

The NASM Code of Ethics

A Discussion of the Revisions Approved by the Membership, December of 2020

May 19, 2021

The Webinar will begin momentarily.

The NASM Code of Ethics

- ❖ The NASM Code of Ethics

- ❖ is an integral part of the overall agreement of accredited member institutions to work together for the good of students, institutions, and the field
- ❖ has a balancing function with respect to the admission, award of aid, and transfer of students — works locally and nationally as hundreds of individual institutions follow the Code's basic protocols established by the vote of the entire membership
- ❖ supports healthy competition and thorough exploration of educational possibilities
- ❖ provides a framework for mobility, indicates equitable practices, and sustains the concept of mutual commitments between institutions and students
- ❖ has been and remains based on a set of enduring principles

Publication of the NASM Code of Ethics

- ❖ The Code's provisions are included in the *NASM Handbook*
- ❖ The current edition of the *Handbook* may be found online
 - ❖ *NASM Handbook 2020-21*
 - ❖ <https://nasm.arts-accredit.org/accreditation/standards-guidelines/handbook/>

The Code's Articles

- ❖ Article I: Basic Responsibilities
- ❖ Article II: Student Recruitment*
- ❖ Article III: Financial Aid*
- ❖ Article IV: Transfer Students*
- ❖ Article V: Faculty Appointments
- ❖ Article VI: Compliance
- ❖ Article VII: Amendments
- ❖ **Revisions considered and approved by the NASM Membership in December of 2020*

Why Revise the Code's Provisions

- ❖ Background: Department of Justice Actions

- ❖ Due to concerns held by the US Department of Justice (DOJ) as they pertain to the alleged violation of Section 1. of the Sherman Antitrust Act (see 15 U.S.C. § 1), DOJ in December of 2019 filed a complaint (see Federal Register dated January 10, 2020).
- ❖ Complaint proceedings resulted in the issuance by DOJ of a Final Judgment in April of 2020.
- ❖ The complaint outlines “prohibited conduct” in that there shall be no attempt to:
 - ❖ “establish, attempt to establish, maintain, or enforce any”:
 - ❖ “Early Decision Incentives Rule”
 - ❖ “First-Year Undergraduate Recruiting Rule”
 - ❖ “Transfer Student Recruiting Rule”

Final Judgment Rule Definitions

- ❖ Person

- ❖ “...any natural person, college or university, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.”

Final Judgment Rule Definitions

- ❖ Early Decision Incentives Rule

- ❖ “...any Rule or Agreement...that restrains any person from offering incentives to students applying under an Early Decision application plan that are not available to students applying under a different application plan.”

Final Judgment Rule Definitions

- ❖ First-Year Undergraduate Recruiting Rule
 - ❖ “...any Rule or Agreement...that restrains any college or university from recruiting or offering enrollment incentives to first-year college applicants on the basis that (a) a particular date has passed; (b) the applicants have either declined admission or not affirmatively indicated that they are still interested in attending that institution; or (c) the applicants have already enrolled in, registered at, declared their intent to enroll in or register at, or submitted contractual deposits to other institutions.”

Final Judgment Rule Definitions

- ❖ Transfer Student Recruiting Rule

- ❖ "...any Rule or Agreement...that restrains any person from recruiting or offering enrollment incentives to transfer students."

Applicability of the Final Judgment

- ❖ The Final Judgment “applies to NACAC, and to all other persons in active concert or participation with NACAC who receive actual notice of this Final Judgment by personal service or otherwise.”

DOJ Proceedings and Findings

- ❖ NASM has been monitoring actively DOJ activities regarding and related to this issue since September of 2017; these efforts will continue
- ❖ The provisions included in the Final Judgment resulted in the necessity for NASM to review and consider modifications to its Code of Ethics

NASM Activities and Actions

- ❖ NASM

- ❖ reviewed and considered the DOJ Final Judgment

- ❖ proposed revisions to some of the language present in the Code of Ethics

- ❖ The NASM membership took action in December of 2020 to amend language in certain Articles of the Code, specifically,*

- ❖ Article II: Student Recruitment

- ❖ Article III: Financial Aid

- ❖ Article IV: Transfer Students

- ❖ **A redlined version of the changes to these articles may be found on the NASM website, <https://nasm.arts-accredit.org/wp-content/uploads/sites/2/2021/01/M-2019-20-Handbook-Addendum-Final-01-18-2021.pdf>*

NASM Concerns

- ❖ The DOJ Final Judgment
 - ❖ voids many traditional provisions and balances for higher education as a whole
 - ❖ is based on a narrow definition of consumer interest
 - ❖ does not take into consideration the specific natures of disciplines

Of Note

- ❖ The NASM Code of Ethics has been and remains based on a set of principles on which the Final Judgment has no effect

Of Note

- ❖ The NASM Code of Ethics and DOJ Final Judgment texts
 - ❖ Leave institutions responsible, as they always have been, for conducting student recruitment and awarding aid mindful of various factors that need to be addressed if the process is to work well for each institution and for all institutions, for each student and for all students

Of Note

- ❖ The current edition of the NASM *Handbook* (i.e., *Handbook 2020-21*) includes all current and in force standards and guidelines, including those pertaining to the ethical practices of institutions offering collegiate study in music.

Of Note

- ❖ Institutions are asked to remain cognizant of
 - ❖ and abide by the standards and guidelines outlined in the *Handbook*
 - ❖ the language removed from the Code of Ethics as it serves as an advisory for accredited institutional members of NASM as it pertains to historical practices related to student recruitment, financial aid, and transfer students

Of Note

- ❖ Although certain specific activities are now prohibited as outlined in the DOJ Final Judgment, it is important to remember that
 - ❖ a hallmark of the work of NASM accredited institutional members is the continuing and unwavering regard held for ethical practices that are fair, applied equitably, and continue to serve and protect both institutions and students, and the field
 - ❖ abiding principles inherent in the work of NASM may be freely exercised absent the presence of articulated requirements

Of Note

- ❖ The DOJ Final Judgment provides a sense of the tenor of the DOJ as indicated by the Final Judgment's provisions. It is recommended that institutions making or planning to make changes to existing procedures and protocols as they relate to student recruitment review and become familiar with the provisions of the Final Judgment.

Of Note

- ❖ Institutions should become cognizant of antitrust laws, and in doing so, avoid
 - ❖ conflating law with principle
 - ❖ collusion or the appearance thereof

Of Note

- ❖ Institutions planning to make changes may wish to seek the advice of counsel

No Simple Answers

- ❖ When making decisions,
 - ❖ consideration should be given to the inherent risk to and possible impact on
 - ❖ music students
 - ❖ your institution
 - ❖ all institutions
 - ❖ the field
 - ❖ take into account and prepare for reactions to actions taken
 - ❖ assume a posture of “do no harm”

Formulating Plans/Creating Policies

- ❖ With regard to issues pertaining to student recruitment, institutions are reminded of the necessity to consult
 - ❖ The NASM Standards and Code of Ethics
 - ❖ Existing protocols established by the institution
 - ❖ The provisions of the DOJ Final Judgment (dated April 17, 2020)
 - ❖ Applicable law and regulations
 - ❖ Etc.

Formulating Plans/Creating Policies

- ❖ With regard to the provisions outlined in DOJ Final Judgment, it is advisable to return to the specific language employed in the Final Judgment, recalling that the language pertaining to the three areas of prohibited conduct specifically speaks to intentions to *restrain activities*. It does not prohibit the establishment of good and effective practices.

Question

- ❖ May institutions design and implement procedures that bind students to mutual understandings and agreements by a specific date?
 - ❖ NASM requirements
 - ❖ DOJ prohibitions
 - ❖ Current law and regulation
 - ❖ The impact the decision may have on the work of music institutions and their students

Article II - Mutual Commitments

- ❖ “Institutions may articulate in writing mutual commitments between the students and the institution which must clearly state the nature of commitments and obligations they impose on...all...involved, and...the conditions under which such commitments may be released by any or all... parties...”

Question

- ❖ May institutions create policies that outline protocols as they pertain to admission and the award of aid?
 - ❖ NASM requirements
 - ❖ DOJ prohibitions
 - ❖ Current law and regulation
 - ❖ The impact the decision may have on the work of music institutions and their students

Article III: Institutional Policies

- ❖ “Financial aid shall be awarded according to the criteria and through the procedures established by the member institution granting the award.”

Question

- ❖ May institutions affirmatively recruit an enrolled student if the student will not have completed the program of study prior to the time of transfer?
 - ❖ NASM requirements
 - ❖ DOJ prohibitions
 - ❖ Current law and regulation
 - ❖ The impact the decision may have on the work of music institutions and their students

Article IV: Transfer Student

- ❖ The term “transfer student” is interpreted to mean an enrolled student progressing toward completion of a degree program who has initiated action or indicated some interest in transferring.

Title IV: *Affirmatively Recruit*

- ❖ The term “affirmatively recruit” suggests that there exists a mutual or implied agreement or understanding that enables the conversation to advance.

Question

- ❖ Without the articulated boundaries that were included in the previous iteration of the NASM Code of Ethics, what impetus exists to ensure that institutions remain attentive to the long-standing historical practices of NASM?

Looking ahead

- ❖ Maintaining a delicate balance
- ❖ Sharing a vision which addresses the needs of students, all institutions offering music study, and the field
- ❖ The belief in long-standing principles upon which the Code rests
- ❖ The responsibility to protect and advance music education and training

Assistance

- ❖ As appropriate, seek information / interpretation from:
 - ❖ Counsel with regard to the DOJ Final Judgment and its interpretation / application, and institutional protocols
 - ❖ NASM staff with regard to the provisions of the Code of Ethics and their interpretation / application

Appreciation

- ❖ Thank you for your commitment to principles which uphold long-standing approaches and practices as they relate to student recruitment. These principles support and advance, in productive and collegial ways, the education and training of musicians.