

The College Admissions Scandal: Recognizing and Managing a Looming Risk

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This week has subjected the college admissions process – already the subject of considerable debate – to unprecedented scrutiny. The nationwide indictments unsealed by the US Department of Justice (DOJ) in the past few days have uncovered what may well be the tip of the iceberg regarding misconduct by college counselors, coaches, parents, students (knowingly or otherwise), admissions officers and other senior administrators among a wide range of colleges and universities.

Institutions of higher education (and the boards that oversee them) should carefully consider taking immediate steps to determine (a) whether they face exposure for the conduct of officials and other employees for admitting students on allegedly false pretenses, (b) what pending and recent admissions applications may have been impacted by these actions and, importantly, (c) what steps will best protect the institution and its students moving forward.

Getting ahead of the curve with self-assessment and undertaking proactive measures will be critical for any college or university, even beyond those named in the indictment. Consider the following developments in the last 72 hours:

- **Private litigation** is already here. Applicants denied admission at universities identified in the DOJ indictments have brought a class action alleging violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act. If found liable, universities face massive penalties including treble damages, punitive damages and attorneys' fees.
- **Federal investigations** are underway, with more to follow.
 - DOJ's ongoing criminal investigation appears to have identified many more violations than have been disclosed in the indictments already unsealed.
 - Education Secretary Betsy DeVos has pledged that the **US Department of Education (ED)** will investigate as well. While it is unclear what ED rules have been violated, there are many to choose from, and it is cases like these that result in new and more onerous regulations and legislation.
- **Congressional investigations** are inevitable and legislation may follow – US Representative Donna Shalala has called for a hearing "to shed light on the admissions procedures of selected higher education institutions," while US Senator Ron Wyden has proposed legislation imposing new regulations on the college admissions process.
- **State attorneys general and other state regulators** will inevitably follow. The governor of Texas has called on every school in his state to investigate their admissions practices. State involvement is key, as consumer protection statutes are quite broad and often authorize extensive investigations and lawsuits with severe sanctions and damages.
- **Accreditors** are expected to weigh in, since "institutional integrity" is a key accreditation criterion.
- **The National Collegiate Athletic Association (NCAA)** has committed to investigate whether its rules were violated, calling the charges "a concern for all of higher education."

While public attention has long been focused on other sectors of education, the DOJ indictments may present a turning point for traditional institutions, their boards of trustees and senior leadership, and every organization and individual involved in college admissions. This scandal is very likely to reach beyond the universities and individuals named in the DOJ indictments, with less than 10% of the students allegedly involved in the known admission scandal publicly identified. The current and forthcoming investigations and litigation will result in an unprecedented examination of the college admissions process and potentially significant consequences. NCAA sanctions may follow and federal funding, state licensure and accreditation may be impacted by these developments. Every institution should expect any or all of the highlighted entities to ask questions regarding admissions processes and safeguards, and it will be important to have answers.

For further information about this developing issue or Cooley's capabilities, please contact Jay Vaughan at jvaughan@cooley.com or (202) 776-2031.

Travis LeBlanc helps clients manage litigation and regulatory risk, as well as strategically respond to data breaches,

cyberattacks, nation-state attacks, dissemination of stolen data, misinformation campaigns, internal investigations and government enforcement efforts, including those by state attorneys general.

David Mills represents higher education institutions in complex commercial disputes, litigation involving federal agencies, investigations, fiduciary duty and fraud cases, whistleblower actions, privacy and class-action litigation, copyright and trademark disputes and agency adjudications.

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Jay Vaughan is chair of Cooley's education practice group. He works proactively with colleges and universities, alternate content providers and innovative education companies to navigate the dynamic regulatory environment, advise on strategic planning and assist with operational opportunities.

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