



Investigating Misconduct in Collegiate Athletics: Challenges and Best Practices

November 15, 2023

DAN SCHORR, LLC

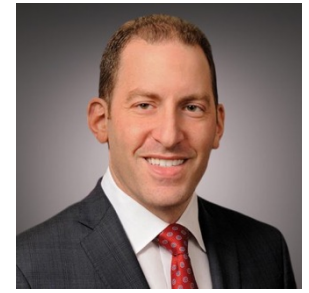
OUR SERVICES

- Title IX, Civil Rights, and Misconduct Investigations
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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.

ALYSSA-RAE MCGINN

Vice President
Boston



Alyssa-Rae McGinn has extensive experience leading a variety of complex investigations, with particular expertise in conducting investigations at educational institutions and corporations into allegations of sexual misconduct and identity-based harassment involving students, faculty, staff, and corporate leadership. Alyssa-Rae has also served as a decision maker and hearing chair for matters brought under the 2020 Title IX regulations and as an interim Title IX Coordinator to support and supplement the Title IX function at schools.

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.

POTENTIAL ISSUES IN ATHLETIC CULTURE

- Isolation from other support systems
- “Favorites” or hierarchy
- Normalization of misconduct, especially for new athletes
- Authority position of coaches and team leaders
- Emphasis on physical fitness, strength, and/or body composition
- Star athletes’ position of power on campus

SCOPE OF THE INVESTIGATION

- Single individual, multiple respondents, systemic problems, or leadership issues
- 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?
- When should the scope and Notice be revised?

EXAMPLE HAZING POLICY

Hazing is any act that causes, encourages, or compels a person or group of people to engage in any activity that could reasonably be perceived as likely to create a risk of mental, physical, or emotional harm or distress, when it is an explicit or implicit condition of recruitment into, admission into, membership with, or affiliation with a group, team, organization, living group, or academic group.

Hazing may include, but is not limited to, activities involving:

- Physical violence toward the victim or any other person;*
- Sexual harassment, sexual assault, or sexual exploitation of the victim or any other person;*
- Damage to or theft of property;*
- Consumption of alcohol or drugs, especially to excess;*
- Consumption of unpalatable substances;*
- Unreasonably derogatory, insulting, or discriminatory language;*
- Illegal acts; or*
- Violation of any Institution policy.*

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
 - From institution
- **Fear** of not being believed
- **Fear** of retraumatization
- **Fear** of getting in trouble

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
- 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

INTERIM MEASURES

- Interim measures in Athletics may include partial or total suspension, removal from the team, exclusion from certain team spaces, No Contact Orders, and more
- Interim measures must not be punishment
- Pros and cons of interim measures
- Consider campus perceptions of interim measures
- Maintain ongoing, clear communication with campus community about public issues

THE TITLE IX AND CIVIL RIGHTS

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"Final Table is a compelling, timely, and fast-paced story of a sexual assault survivor's fight to regain control of her life in the face of fear, self-doubt, international intrigue, and looming retribution. Former sex crimes prosecutor Dan Schorr's nuanced and layered debut novel smashes stereotypes and cliches with a strikingly original and memorable narrative."

- **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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