

**Report of the Special Investigative Counsel
Regarding the Actions of The
Pennsylvania State University Related to
the Child Sexual Abuse Committed by
Gerald A. Sandusky**

**Freeh Sporkin & Sullivan, LLP
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CHAPTER 10

RECOMMENDATIONS FOR UNIVERSITY GOVERNANCE, ADMINISTRATION, AND THE PROTECTION OF CHILDREN IN UNIVERSITY FACILITIES AND PROGRAMS

The failure of President Graham B. Spanier (“Spanier”), Senior Vice President – Finance and Business (“SVP-FB”) Gary C. Schultz (“Schultz”), Head Football Coach Joseph V. Paterno (“Paterno”) and Athletic Director (“AD”) Timothy M. Curley (“Curley”) to protect children by allowing Gerald A. Sandusky (“Sandusky”) unrestricted and uncontrolled access to Pennsylvania State University (“Penn State” or “University”) facilities reveals numerous individual failings, but it also reveals weaknesses of the University’s culture, governance, administration, compliance policies and procedures for protecting children. It is critical for institutions and organizations that provide programs and facilities for children to institute and adhere to practices that have been found to be effective in reducing the risk of abuse. Equally important is the need for the leaders of those institutions and organizations to govern in ways that reflect the ethics and values of those entities.

The Special Investigative Counsel provided several recommendations to the Board and the University in January 2012 to address exigent needs to reform policies and procedures, particularly those involving upcoming activities, such as summer camps. Before, but especially since November 2011, the Board and University administrators have reviewed, modified, or added relevant policies, guidelines, practices and procedures relating to the protection of children and University governance. Consistent with the recommendations in this report, members of the Board, University administrators, faculty and staff have:

- Strengthened security measures and policies to safeguard minors, students and others associated with the University and its Outreach programs.
- Improved the organization and procedures of the Board to better identify, report, and address issues of significance to the University and members of its community.

- Increased compliance with The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (“Clery Act”) training, information collection and reporting requirements.
- Encouraged prompt reporting of incidents of abuse and sexual misconduct.
- Conducted abuse-awareness training for many University areas, including its top leadership.
- Provided better oversight and governance of the University’s educational, research and athletic compliance programs.

One of the most challenging tasks confronting the University community – and possibly the most important step in ensuring that the other recommended reforms are effectively sustained, and that public confidence in the University and its leadership is restored – is an open, honest, and thorough examination of the culture that underlies the failure of Penn State’s most powerful leaders to respond appropriately to Sandusky’s crimes.

The following recommendations are intended to assist University administrators, faculty, staff and the Board, in improving how they govern and provide protection for children in University facilities and programs. These recommendations relate to the University’s administrative structure, policies and procedures and the Office of General Counsel; the responsibilities and operations of the Board; the identification of risk; compliance with federal and state statutes and reporting misconduct; the integration of the Athletic Department into the greater University community; the oversight, policies and procedures of the University’s Police Department; and the management of programs for non-student minors and access to University facilities. In addition, recommendations are included that will assist the University in monitoring change and measuring future improvement.^{ddd}

^{ddd}Recommendations accompanied by an asterisk are being implemented or have been completed as of June 2012.

1.0 – Penn State Culture

The University is a major employer, landholder and investor in State College, and its administrators, staff, faculty and many of its Board members have strong ties to the local community. Certain aspects of the community culture are laudable, such as its collegiality, high standards of educational excellence and research, and respect for the environment. However, there is an over-emphasis on “The Penn State Way” as an approach to decision-making, a resistance to seeking outside perspectives, and an excessive focus on athletics that can, if not recognized, negatively impact the University’s reputation as a progressive institution.

University administration and the Board should consider taking the following actions to create a values- and ethics-centered community where everyone is engaged in placing the needs of children above the needs of adults; and to create an environment where everyone who sees or suspects child abuse will feel empowered to report the abuse.

- 1.1 Organize a Penn State-led effort to vigorously examine and understand the Penn State culture in order to: 1) reinforce the commitment of all University members to protect children; 2) create a stronger sense of accountability among the University’s leadership; 3) establish values and ethics-based decision making and adherence to the Penn State Principles as the standard for all University faculty, staff and students; 4) promote an environment of increased transparency into the management of the University; and 5) ensure a sustained integration of the Intercollegiate Athletics program into the broader Penn State community.

This effort should include the participation of representatives from the Special Faculty Committee on University Governance; Penn State’s Coalition on Intercollegiate Athletics; Penn State’s Rock Ethics Institute; students, alumni, faculty and staff; as well as representatives from peer institutions with experience in reviewing and improving institutional culture in academic settings.

1.2	Appoint a University Ethics Officer to provide advice and counsel to the President and the Board of Trustees on ethics issues and adherence to the Penn State Principles; develop and provide, in conjunction with the Rock Ethics Center, leadership and ethics training modules for all areas of the University; and coordinate ethics initiatives with the University's Chief Compliance Officer.* (See also Recommendation 4.0)
1.2.1	Establish an "Ethics Council" to assist the Ethics Officer in providing advice and counsel to the President and the Board on ethical issues and training.
1.2.2	Finalize and approve the proposed modifications to the Institutional Conflict of Interest Policy; identify the senior administrative and faculty positions to which the policy should apply, and implement the policy throughout the University.
1.3	Conduct open and inclusive searches for new employees and provide professional training for employees who undertake new responsibilities.
1.4	Continue to benchmark the University's practices and policies with other similarly situated institutions, focus on continuous improvement and make administrative, operational or personnel changes when warranted.
1.5	Communicate regularly with University students, faculty, staff, alumni and the community regarding significant University policies and issues through a variety of methods and media.
1.6	Emphasize and practice openness and transparency at all levels and within all areas of the University.

2.0 – Administration and General Counsel: Structure, Policies and Procedures

In various ways the University's administrative structure, the absence or poor enforcement of policies relating to the protection of children and employee misconduct,^{eee} and the lack of emphasis on values and ethics-based action created an

^{eee}The University has policies for investigating employee misconduct: HR-78 created in 1974, and HR-70, created in 2005; and a whistleblower policy, AD67 created in 2010.

environment in which Spanier, Schultz, Paterno and Curley were able to make decisions to avoid the consequences of bad publicity. Standard personnel practices were ignored or undermined by the lack of centralized control over the human resources functions of various departments – most particularly, the Athletic Department.

University administrators, faculty, staff and the Board should consider taking the following actions to create an atmosphere of values and ethics-based decision making.

2.1	Review organizational structures and make adjustments for greater efficiency and effectiveness.
2.1.1	Evaluate the span of control of the University President and make adjustments as necessary to ensure that the President's duties are realistic and capable of the President's oversight and control.
2.1.2	Evaluate the span of control and responsibility of the Senior Vice President – Finance and Business ("SVP-FB") and make adjustments as necessary to ensure that the SVP-FB's duties are realistic and capable of the SVP-FB's oversight and control.
2.1.3	Upgrade the position of the Associate Vice President for Human Resources to a Vice President position reporting directly to the University President.
2.1.4	Evaluate the size, composition and procedures of the President's Council and make adjustments as necessary.
2.2	Review administrative processes and procedures and make adjustments for greater efficiency and effectiveness.
2.2.1	Separate the University's Office of Human Resources ("OHR") from the University's Finance and Business organization.
2.2.2	Assign all human resources ("HR") policy making responsibilities to the OHR and limit the ability of individual departments and campuses to disregard the University's human resources policies and rules.

2.2.3	Centralize HR functions, where feasible, such as background checks, hiring, promotions, terminations, on-board orientation and management training, while recognizing the unique requirements of University components and Commonwealth campuses, and their need for measured autonomy.*
2.2.4	Designate the Vice President for Human Resources (“VP-HR”) as the hiring authority for HR representatives throughout the University and establish a “dotted-line” reporting relationship between the HR representatives and the VP-HR similar to that used in the Finance and Audit areas.
2.2.5	Develop job descriptions for all new key leadership positions and incumbent positions if none exist.
2.2.6	Evaluate the size of the OHR staff, benchmark its human capital capacity against public universities of similar size and scope of responsibility, and modify as necessary.
2.2.7	Adopt a Human Resource Information/Capital Management System (“HRIS/HCM”) with sufficient growth capacity for use at University Park and all Commonwealth campuses.
2.2.8	Engage external HR professionals to assist in the development of the University’s next performance management system.
2.2.9	Provide the OHR with complete access to executive compensation information and utilize the OHR, in conjunction with the University Budget Office, to benchmark and advise the administration and the Board of Trustees on matters of executive compensation.
2.2.10	Develop a mechanism to provide and track all employee training mandated by state and federal law and University policies.
2.2.11	Update, standardize, centralize, and monitor background check procedures.*
2.2.12	Require updated background checks for employees, contractors and volunteers at least every five years.*

	2.2.13 Audit periodically the effectiveness of background check procedures and the University's self-reporting system for employees.*
	2.2.14 Update computer-use policies and regularly inform employees of the University's expectations and employee responsibilities with regard to electronic data and materials.
	2.2.15 Develop a procedure to ensure that the University immediately retrieves keys and access cards from unauthorized persons.*
2.3	Complete the development of the University's Office of General Counsel ("OGC").
2.3.1	Develop a mission statement for the OGC that clearly defines the General Counsel's responsibilities and reporting obligations to the University and the Board of Trustees.
2.3.2	Select and hire a permanent General Counsel ("GC").*
2.3.3	Expand the GC's office staff to provide broader coverage of routine legal issues including employment law.
2.3.4	Appropriate sufficient budget to the OGC to hire specialized outside counsel when needed.
2.4	Advertise all senior executive positions externally and engage educational search experts to broaden the talent pools for senior executive positions.*
2.5	Integrate faculty and staff from different disciplines and areas in University-wide professional development/leadership training to increase their exposure to other University personnel, programs, challenges and solutions.*
2.6	Implement consistent, state-of-the art records management and retention procedures.
2.7	Provide sufficient support and oversight of the Office of Student Affairs to make certain that all students follow the same standards of conduct.*

2.8	Designate an individual, administrative entity or committee to approve and review all new and modified University policies.
2.8.1	Develop guidelines for creating, standardizing, approving, reviewing and updating University policies.
2.8.2	Review periodically all University policies for relevance, utility and necessity, and modify or rescind as appropriate.

3.0 – Board of Trustees: Responsibilities and Operations

Spanier and other University leaders failed to report timely and sufficiently the incidents of child sexual abuse against Sandusky to the Board of Trustees in 1998, 2001 and 2011. Nonetheless, the Board’s over-confidence in Spanier’s abilities, and its failure to conduct oversight and responsible inquiry of Spanier and senior University officials, hindered the Board’s ability to deal properly with the most profound crisis ever confronted by the University.

The Board should consider taking the following actions to increase public confidence and transparency, realign and refocus its responsibilities and operations, improve internal and external communications and strengthen its practices and procedures.

3.1	Review the administrative and governance issues raised in this report, particularly with regard to the structure, composition, eligibility requirements and term limits of the Board, the need to include more members who are not associated with the University, and the role of the Emeriti. In conducting this review, the Board should seek the opinions of members of the Penn State community, as well as governance and higher education experts not affiliated with the University. The Board should make public the results and recommendations generated from the review.
3.2	Review, develop and adopt an ethics/conflict of interest policy for the Board that includes guidelines for conflict management and a commitment to transparency regarding significant issues.

	3.2.1	Include training on ethics and oversight responsibilities in the current regulatory environment in Board member orientation.
	3.2.2	Require full and public disclosure by Board members of financial relationships between themselves and their businesses and the University.
3.3		Implement the Board's proposals for revised committee structures to include a committee on Risk, Compliance, Legal and Audit and subcommittees for Audit and Legal matters; and a subcommittee for Human Resources as part of the Committee on Finance, Business and Capital Planning.* ^{fff}
	3.3.1	Rotate Committee Chairs every five years or sooner.
3.4		Increase and improve the channels of communication between the Board and University administrators.
	3.4.1	Ensure that the University President, General Counsel and relevant members of senior staff thoroughly and forthrightly brief the Board of Trustees at each meeting on significant issues facing the University.*
	3.4.2	Require regular Risk Management, Compliance and Internal Audit reports to the Board on assessment of risks, pending investigations, compliance with federal and state regulations as well as on measures in place to mitigate those risks.
	3.4.3	Require that the SVP-FB, the GC and/or their designee to provide timely briefings to the Board on potential problem areas such as unusual severance or termination payments, Faculty and staff Emeriti appointments, settlement agreements, government inquiries, important litigation and whistleblower complaints.
	3.4.4	Use the Board's Executive Session/Question Period with the President to make relevant and reasonable inquiry into substantive matters and to facilitate sound decision-making.

^{fff} Exhibit 10-A, Pennsylvania State University Board of Trustees, Organizational Chart.

3.4.5	Review annually the University's <i>Return of Organization's Exempt from Income Tax Form (990)</i> , Clery Act reports, and the compensation and performance of senior executives and leaders.*
3.4.6	Conduct an informational seminar for the Board and senior administrators on Clery Act compliance and reporting procedures.
3.4.7	Continue to provide all Board members with regular reports of local, national and academic media coverage of the University.*
3.5	Increase and improve the channels of communication between the Board and the University community.
3.5.1	Establish and enforce rules regarding public and press statements made by Board members and Emeriti regarding confidential University matters.
3.5.2	Increase and publicize the ways in which individuals can convey messages and concerns to Board members.
3.5.2.1	Provide Board members with individual University email addresses and make them known to the public.
3.5.2.2	Use common social media communications tools to communicate with the public on various Board matters.
3.6	Develop a critical incident management plan, including training and exercises, for the Board and University administrators.
3.7	Continue to conduct and publicize periodic internal and external self-assessments of Board performance.*

4.0 – Compliance: Risk and Reporting Misconduct

The University's incomplete implementation of the Clery Act was a contributing factor in the failure to report the 2001 child sexual abuse committed by Sandusky. A strong compliance function, much like exists in the University's financial area, should encourage individuals to report misconduct more readily in the future. A regularized risk identification and management system is as prudent and consistent with best business practices.

University administrators and the Board should consider taking the following actions to ensure compliance with the multiple laws, regulations, rules and mandates that effect its operations, risk management and national reputation.

4.1	Establish and select an individual for a position of "Chief Compliance Officer,"* The Chief Compliance Officer should:
4.1.1	Head an independent office equivalent to the Office of Internal Audit.
4.1.2	Chair a Compliance Council.
4.1.3	Coordinate compliance functions in a manner similar to the Office of Internal Audit.
4.1.4	Have similar access to, and a reporting relationship with the Board, as does the Internal Auditor.
4.1.5	Coordinate the Chief Compliance Officer's responsibilities with the Office of General Counsel, the Director of Risk Management and the Director of Internal Audit.
4.1.6	Direct further review of any incidents or risks reported to the Compliance Officer.
4.2	Assign full-time responsibility for Clery Act compliance to an individual within the University Police Department and provide the individual with sufficient resources and personnel to meet Clery Act regulations.* The individual responsible for Clery Act compliance should:

4.2.1	Establish a University policy for the implementation of the Clery Act.
4.2.2	Create a master list of names of those persons with Clery Act reporting responsibilities, notify them annually of the Clery Act responsibilities and publish the list to the University community.
4.2.3	Require, monitor and track training, and periodic retraining for Campus Security Authorities (“CSAs”) on Clery Act compliance.
4.2.4	Provide information to the OHR on Clery Act responsibilities, reporting suspicious activity to CSAs and whistleblower protection for inclusion in the general training for all employees.
4.2.5	Coordinate timely notices of incidents and threat warnings with the Vice President for Student Affairs, the Chief Compliance Officer and the General Counsel.
4.2.6	Review annual Clery Act reports with the President’s Council, the Board of Trustees and the Compliance Officer.
4.2.7	Coordinate Clery Act training and compliance with responsible officials at the Commonwealth campuses.
4.2.8	Arrange for periodic internal and external audits of Clery Act compliance.
4.3	Update regularly and prioritize the University’s list of institutional risks; determine the appropriate implementation and audit schedule for those risks; and present the results to the Board.
4.4	Send a communication to all University students, faculty and staff at the beginning of each academic term: that encourages the reporting of misconduct; describes the channels for direct or anonymous reporting; and the University’s whistleblower policy and protection from retaliation.
4.5	Publicize the employee misconduct hotline regularly and prominently throughout the University on a variety of platforms including social media networks and the webpages of individual University components.*

5.0 – Athletic Department: Integration and Compliance

For the past several decades, the University's Athletic Department was permitted to become a closed community. There was little personnel turnover or hiring from outside the University and strong internal loyalty. The football program, in particular, opted out of most of the University's Clery Act, sexual abuse awareness and summer camp procedures training. The Athletic Department was perceived by many in the Penn State community as "an island," where staff members lived by their own rules.

University administrators and the Board of Trustees should consider taking the following actions to more fully involve the Athletic Department within the broader University community; provide relevant training and support to the Athletic Department staff to ensure compliance with external regulations and University policies; and maintain a safe environment for those who use the University's recreational facilities, especially children.

5.1	Revise the organizational structure of the Athletic Department to clearly define lines of authority, responsibilities and reporting relationships.
5.2	Evaluate security and access protocols for athletic, recreational and camp facilities and modify as necessary to provide reasonable protections for those using the facilities.*
5.3	Conduct national searches for candidates for key positions, including head coaches and Associate Athletic Director(s) and above.
5.4	Integrate, where feasible, academic support staff, programs and locations for student-athletes.*
5.5	Provide the University's Athletic Compliance Office with additional staff and adequate resources to meet its many responsibilities.*
5.5.1	Benchmark against peer institutions to determine an appropriate staffing level for the office.
5.5.2	Establish an effective reporting relationship with the University Compliance Officer.

5.5.3	Realign the compliance-related responsibilities of Athletic Department staff members to ensure that the Athletic Compliance Office has oversight of the entire program.
5.5.4	Ensure that new hires and incumbent compliance personnel have requisite working knowledge of the NCAA, Big Ten Conference and University rules.
5.6	Ensure that Athletic Department employees comply with University-wide training mandates.
5.6.1	Provide and track initial and on-going training for athletic staff in matters of leadership, ethics, the Penn State Principles and standards of conduct, abuse awareness, and reporting misconduct pursuant to the Clery Act and University policy.
5.6.2	Include Athletic Department employees in management training programs provided to other University managers.

6.0 – University Police Department: Oversight, Policies and Procedures

The University Police Department promptly responded to the 1998 complaint about Sandusky’s conduct, but the sensitivity of the investigation and the need to report on its progress to a senior administrator could have compromised the extent of its inquiry. The independence of the University’s law enforcement function is essential to providing unbiased service and protection to the University community. The University Police Department’s recent restructuring and additional training for its employees is an important step in the continuous improvement of the Department.

The University Police Department and/or University administrators should consider taking the following additional actions to improve the functions and oversight of the University’s law enforcement services:

6.1	Arrange for an external examination of the University Police Department's structure, organization, policies and procedures through a professionally recognized accreditation body, ^{§§§} with a particular emphasis on the University Police Department's training for and qualifications of sex abuse investigators.*
6.2	Review the organizational placement of the University Police Department in the University's Finance and Business area in conjunction with the review of the span of control of the SVP-FB. (See Section 2.0)
6.3	Provide the Vice President/Director of Public Safety with sufficient administrative authority and resources to operate effectively and independently.
6.4	Review records management procedures and controls and revise where needed.*
6.4.1	Establish a policy to ensure that all police reports alleging criminal conduct by Penn State students, faculty and staff are reported to the OHR.^{hhh}
6.4.2	Establish or reinforce protocols to assign a timely incident number and proper offense classification to all complaints received.^{iii*}
6.4.3	Include the final disposition of each complaint in the original or follow-up report (e.g., founded, unfounded, exceptionally cleared).
6.5	Establish a policy to request assistance from other law enforcement agencies in sensitive or extraordinary cases or where a conflict of interest may exist.

^{§§§}The University Police Department has engaged the Pennsylvania State Police Chiefs Association to conduct an external review. For a more expansive review, the University should utilize an organization that has extensive experience in reviewing and accrediting college and university police departments, such as the Commission on the Accreditation on Law Enforcement ("CALEA").

^{hhh}Notifications regarding students, faculty and staff who are confirmed suspects of allegations of criminal conduct are made to the OHR as a standard practice, but there is no departmental policy to confirm or guide the practice.

ⁱⁱⁱThe University Police Department has established an automatic system to assign timely incident numbers and eliminated the "Administrative" category of offenses.

6.6	Implement consistent law enforcement standards and practices, through regular training at all Penn State campuses.
6.7	Review and update, with the GC, the current policies pertaining to the investigation of various categories of offenses involving Penn State employees.
6.8	Provide specialized training to investigators in the area of sexual abuse of children.

7.0 – Management of University Programs for Children and Access to University Facilities

Over the years, University policies regarding programs for non-student minors were inconsistently implemented throughout the University. Enforcement of those policies was uneven and uncoordinated and, as a result, Sandusky was allowed to conduct football camps at University Park and three Commonwealth campuses without any direct oversight by University officials. The University's background check process also was arbitrarily applied and on-site supervision at camps was sometimes provided by staff members who had not been fully vetted.

University administrators and the Board of Trustees should consider taking the following actions to create a safer environment for children involved in University programs, activities, and who use its facilities. University administrators must provide better oversight of staff members responsible for youth programs and increase abuse awareness through training of responsible adults.

7.1	Increase the physical security and access procedures in areas frequented by children or used in camps and programs for children.*
7.2	Require and provide abuse awareness and mandatory reporter training to all University leaders, including faculty, coaches and other staff, volunteers and interns.¶¶

¶¶On June 6, 2012, the University implemented AD72, *Reporting Suspected Child Abuse*, requiring all University personnel to report incidents or allegations of suspected abuse or be subject to disciplinary action, up to, and including, dismissal.

	<p>7.2.1 Consolidate the responsibility for abuse awareness training and mandatory reporting in the OHR and coordinate an abuse awareness training program throughout the University's campuses.*</p>
<p>7.3</p>	<p>Consolidate oversight of the University's policies and procedures for programs involving non-student minors in the OHR and appoint a coordinator to oversee the implementation of those policies. The Coordinator should have sufficient authority to:</p>
	<p>7.3.1 Develop and maintain an inventory of all University programs for children.*</p>
	<p>7.3.2 Update, revise or create policies for unaccompanied children at University facilities, housing and University programs.*</p>
	<p>7.3.3 Enforce all policies relating to non-student minors involved in University programs at all Penn State campuses.</p>
	<p>7.3.4 Assist the University's camp and youth program administrators in ensuring that staff and volunteers are appropriately supervised.</p>
	<p>7.3.5 Provide information to parents of non-student minors involved in University programs regarding the University's safety protocols and reporting mechanisms for suspicious or improper activity.</p>

8.0 – Monitoring Change and Measuring Improvement

The Pennsylvania State University has taken several significant steps to improve its governance and more adequately protect the hundreds of thousands of children who use its facilities and participate in its programs every year. However, restoring confidence in the University's leadership and the Board will require greater effort over a prolonged period of time. As the institution moves forward, it is incumbent upon its leaders to monitor those changes, make adjustments as necessary and communicate their progress to the Penn State community as well as to the public.

University administrators and the Board of Trustees should consider taking the following actions to ensure that their initiatives to prevent and respond to incidents of sexual abuse of children and to improve University governance are duly enforced, monitored, measured and modified as needed:

8.1	Designate an internal monitor or coordinator to oversee the implementation of recommendations initiated, or adopted, by the Board and/or the University administration. The monitor/coordinator would:
8.1.1	Chair a panel of the individuals responsible for developing and implementing these and other approved recommendations and for establishing realistic milestones.
8.1.2	Select a practical and diverse number of members of the University community and solicit input from the larger University community, to provide insights and recommendations to the monitor. (See Recommendation 1.0)
8.1.3	Report actions and accomplishments regularly to the Board of Trustees and University administration.*
8.2	Provide the monitor, or the Chief Compliance Officer, with the authority and resources to hire appropriate external evaluators/compliance auditors to certify that milestones for implementation of these recommendations are being met.
8.3	Conduct a review of the University's progress 12 months from the acceptance of this report using internal and external examiners and provide the findings to University administrators, the Board and the public.
8.4	Conduct a second review of the University's progress 24 months from the acceptance of this report using internal and external examiners and provide the findings to University administrators, the Board and the public.