IV.	RENEWING TRUST: ENSURING THE PROTECTION OF THOSE THE UNIVERSITY SERVES	34
A.	Promoting Reporting of Misconduct	34
1.	The Ethics and Compliance Hotline	35

2.	Values and Culture Survey	36
3.	Ethical Culture Plan	37
4.	Penn State Values and Town Hall Meetings.....	39
B.	Programs to Enhance Youth Protection.....	40
C.	Efforts to Combat Sexual Misconduct.....	42
1.	The Network on Child Protection and Well-Being.....	43
2.	Task Force on Sexual Assault and Sexual Harassment	44
D.	Physical Security Improvements.....	46
E.	Clery Act Compliance Activities	47
F.	Police and Public Safety Improvements	49
G.	Human Resources Improvements	50
V.	OTHER EVENTS DURING THE REPORTING PERIOD.....	51
A.	Lawsuits, Investigations, and Legislative Activity.....	51
1.	New Legislation	51
2.	Litigation Update	52
a.	Paterno Estate.....	52
b.	Lawsuit Filed by Certain Alumni-Elected Trustees.....	53
c.	Criminal Actions	53
d.	Spanier vs. Penn State.....	54
e.	Employment Litigation	54
VI.	CONCLUSION.....	54

I. INTRODUCTION AND SUMMARY

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

Over the past three years, Penn State has demonstrated its commitment to enacting the changes required by the Consent Decree and the AIA, and also has taken a proactive approach in establishing state of the art university policies and practices beyond those imposed by mandate. As a result, in September 2013 my predecessor as Monitor, Senator George J. Mitchell, recommended a reduction in the NCAA sanctions and, one year later, he recommended further sanctions relief in response to Penn State’s “continued commitment to reform.”¹ In both years, the NCAA and Big Ten Conference accepted Senator Mitchell’s recommendations.² In 2013, the NCAA cited “Penn State’s continued progress toward ensuring athletics integrity” as the basis for its decision to more rapidly restore football scholarships to the University.³ In 2014, the NCAA eliminated Penn State’s postseason ban and returned the full complement of football scholarships for the 2015-16 season, “[d]ue to Penn State University’s significant progress

¹ See Monitor’s Second Annual Report at 2-3, 56-57.

² See Monitor’s Second Annual Report at 2; *see also* Monitor’s Ninth Quarterly Report at 21.

³ See “Executive Committee to gradually restore Penn State scholarships,” Sept. 24, 2013, available at <http://www.ncaa.org/about/resources/media-center/news/executive-committee-gradually-restore-penn-state-scholarships>.

toward ensuring its athletics department functions with integrity.”⁴ The Big Ten Conference concurred in each instance.

In the second annual report, Senator Mitchell stated that, “[s]hould Penn State continue its current course of progress during this upcoming third year, I will in my next annual report consider recommending that the NCAA and Big Ten Conference conclude the Monitorship substantially earlier than scheduled.”⁵ In my last two quarterly reports, I have reiterated that I agreed with this intention. Section IV.A. of the AIA provides for the possibility of early termination “in the sole discretion of the NCAA if the University requests and the Monitor recommends a reduction based upon compelling evidence that the athletics culture is consistent with the NCAA Constitution and Bylaws and the Big Ten Handbook and that sufficient progress has been made in the implementation of the AIA that the measures required under the AIA no longer need the oversight of a Monitor.”⁶ This summer, I met with President Eric Barron who requested an early termination of the Monitorship. President Barron pledged his commitment to maintain the governance and compliance reforms instituted over these past three years beyond the original five-year term of the AIA. In particular, President Barron noted the benefits that have inured from the creation of the athletics integrity officer position and gave me his commitment to maintain that position.

Given Penn State’s progress and the commitments made by President Barron, I recommended to the NCAA and Big Ten Conference the early conclusion of the Monitorship at the end of the 2015 calendar year, which would be roughly coterminous with the conclusion of

⁴ See “Executive Committee restores Penn State football postseason scholarships,” Sept. 8, 2014, available at <http://www.ncaa.org/about/resources/media-center/news/executive-committee-restores-penn-state-football-postseason-scholarships>.

⁵ See Monitor’s Second Annual Report at 3.

⁶ See AIA § IV.A.

the 2015 fall semester. This recommendation is contingent only upon the absence of any material adverse events occurring between now and semester's end. This is a highly unlikely possibility given all that has been accomplished during these last three years.

I am gratified to report that both the NCAA and the Big Ten Conference have accepted my recommendation. Accordingly, I expect this to be the last report from the Monitor, subject only to an expected brief statement at year's end confirming that no such adverse events have occurred.

Penn State's progress has been noticed by others. Moody's Investor Services specifically cited "significantly strengthened governance and management practices" in rating the University Aa2 with a positive outlook.⁷ In reaccrediting Penn State this spring, the Middle States Commission on Higher Education also commented that "many institutions talk about integrity, but Penn State lives integrity."⁸ Rutgers University recently created an athletics integrity position which resembles Penn State's athletics integrity officer position. And the Department of Defense has sought guidance from the University regarding programs to address violence against women.

Before deciding to make the recommendation to end the monitorship early, we reviewed the current literature on best practices in university governance and compared those best practices against Penn State's current and former structure. Obviously, a one-size-fits-all model

⁷ See "Moody's gives Penn State positive rating, citing improved governance," Penn State Live, April 26, 2015, available at <http://news.psu.edu/story/354685/2015/04/26/administration/moody%E2%80%99s-gives-penn-state-positive-rating-citing-improved>; see also President Barron's report at the May 8, 2015 Board meeting, available at <https://www.youtube.com/watch?v=2d4kt438MAs>.

⁸ See President Barron's report at the May 8, 2015 Board meeting, available at <https://www.youtube.com/watch?v=2d4kt438MAs>.

cannot apply in the context of implementing compliance in a higher education setting.⁹ Further, the landscape of higher education regulation is in constant flux, and campus compliance has been described as analogous to “changing the tires on a moving car.”¹⁰ With those caveats, certain general best practices for effective compliance programs consistently are recommended. These include, among many others:

- a centralized compliance program organized under the Federal Sentencing Guidelines for Organizations reflecting the shared values of the community;
- support from senior administrators;
- accountability of senior administrators to the board of trustees;
- enterprise risk management programs and risk assessments;
- the use of hotlines;
- instituting a code of conduct and policies outlining university expectations;
- appropriate reporting lines;
- training and education programs;
- hiring full-time Clery Act and Title IX coordinators to oversee comprehensive programs designed based on recommendations by government regulators; and
- inculcating a “see something, say something” climate.¹¹

When this Monitorship began in 2012, many of these practices were not in place at Penn State or were ineffective. Not only has Penn State largely caught up with industry standards but, in many instances, it is at the leading edge of higher education compliance and governance

⁹ See Lawrence White, Top Ten Campus Legal Issues for Boards, Association of Governing Boards of Universities and Colleges, 2015, at 31.

¹⁰ Lawrence White, *Concerns and Forecasts (and Perhaps a Surprise) from Campus Lawyers*, Trusteeship Magazine, Association of Governing Boards of Universities and Colleges, January/February 2013.

¹¹ Numerous resources are made available by the Higher Education Compliance Alliance at <http://www.higheredcompliance.org/compliance> and the Association of Governing Boards of Universities and Colleges at <http://www.agb.org>.

efforts. For instance, before 2012, Penn State did not have a comprehensive compliance program, a University-wide code of conduct, a distinct Clery Act compliance unit, a sturdy Title IX program, coordinated oversight of on-campus youth programs, physical security measures at many of its athletics and recreational facilities, or other increasingly expected elements of University governance, oversight, and safety programs.

Some of the “best practices” introduced by Penn State in the past three years that bring the University into conformity with, or beyond, prevailing standards include:

- Created the Office of Ethics and Compliance and the Ethics and Compliance Council to coordinate, integrate, and oversee all University compliance functions;
- Developed an Ethics and Compliance Plan based on the Federal Sentencing Guidelines for Organizations;
- Hired an athletics integrity officer and changed the reporting line of the University’s Athletics Compliance Office to the director of ethics and compliance rather than the athletic director;
- Established appropriate reporting lines to the Board to ensure accountability for senior administrators;
- Adopted various reforms to enhance the quality of oversight provided by the Board of Trustees;
- Introduced the Code of Responsible Conduct;
- Enacted a formal policy review process that resulted in the creation or revision of policies and procedures regarding youth protection, facility security, reporting potential wrongdoing, anti-retaliation, discrimination and sexual harassment, employee background checks, and institutional financial conflicts of interest and Board conflicts of interest;
- Developed comprehensive compliance and ethics training and education programs;
- Improved lines of communication and reporting mechanisms through the Ethics and Compliance Hotline, quarterly compliance newsletter, and message from the president each semester on reporting processes and promoting the University’s anti-retaliation policy;

- Assigned specific risks identified through an enterprise risk management process to Board committees to ensure proper oversight;
- Developed and implemented a comprehensive action plan to ensure compliance with Title IX requirements and to address a national concern about sexual assault on campuses; and
- Undertook a University-wide effort to promote a “see something, say something” climate and to enforce the University’s anti-retaliation policy.

Penn State serves over 98,000 students around the world. Its \$4.6 billion annual operating budget includes a health system and research and development programs that utilize sensitive information and generate patents and other intellectual property. All of these activities are subject to regulation, and federal and state regulation of higher education institutions has proliferated substantially, with examples including a Department of Education guidance letter in April 2011 regarding Title IX obligations to increased enforcement of Clery Act obligations, amendments to the Violence Against Women Reauthorization Act, amendments to state youth protection legislation, increased regulatory oversight of data privacy, False Claims Act amendments, research grant oversight, and regulatory efforts concerning institutional eligibility requirements, student financial aid programs, disclosures to consumers, student safety, and other issues.¹² The number of federal requirements placed on colleges and universities grew by 56 percent between 1996 and 2012, with more than 2,000 pages of Department of Education guidance issued on ten new directives in 2013 and 2014 alone.¹³

¹² See, e.g., Recalibrating Regulation of Colleges and Universities, Report of the Task Force on Federal Regulation of Higher Education, available at http://www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf;

¹³ See Vice President and Provost Nicholas P. Jones and Senior Vice President for Finance and Business/Treasurer David Gray, Administrative Costs Review, Presentation to the Committee on Finance, Business and Capital Planning of the Penn State Board of Trustees, July 16, 2015.

Increased regulation has led to increases in potential liability. In the past few years, regulatory authorities have levied millions of dollars in fines against universities for research and billing fraud, underpayment of royalties, misuse of federal grants, conflicts of interest, export control violations, inaccurate grant effort reporting, overbilling, and lab accidents to name a few.¹⁴

Strong compliance plans not only mitigate regulatory risk, but also make good business sense. Independent research studies, published university findings, and corporate surveys indicate that these types of changes can lower the cost of capital and credit, promote better access to talent, and enhance a school's reputation.¹⁵ Perhaps most importantly, compliance programs help to protect the communities that universities serve.

Even with all of its recent changes, Penn State continues to compare favorably to its peers in its administrative personnel ratios.¹⁶ Penn State is by far the largest Big Ten school, serving 87,824 enrolled students and employing 4,885 faculty and 11,375 non-faculty personnel in 2013. As the student population has grown over the past ten years, however, Penn State's ratio of non-

¹⁴ See Robert Nobles and Bill Moles, Improving the Effectiveness of Your Institutional Compliance Program, Presentation at SCCE Higher Education Conference 2015, available at http://www.corporatecompliance.org/Portals/1/PDF/Resources/past_handouts/Higher_Ed/2015/P4_Improving-Effectiveness_2.pdf; see also Kimberly Fearney and Virginia Pack, Compliance and Ethics Training in Higher Education, Presentation at SCCE Higher Education Conference 2015, available at http://www.corporatecompliance.org/Portals/1/PDF/Resources/Library_Documents/CE%20Training%20for%20Higher%20Education.pdf.

¹⁵ See Governance Metric International, Howard Sherman, Corporate Governance Risks and Rewards, Presentation to Conference Board Ethics and Compliance Conference, May 11, 2006; Ashbaugh, Collins, LaFond, Working Paper, Corporate Governance and Cost of Working Capital (Dec. 2004); Gompers, Ishii, Metrick, Corporate Governance and Equity Prices, Q.J. Econ. (Feb. 2003); Paine, Value Shift; Why Companies Must Merge Social and Imperatives to Achieve Superior Performance (McGraw Hill 2003).

¹⁶ See Integrated Postsecondary Education Data System, available at <https://nces.ed.gov/ipeds/>.

faculty to faculty employees remained the same at 2.3:1. Penn State's ratio of students to non-faculty employees consistently ranked third among the Big Ten in 2004 and 2013 at 7.2:1 and 7.7:1 respectively. In 2013, Penn State ranked second among the Big Ten for its ratio of students to administrative staff at 14:1, which is forty percent better than the Big Ten average.

In this report, we review Penn State's major accomplishments over the past three years and how they have enhanced the University. While issues remain to be resolved and new ones are bound to arise, Penn State now has a formidable governance structure in place to address the inevitable future challenges as they emerge. Equally important, University leadership is committed to sustaining these many changes and continuing the established path of self-improvement.

II. THE MONITOR'S ACTIVITIES THIS QUARTER

This reporting period, we continued to visit the University Park campus to meet with Penn State administrators, faculty, and staff. We participated in regularly scheduled meetings of the administration response team, the Ethics and Compliance Council, the Ethics Committee, the Youth Programs Council, the Compliance Training Committee, the Advisory Council for Continued Excellence ("ACCE"), and the Athletics Integrity Council. We attended the Board of Trustees meeting held on the Beaver campus on July 16-17, 2015 and at University Park on September 17-18, 2015.

Persons we met with since our last report include: President Eric Barron; Athletic Director Sandy Barbour; Vice President and General Counsel Stephen S. Dunham; Associate General Counsel Frank Guadagnino; Senior Vice President for Finance and Business David Gray; Vice President for Administration Thomas Poole; Senior Associate Athletic Director for Administration Lynn Holleran; Senior Associate Athletic Director for Student-Athlete Performance, Health, and Welfare Charmelle Green; Senior Associate Athletic Director for

Finance and Business Operations Rick Kaluza; Associate Athletic Director for Student-Athlete Success Jan Bortner; Associate Athletic Director for Facilities and Operations Mark Bodenschatz; Director of Athletic Training Services Tim Bream; Vice President for Student Affairs Damon Sims; Director of University Ethics and Compliance Regis Becker; Athletics Integrity Officer Julie Del Giorno; Associate Athletic Director for Compliance Matthew Stolberg; Youth Programs Compliance Specialist Sandy Weaver; University Ethics Officer Timothy Balliett; Investigations Specialist Jeff Bowman; Communications and Training Specialist Denise Shivery; Assistant Vice President for Human Resources Mary Beahm; Director of the Network on Child Protection & Well-Being Dr. Jennie G. Noll; Director of Sport Camps William Mincer; and head coaches James Franklin (football), Randy Jepson (men's gymnastics), Jeffrey Thompson (women's gymnastics), Tim Murphy (men's and women's swimming and diving), Missy Doherty (women's lacrosse), Amanda Lehotak (softball), Rob Cooper (baseball), Josh Brandwene (women's ice hockey), and Greg Nye (men's golf). We also continued to work with Guidepost Solutions, LLC to monitor enhancements to physical security and access controls at Penn State's athletics and recreational facilities.

III. RENEWING TRUST: MAKING THE UNIVERSITY MORE ACCOUNTABLE TO THOSE IT SERVES

A. Incorporating Accountability of Senior Administrators Into University Governance Structure

Over the past three years, Penn State has established clear reporting lines and communication channels from staff to senior administrators and between senior administrators and the Board of Trustees. Penn State not only created new positions dedicated to compliance and integrity (such as the director of ethics and compliance, the athletics integrity officer, and the Clery compliance manager); it ensured that the individuals who fill those roles have direct access and reporting lines to the Board of Trustees.

Regis Becker, the Director of Ethics and Compliance, reports directly to the Board's Legal and Compliance Committee and the senior vice president for finance and business. Julie Del Giorno, the Athletics Integrity Officer, reports directly to Mr. Becker and to the Board's Legal and Compliance Committee. Both of them also meet quarterly with the president, who supports their efforts and communicates that support to the campus through e-mails about reporting obligations each semester, videos supporting efforts to combat sexual assault and harassment, participation in training modules, directives to address compliance concerns such as fear of retaliation for reporting wrongdoing, and backing enforcement actions Mr. Becker and Ms. Del Giorno consider to be necessary.

Penn State developed and published Guidelines and Criteria for Legal and Risk Reporting to the Penn State Board of Trustees to establish a framework for issues that should reach the Board's attention in these important areas.¹⁷ Penn State introduced a Charter for the Board's Legal and Compliance Committee that reflects Mr. Becker's and General Counsel Stephen Dunham's direct reporting lines to the committee. Mr. Dunham also reports to President Barron. Director of Internal Audit Dan Heist and University Risk Officer Gary Langsdale report directly to the Audit and Risk Committee. Mr. Langsdale continues to brief the Board on enterprise risk management efforts, and oversight of specified risks now has been allocated to the appropriate Board committees.

Associate Vice President for Human Resources Susan Basso was promoted to a full vice president position reporting to the senior vice president for finance and business and to the Board's Compensation Committee. She also sits on the President's Council, which provides her

¹⁷ See Guidelines and Criteria for Legal and Risk Reporting to the Penn State Board of Trustees, available at <file:///C:/Users/eg12389/Downloads/Guidelines%20and%20Criteria%20for%20Legal%20and%20Risk%20Reporting%20to%20the%20Board%20of%20Trustees.pdf>.

direct access to the highest levels of the administration. The Clery compliance manager, the associate athletic director for compliance, and the youth programs coordinator report annually to the Board on their activities and provide training to the trustees.

These channels of communication between key senior administrators and the Trustees provide the Board with the knowledge it needs to provide effective oversight and supervision of the University's activities. One criticism of the University's governance prior to 2012 was that the President controlled much of the information that flowed to the Board. These governance enhancements ensure that the Board obtains input from a wide variety of University leaders.

B. Enhanced Administrative Oversight and New Leadership

To ensure implementation of its remedial obligations under the AIA and the Consent Decree, Penn State established the administration response team, a group that includes the general counsel, the associate general counsel, the senior vice president for finance and business, the vice president for administration, the director of ethics and compliance, and the athletics integrity officer. The administration response team meets weekly, often inviting University leaders to report on elements of Penn State's "Plan for Continuous Improvement." Separately, Mr. Becker meets monthly with Mr. Dunham, Mr. Heist, and Mr. Langsdale to discuss potential issues of concern and share information among the compliance, legal, and risk functions.

Penn State also created the ACCE to oversee its review of the University's values and culture. This group, which includes a broad spectrum of faculty, administrators, staff, graduate students, and trustees, developed the University's first values and ethics survey and drafted the recently approved University-wide statement of values. The ACCE continues to meet to plan future surveys, discuss socialization of the values statement, and support other change management initiatives.

Over the past three years, Penn State has experienced a high degree of turnover among the senior leadership team and Board. Thirty out of 36 trustees took office on or after July 1, 2012. Senior Vice President for Finance and Business David Gray was appointed in February 2012. Penn State hired Mr. Dunham as the new vice president and general counsel in July 2012 and hired Nicholas Jones to be its Executive Vice President and Provost in July 2013. The Board conducted a national search for a new president, which resulted in the selection of President Barron in May 2014. In July 2014, Penn State selected Sandy Barbour to be its new Athletic Director. Other relevant leadership changes included the promotion of A. Craig Hillemeier as the new Dean of the Penn State College of Medicine, Chief Executive Officer of the Penn State Hershey Medical Center, and Senior Vice President for Health Affairs at the University and the hiring of new Vice President for Strategic Communications Lawrence Lokman in October 2014.

Penn State also created new positions to coordinate and strengthen its compliance function. These positions included the director of ethics and compliance, athletics integrity officer, Clery compliance manager, University ethics officer, youth programs coordinator, and investigations specialist. Penn State currently is conducting a national search for a full-time Title IX officer.

C. Efforts to Make All Personnel Accountable to the Institution They Serve

1. The Office of Ethics and Compliance

The Office of Ethics and Compliance, established in April 2013, oversees compliance functions that previously were scattered throughout the University system. A centralized compliance structure increasingly is considered to be a best practice for effective oversight of the proliferating legal and regulatory obligations faced by institutions of higher education such as

Penn State.¹⁸ The Office includes ten full-time staff responsible for youth protection, University ethics, athletics integrity, athletics compliance, investigations, compliance training and communications, export control, and privacy. The Office manages Penn State's universal hotline, including investigations arising from hotline reports. Its staff runs a number of oversight committees that bring together relevant leaders from across the University, including the Ethics Committee, the Youth Programs Council, and the Compliance Training Committee. The Office also closely coordinates with the Clery Act compliance function housed in University Police and Security. Its website provides easy access to key policies, initiatives, training materials, and reporting mechanisms.

In May 2014, the Board approved Penn State's University-wide Compliance Plan. Penn State modeled this plan on the requirements of the Federal Sentencing Guidelines, which have served as the blueprint for most compliance plans in business and in the non-profit sector. The plan addresses: standards of conduct; governance; reporting lines and delegation of authority; training and education; monitoring and auditing; program promotion; and remediation measures taken following identification of wrongdoing.¹⁹ The plan details the operational structure of offices responsible for enforcing the University's compliance activities. It establishes standards and guidelines for conduct by all members of the University community and promotes an institutional ethos of compliance at all levels.

¹⁸ See, e.g., Jaclyn Jaeger, "University Compliance Programs Taking Shape," Compliance Week, July 28, 2015, noting that Penn State is one of a number of universities, including Northwestern University, the University of Miami, and the University of New Mexico, to appoint a chief compliance officer and develop central compliance departments over the past two years.

¹⁹ See Penn State University Compliance Plan, available at <http://www.universityethics.psu.edu/UniversityEthics/keyinitiatives/upload/PENN-STATE-UNIVERSITY-COMPLIANCE-PLAN-2014-05-08.pdf>.

Penn State also established the Ethics and Compliance Council, an advisory body composed of 20 University leaders representing diverse constituencies. The Council brings all of Penn State's compliance functions together to provide coordinated supervision. The Council meets six times a year. It conducts a detailed review of one compliance function at each session, updates its constituents on current compliance-related activities, and provides a forum for discussion and debate among its members on timely issues of import, coordinated compliance strategy, and suggestions for improvement.

Penn State's centralization of its human resources function under the Office of Human Resources at University Park has resulted in more coordinated compliance training efforts to support the Office of Ethics and Compliance's initiatives. Human resources and compliance combine to develop, roll out, advertise, and track completion of required training programs. These programs include Penn State's "Reporting Child Abuse" online module, Clery Act training for "campus security authorities," and "Recognizing and Reporting Sexual Harassment and Other Forms of Sexual Misconduct" training. In August 2015, the two offices implemented a process for tracking compliance training across the University through the new Cornerstone Learning Management System.²⁰

2. Office of General Counsel

General Counsel Stephen Dunham supervises a full-time staff of nine attorneys at University Park and three attorneys at the Penn State Hershey Medical Center. The development of a dedicated in-house legal staff to support Penn State's activities is in line with practices at universities around the country that increasingly recognize the need for an internal team with

²⁰ See Monitor's Tenth Quarterly Report at 20; *see also* Monitor's Eleventh Quarterly Report at 17.

legal expertise as the risks of liability, regulatory obligations, and government oversight and enforcement continue to increase.²¹

3. New Policies

Clear, concise, and consistent written standards are a hallmark of a sound compliance program. Under the leadership of Vice President for Administration Tom Poole, Penn State undertook a comprehensive review of University policies to identify and correct redundancies, inconsistencies, and gaps. Penn State also developed Policy AD00 to govern policy development, review, and revision in the future.

Penn State also promulgated a number of new or modified policies to promote appropriate conduct by University officials. Some directly addressed safety and security gaps brought to light by the Sandusky scandal. Others bear no relation to those events. But all were designed to provide the Penn State community with a clear roadmap of University expectations.

Examples include:

- Policy AD88: Code of Responsible Conduct, which holds all University employees to “the highest standards of integrity, responsibility, and respect.” The Code outlines the University’s expectations that all employees abide by all laws and Penn State policies, avoid conflicts of interest, maintain accurate records, report wrongdoing, and adhere to the University’s strict anti-retaliation policy.²²
- Policy AD67: Disclosure of Wrongful Conduct and Protection from Retaliation establishes that retaliation of any kind for good faith reports of potential

²¹ See Peter F. Lake, *Welcome to Compliance U: The Board’s Role in the Regulatory Era*, *Trusteeship Magazine*, Association of Governing Boards of Universities and Colleges, July/August 2013, available at <http://agb.org/trusteeship/2013/7/welcome-compliance-u-boards-role-regulatory-era>; Lawrence White, *Concerns and Forecasts (and Perhaps a Surprise) from Campus Lawyers*, *Trusteeship Magazine*, Association of Governing Boards of Universities and Colleges, January/February 2013.

²² See Policy AD88: Code of Responsible Conduct, available at <https://guru.psu.edu/policies/AD88.html>.

wrongdoing will not be tolerated and will result in disciplinary actions potentially including termination or expulsion from Penn State.²³

- Policy AD83: Institutional Financial Conflict of Interest clarifies University expectations with respect to disclosures of potential conflicts and means of mitigating and avoiding such conflicts.²⁴
- HR101: Positions Requiring National Search Process describes the circumstances in which national searches must be conducted for key University positions.²⁵
- Policies AD86: Acceptance of Gifts and Entertainment, AD89: University Export Compliance Policy, and AD53: Privacy Statement, provide guidance on activities previously unaddressed on a University-wide level.²⁶

The Office of Human Resources has been conducting its own policy assessment as part of the Human Resources Transformation Project. Whenever any organization engages in policy development, one important question is whether the policies actually will be implemented or merely “sit on a shelf.” We have observed these policies in action. Most notably, millions of dollars have been spent improving physical security and ensuring that children on campus are protected from harm. The anti-retaliation policy has been enforced where appropriate. New leadership has been chosen through inclusive search processes. And a University-wide training program is embedding these policies to foster a set of shared values.

²³ See Policy AD67: Disclosure of Wrongful Conduct and Protection from Retaliation, available at <https://guru.psu.edu/policies/AD67.html>.

²⁴ See Policy AD83: Institutional Financial Conflict of Interest, available at <https://guru.psu.edu/policies/AD83.html>.

²⁵ See Policy HR101: Positions Requiring National Search Process, available at <https://guru.psu.edu/policies/OHR/hr101.html>.

²⁶ See Policy AD86: Acceptance of Gifts and Entertainment, available at <https://guru.psu.edu/policies/AD86.html>; Policy AD89: University Export Compliance Policy, available at <https://guru.psu.edu/policies/AD89.html>; Policy AD53: Privacy Statement, available at <https://guru.psu.edu/policies/AD53.html>.

4. Enterprise Risk Management and Crisis Management Enhancements

Universities today face a constellation of risks. Penn State has significantly enhanced its program of enterprise risk management (“ERM”), an emerging best practice among universities.²⁷ University Risk Officer Gary Langsdale conducts an ERM assessment of all Penn State campuses every three years. In the intervening years, he conducts a review of all identified risks during which he meets with every designated risk leader. This review includes evaluation of the risk leader’s strategy for managing a defined risk issue, whether the appropriate resources are available to mitigate the risk, what other units are involved in managing the risk, and what foreseeable changes could impact the risk. The University Risk Council meets periodically and considers the evolving risk landscape.

Over the past three years, Penn State created an inventory of fifty-five significant risks. The inventory assigns a risk score based on the severity of the risk, indicates which functional office is responsible for the risk, identifies the risk leader, and states whether Board oversight is required and, if so, which Board committee is assigned responsibility for the risk. Penn State updates this risk matrix annually.

Board committees oversee fifteen of the most critical risks. The University Risk Council oversees the remaining forty risks. The Board has created a Risk Subcommittee of its Audit and Risk Committee and has put in place strategies to mitigate these key risks. Mr. Langsdale

²⁷ See Shulamith Klein, Michael Mandl, and Stephen Spencer, “Learning to Harmonize,” Business Officer, www.nacubo.org, December 2008; *see also* “Enterprise Risk Management: Best Practices for Boards, Presidents, and Chancellors,” Association of Governing Boards of Universities and Colleges and United Educations, 2009, available at http://agb.org/sites/default/files/legacy/u3/AGB_UE_bestpractices.pdf; “A Wake-Up Call: Enterprise Risk Management at Colleges and Universities Today,” Survey by the Association of Governing Boards of Universities and Colleges and United Educators, 2014, available at <http://agb.org/sites/default/files/legacy/RiskSurvey2014.pdf>;

presents these risks to the relevant Board committees once each year and provides an overall report of all risks to the Board annually.

The Board also has adopted a crisis management plan. The plan includes a matrix defining five levels of crises and prescribes an approach for responding to each. The matrix provides examples to help guide management and the Board in evaluating incidents. The plan identifies a chain of command and response team, delineates the role of the response team, and determines when the Board must be informed. This crisis management plan fills a key gap in preparedness, and its need is well illustrated by the events of three years ago.

D. Enhancements to Board Accountability and Improvements to Board Governance and Oversight

Penn State undertook a comprehensive review of its Board governance during the period of the Monitorship. The Committee on Governance and Long-Range Planning led the effort to update and enhance the Board's functionality and accountability in overseeing a complex University system. The Committee overhauled the Board's governing documents, hired a governance consultant, conducted extensive benchmarking of comparable institutions, researched best practices in university governance, and debated reform proposals. These efforts resulted in several rounds of major amendments to the Board's Charter, Bylaws, and Standing Orders in May 2013, November 2013, and March 2014.

The Board established five new standing committees to improve oversight of specific areas of import: the Audit and Risk Committee; the Compensation Committee; the Legal and Compliance Committee; the Committee on Outreach, Development and Community Relations; and the Committee on Governance and Long-Range Planning. The Board adopted or is in the process of adopting governing charters for each of its standing committees to define their

purposes and responsibilities. In addition, Penn State created three new subcommittees on Human Resources, Legal, and Risk to provide increased attention to these topics.

The Board's composition was altered. It voted to add six new voting members and to make the university president and the governor of the Commonwealth of Pennsylvania ex-officio, non-voting members. The president no longer serves as Secretary of the Board or as an ex officio member of all Board committees, as was the case previously. All references in the governance documents to consultation with the president were removed.

These changes were designed to mitigate the risk of a University president exercising undue influence over the Board, which was a criticism of the relationship between the Board and the University president prior to 2012. The amendments also provide new Board seats for previously unrepresented constituencies, and ensure that no two Board groups possess a majority of votes. As of July 1, 2015, the Board is composed of: nine elected alumni; six gubernatorial appointees; six business and industry appointments; six elected by delegates of agricultural organizations; three at-large trustees elected by the Board; a trustee representing the student body and elected by the Board; a trustee representing the faculty and elected by the Board; and the immediate past president of the Penn State Alumni Association as an ex-officio, voting member.

The Board also enacted amendments to their governing documents including: revisions to the expectations of membership; establishing remedies and removal procedures for trustees who breach their fiduciary duties; establishing 12-year trustee term limits and term limits for committee chairs; revision of the size and composition of the executive committee; amendments to the trustee election and selection processes; the introduction of restrictions on the eligibility of certain Commonwealth officials from becoming trustees; restrictions on Penn State employees' ability to become trustees as well as trustees' ability to become employed by the University; and

strengthening of the conflicts of interest provisions to require trustees to disclose any actual or perceived conflicts, submit annual disclosure statements, and recuse themselves in the event of a conflict.

The Board increased public participation by introducing a public comment period at each full Board meeting. Penn State also now live-streams each full Board meeting on the internet. Each trustee was given a published, University e-mail address to facilitate communications with the public. Trustee orientation now includes discussion of Clery Act obligations, mandated reporter requirements, “Covered Person” training on athletics compliance issues, and certification of the Intercollegiate Athletics Code of Conduct.²⁸ The January Board meeting typically includes a review of the University’s report on Clery Act compliance and a discussion of youth protection activities. All trustees are expected to complete Penn State’s Reporting Child Abuse training, updated to reflect new state law, before the end of this calendar year.

We have observed each of Penn State’s Board meetings during the course of the Monitorship. Trustee discussions sometimes demonstrated internal disputes over the University’s response to the Sandusky scandal, occasionally resulting in coarse and uncivil dialogue. These controversies have spilled over into the judicial arena, with several alumni-elected trustees engaging in litigation against the University. These debates serve as a reminder of the internal fissures that still exist among some University constituents. They are also a reminder of the deep and sincere passion that so many feel for Penn State. But as time moves on, more Board time is being spent on the challenges that the University faces today, and less on the personal reputations that were affected by the tragic events revealed in 2011.

²⁸ The AIA defines “Covered Persons” to include all student-athletes participating in NCAA-sanctioned intercollegiate athletics teams, coaches, team managers, University staff and employees who directly interact with those teams, the Board of Trustees, the president of the University, and members of the athletic director’s executive committee.

The Association of Governing Boards of Universities and Colleges (“AGB”) released its Top 10 Campus Legal Issues for Boards in 2015, highlighting sexual violence, risky student behavior, workplace misconduct, statutory and regulatory compliance, and transparency, ethical conduct, and behavior.²⁹ Penn State’s Board consistently monitors and addresses these important governance issues. The Board compares favorably against the standards suggested by the 2014 AGB Survey of Higher Education Governance, which indicates that only 34 percent of public boards require mandatory orientation training and only 43 percent have implemented formal risk management assessment processes. Penn State is among the majority of public universities that allow the full board to make a final decision about the president’s compensation (79%), that have adopted conflict of interest policies (86%), that have articulated statements on trustees’ roles and responsibilities (73%), and that have adopted confidentiality policies (63%).³⁰

E. The Athletics Integrity Program

In 2012, Penn State established an athletics integrity program. The program arose from obligations imposed by the Athletics Integrity Agreement, the program introduced enhancements to institutional control, ethical conduct, integration, administrative oversight, and accountability for the University’s 31 varsity intercollegiate athletics programs. During the term of the monitorship, Penn State consistently has complied with the obligations of the AIA, with only minor exceptions noted in earlier reports.³¹ President Barron has pledged his support for maintaining the enhancements to athletics integrity instituted under the AIA, and in particular

²⁹ See Lawrence White, “Top 10 Campus Legal Issues for Boards,” Associations of Governing Boards of Universities and Colleges, 2015.

³⁰ See The 2014 AGB Survey of Higher Education Governance, Association of Governing Boards of Universities and Colleges, 2015.

³¹ See Monitor’s First Annual Report at n.11; see also Monitor’s Second Annual Report at n.20-22.

making the athletics integrity officer position one that survives beyond the original five-year term of the AIA.

1. The Athletics Integrity Officer

The athletics integrity officer position is now being replicated by other institutions. But it was a novel concept when first instituted by Penn State. The athletics integrity officer is responsible “for developing and implementing policies, procedures, and practices designed to ensure the Athletics Department’s compliance with all applicable NCAA and Big Ten rules and regulations and with the requirements set forth in [the] AIA.”³² Athletics Integrity Officer Julie Del Giorno has built this position into a hub for communication and collaboration among the Athletics Department, including the coaching staff, the Office of Ethics and Compliance and other administrative units, faculty, staff, and students.

The athletics integrity officer reports directly to the director of ethics and compliance, which fosters independence from those with whom she directly works in the Athletics Department. She also reports directly to the Board’s Legal and Compliance Committee. She meets quarterly with President Barron to update him on her initiatives. She is a member of the weekly administration response team and participates in the ACCE. She meets quarterly and as needed with NCAA and Big Ten Conference representatives, providing reports of her activities. She has worked closely with the Monitor throughout her tenure.

Ms. Del Giorno has established an ethics and civility program for intercollegiate athletics in conjunction with University ethics experts in other departments. This program includes ethics awareness and personal values training, leadership sessions, and communications training. She has developed a regular coaches’ forum to present and discuss topics of interest and relevance in

³² AIA § III.B.1.

the intercollegiate athletics coaching profession and to foster open discussion of coaching issues and trends. She supports and works closely with the Athletics Compliance Office, and she has responsibility for Title IX gender equity issues in athletics.

2. Athletics Integrity Council

Ms. Del Giorno chairs the Athletics Integrity Council, a supervisory body that oversees implementation of the athletics integrity program. The Council is composed of eight University administrators and faculty members, and it meets quarterly to provide oversight regarding the University's athletics integrity and compliance efforts.

3. Code of Conduct for Intercollegiate Athletics

Penn State introduced the Code of Conduct for Intercollegiate Athletics on November 16, 2012. The Code of Conduct outlines Penn State's expectations for all individuals directly affiliated with intercollegiate athletics. The Code requires compliance with Penn State, NCAA, and Big Ten Conference policies and procedures, imposes an affirmative duty to report violations, and includes affirmative promises of non-retaliation and the maintenance of confidentiality to whistleblowers. The AIA requires that the Code of Conduct be distributed to all "Covered Persons" within 30 days of their employment and that each such individual must certify that he or she has received, read, understands, and will abide by the document. There currently are more than 1,500 "Covered Persons" at Penn State. Penn State initially obtained certifications from more than 1,800 individuals in 2012 to ensure compliance with the AIA. Since then, the University has continued to obtain certifications from new employees and student-athletes. On occasion, Penn State has taken more than 30 days to obtain the

certifications due to administrative oversight, and one trustee has refused to provide a certification.³³

4. Policies and Procedures in Support of the Athletics Integrity Program

Penn State also adopted and updated written policies and procedures concerning the operation of the athletics integrity program and distributed those documents to all “Covered Persons.” Penn State conducted two rounds of updates to its pre-existing Intercollegiate Athletics Policy Manual, issuing revised Chapters I and II in February 2013 and revised Chapter IV in October 2014.

5. Disclosure Program

The disclosure program required under the AIA and developed by Penn State is designed to provide a method for individuals, anonymous or named, to disclose, report, or request advice on matters relating to compliance with the AIA, Penn State’s athletics policies, NCAA and Big Ten Conference rules, or other issues relating to institutional control, ethical conduct, and integrity.³⁴ Penn State’s ethics and compliance hotline serves as a primary reporting mechanism. All reporting is subject to Penn State’s policy of non-retaliation. Ms. Del Giorno is responsible for handling athletics compliance-related calls. She maintains a disclosure log, as required by the AIA, that tracks each report received and actions taken in response.

³³ *See, e.g.*, Letter from Julie Del Giorno to Donald Remy and Jonathan Barrett, dated August 27, 2014 describing an administrative error resulting in untimely completion of Codes of Conduct certifications by incoming trustees; *see also* Letter from Julie Del Giorno to Donald Remy and Jonathan Barrett, dated July 20, 2015. Furthermore, as previously reported in the Monitor’s Second Quarterly Report at n.4, Trustee Anthony P. Lubrano declined to sign the Code of Conduct because of his expressed disagreement with the Consent Decree and the AIA as described in a letter dated January 23, 2013 from Penn State’s outside counsel to the NCAA and the Big Ten Conference.

³⁴ AIA § III.E.

In March 2015, Ms. Del Giorno presented to the Board's Legal and Compliance Committee a report comparing statistics on reporting of athletics-related incidents in 2013 and 2014. According to the report, in 2014, anonymous reports accounted for 32 percent of total reports. In 2013, anonymous reports comprised 65 percent of total calls. She also reported decreased use of the hotline for reporting and an increase in direct reporting by e-mail, telephone, letter, or in-person to her. The increase in the percentage of persons willing to identify themselves when reporting potential violations may indicate that Penn State's ongoing publicity efforts regarding its anti-retaliation policy are gaining credibility within the University community.

This quarter, Ms. Del Giorno received sixteen, non-anonymous complaints and two anonymous complaints. The reports involved allegations related to: several alcohol-related issues involving student-athletes; a felony trespass charge brought against a student-athlete; relationship violence by a student-athlete; harassment by an athletics staff member; an inappropriate joke encouraged by a coach; noncompliance by a student-athlete with student conduct expectations; concerns about academic integrity and coaching behavior within one sports program; concerns about the academic advising program; an improper change of campus assignment; and an improper procedure for awarding of grades. Action has been taken with respect to ten of the complaints. The student-athlete facing a felony trespass charge has been dismissed from his/her team coupled with a loss of scholarship. The student-athlete who failed to adhere to student conduct expectations also was dismissed from his/her team.

Ms. Del Giorno learned last quarter that she was not receiving from the Office of Student Conduct reports of all infractions allegedly committed by student-athletes.³⁵ This prompted

³⁵ See Monitor's Eleventh Quarterly Report at 21.

Ms. Del Giorno independently to track data from local court records to ensure that she is aware of all recent criminal charges brought against student-athletes. Ms. Del Giorno discovered a number of earlier, unreported allegations against student-athletes, mainly involving underage drinking, substance abuse, and related public misconduct. Ms. Del Giorno shared this information with the Office of Student Conduct and reviewed all of the newly uncovered incidents of student-athlete misconduct with the relevant head coaches, each of whom included summaries of this activity in their required annual certifications of Code of Conduct compliance to Ms. Barbour. Several coaches took disciplinary actions in response to learning of these criminal charges. During an Athletics Department retreat in August 2015, its leadership reiterated that all known misconduct must be reported promptly to the athletics integrity officer.

The Office of Student Conduct also has agreed to notify both Ms. Del Giorno and Ms. Barbour immediately of any significant incident involving a student-athlete. Ms. Del Giorno will receive a monthly report of all student conduct complaints involving student-athletes. The Office of Student Conduct will also inform Ms. Del Giorno upon the conclusion of any proceeding through which a student-athlete is found responsible for misconduct.

The Athletics Department is developing educational programming to address the societal problems of substance abuse and sexual misconduct. All incoming student-athletes will participate in mandatory training called “Sex Signals” to discuss how to identify and avoid harmful situations such as excessive drinking and being alone with strangers while intoxicated. In addition, all returning student-athletes will have mandatory training on alcohol and drug awareness as well as sexual assault and rape. Penn State’s enhanced vigilance is consistent with national trends; many institutions of higher learning are providing increased resources in response to heightened national awareness of these issues.

Finally, this year Penn State amended the student disciplinary process, empowering the Office of Student Affairs to exclude student-athletes from co-curricular activities such as intercollegiate athletics as a disciplinary sanction. This policy applies not only to student-athletes but to all Penn State students involved in co-curricular activities. Any decision to remove a student-athlete from a team would be made in consultation with the head coach and the athletic director. The Athletics Department continues to maintain the right to discipline a student-athlete by suspending or terminating team participation, but the Office of Student Affairs may augment such a sanction or impose a sanction in the absence of discipline imposed by the Athletics Department. The coach and, derivatively, the athletic director, have a conflict of interest in making disciplinary decisions about student-athletes. This policy change vests independent disciplinary authority with the Office of Student Affairs, which is not encumbered with such a conflict. It is worth noting, however, that several coaches dismissed student-athletes for repeated violations of student conduct and severe misbehavior this past academic year on their own initiative.

6. Team Monitor and Athletic Director Certifications of Compliance

As required by the AIA, Penn State appointed a team monitor for each of its 31 NCAA-sanctioned intercollegiate athletics teams. Each team monitor (the head coach of each sport) annually must certify in writing to the athletic director and the Athletics Integrity Council that his or her team complied with NCAA and Big Ten Conference rules and principles, must note any infractions committed or problems that arose during the course of the year, and must detail any corrective actions taken in response.³⁶ Ms. Del Giorno and the Athletics Integrity Council oversee this process.

³⁶ AIA § III.B.3.

The certifications include an acknowledgment that a team monitor's failure to fulfill his or her obligations in the role will be reported to the Athletics Integrity Council and the Board or a Board committee and may result in disciplinary action. For the past three years, the team monitors have provided the required certifications in advance of their June 30 deadline. On the basis of these certifications, the athletic director certifies compliance to the NCAA, the Big Ten Conference, and the Athletics Integrity Council. This system, similar to a Sarbanes-Oxley certification process, has introduced a higher level of accountability for team conduct. It also requires coaches annually to take stock of all misconduct and rules infractions, identify any problematic trends, and consider methods of improving their programs.

This year's certifications included a total of 31 Level III or IV violations.³⁷ Nineteen of these relatively minor violations were self-reported by teams.³⁸ This figure approximates the number of secondary violations in recent academic years, with 24 and 33 secondary violations reported in 2012-13 and 2013-14 respectively.³⁹ Over the past seven years overall, however, the number of minor infractions reported to the NCAA has gradually risen from 13 in 2008-09 to 31 reports in 2014-15. Football accounted for 29 percent of this year's violations, in contrast with

³⁷ This past year, the NCAA revised its violations structure. Level III violations refer to isolated or limited breaches of conduct that result in minimal recruiting or competitive advantage. Level IV violations refer to incidental infractions that are inadvertent or technical in nature and result in negligible, if any, competitive advantage. Prior to this classification, Level III and IV violations were generally categorized as "secondary" violations. See <http://www.ncaa.org/about/resources/media-center/news/new-violation-structure>.

³⁸ Self-reported violations are those reported by a member of an athletics program. All other violations discovered by the Athletics Compliance Office, the athletics integrity officer, or other channels outside of a Penn State athletic team are considered externally reported violations.

³⁹ Secondary violations no longer exist under the revised NCAA violations structure. They were defined in the NCAA Constitution as "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." NCAA Const., § 19.02.2.1. They are roughly commensurate with Level III and Level IV violations today.

16 percent in 2013-14. Some of the increase in violations relates to inappropriate uses of social media, which is correctable with increased rules education. The NCAA has viewed this increase in reported infractions favorably; that is, an indication of a more healthy reporting climate.

The athletic director certifies annually 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, responsibility, ethical conduct, and integrity reflected” in those documents.⁴⁰ In a letter to the NCAA, the Big Ten Conference, and the Athletics Integrity Council dated July 9, 2015, Athletic Director Sandy Barbour provided that certification and attached a chart detailing rules violations reported during the course of the 2014-15 academic year.

7. Football

There is evidence of increased tension, and a mutual lack of trust, between the head football coach and University athletics compliance staff. I have spoken to the athletic director, head football coach, director of ethics and compliance, athletics integrity officer, and athletics compliance staff members about this. All parties acknowledge the problem. Equally important, all parties have expressed a commitment to improving the communications and relationships between one another. This suggests the problem is solvable if the parties honor these commitments.

At the same time, this development highlights the efficacy of certain reforms undertaken by the University. Athletics compliance personnel no longer report to the athletic director; instead, they report directly to the director of ethics and compliance. This independence from

⁴⁰ AIA § III.D.1.

the Athletics Department is a governance best practice. Additionally, the athletic director and the senior associate athletic director for administration are both former athletics compliance officers and are closely overseeing this situation. These safeguards provide additional assurance that the football program will operate in a compliant manner.

8. Annual Training

Penn State continued to conduct in-person annual training sessions for all “Covered Persons” on the NCAA Constitution and Bylaws, the Big Ten Handbook, and the principles of institutional control, responsibility, ethical conduct, and integrity.⁴¹ The training also covers the disclosure program, Penn State’s non-retaliation policy, and its commitment to maintain confidentiality and anonymity with respect to any disclosures. Penn State also now provides required training to the Board of Trustees on its specific relationship, role, and responsibilities regarding athletics. Pursuant to the AIA, annual training must be completed by June 30 of each calendar year, and each “Covered Person” must certify in writing their completion of this obligation. Associate Athletic Director for Compliance Matthew Stolberg and his staff provide the training, and the requirement also is overseen by the Athletics Integrity Council.

In the 2014-15 academic year, Penn State trained a total of 1,524 “Covered Persons.” In a letter dated July 20, 2015, Ms. Del Giorno reported Penn State’s timely completion of this annual training requirement for a third year.⁴² The Monitor concurs that Penn State substantially met this obligation by the June 30, 2015 deadline with certain immaterial exceptions noted below.

⁴¹ AIA § III.D.1.

⁴² See Letter dated July 20, 2015 from Julie Del Giorno to Donald Remy and Jonathan Barrett regarding the Athletics Integrity Agreement.

Student-Athletes traditionally complete their annual training at compliance orientation meetings held in August of each year. Mr. Stolberg introduces student-athletes to the compliance office staff and discusses ethics, integrity, and a number of rules relating to: the Code of Conduct; Penn State's obligations under the AIA; 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 season; and best practices to avoid rules infractions. We reviewed Penn State's files containing the certifications obtained from all student-athletes. We verified that Penn State completed its annual training certification requirements for all student-athletes.

Mr. Stolberg and his staff also conducted five "Covered Persons Training" sessions throughout the year for athletics-related staff. Each training included the common elements of: introducing the athletics 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 rules violations; discussion of sanctions-related documents and vocabulary; and a "Covered Person Training Document" reviewing the Code of Conduct and NCAA standards and expectations of conduct. Mr. Stolberg also offered additional, specialized training sessions for groups including coaches, athletics trainers, strength and conditioning staff, wage payroll staff, volunteer coaches, faculty partners, and team managers. Mr. Stolberg timely obtained and provided the Monitor certifications from the majority of these staff members. Twenty athletics-related staff members designated "Covered Persons" were unable to attend a live annual training session. Mr. Stolberg provided

them the training materials by e-mail and obtained confirmation in writing of their receipt and understanding of the materials.

On January 16, 2015, Mr. Stolberg provided the required annual “Covered Persons” training on athletics compliance to the Board of Trustees. In addition to the traditional “Covered Persons” topics, the training covered relevant topics including: the activities of boosters; recruitment of prospective student-athletes; fundraising activities; donations; contacts with current student-athletes; and activities that constitute extra benefits to student-athletes under NCAA rules. A member of the Monitor’s team attended the training session. All trustees but one present certified in writing that they received the training as required under the AIA. One trustee present at the meeting declined to participate and certify completion of the training, and cited as a reason his disagreement with the Consent Decree and the AIA. In her July 20, 2015 letter, Ms. Del Giorno informed the NCAA of Penn State’s good faith effort to obtain all trustees’ certifications and enclosed a copy of the non-compliant trustee’s letter describing his reasons for refusing to participate in the required training.⁴³ All newly elected trustees completed their annual training and certifications of the Code of Conduct at their orientation training in July 2015, and all new gubernatorial appointees also timely completed these obligations in February 2015.

F. Enhancements to Athletics Compliance Office

Over the past three years, the Athletics Compliance Office has expanded to include seven full-time employees. Two new positions (director of compliance and assistant director of compliance) have been added. Mr. Stolberg now reports directly to Mr. Becker with a dotted line to Senior Associate Athletic Director for Administration Lynn Holleran. Mr. Stolberg and

⁴³ See Letter dated July 20, 2015 from Julie Del Giorno to Donald Remy and Jonathan Barrett regarding the Athletics Integrity Agreement.

the professionals on his staff also are in the process of being reclassified as compliance personnel as opposed to athletics personnel. Mr. Stolberg works closely with Ms. Del Giorno and Mr. Becker. As noted earlier, we have observed the benefits of this improved reporting line structure under which Mr. Stolberg has been able to report issues of concern to Mr. Becker who in turn shares concerns with Senior Vice President David Gray and President Barron as needed.

Penn State introduced a software application to enhance roster management, compliance monitoring, financial aid tracking, and communications, and to streamline records management. All annual training certifications are maintained electronically and are easily accessible. Quarterly training is scheduled far in advance to support timely attendance by “Covered Persons.” Orientation of new coaches now includes completion of and certification of the completion of this training and on the Code of Conduct.

G. Reorganization of the Athletics Department

Over the past three years, Penn State’s Athletics Department has experienced significant change. Athletic Director Sandy Barbour was hired in 2014 following a national search. Ms. Barbour has hired several new administrators to support her oversight responsibilities. In March 2015, she revised the Athletics Department’s organizational structure into four administrative divisions to oversee: (1) business and finance; (2) administration; (3) internal and external operations; and (4) student-athlete performance, health, and welfare. These changes decreased the number of direct reports to the athletic director, which had grown to an unworkable number. The new organization is designed to improve communication and reporting capacity. The professionals responsible for three key functions—finance, human resources, and compliance—enjoy greater independence through dual reporting lines and budgets that are, or shortly will be, overseen outside of the Athletics Department.

H. The Morgan Academic Support Center for Student-Athletes

A key reform recommendation called upon Penn State to better integrate the academic services provided to its athletics programs.⁴⁴ Penn State has begun the process of consolidating the Morgan Center into one location through its renovation of the Greenberg Ice Pavilion. Penn State's design committee, which includes Associate Athletic Director for Facilities and Operations Mark Bodenschatz and Morgan Center Director Russell Mushinsky, worked with a team of architects to finalize the project's plans. Construction bidding began in August 2015, and the Board approved the project at its September 18, 2015 meeting. Penn State anticipates completing the project in the summer of 2016. The consolidation of the Morgan Center's resources will promote more consistent quality of resources for all student-athletes and a more cohesive staff unit. Furthermore, while we have previously reported staff shortages in the Morgan Center, it currently is fully staffed for the beginning of the 2015-16 academic year.

IV. RENEWING TRUST: ENSURING THE PROTECTION OF THOSE THE UNIVERSITY SERVES

Over the past three years, Penn State has engaged in a series of efforts to better protect the physical well-being of those who use its campuses. These efforts are reviewed here.

A. Promoting Reporting of Misconduct

The Sandusky scandal revealed a need to address concerns about fears of retaliation for reporting misconduct. In the fall of 2000, two janitors reportedly observed sexual misconduct by Mr. Sandusky occurring on campus, but neither reported what they observed, "fearing that they would be fired."⁴⁵

⁴⁴ See Freeh Report recommendation 5.4.

⁴⁵ See "Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," Freeh Sporkin & Sullivan, LLP, July 12, 2012, at 62.

Since the Sandusky tragedy became public, Penn State has employed a variety of strategies to foster a “see something, say something” culture. This effort is hardly unique to Penn State; many institutions of higher learning are devoting substantial resources to promote reporting of misconduct, particularly in the area of sexual misconduct and Title IX violations. Penn State’s efforts began with the promulgation of Policy AD67: Disclosure of Wrongful Conduct and Protection from Retaliation as a statement of the University’s support for reporting alleged wrongdoing, protections provided to good faith reporters, and disciplinary consequences up to and including termination or expulsion for those who breach the policy.

1. The Ethics and Compliance Hotline

Penn State introduced several enhancements to its misconduct hotline over the past three years. Hotlines are a basic element in any strong compliance program. They not only provide an easy, anonymous mechanism for reporting issues of potential misconduct, but their very existence sends a message to stakeholders that an organization is interested in and prepared to listen to their concerns.

On August 24, 2015, Penn State consolidated its Ethics and Compliance Hotline with its previously separate sexual assault and relationship violence hotline, resulting in a single, universal hotline administered by a newly selected vendor to service all reports of misconduct to the University. At the beginning of each academic term, the University’s president sends an e-mail to all Penn State students, faculty, and staff detailing the resources available to the community to report wrongdoing, linking to relevant policies and webpages, and providing relevant contact information not only for hotline usage but also to support services available to potential victims. The message is updated as needed to inform the community of any changes in the reporting process, new policies, or additional resources available. The Office of Ethics and

Compliance published memoranda, posters, and other written materials to representatives at all University campuses to promote hotline use in 2014, and the practice will be continued this fall.

Since 2011, Penn State has witnessed a dramatic increase in the amount of hotline reports received, indicative of the University's successful promotion of the hotline and the community's increased comfort in using it. Between 2005 and 2011, Penn State's hotline received an average of 53 calls each year. This number has steadily increased each year since then, with the number of reports rising to 202 in 2012, 259 in 2013, and 425 in 2014. In 2015, that trend has continued, with 312 reports in the first two quarters of this year. The number of reports in the first quarter of 2015 was more than double those made in the first quarter of 2014. Each call spawns a new case file. Penn State continues to reduce the average number of days a case remains open and under investigation. This year that figure has dropped by more than 36 percent to a new average low of 14 days in the second quarter of 2015.

2. Values and Culture Survey

In the fall of 2013, Penn State conducted a University-wide values and culture survey. The results of the survey, published in September 2014, helped Penn State develop a new statement of core values. It also helped to identify areas for improvement. Fifty-nine percent of staff stated that they did not report an observed incident of wrongdoing in the past year because of a fear of retaliation (the figure was 61% in the Athletics Department).⁴⁶ Approximately 18% of staff stated that they had experienced retaliation as a result of reporting misconduct in the past year (the figure was 33% in the Athletics Department).⁴⁷ The retaliation rate reported by faculty

⁴⁶ "The Pennsylvania State University Values and Culture Survey: Report of Findings," Ethics Resource Center, dated September 19, 2014, at 34.

⁴⁷ *Id.* at 33; *see also* "Addressing fear of retaliation among University employees," Penn State Today, June 29, 2015, available at <http://news.psu.edu/story/361767/2015/06/29/addressing-fear-retaliation-among-university->

and staff was 15%, as compared to the national retaliation rate of 21% reported in the 2013 National Business Ethics Survey.⁴⁸ Penn State plans to conduct a follow-up survey in the fall of 2017 to gauge improvements achieved through those efforts.

3. Ethical Culture Plan

The 2013 values and culture survey highlighted a continuing need to address fears of retaliation for reporting misconduct within the University community. At President Barron's direction, the Office of Ethics and Compliance has developed an "Ethical Culture Plan" consisting of three components that have been underway since 2014: (1) education; (2) communication; and (3) structural changes.

Education. Penn State has developed and implemented in-person management and leadership training modules for both staff and faculty leaders. These training modules educate supervisors on how to handle reports of misconduct, how to provide performance feedback, and how to address perceptions of retaliation. The Office of Ethics and Compliance also is developing ethics workshops and seminars for senior administrators, including the Academic Leadership Council, the President's Council, and the Chancellors of Commonwealth Campuses, all of which cover the issue of retaliation. A University-wide ethics awareness program is slated to launch in July 2016 and will include an online training module covering: all Penn State ethics-related policies; University expectations; Penn State resources; how to report potential

[employees?utm_source=newswire&utm_medium=email&utm_term=361834_HTML&utm_content=06-29-2015-22-28&utm_campaign=Penn%20State%20Today](http://news.psu.edu/story/361767/2015/06/29/addressing-fear-retaliation-among-university-employees?utm_source=newswire&utm_medium=email&utm_term=361834_HTML&utm_content=06-29-2015-22-28&utm_campaign=Penn%20State%20Today).

⁴⁸ See "Addressing fear of retaliation among University employees," Penn State Today, June 29, 2015, available at http://news.psu.edu/story/361767/2015/06/29/addressing-fear-retaliation-among-university-employees?utm_source=newswire&utm_medium=email&utm_term=361834_HTML&utm_content=06-29-2015-22-28&utm_campaign=Penn%20State%20Today.

misconduct; what happens when a report is made; what steps the University takes to protect confidentiality of reporters; and how to engage in ethical decision-making. All University personnel will be required to take this online training every three years.

Communications. Each term, Dr. Barron sends an e-mail reminding the Penn State community about reporting mechanisms. Penn State Today issues a quarterly ethics and compliance newsletter to improve communication about the role and functions of the Office of Ethics and Compliance. The University has published content on addressing the fear of retaliation for reporting misconduct, the Penn State Values, and the Code of Responsible Conduct. This year, the Office of Ethics and Compliance also plans to begin posting aggregate results of allegations and investigations on its website. In conjunction with the Office of Strategic Communications, Dr. Balliett is developing a toolkit of banners, posters, and other materials available to all campus leaders to promote the introduction of the Penn State Values in the fall semester. He also is developing a website to provide resources for how to apply the values, discuss them with staff members, and incorporate them into performance reviews.

Structural Components. Penn State hired Jeff Bowman this summer as its new ethics and compliance investigator. Mr. Bowman is responsible for overseeing the new hotline, responding to complaints, conducting investigations, and providing feedback to complainants. Penn State also will be recommending standards for staff performance reviews that evaluate whether an employee completed all compliance obligations, such as training, and whether the employee demonstrated adherence to the Penn State Values. Finally, the Ethics Committee is constructing an ethical decision-making model which includes a flow chart and accompanying worksheet of questions to guide individuals faced with an issue that involves ethical dimensions.

As a final component to the University's response to survey results, Dr. Balliett prepared 29 unit-specific breakdowns of relevant data distilled from the survey, and he met with 14 units to review this customized analysis and discuss strategies to implement in response to identified issues. He prioritized those administrative units in which the survey highlighted concerns about retaliation, potential misconduct, and other managerial problems. To date, the Office of Finance and Business, the Athletics Department, the Office of Information Technology Services, Outreach, Development and Alumni Relations, and Hershey College of Medicine have undertaken a variety of tailored initiatives to proactively combat fears of retaliation for reporting wrongdoing.

4. Penn State Values and Town Hall Meetings

Between February and April 2015, Dr. Balliett conducted 46 town hall meetings with more than 2,200 students, faculty, and staff at every Penn State campus. He used the opportunity to present the core values identified through the values and culture survey, discuss their import, gather examples of their use by individuals, and learn about ways to develop Penn State's commitment to the values. He worked with the ACCE to incorporate feedback from the town halls, and presented the statement to the President's Council on June 15, 2015. After additional input from the highest level of University administration, the Penn State Values were finalized and shared at the July 2015 Board meeting. The finalized values statement is:

INTEGRITY: We act with integrity and honesty in accordance with the highest academic, professional, and ethical standards.

RESPECT: We respect and honor the dignity of each person, embrace civil discourse, and foster a diverse and inclusive community.

RESPONSIBILITY: We act responsibly, and we are accountable for our decisions, actions, and their consequences.

DISCOVERY: We seek and create new knowledge and understanding, and foster creativity and innovation, for the benefit of our communities, society, and the environment.

EXCELLENCE: We strive for excellence in all our endeavors as individuals, an institution, and a leader in higher education.

COMMUNITY: We work together for the betterment of our University, the communities we serve, and the world.

The values have been incorporated into the University's new five-year strategic plan and new student orientation. This fall, Dr. Balliett will work with the Faculty Senate to incorporate the values into academic curricula and to promote awareness of the values and their use at all campuses.

B. Programs to Enhance Youth Protection

Generally accepted best practices for the oversight of youth programs include: adopting policies and procedures to protect children; designating an administrator responsible for protecting youth; identifying the areas where children are located on campus; screening and conducting background checks; analysis of all university positions to assess their involvement with youth; implementing training programs to reduce the risk of child abuse and increase reporting of concerns; using protocols to monitor and supervise youth programs; informing parents of program rules and expectations; responding effectively to suspicions of malfeasance; compiling applicable state and federal laws and policies, such as mandatory reporting laws; developing feedback systems; instituting third party requirements; and following sound administrative practices such as putting locks on doors to limit access to private spaces.⁴⁹ Today, Penn State incorporates each of these elements into its youth protections program.

⁴⁹ See Janie Abraham, "Protecting minors on Your Campus, Association of Governing Boards of Universities and Colleges, March/April 2012; see also Omar Andujar, "Monitoring the Effectiveness of Youth Protection Efforts," College and University Auditor, Volume 56/No. 3, Fall 2014; "Managing the Risk of Minors on Campus," Gallaher Higher Education Practice, the

Penn State hired Youth Programs Compliance Specialist Sandy Weaver to provide full-time oversight and coordination of all youth programs on its many campuses. She, in turn, chairs a Youth Programs Council that gathers University leaders involved in youth programs to improve communication and consistency among programs. Ms. Weaver developed and tracks an inventory of youth programs at all campuses that houses more than 1,185 programs involving an estimated 188,000 minors, including sport camps, 4-H clubs, academic programs, recreational activities, and special events. The inventory not only allows Penn State to have oversight over its programs, but it gives Ms. Weaver a tool for communicating consistent policies, procedures, and expectations to all registered programs.

Over the past three years, Penn State significantly revised and regularly updated written standards that support its commitment to youth safety. These include the following:

- Policy AD39: Minors Involved in University-Sponsored Programs or Programs Held at the University and/or Housed at the University, ensures that no adult is alone with a minor at any time and requires maintaining a certain ratio of campers to counselors.⁵⁰ It also requires background checks on authorized adults; mandates annual training for adults on protecting minors from abusive treatment and reporting suspected child abuse; requires self-disclosure of prior arrests or convictions; establishes rules and procedures for overnight campers; and outlines the requirements of mandatory reporters of child abuse.
- Policy AD72: Reporting Suspected Child Abuse defines employees and volunteers obligated under Pennsylvania law to report suspected child abuse and outlines proper reporting procedure.⁵¹ The policy exceeds state standards by imposing an obligation on all Penn State employees and volunteers to report

2012 Arthur J. Gallagher Think Tank for Higher Education Risk Management, 2012. A study on best practices among risk managers at institutions of higher education responsible for protecting minors participating in campus programs, the report appends a prior version of Penn State's Policy AD39 as a sample to be emulated.

⁵⁰ See Policy AD39: Minors Involved in University-Sponsored Programs or Programs Held at the University and/or Housed at the University, available at <https://guru.psu.edu/policies/AD39.html>.

⁵¹ See Policy AD72: Reporting Suspected Child Abuse, available at <https://guru.psu.edu/policies/AD72.html>.

suspected child abuse and to complete Penn State's Reporting Child Abuse online training. In 2014, more than 30,000 individuals completed the training. Updated in January 2015 to incorporate the changes in Pennsylvania law relating to background checks, the training must be completed by every employee this year and every three years thereafter. Employees working with children, however, must continue to complete the training annually. This year, 25,089 individuals have completed the training.

- Policy HR99: Background Checks Process requires background checks on all adults over the age of 18 who work with the University.⁵² The policy currently is being updated based on new legislation enacted in Pennsylvania this year that requires three publicly available background checks on all individuals who have regular or repeated contact with minors that is integral to the person's responsibilities. Ms. Weaver has been overseeing Penn State's implementation of the new background check requirements, examining employees' roles to assess their involvement with minors. Amendments to the law in July 2015 provide some relief, permitting portability of clearances completed at other institutions and extending the validity of clearances to a 60-month time period. They also provide several exemptions that will significantly reduce the number of background checks Penn State must conduct on faculty, administrators, and support staff. Penn State will continue to require background checks on staff in the libraries, admissions, athletics, and others who interact regularly with recruits and other minors. Penn State has completed the three background checks on more than 4,000 individuals in 2015.

C. Efforts to Combat Sexual Misconduct

In 2015, the Association of Governing Boards of Universities and Colleges ranked sexual violence as the most pressing campus legal issue facing institutions of higher learning.⁵³ The events at Penn State and many other colleges not only raised awareness of an ongoing concern but attracted the attention of government regulators. In April 2011, the U.S. Department of Education issued its "Dear Colleague" guidance letter to colleges and universities clarifying Title IX obligations related to reports of sexual misconduct, and has since issued additional guidance to clarify and elaborate on its expanded expectations under the law. Since May 2014, the list of

⁵² See Policy HR99: Background Checks, available at <https://guru.psu.edu/policies/OHR/hr99.html>.

⁵³ See Lawrence White, "Top 10 Campus Legal Issues for Boards," Association of Governing Boards of Universities and Colleges, 2015.

colleges and universities under investigation for possible violations of federal law with respect to their handling of sexual violence complaints by the U.S. Department of Education's Office of Civil Rights has grown from 55 to over 100.⁵⁴ Universities are responding to demands by the federal government to improve the investigative processes, support resources, and security measures available on their campuses.

1. The Network on Child Protection and Well-Being

In early 2012, former Penn State President Rodney Erickson formed the Presidential Task Force on Child Maltreatment as part of the launch of a new Center for the Protection of Children. This interdisciplinary task force identified the existing University resources and expertise dedicated to the prevention and treatment of child maltreatment and explored how Penn State could take advantage of its research, educational, and service missions to address this problem. In December 2012, the task force presented recommendations to University administrators that resulted in the establishment of Penn State's Network on Child Protection and Well-Being. Its mission is to build a network of researchers and practitioners to develop new approaches to prevent, detect, and treat child maltreatment, educate Penn State students, and put its efforts to work in Pennsylvania communities.

Through the Network, Penn State had committed to co-fund 12 faculty positions to address child abuse. Nine of those positions have been filled to date. In July 2015, the Board approved an undergraduate minor in child maltreatment and advocacy studies to develop the next generation of child advocates. The Network has hosted three annual conferences on Child Protection and Well-Being since the fall of 2012 and opened the Transforming Lives of Children

⁵⁴ See Tyler Kincade, "106 Colleges Are Under Federal Investigation For Sexual Assault Cases," The Huffington Post, April 6, 2015, available at http://www.huffingtonpost.com/2015/04/06/colleges-federal-investigation-title-ix-106_n_7011422.html.

Clinic in Harrisburg, Pennsylvania as a mental health services treatment center for victims of sexual and other abuse.

As part of the settlement of the lawsuit between State Senator Jake Corman and former State Treasurer Rob McCord against the NCAA and Penn State, the University committed the entire \$60 million monetary penalty to be paid under the Consent Decree to child abuse prevention and treatment programs. Of that sum, Penn State agreed to dedicate \$12 million to the creation of an endowment to support research, education, treatment, and public service programs to help eradicate child sexual abuse. After soliciting recommendations, President Barron awarded that \$12 million endowment to the Network.⁵⁵ Network faculty also independently have raised \$7.2 million in external grant funding. In addition to funding the Network, Penn State also awarded a three-year, \$1.5 million grant to the Pennsylvania Coalition Against Rape, partnering with that organization to develop Penn State's training for mandated reporters and supporting rape crisis centers and prevention initiatives throughout the state.

2. Task Force on Sexual Assault and Sexual Harassment

In January 2014, Penn State adopted Policy AD85: Discrimination, Harassment, Sexual Harassment and Related Inappropriate Conduct.⁵⁶ The policy defines all prohibited sexual misconduct, enumerates reporting resources, and prescribes potential sanctions (which include expulsion and termination).

One of President Barron's first acts upon his arrival at Penn State was the appointment of a Sexual Assault and Sexual Harassment Task Force to expand Penn State's focus in this area

⁵⁵ See The Pennsylvania State University Guideline Agreement for An Endowment for the Prevention of Child Sexual Abuse, the Treatment of Victims of Child Sexual Abuse and the Study of Issues Related to Child Sexual Abuse," dated August 11, 2015.

⁵⁶ See Policy AD85: Discrimination, Harassment, Sexual Harassment and Related Inappropriate Conduct, available at <https://guru.psu.edu/policies/AD85.html>.

beyond child maltreatment. The Task Force issued 18 recommendations to augment Penn State's approach to its Title IX and other legal obligations and efforts to stem sexual assault and harassment. President Barron accepted each recommendation, and many of them already have been implemented.⁵⁷ The Office of Ethics and Compliance developed a comprehensive training module covering legal and policy requirements related to Title IX, the Violence Against Women Reauthorization Act, sexual harassment, and other sexual misconduct topics. The training, which will be uploaded into Penn State's new learning management system this fall, is mandatory for all employees. The Office determined which employees are designated as either "responsible" or "confidential." These designations relate to individuals' obligations to report or respond to disclosures of sexual misconduct. Approximately 350 individuals have been deemed "confidential employees" who, by virtue of their roles as counselors, medical professionals, attorneys, clergy and others, are not obligated to report such disclosures. The Office also developed specialized, mandatory training for such employees. Penn State is revising Policy AD85 to reflect the new training obligations and will issue a letter advising employees of their designations and directing them to complete the training.

Penn State committed to establishing a Title IX office within the Office of Student Affairs to be led by a new Title IX coordinator. Penn State also is searching for a coordinator of a new bystander intervention program, and plans to hire staff to coordinate Commonwealth Campus activities, to conduct Title IX investigations, and to lead educational outreach. The Office of Student Affairs hired a full-time investigator this year to handle cases of sexual assault

⁵⁷ See Monitor's Tenth Quarterly Report at 4-8; *see also* Monitor's Eleventh Quarterly Report at 11-15.

and harassment and implemented a new investigative model endorsed by the White House Task Force to Protect Students from Sexual Assault.⁵⁸

The University conducted a survey of Commonwealth Campus resources and is working with chancellors to ensure a common baseline of services at all locations. Penn State continues to develop a climate survey for release this fall to gauge the scope and nature of sexual misconduct at the University, also recommended by the White House Task Force.⁵⁹ A Faculty Senate task force is considering ways to embed issues related to sexual assault and prevention in the undergraduate curriculum.

Penn State's initiatives are consistent with efforts across the country to curb on-campus sexual misconduct. The measures already implemented and those underway support a long-term commitment to establish an educational, procedural, administrative, and support service infrastructure to protect community members from sexual assault and to ensure that victims become survivors.

D. Physical Security Improvements

When the Sandusky scandal broke, Penn State's athletics and recreational facilities were, for the most part, open to and accessible by the general public. Over the course of the Monitorship, Penn State reviewed security and access protocols at athletic, recreational, and camp facilities at all campuses. Penn State amended its lease and usage agreements with third parties to require compliance with all University policies. In July 2012, Penn State adopted Policy AD73: Accessing Athletic and Recreational Facilities.⁶⁰ The policy limits access to

⁵⁸ See Monitor's Eleventh Quarterly Report at 13-14.

⁵⁹ *Id.* at 7.

⁶⁰ See Policy AD73: Accessing Athletic and Recreational Facilities, available at <https://guru.psu.edu/policies/AD73.html>.

athletics facilities to student-athletes and athletics personnel during normal business hours, and it restricts use of recreational facilities to individuals holding a valid University identification card and one accompanying guest.

An interdisciplinary team comprised of Athletics Department administrators, University Police and Public Safety personnel, project management, design and construction professionals from the Office of Physical Plant, and representatives from the access controls and electronic security team have implemented physical security measures at these facilities to support implementation of Policy AD73. In Phase I, Penn State consolidated the number of entry and exit points at athletic and recreational facilities and further secured the outside perimeter of the facilities through the introduction of card swipe readers and the installation of surveillance cameras. Phase II, which remains ongoing, involves renovation projects designed to improve building security by establishing screening points at main entrances and the use of turnstiles, card swipes, and the installation of cameras. Penn State recently received approval from the Pennsylvania Department of General Services of a delegation agreement to begin Phase II projects in three key facilities. Penn State is awaiting permission to request bids for the project and, once received, anticipates moving forward with selecting contractors, developing the project design, and seeking the approval of the Project Design Review Board in October 2015 and of the Board of Trustees in December 2015. Penn State anticipates completing this final phase of its security upgrades by the fall of 2016.

E. Clery Act Compliance Activities

The federal Clery Act requires universities to collect, compile, and report specified campus crime data. Penn State's Clery Act compliance program is overseen by a Clery compliance manager and a Clery compliance coordinator. The program encompasses all Penn

State campuses and is supported by a new policy, annual training, and standardized Clery Act procedures.

Penn State memorialized its commitment to Clery Act compliance in Policy AD74.⁶¹ The policy requires Penn State to issue timely warnings of specified crimes that pose a continued potential threat to the campus community and emergency notifications of dangerous situations. Penn State issued 25 timely warnings in 2014, and it has issued 16 in 2015. Per the policy, Penn State maintains daily crime and fire logs available for public inspection and compiles crime statistics from all campuses.

Under the policy and Act, Penn State also must identify individuals who qualify as “campus security authorities,” or those persons who, based on their positions, are obligated to notify the University when they learn of certain alleged crimes that take place in certain locations. The Clery compliance staff has compiled and regularly updates a list of approximately 3,000 “campus security authorities.” Penn State developed procedures to ensure that this Clery Master List is consistent with University policy and Clery Act requirements, and conducts internal audits to test the accuracy of the list.

To fulfill the training requirement expressed in Policy AD74, Penn State developed an annual training program for “campus security authorities.”⁶² In 2014, Penn State trained more than 7,500 employees and volunteers on Clery Act responsibilities, well above the identified 3,000 “campus security authorities.” Approximately 70 “campus security authorities” have not yet completed the training. Mr. Becker has prioritized completing training of those individuals this year.

⁶¹ See Policy AD74: Compliance with the Clery Act, available at <https://guru.psu.edu/policies/AD74.html>.

⁶² See Monitor’s Second Annual Report at 9.

Penn State is conducting a national search to replace former Clery Compliance Manager Gabriel Gates, who recently departed for a similar position at the University of Virginia. The interim Clery Compliance Manager, Tracie Bogus, is a member of the University Police and Public Safety office.

F. Police and Public Safety Improvements

Penn State instituted numerous policy and structural improvements within the University Police and Public Safety Department that support greater physical protections for community members. These include:

- University Police Policy/Procedure #40: “Incident Reporting,” which provides guidance in report-writing standards for University Police employees, clarifies reporting mechanisms and procedures for specific types of incidents, and requires the referral of incidents involving student misconduct to the Office of Student Conduct and incidents involving employee misconduct to the Office of Human Resources. The Department further collaborated with the Office of Human Resources to create an internal database to aggregate reports of employee misconduct.
- University Police Policy/Procedure #39: “Conflict of Interest,” which addresses investigations involving potential conflicts of interest. The policy requires employees with knowledge of a potential conflict to notify the assistant vice president of police and public safety of investigations or suspicions involving wrongdoing by an administrator and requires the head of the police unit to inform the assistant vice president of inappropriate interference with an investigation.
- Policy AD81: Independence of the University Park Police and Public Safety, which protects the independence of the University police in carrying out its law enforcement functions without interference from administrators.

Penn State also conducted an internal administrative review of the Department in 2015, resulting in the institution of several structural and leadership changes. Penn State is conducting a national search for a new assistant vice president for police and public safety and replaced the unit’s human resources representative. The University is in the process of reorganizing the police department along traditional hierarchical lines with more clearly delineated responsibilities.

Penn State has been seeking accreditation from the Commission on Accreditation for Law Enforcement Agencies, Inc. (“CALEA”) since March 2013. An initial on-site assessment by CALEA in September 2014 resulted in the institution of 30 modifications to Penn State’s written guidelines and the provision of additional proof of compliance with 44 standards. Penn State made numerous policy and procedural enhancements in the wake of that assessment, and hosted CALEA for a second, on-site assessment in June 2015. That assessment found Penn State in compliance with 163 out of 169 standards; the other six standards were satisfied by the subsequent institution of policy changes. Penn State continues to await a final accreditation decision.

G. Human Resources Improvements

Increased centralization and consolidation of the human resources function continues to be a focus for Penn State. The University now conducts centralized new-hire training to ensure familiarity by all staff with Penn State’s many new policies described above to promote campus safety, reporting processes, compliance requirements, and ethical expectations.

Completion of Penn State’s long-term Human Resources Transformation Project will support its goal of centralizing and improving the efficiency of its human resources function through the creation of a shared services center to support all employees. Penn State remains on schedule to introduce the shared services center in 2017. An additional, key element of that project was Penn State’s decision two years ago to establish a dual reporting relationship for all human resources representatives, requiring direct reports to both the Office of Human Resources and their respective units. This provides the Office of Human Resources greater oversight of hiring practices, training, and expectations for human resources staff. This change also supports Penn State’s efforts to provide the Office of Human Resources greater control over recruitment

and compensation. The increased involvement of the Office of Human Resources has provided improved compensation benchmarking for new hires.

Penn State is now in the implementation phase of the Human Resources Information System project.⁶³ This project involves introducing a new human capital management system and learning management system for all University employees by 2017. In August 2015, Penn State officially launched its new Cornerstone On Demand learning management system. The initial courses offered through the system include the mandatory Reporting Child Abuse and Clery Act courses, and Penn State's new Title IX training will be launched on Cornerstone in the fall of 2015. The system eventually will incorporate all University training programs into a single system that can deliver and track training, set up specific designations such as "campus security authority," facilitate notification of specialized training requirements, and support improved oversight of completion of these requirements by managers. Increased centralization and the introduction of sorely needed technological updates to Penn State's human resources function supports improved employee tracking, training, oversight, and completion of security obligations while further contributing to improved governance processes.

V. OTHER EVENTS DURING THE REPORTING PERIOD

A. Lawsuits, Investigations, and Legislative Activity

1. New Legislation

On May 27, 2015, State Senator John T. Yudichak proposed legislation that would fix the number of trustees at 36, 14 of whom would be appointed by elected officials (six by the governor and four each by the president pro tempore of the Senate and Speaker of the House of

⁶³ See Monitor's Eleventh Quarterly Report at 17.

Representatives), 10 appointed by a trustee selection committee, and 12 elected by alumni.⁶⁴ This legislation was referred to the Senate Committee on State Government on May 28, 2015.⁶⁵

2. Litigation Update

a. Paterno Estate

On June 5, 2015, the Estate of Joseph Paterno and former Penn State football coaches William Kenney and Jay Paterno asked the court presiding over their lawsuit against the NCAA and Penn State to enter judgment in their favor on the basis of the pleadings.⁶⁶ On July 10, 2015, the NCAA asked the court to compel Messrs. Kenney and Paterno to produce requested documents.⁶⁷ The parties have briefed fully their positions on these two motions, and the Court held a hearing on September 9, 2015 on these and other outstanding matters.⁶⁸ The court's decision is pending.

On August 10, 2015, Penn State and Pepper Hamilton LLP, the law firm into which Freeh, Sporkin & Sullivan LLP merged following publication of the Freeh Report, filed a statement of errors in support of its appeal of the trial court's order that it produce to plaintiffs documents the firm claims are shielded from disclosure by the attorney-client privilege or other

⁶⁴ Press Release, "Yudichak Unveils Board of Trustee Reform Bill for Penn State University," May 27, 2015, available at <http://www.senatoryudichak.com/yudichak-unveils-board-of-trustee-reform-bill-for-penn-state-university/>; see SB 800 at §§ 3(a)-(d), Printer's No. 969.

⁶⁵ Bill Information – History, available at http://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2015&sind=0&body=S&type=B&bn=800.

⁶⁶ See Plaintiffs' Motion for Judgment on the Pleadings dated June 5, 2015, *Estate of Joseph Paterno v. Nat'l Collegiate Athletic Ass'n*, No. 2013-2082 (Ct. Com. Pl. Centre Co. May 30, 2013).

⁶⁷ See NCAA's Motion to Compel the Production of Documents from Plaintiffs Jay Paterno and William Kenney dated July 10, 2015, *Estate of Joseph Paterno v. Nat'l Collegiate Athletic Ass'n*, No. 2013-2082 (Ct. Com. Pl. Centre Co. May 30, 2013).

⁶⁸ See Scheduling Order dated July 20, 2015, *Estate of Joseph Paterno v. Nat'l Collegiate Athletic Ass'n*, No. 2013-2082 (Ct. Com. Pl. Centre Co. May 30, 2013).

protection.⁶⁹ Penn State and Pepper Hamilton filed briefs in support of their appeal on August 31, 2015.⁷⁰ The appeal remains pending before the superior court.

b. Lawsuit Filed by Certain Alumni-Elected Trustees

On June 22, 2015, seven alumni-elected trustees responded to the new matter Penn State asserted in response to the civil action the trustees initiated against the University to gain access to materials created during the course of Judge Freeh's investigation of Penn State's action related to Gerald Sandusky's acts of child sexual abuse.⁷¹ The court heard oral arguments on September 8, 2015 and has indicated its intent to rule on the matter this fall.⁷²

c. Criminal Actions

On August 11, 2015, a panel of the Pennsylvania Superior Court heard oral arguments in the defendants' appeal of the trial court's January 14, 2015 decision to deny several motions they filed seeking, among other things, to suppress certain grand jury testimony and dismiss the charges against them.⁷³ The superior court's decision on their appeal is pending.

⁶⁹ See Pepper Hamilton LLP and the Pennsylvania State University's Statement of Errors Complained of on Appeal dated August 10, 2015, *Estate of Joseph Paterno v. Nat'l Collegiate Athletic Ass'n*, No. 2013-2082 (Ct. Com. Pl. Centre Co. May 30, 2013).

⁷⁰ See Pepper Hamilton LLP and the Pennsylvania State University's Statement of Errors Complained of on Appeal dated August 10, 2015, *Estate of Joseph Paterno v. Nat'l Collegiate Athletic Ass'n*, No. 2013-2082 (Ct. Com. Pl. Centre Co. May 30, 2013).

⁷¹ Petitioners' Reply to New Matter in Respondent's Answer to Petition to Compel Inspection of Corporate Information dated June 22, 2015, *In re: Application by Nonprofit Corporation Trustees to Compel Inspection of Corporate Information*, Case No. 1593-2015 (Ct. Com. Pl. Centre Co. April 20, 2015).

⁷² See Charles Thompson, "Tuesday's court arguments have ended in Penn State alumni trustees' battle to see Freeh Report records," PennLive.com, available at http://www.pennlive.com/midstate/index.ssf/2015/09/arguments_end_penn_state_alumn.html; see also Charles Thompson, "Penn State, trustees, argue over access to Freeh Report source materials," PennLive.com, available at http://www.pennlive.com/midstate/index.ssf/2015/09/penn_state_trustees_argue_over.html.

⁷³ See Docket, *Commonwealth of Pennsylvania v. Spanier*, 304 MDA 2015 (Pa. Super. Ct. Fed. 13, 2015); Docket, *Commonwealth of Pennsylvania v. Curley*, 299 MDA 2015 (Pa.

d. Spanier vs. Penn State

On June 1, 2015, the court presiding over a defamation lawsuit initiated by former Penn State President Graham Spanier against Judge Freeh and Freeh Sporkin & Sullivan LLP granted defendants' request for the appointment of an out-of-county judge.⁷⁴ On June 30, 2015, the newly appointed judge ordered the parties to file memoranda summarizing the status of this proceeding, which they did.⁷⁵ Dr. Spanier's motion to join Penn State as a defendant in his extant action against Judge Freeh and Freeh, Sporkin & Sullivan LLP remains pending.

e. Employment Litigation

There has been no further public activity in the civil action initiated by two former Penn State football coaches against the University to seek a remedy for what they contend were wrongful actions by Penn State related to its agreement to the Consent Decree and termination of their employment.

VI. CONCLUSION

Penn State's achievements over the past three years inform my decision to recommend the early termination of the Monitorship to take effect at the end of the 2015 calendar year barring any unforeseen circumstances. The NCAA and Big Ten Conference have accepted this recommendation. Penn State has institutionalized strong processes and structures to ensure

Super. Ct. Feb. 12, 2015); Docket, *Commonwealth of Pennsylvania v. Schultz*, 280 MDA 2015 (Pa. Super. Ct. Feb. 12, 2015).

⁷⁴ Order dated June 1, 2015, *Spanier v. Freeh*, No. 2013-2707 (Ct. Com. Pl. Centre Co. July 11, 2013).

⁷⁵ See Order dated July 1, 2015, *Spanier v. Freeh*, No. 2013-2707 (Ct. Com. Pl. Centre Co. July 11, 2013); Plaintiff's Status Report dated July 31, 2015, *Spanier v. Freeh*, No. 2013-2707 (Ct. Com. Pl. Centre Co. July 11, 2013); Memorandum of Defendants Louis J. Freeh and Freeh Sporkin & Sullivan LLP in Response to the Court's June 30 Order dated July 30, 2015, *Spanier v. Freeh*, No. 2013-2707 (Ct. Com. Pl. Centre Co. July 11, 2013).

compliance with its obligations and promptly and effectively address problems which inevitably arise in any large organization.

The conclusion of the Monitorship will not, however, mark an end to Penn State's athletics integrity obligations. Penn State is obliged to abide by the terms of the AIA for an additional two years under the five-year term of the agreement. President Barron personally assured me of his intention to maintain the governance and compliance enhancements beyond the expiration of the AIA's five-year term.

Both Senator Mitchell and I are grateful to the NCAA and the Big Ten Conference for the responsibility they placed with us. We are also grateful to the many Penn State officials with whom we worked. Their accomplishments over the last three years are remarkable and were undertaken with the best interests of the University at heart. Their unfailing cooperation made our work much easier. It was a privilege to observe and report upon the reformation and strengthening of a great University.