



Investigating Misconduct in Collegiate Athletics

Challenges and Best Practices

2023 ATIXA Annual Conference

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DAN SCHORR, LLC

OUR SERVICES

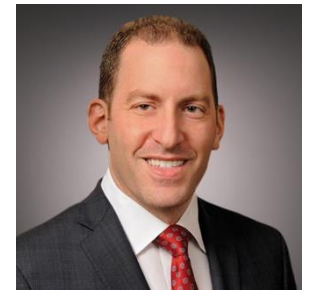
- Title IX, Civil Rights, and Misconduct Investigations
- Decision Makers and Hearing Officers
- Hearing and Process Advisors
- Trainings
- Policy and Program Reviews
- Interim Title IX Coordinator Coverage
- Expert Witness Testimony

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DAN SCHORR

President

New York



Dan Schorr is a former criminal prosecutor and municipal inspector general with more than 25 years of legal and investigative experience. He manages a variety of complex assignments, including investigations into sexual misconduct, Civil Rights, and fraud allegations at educational institutions, corporations, and government entities. In addition to specializing in Title IX investigations, Dan assists higher education and K-12 schools by conducting policy and program reviews, training personnel on all aspects of Title IX and Civil Rights compliance, and serving in hearing officer and Decision Maker roles. Dan is a pre-approved Sexual Misconduct Investigator for the United Educators ProResponse Expert Services Benefit.

JENNA FARRELL

Investigator

Denver



Jenna Farrell specializes in investigations of sexual misconduct and discrimination allegations based on sex, gender, and race. She was previously an intern in Kroll's Business Investigations & Intelligence practice where she worked on a wide array of investigations including due diligence, fraud investigations, and pro bono human rights matters. Prior to Kroll, Jenna interned at the Washington County District Attorney's Office in New York State focusing on cases of sexual misconduct and domestic violence. She is a pre-approved Sexual Misconduct Investigator for the United Educators ProResponse Expert Services Benefit.

NOTABLE ASPECTS OF ATHLETIC CULTURE

- Team dynamics and culture
- Student athletes may be isolated from other groups and individuals on campus
- Athletic team may be the only support system for student athlete
- Perceptions of “favorites” and/or hierarchy within the team
- May be student athlete’s first time participating in collegiate athletics, and they may think misconduct is “normal”
- Student athletes may automatically believe that whatever their coaches or team leaders say is correct
- Emphasis on physical fitness, strength, and/or body composition may lead to body shaming and unhealthy issues with food, exercise, and body image
- Star athletes may be favored by campus community when they are named as respondents (or there may be a perception that this is the case to Complainant or others)

WHAT IS THE SCOPE OF THE INVESTIGATION?

- Specific allegations against a single individual
- Widespread allegations against multiple respondents
- Systematic problems in a team or entire athletic department
- Ongoing issues with one coach who may or may not have violated a specific policy
- When do you issue Notice of Allegations?
- When is the investigation conducted under Title IX process requirements?
- What are notice requirements if there is not a specific allegation based on a clear campus policy?
- What is included in Notice?
- When to revise scope?
- When to revise Notice?

WHAT IS HAZING?

Regardless of the person's consent to participate, hazing is any act that, as an explicit or implicit condition of recruitment, admission, or initiation into, affiliation with, or new or continued membership status within a group, team, organization, living group, or academic group or cohort, does one or more of the following:

1. Causes, encourages, or compels another person to engage in any activity that could reasonably be perceived as likely to create a risk of mental, physical, or emotional stress or harm
2. Involves any of the following:
 - a. Consumption of alcohol or drugs;
 - b. Consumption of unpalatable substances, or palatable substances to excess;
 - c. Damage to or theft of property, or any other illegal act
 - d. Violation of any University policy
3. Subjects any other person (including an existing member or cohort of existing members of the group) to any of the above activities.

(Source: Cornell University Code of Conduct)

INVESTIGATION FACT PATTERN: HAZING



From: anonymous123@gmail.com
Sent: Wednesday, October 3, 2023

I don't want my reveal my identity because I'm afraid of retribution, but you have a big problem on your football team. For years, it's been a tradition to have the freshmen go with the upperclassmen to a certain bar off campus the first weekend of the school year, and then the freshmen have to drink 12 shots without getting sick. If anyone gets sick, the older players on the team make them be their "servants" for the rest of the season, and they have to be available all the time on their phones, do whatever the older players tell them, and call the older players "sir" and say "I apologize" before every time they talk. The older players also always yell at and insult the freshmen, especially the "servants," and call them racial and gender slurs. They also allow freshmen to get out of being "servants" if they can provide a photo or video of a naked female classmate. The coaches know about this and don't care, as long as the "servant" work doesn't interfere with games.

WHY MAY ATHLETES BE RELUCTANT?

- **Mistrust** of the institution, the investigation process, the interviewers, or the system in general
- **Discomfort** with strangers/interviewers
- **Discomfort** with subject matter
- **Fear** of retaliation
 - From coaches
 - From teammates
 - From student body
- **Fear** of not being believed
- **Fear** of retraumatization
- **Fear** of getting in trouble
- Complainant may have reasons for being reluctant that are significant to analyzing their report:
 - Discomfort or trauma
 - Pressure not to report
 - Wanting to protect the respondent
 - Concern that their report will not meet violation threshold

WHEN TO CONDUCT CLIMATE INVESTIGATIONS

- Climate investigations are broad investigations into the attitudes and practices of a team, club, department, or other group
- Climate investigations can be triggered by:
 - Clear, direct allegations from outside the team
 - Clear, direct allegations from a member of the team
 - Vague or unverified allegations
 - Rumors
 - Anonymous allegations
 - An unusual number of individual investigations within a particular team

WHO SHOULD CONDUCT CLIMATE INVESTIGATIONS?

- Investigators should be from outside the team/department
- Avoid actual or perceived bias or conflicts of interest
- Investigators should have subject matter expertise regarding the nature of the investigation

IDENTIFYING INFORMATION

- Start with the source of the allegations when possible
- Consider how to follow-up with anonymous sources of information
- Social media allegations
- Assess whether you begin with a wide or narrow scope
- Look for individuals who may have knowledge outside the team
 - Identify former members, friends of members, or adjacent/related team
- Include interviews of people who may have had positive experiences on team

INTERVIEWING TEAM MEMBERS

- Be transparent about the reason for the interview, the process, and what's at stake (BUT: witnesses don't necessarily need to be told the specific allegations)
- Be kind, compassionate, and friendly
- Build rapport and trust
- Recognize the difficulty of speaking "against" the group
- Explain non-retaliation policy
- Begin with questions to elucidate the group's attitude about the issue, rather than direct questions
- Ask for names of others who may be willing to speak or have relevant information
- Leave the door open for follow-up
- Document all interviews

INTERIM MEASURES

- What interim measures are considered in athletic program investigations?
- Pros and cons of interim suspension of Respondent
- Interim measure can not be a punishment because there has been no finding of responsibility
- Perception if star athlete Respondent receives interim suspension
- Perception if star athlete Respondent does not receive interim suspension
- Importance of ongoing, clear communication with campus community regarding these issues

THE TITLE IX AND CIVIL RIGHTS

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- **SUNNY HOSTIN**,
Emmy-Winning Co-Host of *The View* and best-selling author of *I Am These Truths* and *Summer on the Bluffs*



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