

4 Challenges For College GCs After Admissions Scandal

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For some time now, the college admissions process for athletes and nonathletes alike has been the subject of considerable controversy. With the recent announcement of a major [U.S. Department of Justice](#) investigation, code-named “Operation Varsity Blues,” the issue is in the spotlight like never before. With federal charges against dozens of defendants, the issue has gone from controversial to allegedly criminal.



Greg Brower

More than four dozen persons have been accused of participating in a scheme whereby wealthy parents paid tens of thousands of dollars in bribes to a middleman who then allegedly funneled the money through a bogus charity and ultimately to college officials and others to guarantee their children’s admission into certain highly selective schools.

This very high-profile criminal case has intensified the scrutiny on the the integrity of the college admissions process, and presents an unprecedented range of challenges for institutions of higher learning and their leaders. Understanding the legal and political risks presented by this controversy is critical to safely navigating the increased scrutiny virtually every private and public college and university is likely to face in the weeks and months ahead.

General counsel for higher education institutions can expect one or all of the following challenges to confront them and should be prepared to respond effectively:

1. Criminal Investigations

As noted above, the DOJ has announced its largest-ever investigation into college admissions fraud, with some 50 persons charged. Many believe this is just the first of many potential indictments, some of which have already been returned by grand juries, but remain under seal. The criminal charges are serious and range from racketeering to tax fraud. Among the defendants are Hollywood stars, Wall Street lawyers, college coaches and others. All face at least the possibility of prison time.

Meanwhile, state attorneys general are likely to follow the DOJ’s lead and initiate their own investigations aimed at institutions and individuals in their respective states. Although none of the schools identified in the charging documents have been named as actual defendants, the potential for reputational harm resulting from a connection with an alleged criminal conspiracy that goes to the very heart of a school’s integrity is not insignificant.

2. Other Federal Investigations

Virtually every American college and university receives at least some federal funding from the [U.S. Department of Education](#) and is, therefore, potentially subject to oversight by the department’s Office of Inspector General. It is safe to assume that the OIG, at the suggestion of department leadership and/or at the urging of Congress, will initiate its own

investigation of higher education admissions processes that could target dozens of institutions.

OIG investigations are every bit as serious as DOJ criminal investigations and should be handled accordingly. Such investigations often lead to referrals to relevant U.S. attorneys' offices for potential criminal prosecution. Alternatively, OIG investigations can lead to administrative repercussions that can have significant negative impacts on federal grants, contracts and other funding.

In addition to the potential for OIG investigations, the Education Department's Student Aid Enforcement Unit, which is tasked with investigating fraud in higher education, and has subpoena power, has announced that it has initiated investigations into the admissions practices of the eight schools named in the DOJ criminal investigation. These administrative investigations are looking at whether any of the institutions implicated by the federal criminal investigation violated any laws or rules relating to federal student financial aid programs. Adverse findings could have significant consequences for the affected schools' ability to participate in these programs.

3. Civil Litigation

At least two private lawsuits have already been filed against some of the charged defendants and some of the schools implicated in the DOJ investigation. These suits by applicants who were not accepted allege civil Racketeer Influenced and Corrupt Organization claims and seek millions of dollars in damages and attorney fees.

One such suit is a class action filed against some of the colleges, and alleges that the schools fraudulently represented that their admissions processes were fair and unbiased, when, in fact, they knew that their admissions process was corrupt and allowed for the admission of some applicants through corrupt means. Similar claims are likely to multiply around the country, making many institutions targets for expensive and potentially risky litigation. Educational institutions faced with this type of litigation should consult their liability and other types of insurance policies for potential coverage of such claims.

4. Legislative Oversight

Given the extensive media coverage of the DOJ investigation and resulting charges, various committees of Congress are likely to do their own investigations aimed at not only shedding additional light on abuses, but also at potentially imposing new statutory and regulatory oversight on the higher education admissions process. At least two members of Congress have already proposed legislation and/or called for hearings as part of what is likely to be a rare, bipartisan oversight effort. State legislatures too will likely want to get into the game, at least concerning schools within their jurisdiction.

Whether in Washington, D.C., or in a state capital, legislative oversight investigations can look, and cost, a lot like civil litigation, but with the additional downside of intense media attention and the potential for significant reputational harm, not to mention the potential for legislation that could actually be detrimental to the overall interests of higher education.

Conclusion

In light of these varied and significant risks, all institutions of higher learning are well-advised to take a proactive approach and, at a minimum, conduct an internal review of their admissions policies and procedures. Any such review should be aimed at ensuring proper checks, balances and internal controls to detect potential fraud in the recruiting and admissions processes.

The more selective the school is in terms of its admissions statistics, the more robust this review should be. Indeed, schools in the highly selective category should consider having an independent assessment done by an outside law firm with relevant expertise. One benefit of having a law firm conduct such a review is, of course, the attorney-client privilege that will attach to the communications between the school's general counsel and the outside lawyers, and the firm's findings. Depending upon the findings of any such review, the school will also want to consider waiving the privilege as part of communicating any negative findings to the appropriate authorities as a way of getting out in front of any potential problems.

The bottom line is that the Varsity Blues investigation has clearly touched a public nerve. This controversy will likely get bigger, perhaps much bigger, before the public, prosecutors, regulators, legislators and plaintiffs lawyers lose interest. That collective interest creates potentially very significant legal, political and reputational challenges for every college or university.

In order to effectively meet these challenges, every institution should consider conducting a comprehensive, multidisciplinary and expert review of every aspect of its admissions policies and practices, especially as they pertain to the admission of recruited athletes. Only by way of a robust and candid self-analysis can an institution prepare itself to effectively manage and mitigate the risks inherent in the various types of less friendly reviews that are likely to come.

Gregory Brower is a shareholder at [Brownstein Hyatt Farber Schreck LLP](#) and former assistant director for the Office of Congressional Affairs at the [FBI](#).

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