Published on Sports Management Resources

External Misconduct: Specific Policy Recommendations

Our administrative responsibilities are multiple: (1) to identify reputation and business risk, (2) to develop policies and procedures that reduce or eliminate such risk, (3) to educate all employees on how to avoid such risks and the penalties that may be incurred if policies and procedures are violated, (4) to fairly evaluate when employees have violated policies and procedures (using the preponderance of evidence standard), and (5) to impose appropriate penalties for such violations. It is important for such policies to be specific with regard to the delineation of both prohibited and expected conduct. A general policy such as, “All employees are expected to exhibit the highest standards of professional and personal conduct”, is not an effective deterrent if there is a possibility that the employee and employer may not agree on general definition of “highest standard of personal and professional conduct”. For instance, an employee may think it is appropriate to date one of his or her students as long as he or she is of legal age while the employer may think such conduct is a conflict of interest and wholly unacceptable. Or, an employee may think that being intoxicated in a public restaurant or even being arrested for driving while intoxicated is none of the employer’s business because it occurs outside the workplace while the employer believes such irresponsible conduct damages consumer trust of the organization or its hiring and retention practices.

With regard to external misconduct of employees or athletes, the following policies should be considered.

1. General Institutional Rules and Regulations. Continued employment or participation privileges are conditioned on each employee or student conducting himself or herself in compliance with organization and department or program rules and regulations related to ethical and professional conduct as explicitly defined in employee handbooks, student codes of conduct and similar organization manuals.

2. Confidentiality. The organization collects information on a variety of constituents as defined here and views this information to be confidential, whether pending, historical, or active. In addition, the organization and its departments create many proprietary documents. Discussing this information or copying, distributing, removing, or allowing access to this information by unauthorized persons inside or outside the organization or department is strictly prohibited and may result in penalties including termination of employment. If unsure about whether information is considered confidential, the employee should ask his or her immediate supervisor. Information that must be protected includes the following:

- All employee personnel records
- All academic, behavioral, financial, or medical records (both physical and mental) of prospective or current athletes, as well as issues that affect eligibility or personal issues revealed by athletes or employees noting that a student's academic information may also be protected by federal law under FERPA (available at: http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html)
- All alumni, ticket purchaser, and donor information including but not limited to database contents (name, address, degrees conferred, credit card information, and so on), amount of money spent or donated, seat placement or awarding of benefits, history of purchases or giving, and the like
- All vendor, corporate sponsorship, and media agreements
- All internal budget and financial documents and decisions
- Other information that would be deemed proprietary, such as grant applications, playbooks, event proposals, etc., to the department or the organization
- Some information is not deemed confidential and is categorized as public information under government statutes such as the Equity in Athletics Disclosure Act Report or the Open Records Act. Distribution of that information, however, is controlled through the office of [indicate top administrative position]. Therefore, requests for data or reports that are considered public information must be forwarded to that office and may not be distributed by any other staff member. Failure to comply with these confidentiality policies may result in immediate termination of employment.

3. Obligation to Comply With NCAA and Conference Rules [or other league or governance association rules]. Continued employment is conditioned on conduct that complies with NCAA and conference rules as defined in NCAA and conference rules manuals; the athletic department policy manual; and memorandum, educational materials, and rules updates distributed during the course of the year. Employees in violation of such rules and policies shall be subject to disciplinary or corrective actions as appropriate under the applicable rules, regulations, bylaws, and policies, including termination of employment. In addition, any employee who becomes aware, or has reasonable cause to believe, that any employee, athlete, or representative of athletic interests has violated such rules shall report the same promptly to the [indicate administrative position of person in charge of compliance]. Failure to report shall be considered a serious violation of athletic department policy. The refusal of any employee to respond fully and accurately or to appear on request during investigations of rules violations by the institution or governance associations of which the institution is a member shall also be considered a serious violation of athletic department policy.

4. Sexual Harassment Inside or Outside the Workplace. Under Title VII of the Civil Rights Act and Title IX of the Education Amendments Acts of 1972, sexual harassment (including all forms of sexual violence) and other forms of sex discrimination are illegal. All employees and athletes are strictly prohibited from engaging in any form of sexual harassment affecting athletes, other employees or third parties, whether such behavior occurs inside or outside the workplace.

- Examples of behaviors that would constitute sexual harassment include sexually abusive jokes, sexual physical contact, sexually graphic literature, sexual advances, demands for sexual favors, and any other behavior with sexual overtones that creates a hostile environment. Sexual harassment also includes all forms of sexual violence such as sexual assault, sexual battery, rape, and sexual coercion.
- Employees engaging in sexual harassment may be subject to immediate termination of employment.

5. Professional Conduct and Inappropriate Relationships. Employees, volunteers, or others who have authority over subordinates or who provide professional services to athletes must exhibit the highest standard of impartiality and professional treatment. Having a sexual, intimate, romantic, or similar close personal relationship with individuals over which a person has an instructional or service responsibility, regardless of the age or consent of the individual, creates the appearance or actuality of favoritism and special treatment, which is professionally unethical and unacceptable and is expressly prohibited. Examples of other professionally inappropriate behaviors inside or outside the workplace that are expressly prohibited include, but are not limited to the following:

- Staff performing back rubs or massage on a athlete or employee (must be performed by a licensed allied health professional approved by the institution)
- Kissing
- Frequent touching that is noninstructional or noncelebratory
- Commenting on athletes' or employees' bodies or appearance in a sexual manner
- Exchanging romantic gifts or communications
- Showing obscene or suggestive photos
- Videotaping or photographing student-athletes or employees in revealing or suggestive poses or in inappropriate places like showers, locker room and the like
- Discussing or writing about sexual topics unrelated to curriculum of student-athletes or work responsibilities of employees
- Making sexual jokes, sexual gestures, and innuendos or engaging in inappropriate sexually oriented banter with student-athletes or employees (e.g., discussion of dating behavior)
- Sharing the staff member's own sexual exploits or marital difficulties
- Intentionally invading the athlete's or employee's privacy during nonworking hours or outside regularly scheduled practice and competition
- Using e-mail, text messaging, or instant messaging to discuss sexual topics with students or employees

Such unprofessional behaviors or sexual or romantic personal relationships undermine the trust in the supervisor and belief that the athlete or employee will be treated impartially. Employees engaging in such unethical conduct shall be subject to penalties including immediate termination of employment.

6. Conflict of Interest. Employees must conduct business in an ethical manner. All employees are obligated to avoid any actions that might result in or create the appearance of:

- using the association with the institution [business or organization] for private gain;
- providing preferential treatment to any outside person or organization;
- impeding the efficiency or economy of the institution [business or organization];
- causing loss of independence or impartiality; affecting public confidence in the integrity or the reputation of the institution [business or organization]; or
- endangering the life, health, or safety of anyone.

No person shall have direct or indirect interest in or relationship with any outside business, organization, or person that might affect (or that might reasonably be understood or misunderstood by others as affecting) the objectivity or independence of his or her judgment or conduct in carrying out the duties and responsibilities that he or she has in connection with the institution's [business or organization] activities. Any action that could constitute a conflict of interest or unethical conduct on the part of any

person is also a conflict of interest if it is knowingly engaged in through a third party such as a spouse, family member, or other people or organizations.

A conflict of interest would arise in circumstances such as the following:

- Material and direct personal involvement with vendors, suppliers, and contractors with whom the university does business
- Ownership of a material interest in such an entity
- Acceptance of material payments, services, or loans from such an entity
- Ownership of property affected by university action or acquired as a result of confidential information
- Outside employment which might materially impact job performance or efficiency
- Outside activities in civic, professional, or political organizations that might involve improper and unauthorized divulging of university or athletic department data

Nothing in this policy statement is intended to characterize a relationship or involvement as a conflict of interest or as unethical conduct on the part of any person if the person has no knowledge of such a relationship or involvement or if a potential conflict is disclosed and the person is excluded from participating in any relevant transactions. Also, any individual whose sole relationship with the institution [business or organization] is membership on any advisory committee and who is not directly involved in negotiations with third parties on behalf of the institution [business or organization] shall not be subject to the provisions of this policy.

7. Proper Use of Funds, Gifts and Gratuities. Proper use of funds of the institution [business or organization] is a fiduciary responsibility. No employee shall make any illegal or unethical payments (including bribes, kickbacks, graft, unauthorized commissions, or finder's fees) from the assets or resources of the university, or otherwise. No employee shall encourage or accept gifts or gratuities for themselves, their families, or friends from any outside person or organization having, or seeking to have, a relationship with the institution [business or organization]. Unsolicited gifts or gratuities of less than $100 may be retained but shall be fully disclosed to the business manager. Minor business courtesies such as payment for normal meal costs are permitted when arising from business connected with the activities of the institution [business or organization]. No employee should give from the assets belonging to the institution [business or organization] any gifts, gratuities, or entertainment in excess of $100 to outside persons or organizations Entertainment valued in excess of $100 with a person shall be fully disclosed to the business manager. Accurate and complete records shall be maintained with respect to any gift, gratuity, or entertainment described here.

8. Influencing Institution [business or organization] Decisions. No employee shall succumb to domestic and foreign political pressures or other forces, such as direct or indirect payments, from outside the institution [business or organization] that are received with the purpose of influencing institution [business or organization] decisions, actions, or inactions in a manner other than in accordance with institution [business or organization] authorization.

9. Acceptance of Honoraria and Other Forms of Outside Employment. Receipt of honoraria by any employee speaking on behalf of or representing the institution [business or organization] shall be prohibited based on the belief that employees should not use the organization for private gain. But if an employee or other person is asked to give a presentation or perform consultant services based on the

professional expertise of the individual as opposed to his or her position as a representative of the institution [business or organization], that person may participate in such activities and receive expenses, honorarium, or a fee for such services from the sponsoring agency as long as the institution [business or organization] employee (1) uses a vacation day if such outside employment or activity occurs on a regular working day and (2) receives prior approval from his/her supervisor to establish that participation in such outside employment or activities is not related to his or her duties as a representative of the institution [business or organization].

10. Personal Conduct and Responsibility. Employees and athletes are to conduct their personal business so as not to bring discredit to themselves or the institution [business or organization]. Members of the staff and team members are expected to establish and maintain a standard of behavior that brings credit to themselves and the institution [business or organization] including acting with good judgment, discretion, and integrity both on and off the job or playing field, representing the institution [business or organization] with dedication, enthusiasm, and loyalty, and treating all persons with courtesy, friendliness, and respect for their personal dignity.

11. Gambling and Bribery. Employee involvement in illegal gambling and bribery is strictly prohibited in any context. Furthermore, staff members shall not knowingly provide information to people involved in organized gambling activities, solicit a wager on any team, accept a bet on any team, or participate in any gambling activity that involves intercollegiate or professional athletics, through a bookmaker, a parlay card, or any other method employed by organized gambling.

12. Alcohol, Tobacco and Substance Abuse. Employees are prohibited from using tobacco products at any business function inside or outside the workplace, including during practices or competitions. Illegal drug use or distribution is considered a felony and shall result in immediate termination. More specifically, the following policies also apply to employees:

- Staff may not drink alcohol during team trips. All staff must be nonimpaired in the event of any athlete or traveling group emergency.
- Athletes often carry prescription drugs for pain from injuries or other conditions. Staff may not take prescription drugs that they acquire from a student-athlete.
- With the exception of qualified medical personnel, staff may not encourage the use of or provide any over-the-counter or prescription drugs or supplements to athletes, including aspirin, vitamins, energy drinks, or supplements of any kind. In general, staff shall not give anything to athletes to ingest except water or electrolyte replenishment drinks provided by athletic trainers. Staff must be cognizant of the fact that most drug testing offenses are “strict liability” offenses for the athlete, meaning that the athlete will be sanctioned even if they reasonably relied on staff that the medication, vitamin, energy drink or supplement was safe to ingest.
- The athletic department holds a visible and recognizable position in the surrounding community. Therefore, staff members’ behavior may be scrutinized by others even during their personal time. Staff members shall demonstrate responsible social behavior in the consumption of alcohol.

13. Background Checks. Given our responsibility to ensure a safe environment for athletes, employees and third parties that participate in camps, clinics, and other activities for children conducted by the organization, background checks are required of all athletic department employees as a condition of

employment.

14. Reckless, Dangerous, or Felonious Conduct. Employees engaging in any of the following activities are subject to immediate suspension without pay and possible termination of employment:

- convictions of crimes committed at work or outside work that reflect unfavorably on a staff member's suitability for continued employment
- violation of civil laws that are committed at work or outside work that reflect unfavorably on a staff member's suitability for continued employment
- manufacture, possession, use, distribution, dispensation, or sale of illegal drugs or alcohol
- violation of safety rules or procedures
- engaging in or threatening physical violence
- possession of firearms, explosives, flammables, or other weapons of any kind on business trips, team travel, during business activities or in the workplace
- carrying unauthorized persons in vehicles owned, leased, or rented by the institution

15. Prohibited Activities. An employee may not engage in any of the following activities:

- [for high school or college athletic programs] provide, or collaborate with a representative of athletic interests to provide, impermissible benefits to student-athletes or prospective student-athletes (cause for immediate termination of employment). Note: If an employee is not involved but has knowledge that such activity is taking place and does not report it to the athletic director, such failure to report is similarly cause for immediate termination.
- Use institutional funds (including telephone, postage, stationery, and so on) for personal use, to influence the outcome of any election, or to support any cause.
- Use department vehicles for personal recreation or for any non-work-related activity.
- Accept other employment that would impair or interfere with the employee's duties.
- Remove organizational property from campus without written permission.
- Keep confidential information at home, outside the workplace or in any unlocked areas in the workplace.
- Keep institutional cash, checks, or credit card receipts at home, outside the workplace, or in any unlocked areas in the workplace unless administrative approval for delayed submission under special circumstances has been obtained.
- Lend, loan, or sell any institutional property or information to any outside individual or agency.
- Purchase tickets to sport events and sell those tickets at an increased price (scalping).
- Allow an outside group to use business, practice or competition facilities without obtaining required approvals.
- Accrue any vacation or other compensatory time without posting such on the time reporting sheet at the end of each month.

16. Negligent or Other Prohibited Work Practices. Following is a noninclusive compilation of behaviors that may occur inside or outside the traditional workplace that are considered negligent or prohibited work practices that will subject the employee to immediate corrective action including termination of employment:

- Falsification of or omissions from work, personnel, or other university records
- Failure to call in each day according to university and departmental policies when unable to

report to work
- Working under the influence of illegal drugs or alcohol
- Incompetence, including below standard, or unsatisfactory job performance or neglect of duty
- Inefficient or unproductive use of work time (including personal use of university communication, computing, or network resources; sleeping while on duty; unauthorized absence from assigned work areas; and the like)
- Working unauthorized overtime
- Insubordination
- Failure or refusal to perform assigned work or carry out management requests or assignments
- Plagiarism or falsification of academic credentials
- Gaining unauthorized access to or falsification of reports or records
- Misappropriation or misapplication of organizational funds
- Dishonesty
- Patterns of absenteeism, tardiness in reporting to work or in returning from break or luncheon periods, or leaving early
- Rude or unprofessional conduct with students, faculty, staff, or the public
- Any negligent act that might endanger one's own safety or life, the safety or lives of others, or that might result in damage to or destruction of institutional [business or organization] property (including driving business vehicles negligently, losing business property through negligence, and so on)
- Having unauthorized family members, friends, or animals in the workplace, practice facilities or in game day areas
- Misuse, abuse, unauthorized possession, removal, or use of business property or unauthorized charges to business accounts
- Discrimination against or harassment of staff members, faculty members, students, or other constituents
- Conflicts of interest or the failure to resolve a conflict of interest
- Disclosure of confidential institutional or departmental information to unauthorized persons

Employees and athletes should be annually informed of these policies during meetings designated for this purpose.

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