

NCAA DIVISION I INFRACTIONS APPEALS COMMITTEE

POLICIES AND PROCEDURES GUIDE

1. INTRODUCTION.

This guide has been created to aid NCAA Division I institutions and individuals in understanding the infractions appeals process and procedures. These procedures and policies have been developed by NCAA member institutions through adopted legislation and by the NCAA Division I Infractions Appeals Committee. Questions regarding situations in the appeals process not specifically addressed by these procedures and policies should be submitted to the NCAA primary staff liaison for committee, who will refer them to the Infractions Appeals Committee. Contact information for the committee and staff is contained on the last page of this guide.

This policy and procedure guide will accompany the NCAA Division I Committee on Infractions Panel's (panel) decision informing the institution/involved individual of its right to appeal and the exact deadline for the submission of its notice of appeal to the Infractions Appeals Committee.

An appeal is not a new hearing that provides a second chance to argue the case. The Infractions Appeals Committee will reverse or modify decisions of the Committee on Infractions panel's involving Level I or Level II violations only if the individual or institution can show one or more of the following grounds:

- a. A factual finding is clearly contrary to the evidence presented to the panel;
- b. The facts found by the panel do not constitute a violation of the NCAA constitution and bylaws;
- c. There was a procedural error and but for the error, the panel would not have made the finding or conclusion; or
- d. In prescribing a penalty, the panel abused its discretion.

The Infractions Appeals Committee acts on the basis of the record in the case. It will not consider evidence that was not presented to the panel, except in the limited circumstances.

All previous Infractions Appeals Committee decisions may be found on the NCAA's Web site at www.ncaa.org in the Legislative Services Database for the Internet. Institutions and individuals are encouraged to review these reports and to use those involving similar violations and issues on appeal as guides when presenting an appeal.

2. THE RIGHT TO APPEAL.

a. Standing: Who may appeal?

An institution or an individual who has been found by the panel to have been involved in a violation of NCAA constitution or bylaws may appeal to the Infractions Appeals Committee. An individual may appeal regardless of whether the institution does so, and vice-versa. The appeals are independent of each other. An institution/individual may accept the findings facts or conclusions and still appeal the penalty, and may appeal one element of the penalty while accepting others.

The appeal may be heard through either in-person oral argument or review of written record. An institution or involved individual may not request an in-person oral argument before the Infractions Appeals Committee unless the institution or involved individual has made an in-person appearance before the panel.

The Infractions Appeals Committee will not hear an appeal submitted by an individual who has not appeared (either in person or through written presentation) the panel's hearing.

A letter explaining how to initiate an appeal and a copy of this Policies and Procedures Guide will accompany the panel's decision informing the institution and individual(s) of the right to appeal and the deadline for submission of the Notice of Appeal to the Infractions Appeals Committee.

b. Grounds for an appeal and standard of review.

Determinations of fact and conclusions found by the panel shall not be set aside on appeal, except after a showing that:

- (1) The Committee on Infractions' finding is clearly contrary to the evidence presented;

- (2) The facts found by the Committee on Infractions do not constitute a violation of the Association's rules; or
- (3) There was a procedural error and but for the error, the Committee on Infractions would not have made the finding of violation.

A penalty prescribed by the panel shall not be set aside on appeal, except after a showing that in prescribing a penalty, the panel abused its discretion.

3. THE APPEAL.

a. Submission of Written Material

Deadlines for the submission of written documents within the infractions appeals, except for the Notice of Appeal, shall be considered met if the written document is submitted electronically to the NCAA Infractions Appeals Committee liaisons by 5 p.m. Eastern time on the due date. Electronic submission to the liaisons shall be completed through a method designated by the Infractions Appeals Committee. Immediately after electronic submission, hard copies of the written documents shall be provided directly from the filing party to all members of the Infractions Appeals Committee.

b. Notice of Appeal.

(1) Deadline for Submission.

Written notice of appeal by an institution/individual must be received by the NCAA primary staff liaison not later than 15 calendar days from the date of the public release of the panel's decision.

(2) Notice of Appeal Content.

- (a) The institution/individual must submit the Notice of Appeal on the form provided by the panel.
- (b) The Notice of Appeal must identify on the form the specific factual findings, conclusions and penalties being appealed to the Infractions Appeals Committee. The

institution/individual must indicate the basis for appealing each factual finding, conclusion and penalty.

- (c) The Notice of Appeal must indicate whether the institution/individual will submit its appeal only in writing or will also appear in-person at the oral argument before the Infractions Appeals Committee.
- (d) If an institution/individual appeals only a factual finding and conclusion made by the panel, the penalties are not stayed and remain in full effect during the appeals process. If the institution/individual appeals one or more of the penalties prescribed, only the specific penalties appealed are stayed pending the Infractions Appeals Committee's decision. This stay is automatic.¹
- (e) If an institution/individual appeals only specific penalties imposed by the panel, the Infractions Appeals Committee will confine its decision to the specific penalty (or penalties) appealed, but will consider all of the penalties imposed when making this decision.
- (f) In the case of an individual appellant, the Notice of Appeal must state whether that individual is then currently employed at an NCAA institution (regardless of the division of the institution). Further, if the individual's employment changes during the course of the appeal process (that is, from the time of the submission of the notice of appeal through the release of final Infractions Appeals Committee report), the individual must notify the Infractions Appeals Committee, through its liaisons, of that change, including the identity of the new employer.

c. Initial Submission.

The Infractions Appeals Committee will acknowledge receipt of a timely notice of appeal in writing. The institution/individual has 30 days from the date of the notice of appeal acknowledgement to file an initial submission with the Infractions Appeals Committee. The institu-

¹ This does not affect the application of Bylaws 13.1.1.3.3 and 14.8.2 and the application of the official interpretation: [Reference 9/19/95, Item No. 2].

tion/individual must submit an initial submission in order to perfect its appeal to the Infractions Appeals Committee. Failure to submit an initial submission will result in dismissal of the appeal. (See section 3.a of this guide for written material submission instructions.)

d. Access to the Record on Appeal.

After the institution/individual has filed a notice of appeal, the institution/individual will be provided access to the custodial file through the Web-based custodian system. If use of the Web-based custodian system is unavailable, the NCAA staff liaison will designate a custodial site for purposes of providing the institution/individual with access to portions of the record on appeal. The staff will consult with the institution/individual so that a convenient and appropriate custodian is selected.

Those portions of the record on appeal that may only be reviewed through the custodial arrangement include: (1) a copy of the official transcript of the Committee on Infractions' hearing; (2) the Committee on Infractions' report; (3) the Committee on Infractions' response to the written appeal; and (4) any additional materials which the Infractions Appeals Committee has authorized to become part of the record of appeal.

These materials may only be reviewed by the individual and authorized representatives of the institution/individual (including legal counsel). Duplication of material is prohibited. Those reviewing the material may take handwritten notes or may use a mechanical recording device to make verbal notes, provided no verbatim records of the reviewed information are made.

The institution/individual also may review these portions of the record on appeal at the NCAA national office.

e. Panel's Response to the Written Appeal.

- (1) The panel's committee appeal advocate must file a response to a written appeal with the Infractions Appeals Committee within 30 days from the date of the letter acknowledging receipt of the written appeal. (See section 3.a of this guide for written material submission instructions.)

- (2) This response shall include: (a) a statement of the origins of the case; (b) the violations of the NCAA constitution and bylaws found by the Committee on Infractions; (c) disciplinary or corrective actions taken by the institution or conference or any other agency involved in the particular incident; (d) the Committee on Infractions' proposed penalties; (e) the issue(s) raised in the appeal; (f) the Committee on Infractions' response to the issue(s) raised on appeal; and (g) any additional information that was presented to the Committee on Infractions during its consideration of the case that the Committee on Infractions deems relevant to consideration of the appeal.

f. Institutional/Individual Rebuttal to the Panel's Response.

The institution/individual may submit a rebuttal to the panel's response. This rebuttal must be submitted within 14 days and must be confined to specific matters set forth in the panel's response. (See section 3.a of this guide for written material submission instructions.)

g. Enforcement Staff Statement.

The enforcement staff may submit written information regarding perceived new information, errors, misstatements and/or omissions relating to the appellant's initial submission, panel's response and/or rebuttal documents. This enforcement staff statement must be received within 10 days of the notification of the receipt of the rebuttal to the panel's response.

The enforcement staff statement shall be limited to a direct and specific identification of the new information, errors, misstatements and/or omissions, and shall contain no argument. In addition, the identification shall include the specific page(s) at which the new information, errors, misstatements, and/or omissions appear and where in the record the information which the enforcement staff believes is correct or accurate appears.

h. Response to Enforcement Staff Statement.

Within 10 days of the enforcement staff statement, the appellant shall be permitted to provide a response which shall be limited solely to an identification of record information, if any, which supports the accuracy of the alleged error, misstatement, or omission identified by the enforcement staff. The appellant's submittal shall include no argument beyond such direct and limited identification. The Infractions Appeals Committee will notify all parties of its determination of the accuracy of the challenged information.

i. Access to Appeal Submissions by other Parties.

- (1) **Appeal by the individual.** If the panel's decision involves an individual as well as an institution and the individual appeals to the Infractions Appeals Committee, the institution is not entitled, in every case, to receive a copy of the individual appellant's written appeal or rebuttal to the panel's response. The institution may request a copy from the individual appellant. If this request is denied, the institution may request a copy from the Infractions Appeals Committee. The Infractions Appeals Committee will make a copy available in appropriate circumstances.
- (2) **Appeal by the institution.** If the panel's decision involves an individual as well as an institution and the institution appeals to the Infractions Appeals Committee, the individual is not entitled, in every case, to receive a copy of the institution's written appeal or rebuttal to the panel's response. The individual may request a copy from the institution. If this request is denied, the individual may request a copy from the Infractions Appeals Committee. The Infractions Appeals Committee will make a copy available in appropriate circumstances.

j. Record on Appeal.

The Infractions Appeals Committee will consider only the record on appeal, which shall consist of:

- (1) The record before the panel;
- (2) The official transcript and report of the panel's hearing;

- (3) The institution/individual's notice of appeal and initial submission;
- (4) The panel's response to the initial submission;
- (5) The institution/individual's rebuttal, if any;
- (6) The enforcement staff's written submittal, if any; and
- (7) The appellant's response to the enforcement staff statement, if any.

The Infractions Appeals Committee may consider requests to supplement the record with additional material.

It is permissible for an institution/individual or the panel to provide, as part of its appeal submission, brief portions of materials submitted to the panel in conjunction with the hearing before that body. In appeals in which a summary disposition report is referenced, only relevant portions of the report should be attached to the appeal submission.

k. Consideration of Evidence.

The Infractions Appeals Committee shall consider only the information contained in the record(s) of proceedings before the panel and the record on appeal.

- (1) If an institution or involved individual seeks to introduce information/evidence during the appeals process that was not presented to the panel for its consideration **and** could reasonably have been ascertained prior to the panel hearing, it will not be considered by the Infractions Appeals Committee.
- (2) If an institution or involved individual seeks to introduce information/evidence during the appeals process that was not presented to the panel for its consideration **and** could not reasonably have been ascertained prior to the panel hearing, it is considered "new evidence" and should be handled accordingly.

l. Handling of New Evidence.

Any party wishing to rely on new evidence shall submit such evidence to the chair of the Infractions Appeals Committee. The Infractions Appeals Committee chair will forward material suggested to be “new evidence” to the committee appeal advocate. Within 10 days, the panel, through the committee appeal advocate, will state in writing whether such evidence could have materially affected any decision made by the panel. The Infractions Appeals Committee will make specific findings and notify all parties whether the case will be remanded to the panel or the new evidence excluded.

In no event will any party be permitted to present for the first time at an oral argument of the Infractions Appeals Committee any information that was not presented to the panel for its consideration.

THE ORAL ARGUMENT.

- **Oral Argument Procedures and Format.**

(1) The institution/individual shall be permitted a reasonable time to make an oral presentation to supplement its written appeal. The committee appeal advocate shall then be permitted a reasonable time to orally present the panel’s response. The period of time for the presentation by the institution/individual and the committee appeal advocate shall be left to the discretion of the chair of the Infractions Appeals Committee.

(2) Oral argument Attendance:

A minimum of three Infractions Appeals Committee members must be present to consider an appeal. If one or more of the Infractions Appeals Committee members is unable to participate in hearing a case, the chair of the Infractions Appeals Committee may designate a former member of the committee as a temporary substitute.

(a) Institution/Conference.

The chief executive officer and director of athletics of an appealing institution are required to attend the oral argument. Faculty athletics representatives may attend, but are not required. Other university representatives whom

the institution deems appropriate or a conference representative may attend the oral argument.

(b) Individual.

The individual who has requested an in-person oral argument, or their representative, is required to attend.

(c) The panel will be represented by its committee appeal advocate and the NCAA managing director for the office of Committee on Infractions.

(d) Others.

i. The vice president for enforcement and two NCAA enforcement staff members familiar with the case may attend the oral argument.

ii. Two representatives of nonappealing party may attend the oral argument as a silent observer.

(3) Participation in the Oral Argument by the Enforcement Staff:

The presentation by the enforcement staff in an Infractions Appeals oral argument shall not be accepted during either party's presentation, but instead must be made, if at all, at the conclusion of the presentation during which the information to which the enforcement staff wishes to respond is presented. The enforcement staff may identify new information, error, misstatement or omission only if such allegedly offending material is raised for the first time during the oral argument. If the new information, error, misstatement, or omission is contained in the parties' written submissions and is identified by the enforcement staff in the enforcement's written submittal, then the enforcement staff may not correct again if the information is repeated during the oral argument. Further, if the new information, error, misstatement, or omission is contained in the parties' written submissions and is not identified by the enforcement staff in the enforcement staff's written submittal, then the enforcement staff may not identify such material for the first time during the oral argument. This presentation may occur upon oral request by the enforcement staff at the conclusion of the oral argument period during

which the enforcement staff believes that the offending material was presented.

5. POST-ORAL ARGUMENT PROCEDURES AND POLICIES.

- a. The Infractions Appeals Committee shall act on an appeal by majority vote of the members present and voting.
- b. The decision of the Infractions Appeals Committee is final and shall not be subject to further review by any other authority.
- c. The Infractions Appeals Committee's final written decision shall be sent to the appellant institution/individual and all other appropriate parties involved one day prior to the public release.
- d. The Infractions Appeals Committee will announce its final decision publicly in coordination with the NCAA's public relations staff.

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