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Q: What would you recommend with regard to coaching behavior expectations?

There are three keys critical to the oversight of professional conduct of coaches: (1) the existence of a comprehensive athletic department policy regarding standards of coaching conduct that explicitly defines prohibited behaviors, (2) the requirement that the coach's supervisor have an annual meeting with the team and the coaches prior to the start of practice to review the policy so that student-athletes as well as coaches clearly understand prohibited conduct and student-athletes understand the complaint process, and (3) having a policy that requires all staff members to report observed violations.

The following model athletic department policies and procedures are recommended (see https://thedrakegroup.org/2016/11/30/drake-group-calls-for-strong-actions-to-address-collegiate-coaching-misconduct/ for a complete discussion):

1. Coaches and other staff members working with athletes should be required to comply with a Code of Ethics, or other comprehensive conduct policy which includes specific descriptions of prohibited behavior, as a condition of employment. Such requirement should be referenced in any employee at-will or multiyear employment agreement. Specifically, the agreement should also include employee acknowledgement that engaging in any of the listed instances of serious misconduct would subject the employee to immediate suspension (while charges are pending) or termination of employment following completion of investigation and adjudication processes (see #8 below):

- Arrests for or convictions of crimes committed at work or outside of work which reflect unfavorably upon a staff member's suitability for continued employment;
- Violation of the criminal laws on Institutional property or while on Institutional business;
- The manufacture, possession, use, distribution, dispensation or sale of illegal drugs or the abuse of alcohol on university time or premises;
- Failing to act reasonably to voice or causing violation of safety rules or procedures or engaging in prohibited pedagogical or other practices that results in endangering the health, causing significant physical injury, psychological harm or death of athletes or others; or
- Violation of the institution's employee conduct policies.

The agreement should also include a provision specifying that refusal by the employee to respond fully and accurately during investigations of such complaints by the institution would be considered as a presumption of guilt unless coach involvement in a pending or potential lawsuit would make such testimony self-incriminating.

2. Athletic department employees should be designated as mandatory reporters if they observe violations of the conduct policy, with failure to report resulting in disciplinary penalties.

3. The institution should provide “whistleblower protection” to any athlete or athletic department employee submitting a complaint or alleging coaching misconduct. Retaliation against a complainant or reporter in any form should be strictly prohibited.

4. The athletic department should conduct annual staff and athlete education meetings detailing the requirements of the conduct policy and misconduct complaint procedures.

5. Misconduct complaint procedures should include the reporting of misconduct to either the athletic director or a trained non-athletic department compliance employee. In the case of Title IX sexual harassment or assault allegations, the complaint procedure should not be handled by the athletic department due to possible conflict of interest concerns. These complaints should be directed to the institution’s Title IX Compliance Coordinator.

6. In the case of minor misconduct by coaches that does not result in significant physical or psychological harm to the athlete but represents unacceptable pedagogical practice, the institution’s standard HR gradual escalation of disciplinary processes should be utilized by the employee’s supervisor: (1) informal oral warning, (2) written warning and performance improvement plan, including reevaluation at a time certain and (3) written warning including specific corrective action (e.g., suspension, termination, etc.) in the event of a failure to correct.

7. The institution should be prohibited from providing the employee with legal representation during investigation and adjudication processes (unless all employees are provided with legal representation) or otherwise interfering with the misconduct complaint proceedings.

8. In cases involving serious coach misconduct resulting in harm to athletes or other individuals (see #1 above), the institution should be responsible for implementing the following procedures:

a. Prior to the suspension of any employee for serious misconduct, the institution should be required to convene an independent third party panel (unbiased parties with no association to the institution as employees, donors, alumni or business affiliates) to determine the plausibility of allegations. The complainant and the coach alleged to have engaged in misconduct, among others determined by the panel, should have the opportunity to appear before the panel. If the allegation is determined to be plausible the coach shall be suspended pending the outcome of investigatory and adjudication processes.

b. The coach should be entitled to retain legal counsel at his or her own expense to advise the coach during interviews and proceedings.

c. The institution should provide the complainant and the coach accused of misconduct with a written

statement of the allegations and should conduct a formal investigation by an independent third party that shall include interviews with all witnesses, the complainant and the coach accused of misconduct.

d. The institution should convene an independent third party panel to receive and consider the report of the investigator and conduct adjudication procedures which should include the opportunity for the coach to respond to all allegations and the requirement for a written decision.

e. The accused and the complainant (or the victim of the abuse if other than the complainant) should both have the right to appeal the decision of the adjudication panel which should be required to provide a written decision."

If the athletic department does not have its own policies to deal with coach professional misconduct issues, the institution's Student Conflict Resolution policy should be communicated to student-athletes on an annual basis. However, the absence of an athletics-specific coaching misconduct policy or professional code of ethics specific to athletics would leave student-athletes and coaches without clear knowledge of acceptable professional conduct because the most institutional student conflict resolution policies lacks sufficient specificity in the definition of unprofessional behaviors commonly encountered in athletic settings. Because of the power imbalance between coaches and their student-athletes, the likelihood of an athlete reporting coaching misconduct is slim if the athletic department doesn't clearly define unacceptable conduct and encourage athletes to report the occurrence of these harmful behaviors. Definitions of misconduct are particularly critical because the athletics culture has perpetuated and tolerated coach abuse of athletes using the questionable rationale of "toughening" athletes.

It is also important to emphasize that it is not appropriate to use an employee's annual performance evaluation as the mechanism for addressing coaching misconduct, whether serious or minor. Misconduct should always be immediately addressed and not "stored up" for an end-of-year conversation. Hiding and gathering evidence against an employee and not informing an employee of unacceptable behavior is not only highly unethical but also allows an unsafe instructional environment to continue to affect student learning. That being said, it is important to recognize the concomitant obligation of administrators to verify that unacceptable behavior actually occurred, to inform the employee of any allegations and provide an opportunity for the employee to address allegations, and if found to be true, to explicitly inform the employee that continuation of such behavior is unacceptable and clearly state orally or in writing (depending on the stage of the disciplinary process) that such behavior must cease and not be repeated. Title IX clearly specifies that institutions have a responsibility to protect students and employees in order to maintain a safe educational environment and these are the proper mechanisms administrators must use to do so.

It is important to be clear about the conditions under which coaching misconduct rises to the level where suspension or termination of employment is justified. Such consequences are justified when (a) the misconduct results in serious harm to athletes or other individuals and a reasonable individual should have known of its consequences regarding student safety even if there has been no formal HR warning process or (b) In the middle or at the end of the discipline process, after the employee has been previously warned, there is written documentation of such warning either in the context of a performance improvement plan and/or corrective action letter and the misconduct reoccurs. If a student alleges coach misconduct during a practice or other team setting, management best practice would be to ask the immediate supervisor of the coach to observe the coach on a regular basis during practices for the

purpose of verifying the existence of such misconduct. If such behavior is verified, the coach should receive an oral warning, written warning or notice of disciplinary action related to these complaints. Thus, the complaint of an athlete critical of coach pedagogy is not a cause for disciplinary action unless it is corroborated by observation by a skilled supervisor knowledgeable about proper coaching pedagogy and an adequate investigation.

It is also important to address another area of coach misconduct – failure to comply with NCAA rules. It is important to note that it is very common for institutions to self-report minor violations of NCAA rules termed “secondary” violations. NCAA rules, especially NCAA recruiting rules, are so complex, that it is difficult to avoid minor violations, especially if a coach has had no previous experience in collegiate sport. As long as the transgression is "minor", the same violation is not repeated, and the violation is not intentional, these violations should not be considered cause for non-renewal or termination of employment. There should never be a double standard in which some coaches have NCAA rules violations ignored and others are punished.

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