

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

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I. INTRODUCTION AND SUMMARY

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

During this quarterly reporting period, Penn State has continued to press forward in good faith in fulfilling its obligations under the AIA. Penn State’s athletics integrity officer and its director of University ethics and compliance both began their full-time work in those roles. The University’s Board of Trustees adopted a number of governance reforms in response to recommendations made in the report by Freeh Sporkin & Sullivan LLP dated July 12, 2012 (the “Freeh Report”), in a report by Pennsylvania’s auditor general, and other sources. These reforms have received favorable comment from a national bond rating agency. Penn State also introduced operational online versions of training courses for compliance with mandated reporter laws and the Clery Act, and those online programs now are available for use by University students, employees, and volunteers. Of 119 recommendations in the Freeh Report, 15 remain to be completed (after excluding those that the NCAA has agreed need not be put into place). The implementation of all of those recommendations is progressing.

Penn State continues to focus on the issues of ethics and core values. The University hosted several events in April as part of Sexual Assault Awareness Month and Child Abuse Prevention Month. It has retained a consultant to develop a survey to be used over time to better understand the views of Penn State students, faculty, and staff about Penn State’s culture and how those views may evolve. Penn State also has continued to examine the many youth

programs it sponsors or that use its facilities to ensure compliance with University policies and improve the safety of non-student minors on campus.

Our efforts have included work with our consultant Guidepost Solutions, LLC to monitor Penn State's ongoing efforts to upgrade the physical security of its athletics and recreational facilities. We also have continued to track other events involving Penn State, including litigation and proposed legislation, that may affect our work. In recent weeks, media reports have drawn attention to the Athletics Department's fiscal health and changes in assignments for the medical staff who care for student-athletes. Our monitoring of these developments provides context for our continuing work, but that work continues to be focused on Penn State's fulfillment of the obligations to which it agreed in the AIA and the Consent Decree.

II. THE MONITOR'S ACTIVITIES THIS QUARTER

Our work during the quarter just ended involved a number of visits to the University Park campus to meet with Penn State administrators, faculty, and staff responsible for executing the requirements of the AIA and the Consent Decree. We also have continued to attend meetings of the administration response team, the Freeh Response Advisory Council, and the Subcommittee on Ethics and Core Values.

Persons we met with this quarter include, among others: Vice President and General Counsel Stephen S. Dunham; Senior Vice President for Finance and Business David Gray; Vice President for Administration Thomas Poole; Associate Vice President for Human Resources Susan Basso; Associate Athletic Director for Compliance Matthew Stolberg; Associate Athletic Director for Facilities and Operations Mark Bodenschatz; Director of Internal Audit Dan Heist; Athletics Integrity Officer Julie Del Giorno; Director of University Ethics and Compliance Regis Becker; and several head coaches of Division I varsity teams. In addition, the organization Penn Staters for Responsible Stewardship requested an opportunity to meet with our team. We agreed,

and during a meeting on April 11, 2013, the group summarized for us their suggestions and concerns relating to Penn State's governance and future.

We attended both Board meetings held during this reporting period, the quarterly meeting of the Athletics Integrity Council, and the first meeting of the newly constituted Ethics and Compliance Council. Members of our team attended training sessions held for trustees, head coaches, medical staff, and other "Covered Persons" designed to satisfy the AIA's annual athletics compliance training requirement. Members of our team also took the new, online mandated reporter and Clery Act training courses, which Penn State introduced on February 28 and May 10, 2013, respectively.

We worked with Guidepost Solutions, LLC to review physical security issues for Penn State's athletics and recreational facilities. During regularly scheduled visits in March, April, and May 2013, Guidepost personnel and members of our team met with Athletics Department administrators, architects, engineers, and project managers to understand the plans and schedules for implementation of the access restrictions at relevant facilities.

We also continued to collect and review relevant documents from Penn State and have issued supplemental document requests based on the University's reported progress and activities. To date, the University has produced roughly 14,200 pages of documents in response to our requests and remains cooperative in this process. We also continued to review publicly available information to the extent we deemed relevant.

III. OBSERVATIONS AS TO SPECIFIC AREAS

A. Penn State's Efforts to Implement the AIA

As our last report noted, Penn State hired Julie Del Giorgio as its first athletics integrity officer on January 24, 2013, fulfilling one of the requirements of the AIA.¹ Ms. Del Giorgio worked part-time in March 2013 and began full-time work in her new position on April 1, 2013. As the athletics integrity officer, she is responsible for developing, implementing, and overseeing policies and practices that ensure compliance with obligations of integrity, ethical conduct, and institutional control within the Athletics Department. She also has assumed an ombudsman role within the Athletics Department. As the first athletics integrity officer at Penn State and in the broader world of intercollegiate athletics, Ms. Del Giorgio has undertaken an effort to define her role as a functional, constructive, and valuable one.

Ms. Del Giorgio reports directly to the newly hired Director of University Ethics and Compliance, Regis W. Becker. Ms. Del Giorgio initially has focused on building relationships within the Penn State community and the Athletics Department's governing bodies. She already has met with 21 head coaches, numerous athletics administrators, and staff, and she has attended team practices, competitions, and other student-athlete programs. Ms. Del Giorgio holds regularly scheduled meetings with Associate Athletic Director for Compliance Matthew Stolberg, attends Dr. Joyner's executive staff meetings, and attends the bi-weekly head coaches meetings. She also regularly attends the Freeh Response Advisory Council and administration response team meetings. Ms. Del Giorgio is working closely with Mr. Stolberg and his staff on the compliance curriculum. She has met with the Monitor to discuss her work to date and her future plans.

¹ See AIA § III.B.1.

On March 11, 2013, Ms. Del Giorno chaired the quarterly meeting of the Athletics Integrity Council, as the AIA requires. At that meeting, the Athletics Integrity Council reviewed and discussed the content of annual rules education training, upcoming changes to the NCAA enforcement structure, the manner in which the athletics compliance office tracks and addresses secondary violations, the format of the disclosure log the Council will use to track any investigations and violations, and maintenance of a list of “Covered Persons” under the AIA. The Council also reviewed the team monitor certifications that each Division I varsity team head coach must sign as part of the AIA’s annual requirements.

Ms. Del Giorno has assumed responsibility for responding to and investigating athletics-related compliance complaints reported through the University’s ethics and compliance hotline. She has received one direct complaint and two anonymous complaints since her arrival, one of which reached her through the hotline. She is investigating and addressing those complaints.

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

The Consent Decree requires Penn State to adopt all of the recommendations that were set forth in chapter 10 of the Freeh Report and to do so “in spirit and substance” by no later than December 31, 2013. Penn State made significant progress this quarter in implementing many of those 119 recommendations.

1. Completed Recommendations

To date, Penn State has completed or substantially completed implementation of 76 recommendations from the Freeh Report.² Among others, the University made substantial progress in adopting many governance reforms recommended in the Freeh Report and in hiring

² Work on an additional 27 recommendations has been designated “ongoing and continuous.”

its first director of ethics and compliance. Additionally, the Board received training in both NCAA and Big 10 rules during the May 3, 2013 meeting.

a. *Board of Trustees Governance Reforms*

The Board of Trustees met twice during this reporting period, on March 15, 2013 and May 3, 2013. In March, the Governance and Long-Range Planning Committee met and approved numerous revisions to the University's governing documents. Additional revisions were made before the May meeting, at which time the Board approved all of the reforms to Penn State's charter, bylaws, and standing orders proposed over the course of the two meetings. While some reforms address anachronisms in the University's governance documents, many satisfy substantive changes proposed in the Freeh Report, in the report issued by Pennsylvania's auditor general, or by the Middle States Commission on Higher Education.³

i. Amendments to the Charter

Chief among the approved changes to the University's charter was to change the positions on the Board of the governor of the Commonwealth of Pennsylvania and the president of Penn State from voting trustees to ex officio, non-voting members.⁴ Both Governor Corbett and President Erickson supported these changes. As a result, the total number of voting trustees has been reduced from 32 to 30. Other amendments brought the charter in line with current Board practices of electronic notice of elections and meetings and electronic voting methodologies. The ten-day notice period for Board meetings has been reduced to three days.⁵

³ See Freeh Report, ch. 10, Recommendation 3.1.

⁴ See Corporate Charter of The Pennsylvania State University, Membership of the Board (1); Amended and Restated Bylaws of The Pennsylvania State University, Article II, § 2.01(a)(ii).

⁵ See Corporate Charter of The Pennsylvania State University, Meetings of the Board.

The Board also revised and clarified the composition of its executive committee.⁶ In addition, the Board removed several provisions dating to the University's original role as a farmer's college.

ii. Amendments to the Bylaws

The Board made many changes to the bylaws to adopt external recommendations consistent with current best practices in university governance. These changes included clarifying that both elected and appointed trustees are limited to terms of twelve years and removing the exception to term limits for the vice chair.⁷ New provisions established remedies and removal procedures for trustees who breach their fiduciary duties to the University.⁸

The Board also revised the size and composition of the executive committee, and added the requirement of an affirmative vote of seven members for that body to take action.⁹ In addition, term limits of no more than five consecutive years were adopted for the six standing committee chairs, and standing committee membership was reduced from a minimum of six to five trustees.¹⁰

⁶ The executive committee is a group of 13 trustees composed of the chair, the vice chair, the chairs of standing committees, the immediate past chair, the chair of the Board of Directors of the Milton S. Hershey Medical Center, and three at-large trustees elected by the Board. The committee transacts Board business that arises between regularly scheduled Board meetings. It is charged with taking action only in extraordinary circumstances and based on a minimum vote of seven.

⁷ See Amended and Restated Bylaws of The Pennsylvania State University, Article II, § 2.01(b).

⁸ See Freeh Report, ch. 10, Recommendation 3.5.1; Amended and Restated Bylaws of The Pennsylvania State University, Article II, § 2.03.

⁹ See Amended and Restated Bylaws of The Pennsylvania State University, Article III, § 3.02.

¹⁰ See Freeh Report, ch. 10, Recommendation 3.3.1; Amended and Restated Bylaws of The Pennsylvania State University, Article III, § 3.03(g).

Provisions setting forth the roles and responsibilities of the University president were moved from the Board's standing orders to its bylaws and were revised in response to recommendations in the Freeh Report and in the report by the Pennsylvania auditor general.¹¹ In addition to no longer serving as a voting member of the Board, the president now will participate in the executive committee only as an ex officio, non-voting member.¹² He will no longer serve as an ex officio member of all standing committees, special committees, and subcommittees. Similarly, the president will no longer serve ex officio as secretary of the Board. Instead, the secretary will be elected by a vote of the trustees.¹³ The Board also deleted all references that previously called for consultation with the president, such as in making decisions to call executive committee meetings and appointing standing committee members. President Erickson supported these changes.

The bylaws also now contain a more comprehensive section concerning trustee conflicts of interest.¹⁴ The provisions clarify what constitutes a conflict of interest. They also require disclosure by trustees of actual or apparent conflicts of interest and the submission of annual disclosure statements. The conflicts of interest provisions provide guidance on how to address situations that trigger concerns, and they require recusal if a matter before the Board involves a known conflict of interest. The bylaws also now include a statement of the trustees' fiduciary

¹¹ See Freeh Report, ch. 10, Recommendation 2.1.1; Amended and Restated Bylaws of The Pennsylvania State University, Article V, § 5.04. With the completion of Recommendation 2.1.1, Recommendation 2.1 has been completed in its entirety.

¹² See Amended and Restated Bylaws of The Pennsylvania State University, Article III, § 3.02.

¹³ At the May 2013 Board meeting, the trustees elected Vice President for Administration Thomas Poole to be secretary. Incoming Director of the Office of the Board of Trustees Janine Andrews was elected associate secretary.

¹⁴ See Freeh Report, ch. 10, Recommendations 3.2 and 3.2.2; Amended and Restated Bylaws of The Pennsylvania State University, Article VIII.

duties and prohibitions of certain activities designed to avoid a breach of those duties. These activities include misuse of Penn State’s proprietary information and solicitation or acceptance by trustees of gifts or favors in exchange for their action. Going forward, the bylaws now impose a five-year waiting period before a former trustee can be employed by Penn State. The section further provides for disclosure of conflicts of interest by University employees.¹⁵

Other modifications to the bylaws address the delegation of duties and matters requiring presentation and approval by the Board, which previously had been set forth in the Board’s standing orders. These provisions now include a statement requiring the Board to receive and review the University’s annual reports filed under the Clery Act and Pennsylvania Right to Know Act.¹⁶ The waiting period for a University employee or a Commonwealth of Pennsylvania “row officer” to be eligible to serve as trustee was extended to five years.¹⁷ The Board also modified the definition of a quorum from 13 members to at least a majority of the voting members, and it added provisions to accommodate the current practice of giving electronic or telephonic notice of meetings and special meetings and for participating remotely in Board meetings.¹⁸

iii. Amendments to the Standing Orders

The Board’s amendments to the standing orders modernized their language, transferred sections to the bylaws, and focused their content on University governance, procedures for the

¹⁵ See Amended and Restated Bylaws of The Pennsylvania State University, Article VIII, § 8.13.

¹⁶ See Freeh Report, ch. 10, Recommendation 3.4.5; Amended and Restated Bylaws of The Pennsylvania State University, Article V, § 5.09(b)(ii)(2).

¹⁷ See Amended and Restated Bylaws of The Pennsylvania State University, Article II, § 2.02. The Commonwealth “row officers” include the governor, lieutenant governor, attorney general, auditor general, and state treasurer.

¹⁸ See Amended and Restated Bylaws of The Pennsylvania State University, Article II, §§ 2.04, 2.06, 2.07, and 2.09.

election of trustees, and the rules and regulations for conducting Board meetings. Among other things, the standing orders permit the chair to allow additional speakers and extend or make other accommodations as necessary to achieve the purpose of the public comment period.¹⁹ Consistent with this procedural change, Chairman Masser has permitted expanded public comment during recent meetings, and many Penn State constituents have provided candid input on issues ranging from proposed natural gas pipelines to the football program.

The standing orders also extend automatic emeritus status to trustees with at least 20 years of service and to former Board chairs.²⁰ In addition, certain of the “Expectations of Membership” will continue to apply to trustees emeriti. The Board revised the section on “Expectations of Membership” to clarify rules governing public statements by trustees about Board activities and decisions and to attempt to ensure confidentiality with respect to nonpublic information elicited during Board discussions.²¹ Trustees are expected to speak or act on behalf of the University only when authorized to do so, to not subvert decisions the Board has reached as a whole, and to respect University policies on the preservation of confidential information and on external communications by the Board.

iv. Additional and Anticipated Board Reforms

Penn State established individual University e-mail addresses for each trustee to facilitate communication with the public.²² The addresses are published on Penn State’s website. The

¹⁹ See Standing Order IV(9)(b).

²⁰ See Standing Order VI.

²¹ See Freeh Report, ch. 10, Recommendation 3.5.1; Standing Order V(1)(d).

²² See Freeh Report, ch. 10, Recommendation 3.5.2.1.

athletics compliance office also provided the annual athletics compliance training required under the AIA at the May Board meeting to members in attendance.²³

As the chair of the Governance and Long-Range Planning Committee has noted, the process of revising the University's governing documents is an ongoing project. Further changes are anticipated as the committee continues to analyze the report issued in February by the Faculty Senate's Special Committee on University Governance. The Board's progress during this reporting period in effecting these many reforms addressed seven recommendations made in the Freeh Report.²⁴ These developments show a commitment by the Board to implement reforms in University governance. The Board's continued self-examination has attracted attention from peer institutions and organizations specializing in the governance of institutions of higher education. The changes also have been viewed positively by a rating agency.²⁵

b. Director of Ethics and Compliance (Recommendation 4.1)

On March 7, 2013, following a national search, Penn State announced the selection of Regis W. Becker as the University's first director of ethics and compliance.²⁶ While the Freeh Report recommended appointing a separate ethics officer and a chief compliance officer, Penn State decided to combine these two roles based on the advice of faculty experts in the field and the preferences of the candidates interviewed for the chief compliance position.²⁷ The hiring

²³ See AIA § III.D.1. Six members were not present for the training presentation, but were provided the training materials and asked to confirm in writing that they read and understood the materials.

²⁴ See Freeh Report, ch. 10, Recommendations 2.1.1, 3.1, 3.2, 3.2.2, 3.3.1, 3.5.1, and 3.5.2.1.

²⁵ See, Moody's Investors Service Issuer Comment: "Pennsylvania State University Makes Credit Positive Changes to Board and Oversight Policies," U.S. Public Finance Weekly Credit Outlook (May 16, 2013).

²⁶ See Freeh Report, ch. 10, Recommendations 4.1.

²⁷ See Freeh Report, ch. 10, Recommendations 1.2 and 4.1.

marks a significant change in Penn State's administrative structure as the University undertakes the challenge of building an Office of Ethics and Compliance where none had existed before. Mr. Becker started work on April 1, 2013.

Mr. Becker graduated from Penn State with a bachelor's degree in law enforcement and later earned a law degree from the Duquesne University School of Law. He has worked as an FBI special agent, a detective in the Allegheny County district attorney's white collar crime unit, and as a corporate security director. Most recently, Mr. Becker served as the chief compliance officer for PPG Industries, a global company with over \$15 billion in annual revenues.

In his new position, Mr. Becker reports to both the senior vice president for finance and business and the Board of Trustees through its Legal and Compliance Committee.²⁸ Since hiring Mr. Becker, Penn State has satisfied eight recommendations in the Freeh Report related to his responsibilities, including: establishing the Ethics and Compliance Council; creating an Office of Ethics and Compliance; coordinating University compliance functions; establishing a reporting relationship to the Board; coordinating with the Offices of the General Counsel, Risk Management, and Internal Audit; and reviewing incidents and risks on campus.²⁹

With the combination of the ethics and compliance officer roles, Penn State also combined the recommended ethics and compliance councils into one body—the newly formed Ethics and Compliance Council.³⁰ On April 26, 2013, Mr. Becker chaired the first meeting of the council. It is comprised of fifteen administrators and professors appointed by the senior vice president for finance and business. At its initial meeting, Mr. Becker outlined his activities to

²⁸ See Freeh Report, ch. 10, Recommendation 4.1.4.

²⁹ Freeh Report Recommendations 4.1 and 1.2.1 were completed. Recommendations 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5, and 4.1.6 have been deemed implemented but ongoing and continuous in nature.

³⁰ See Freeh Report, ch. 10, Recommendations 1.2.1 and 4.1.2.

date and plans for the future. He discussed the Council's charter and presented the organizational chart for the new Office of Ethics and Compliance, which includes Ms. Del Giorno and Associate Athletic Director for Compliance Matt Stolberg as direct reports to Mr. Becker.³¹ Mr. Becker also plans to hire a compliance specialist for youth programs and an ethics specialist.

Mr. Becker has identified approximately 140 University employees whose positions involve, at least in part, compliance responsibilities. In conjunction with the general counsel's office, he developed a chart of compliance elements intended to ensure that all relevant employees have the tools of a consistent and effective compliance structure available to them.³² Mr. Becker expects to develop an investigations protocol and centralized case management system to safeguard due process and ensure that everyone with a compliance function employs consistent and fair processes during an investigation.³³ Mr. Becker also will work with the director of internal audit and Ms. Del Giorno to oversee the ethics and compliance hotline. He will participate in the subcommittee on ethics and core values and hold monthly compliance coordination meetings with the general counsel, the director of risk management, and the director of internal audit.³⁴

c. Online Mandated Reporter Training

At the end of the last reporting period, the University introduced an online platform for its mandated reporter training, and Penn State recently expanded it to include University students, volunteers, part-time employees, and county employees who work with the Extension

³¹ See Freeh Report, ch. 10, Recommendation 4.1.1.

³² See Freeh Report, ch. 10, Recommendation 4.1.3.

³³ See Freeh Report, ch. 10, Recommendation 4.1.6.

³⁴ See Freeh Report, ch. 10, Recommendation 4.1.5. The first of these meetings took place on May 1, 2013.

Office. The online module begins with a short pre-test. It includes a series of lessons interspersed with video messages from noted experts, “knowledge checks,” and interactive components that allow participants to click on topics to learn more. The training includes links to relevant Penn State policies, posters, and government sponsored child abuse prevention and child protective services resources. At the conclusion of the program, participants must pass a test with a score of at least 80 percent. The test must be repeated until successfully completed, and “Authorized Adults” (as defined by Policy AD39) may not work with minors until they successfully complete the training module.³⁵ To date, 5,891 people have completed the online mandated reporter training in addition to the approximately 10,400 people who completed the in-person, classroom training. A member of our team completed the training and found it to be thorough.

d. Online Clery Act Training

On May 10, 2013, the University introduced the online version of its Clery Act training course. Under Policy AD74, the training is mandatory for all “campus security authorities,” who are persons who have an obligation under the Act to notify the University when they learn of alleged crimes falling under the Act. These individuals include, among others, police and security officers, administrators, coaches, faculty advisors, volunteers, and resident student advisors. The training also is available to the remainder of the University community on a voluntary basis. The approximately half-hour training begins with a pre-test, which is followed

³⁵ Policy AD 39 governs the protection of minors involved in University-affiliated programs. As discussed in earlier reports, “Authorized Adults” as defined by Policy AD39 are deemed mandated reporters by law and must receive appropriate training. They include individuals over the age of 18, paid or unpaid, who interact with, supervise, chaperone, or otherwise oversee minors in program activities, recreation, or in residential facilities. This includes faculty, staff, volunteers, students, interns, temporary employees, and independent contractors, consultants, or anyone else who has significant interaction with minors in the course of their duties.

by three learning modules on: the requirements of the Clery Act, the reportable criminal offenses, and locations under the Act; the responsibilities of “campus security authorities”; and Penn State’s reporting mechanisms. At the conclusion of the course, participants must take a test and obtain a score of at least 80 percent. The test must be repeated until participants obtain this score. To date, 30 individuals have taken the online Clery Act training, in addition to the approximately 3,000 individuals who completed the in-person, classroom training. Members of our team also completed this training and found it to be thorough.

e. Policy AD00: Policy on Policies (Recommendation 2.8)

On April 24, 2013, Penn State published Policy AD00: “Policy on Policies,” to establish standards and processes for developing, reviewing, approving, updating, and amending University policies.³⁶ The purpose of the policy is to support ethics and integrity, operational efficiencies, best practices, effective decision-making, and compliance with laws and regulations throughout the University. The new policy defines what constitutes a University-wide policy and which responsible officials must develop and review them. The policy also clarifies who is responsible for approving various types of policies, and it provides for periodic review and update of policies by those responsible University officials.³⁷

f. Policy AD81: Independence of the University Police and Public Safety (Recommendation 6.7)

On April 25, 2013, the University formally adopted Policy AD81: “Independence of the University Park Police and Public Safety.”³⁸ The policy protects the independence of the University police department to carry out its law enforcement functions without interference

³⁶ See Freeh Report, ch. 10, Recommendation 2.8.1.

³⁷ See Freeh Report, ch. 10, Recommendation 2.8.2.

³⁸ See Freeh Report, ch. 10, Recommendation 6.7.

from the administration or others and preserves its ability to request support and direction from the University and to obtain legal advice from the Office of the General Counsel. Police are encouraged in the policy to report any potential interference with their work through the University's compliance hotline.

g. Guidelines and Criteria for Legal and Risk Reporting to the Penn State Board of Trustees (Recommendation 3.4.3)

On May 2, 2013, Penn State's general counsel presented to the Board's Committee on Legal and Compliance a set of proposed guidelines to help administrators determine when legal, compliance, and risk issues rise to the level that warrants notification to the Board for discussion and oversight.³⁹ Issues deemed appropriate for Board notification include matters relating to: trustees' fiduciary duties; subjects requiring Board approval as a matter of law; issues of major reputational significance; subjects reserved for Board decision; matters regularly discussed by the Board over which it has knowledge and expertise; serious and substantial issues of institutional liability or compliance; significant lawsuits and substantial settlements; unusual employment decisions; and issues likely to generate public attention or over which Board members are likely to be called by constituents.

h. New Hires

The Board of Trustees approved upgrading the position of the associate vice president for human resources to a vice president position, promoting Susan Basso to this post.⁴⁰ The Board also approved the appointment of Nicholas Jones, formerly the dean of the Whiting School of Engineering at Johns Hopkins University, as Penn State's new provost and executive vice president. Dr. Jones will begin work on July 1, 2013. Athletic Director David M. Joyner hired

³⁹ See Freeh Report, ch. 10, Recommendation 3.4.3. This step is being treated as ongoing and continuous.

⁴⁰ See Freeh Report, ch. 10, Recommendation 2.1.3.

Dr. Morris Kurtz as a Special Assistant – Operations. Dr. Kurtz, the former athletics director at St. Cloud State University, will assist Dr. Joyner with special administrative and budgetary projects and will work with Associate Athletic Director Joe Battista to move the men’s and women’s hockey programs into their new facility.

2. Recommendations in Progress

a. *Penn State Culture (Recommendation 1.1)*

This quarter, Penn State’s subcommittee on ethics and core values continued to meet regularly to make progress toward the implementation of Recommendation 1.1 in the Freeh Report, which called for examination and understanding of Penn State’s culture, the establishment of ethics-based decision making, and adherence to the Penn State Principles. Under the leadership of Karen Wiley Sandler, Chancellor of Penn State Abington, the subcommittee reviewed values statements earlier promulgated by various Penn State departments and units in support of its development of a new values statement. The subcommittee also is in the early stages of determining how to implement the new values statement once it has been finalized to ensure its dissemination, inclusion in University-wide education, and incorporation into University decision-making processes.

In April, Penn State retained the Ethics Resource Center to support the subcommittee’s work. The Ethics Resource Center, a Virginia-based nonprofit research organization focused on the advancement of high ethical standards and practices in public and private institutions, will develop and analyze surveys distributed to all Penn State students, faculty, and staff. The surveys will gather feedback and input about the proposed values statement and gauge the extent to which that draft reflects perceptions of Penn State’s current culture and values and aspirations for its future. The surveys will also measure participants’ willingness to report wrongdoing and

collect baseline data for future comparisons. The subcommittee on ethics and core values is working with the Ethics Resource Center to formalize its action plan.

Penn State also hosted numerous activities in April 2013 as part of Sexual Assault Awareness Month and Child Abuse Prevention Month. At least seven Commonwealth Campuses hosted events to encourage greater awareness of sexual violence and child abuse. These events were hosted by student organizations, faculty, and administrative units and included: workshops; courses; presentations by survivors of sexual violence; documentary screenings; candlelight vigils; several runs sponsored by student groups; rape aggression defense training offered by campus police; blue and teal ribbon displays around campuses; and several “Take Back the Night” events.

President Erickson also reported that Penn State’s cluster hire for the Network on Child Protection and Well-Being is underway. The University plans to hire twelve new faculty members with a diverse range of expertise over the next three years with the goal of advancing knowledge, practice, education, and outreach to combat child abuse. The Network will work closely with the Penn State Hershey Center for the Protection of Children.

b. Recommendations Concerning Facilities Security

Supported by Guidepost Solutions, LLC, we have continued to monitor the University’s implementation of Recommendations 5.2 and 7.1 in chapter 10 of the Freeh Report, which entail the evaluation and modification of security and access protocols at Penn State’s athletics and recreational facilities and areas frequented by children or used by programs for minors. Penn State has remained cooperative with us and Guidepost in understanding the process by which the University is assessing existing security mechanisms and planning upgrades.

Penn State’s project management process is overseen by an interdisciplinary working group comprised of an athletics department administrator, 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. This group has day-to-day supervisory responsibility for the security projects the University is undertaking and meets monthly to review project status. Members of our team and Guidepost representatives participate in those monthly meetings. Guidepost also has arranged to confer periodically with the associate athletics director for facilities and operations to gain a better understanding of Penn State's project management process and the progress it is making towards satisfaction of Freeh Report recommendation 5.2.

Work on security enhancements and access controls has been divided into two phases. Guidepost has stated that this approach is consistent with best practices in a university setting. Phase one projects include upgrading existing security and access controls through the use of electronic card swipe readers at entry points and the placement of video cameras. Before commencing phase one work, Penn State's access controls and electronic security team completes a security assessment for each facility. Architectural designs then are drafted to guide the development of a construction schedule and prepare cost estimates. We noted in our last report that Penn State had completed security assessments for all facilities of primary concern. The University has since completed the design work for all but one of those facilities and is engaged in many phase one construction projects, some of which are expected to be finished by the next reporting period.

Phase two includes renovation projects to consolidate the number of entry points to athletics and recreational facilities, facilitate monitoring the circulation of patrons and staff within and around the facilities, and control building access through the construction of manned security posts and turnstiles. Penn State has engaged a national architectural firm to develop

designs for the phase two projects contemplated for the first priority facilities. The firm has met with the facilities security working group three times since March 2013 to review design options and discuss personnel flow and project feasibility studies. Guidepost participated in the two most recent workshops.

During this past reporting period, Guidepost independently walked through selected facilities to observe phase one enhancements, building layout, personnel flow, and the feasibility of the planned phase two security measures. In conjunction with Penn State's building coordinators for the relevant facilities, Guidepost conducted a thorough on-site review of all structures undergoing phase one improvements. As work proceeds on the many facilities security initiatives, we and Guidepost will maintain close communication with Penn State stakeholders and continue to evaluate the University's progress.

Also during this past quarter, Penn State revisited the language of Policy AD73, which was adopted in July 2012 to address access to athletics and recreational facilities.⁴¹ As we have reported, this policy sparked debate mainly as it relates to enforcement and the restricted use of recreational facilities to which the University community previously had enjoyed unfettered access. Language limiting entry to recreational facilities to "those individuals with a valid University student or faculty/staff/retiree identification card . . . plus one *related* guest" caused particular concern. To clarify access guidelines, Penn State revised Policy AD73 to permit access to persons with a valid University identification card "plus one *accompanied* guest" and provided further guidance concerning oversight of guests while using recreational facilities and the process for obtaining an exception to the policy.⁴²

⁴¹ See <http://guru.psu.edu/policies/AD73.html>.

⁴² *Id.*

c. Human Resources Information System (Recommendation 2.2.7)

Penn State's Office of Human Resources continued to make progress this quarter in implementing the human resource information system to cover all Penn State campuses.⁴³ Prior to the issuance of the Freeh Report, Penn State already had begun to consider ways to improve its technological capacity and systems to centralize and streamline the delivery of human resources services. Implementation will be conducted in three phases, and Penn State anticipates completing the project—which involves substantial commitments of capital and other resources—by the end of 2014.

The first phase of the project formally began with the engagement in March 2013 of a consulting firm specializing in human resources transformation projects. Penn State initially examined the current state of human resources capabilities and surveyed human resources employees to better understand their capacity and needs. The Office of Human Resources currently is developing a business case for reforms, recommendations for the future state of the system, an implementation plan, and a request for proposals to solicit human resource information system and technology vendors. The Office of Human Resources added a page to its website dedicated to sharing information about this initiative, part of which is open to the general public.⁴⁴ The site enables the Penn State community to send feedback or pose questions about the project.

d. Policy AD39 and Programs for Non-Student Minors on Campus

The committee responsible for youth programs continued to oversee implementation and enforcement of policies related to non-student minors on campus. Among other activities this reporting period, the committee received a presentation on the University's facilities security

⁴³ See Freeh Report, ch.10, Recommendation 2.2.7.

⁴⁴ See <http://ohr.psu.edu/transformation>.

program and current initiatives conducted by representatives from the access controls and electronic security team and the office of physical plant. The committee also developed a list of collection points and areas on the University Park campus frequented by non-student minors and identified unique challenges to the enforcement of Policy AD39. The committee has received feedback from the University community—particularly camp sponsors and third parties who use Penn State facilities, but also professors and administrators who may unwittingly correspond by email with minors—expressing concern over the costs and burdens associated with the heightened compliance obligations applicable to Authorized Adults under Policy AD39, such as the need for background checks, the annual training requirements and the general prohibition against one-on-one interaction between adults and minors. Many with whom we have spoken have echoed these concerns, which present logistical burdens they fear may undermine the economic viability of youth programs. Notwithstanding the challenges attendant with adherence to Policy AD39, other institutions of higher education have remarked on its comprehensiveness and have sought permission to model their own policies based on it.

As part of Mr. Becker’s strategic plan for building the Office of Ethics and Compliance, Penn State developed and advertised the position of Compliance Specialist Youth Programs. The compliance specialist will report to Mr. Becker and be responsible for developing and maintaining an inventory of all youth activities occurring on Penn State campuses as well as Penn State-sponsored activities off-campus. The compliance specialist also will be responsible for coordinating compliance of these activities with University policies related to youth protection as well as review and communication of any updated procedures to comply with those policies. He or she also will develop template forms and instructional materials for use by youth programs to ensure consistency and create and communicate educational materials to areas

sponsoring youth programs. Penn State received over 70 applications for the post and anticipates filling it shortly.

IV. OTHER EVENTS DURING THE REPORTING PERIOD

A. Lawsuits and Legislation

We have continued to monitor the lawsuits and legislation triggered by Jerry Sandusky's prosecution and conviction, the sanctions in the Consent Decree, and publication of the Freeh Report. None of the bills introduced in either house of the Pennsylvania legislature to enact governance reforms proposed in the auditor general's report has advanced out of committee. On April 10, 2013, a resolution was presented to discharge the House of Representatives Committee on Education from further considering the legislation referred to it.

As previously reported, the NCAA moved to dismiss Governor Corbett's lawsuit claiming that the sanctions imposed on Penn State violate federal antitrust laws. The motion was submitted to the court, which held oral argument on May 20, 2013.⁴⁵ The court's decision on the motion remains pending. In a second federal lawsuit assigned to the same judge, the NCAA has challenged the constitutionality of a recently enacted Pennsylvania statute directing payment of the \$60 million fine imposed in the Consent Decree into a trust fund for exclusive use in Pennsylvania to benefit programs that combat child sexual abuse and assist victims.⁴⁶ Governor Corbett has moved to dismiss that action, and the parties have now completed briefing with respect to that motion.

In an action in state court brought against the NCAA by Senator Jake Corman, who sponsored the Pennsylvania statute at issue in the NCAA's federal lawsuit, the parties have

⁴⁵ See Docket, *Corbett v. Nat'l Collegiate Athletic Ass'n*, No. 1:13-cv-00006-YK (M.D. Pa. Jan. 2, 2013).

⁴⁶ See Complaint, *Nat'l Collegiate Athletic Ass'n v. Corbett*, No. 1:13-cv-00457-YK (M.D. Pa. Feb. 20, 2013).

completed briefing on both the legal sufficiency of the complaint and the merits of Senator Corman's application for a preliminary injunction to block use of the fine pending resolution of their dispute. Argument on the motion to dismiss is scheduled for a hearing in June.⁴⁷

B. Athletics Department Finances

The monetary penalties under the Consent Decree, including both its \$60 million fine and Penn State's loss of bowl revenue, have generated interest and concern about the fiscal health of the Penn State Athletics Department.⁴⁸ The University released its financial reports to the NCAA for the 2010-2011 and 2011-2012 academic years.⁴⁹ Comparison of these two financial reports reflects a drop in the department's overall operating revenue for the 2011-2012 academic year. Penn State officials, however, attribute the relative decrease to a spike in receipts the prior year resulting from the renewal of a large number of multi-year contracts for club seating and suites at Beaver Stadium. Total operating revenue for the 2011-2012 academic year increased over the 2009-2010 academic year (the year prior to the contract renewals). Examination of the past three years' financial reports, however, reveals a significant reduction in the surplus generated by the Athletics Department.⁵⁰ Nonetheless, Penn State remains one of the few Division I schools with a financially self-sufficient intercollegiate athletics program.⁵¹

⁴⁷ See Docket, *Corman v. Nat'l Collegiate Athletic Ass'n*, No. 1 MD 2013 (Pa. Commw. Ct. Jan. 4, 2013).

⁴⁸ See, e.g., Steve Berkowitz, *Penn State Clarifies Statements About Athletic Finances*, USA Today, April 18, 2013, available at <http://www.usatoday.com/story/sports/ncaaf/2013/04/18/penn-state-athletics-finances/2094129/>; Steve Berkowitz and Jodi Upton, *Penn State Clarifies Statements About Athletic Finances*, USA TODAY, April 18, 2013, available at <http://www.usatoday.com/story/sports/2013/04/08/penn-state-athletics-finances-2012-sandusky/2064641/>.

⁴⁹ See <http://progress.psu.edu/press-and-media>.

⁵⁰ Compare 2011-2012 NCAA Financial Report (difference between operating revenue and operating expenses is \$863,023) with 2010-2011 NCAA Financial Report (difference

C. Review of Student-Athletes' On-Field and Classroom Performance

Penn State's student-athletes have continued to excel in competition and in the classroom. Through fall semester 2012, 96 seniors maintained a cumulative grade point average of 3.0 or higher, a record that tops the previous mark of 88 seniors.⁵² The 29 varsity programs competing during the 2011-2012 academic year earned a combined overall GPA of 3.05.⁵³ One hundred student-athletes who participated in fall sports received Academic All-Big Ten Conference honors, the most among Penn State's conference peers.⁵⁴ An additional 64 student-athletes who competed in winter sports raised the all-time number of Penn State academic all-conference honorees to 4,188 over the 20-year history of the program.⁵⁵ So far this academic year, the University's athletics programs have earned a school record of eight Big Ten Championships and one NCAA title.⁵⁶

between operating revenue and operating expenses is \$14,781,542) and 2009-2010 NCAA Financial Report (difference between operating revenue and operating expenses is \$18,572,803).

⁵¹ See Steve Berkowitz and Jodi Upton, *Penn State Clarifies Statements About Athletic Finances*, USA TODAY, April 18, 2013, available at <http://www.usatoday.com/story/sports/2013/04/08/penn-state-athletics-finances-2012-sandusky/2064641/>; Steve Berkowitz, *Penn State Clarifies Statements About Athletic Finances*, USA TODAY, April 18, 2013, available at <http://www.usatoday.com/story/sports/ncaaf/2013/04/18/penn-state-athletics-finances/2094129/>.

⁵² "Record 356 awards presented at 26th Annual SAAB Academic Achievement Awards," April 17, 2013, available at <http://news.psu.edu/story/273660/2013/04/17/athletics/record-356-awards-presented-26th-annual-saab-academic-achievement>.

⁵³ *Id.*

⁵⁴ "Record 100 Penn State Student-Athletes Honored with Academic All-Big Ten Awards," December 18, 2012, available at <http://www.gopsusports.com/genrel/121812aag.html>.

⁵⁵ See "Sixty-Four Penn State Winter Student-Athletes Earn Academic-All Big Ten Honors," March 28, 2013, available at <http://www.gopsusports.com/genrel/032813aaa.html>; "Record 356 awards presented at 26th Annual SAAB Academic Achievement Awards," April 17, 2013, available at <http://news.psu.edu/story/273660/2013/04/17/athletics/record-356-awards-presented-26th-annual-saab-academic-achievement>.

⁵⁶ "Penn State Teams Set School Record with Eight Big Ten Titles," May 13, 2013, available at <http://www.gopsusports.com/blog/2013/05/penn-state-teams-set-record-with-eight-big-ten-titles.html>.

D. The Search for Penn State's Next President

The search for Penn State's next president continues to progress. The University retained a national search firm to assist in the search, published a position description, and already has identified over 300 candidates.⁵⁷ The process of identifying qualified candidates and selecting the next president is proceeding with guidance from a number of sources, including a report of the Blue & White Vision Council and a series of forums held at the University Park, Berks, and Beaver campuses to gain the input of stakeholders from across the University community.⁵⁸ Penn State also has a website dedicated to providing information about the presidential search and selection process through which people may confidentially nominate candidates, request an application, or make suggestions.⁵⁹ The chair of the Board's Presidential Selection Council expects the trustees will vote on the next president at their November meeting.⁶⁰

E. The Athletics Department's Sports Medicine Model

When he was hired, Penn State empowered football head coach Bill O'Brien to build his own staff and asked him to observe the football program and provide recommendations to improve it. After the 2012 football season, coach O'Brien met with the University's athletics director and its president to review the performance of the football program. Coach O'Brien has said that, during that meeting, he shared his observations and offered recommendations on,

⁵⁷ See "Trustee Peetz gives update on Penn State presidential search," Penn State News, May 3, 2013, available at <http://news.psu.edu/story/275887/2013/05/03/administration/trustee-peetz-gives-update-penn-state-presidential-search>.

⁵⁸ The Blue & White Vision Council was composed of students, faculty, staff, administrators, and representatives from the Board of Trustees and Penn State Hershey Medical Center for the purpose of identifying strategic challenges and opportunities Penn State may encounter in the coming years.

⁵⁹ See <http://presidentalsearch.psu.edu/>.

⁶⁰ See "Trustee Peetz Gives Update on Penn State Presidential Search," Penn State News, May 3, 2013, available at <http://news.psu.edu/story/275887/2013/05/03/administration/trustee-peetz-gives-update-penn-state-presidential-search>.

among other things, personnel changes he believed would advance his vision of the football program consistent with the best interests of the student-athletes in his charge. Subsequent to that meeting, the University assigned Scott Lynch, M.D. and Peter Seidenberg, M.D. to work directly with the football team, replacing Wayne Sebastianelli, M.D., the physician who had worked with the football program since 1992. The University has reported that, while Dr. Sebastianelli is no longer working directly with the football team, he remains Penn State's director of athletic medicine with continued oversight over all of the University's varsity intercollegiate athletics teams and specific responsibility for the men's and women's basketball, fencing, golf, soccer, tennis, volleyball, cross-country and track teams, as well as the softball, cheerleading, and dance teams.

The reorganization of the sports medicine professionals and the role of athletics trainers who attend to Penn State's football student-athletes has garnered media attention in recent weeks. We will be examining this issue more closely in the coming quarter.

V. AREAS OF FUTURE FOCUS AND CONCLUSION

Penn State made significant progress in implementing the Freeh Report recommendations and AIA requirements this reporting period. We have continued to receive the full cooperation of Penn State administrators, staff, and trustees who exhibit dedication to fulfilling their commitments to the NCAA and the Big Ten Conference and taking advantage of this opportunity to improve Penn State.

Our next quarterly report is due at the end of August 2013, which will be combined with the annual report we issue in our role as Penn State's External Monitor under Freeh Report recommendation 8.2. We anticipate reporting on the annual activities that must be completed under the AIA. These include: the completion and certification of annual training by all

“Covered Persons” on athletics compliance; certification by the “Team Monitors” of all NCAA-sanctioned intercollegiate athletics teams of their team’s compliance with NCAA and Big Ten rules and obligations; and annual certification by the athletic director that the Athletics Department is in compliance with NCAA and Big Ten rules and obligations.

In the interim, we intend to include more Commonwealth campuses in our visits. We also will be working with Penn State’s Office of Internal Audit to validate and test certain compliance initiatives the University has undertaken. We will continue to reach out and make ourselves available to Penn State’s various constituencies in order to ensure our full understanding of the context in which we make any recommendations.