

NCAA ENFORCEMENT CHARGING GUIDELINES

Guidelines for Allegations

When determining whether a hearing panel of the Committee on Infractions could conclude that a Level I or II violation occurred (Bylaw 19.7.1), the enforcement staff must (a) use only attributable information and documentation and (b) evaluate relevant information in a fair and objective manner. In exercising its discretion to bring or not bring an allegation, the enforcement staff should also review relevant bylaw interpretations and prior similar cases as appropriate. Case-specific interpretations are addressed in [Division I Enforcement Internal Operating Procedure 2-1](#).

Decisions whether to bring allegations are made on a case-by-case basis. Unethical conduct, failure of head coach responsibility, lack of institutional control and failure to monitor are among the most serious allegations the enforcement staff can bring. Accordingly, the following are general guidelines the enforcement staff will consider when determining whether to bring the identified allegations.

Unethical Conduct

Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member (e.g., coach, professor, tutor, teaching assistant, student manager, student trainer, etc.) may include, but is not limited to, the following:

- Refusal to furnish information – Unless there are extenuating circumstances that would prevent an individual's participation in an interview and/or provision of requested information, the enforcement staff will allege a violation of Bylaw 10.1-(a) when one or more of the following factors exist:
 - There is a nexus between the information requested and the underlying alleged violation(s);
 - An individual's agreement to interview or produce requested information is untimely; or
 - The failure or refusal to interview or produce requested information hinders the ability to discover pertinent information, slows the timely progress of the matter or otherwise negatively impacts efforts to conduct a thorough investigation.
- Knowingly furnishing the NCAA or the individual's institution false or misleading information – Unless extenuating circumstances exist, the enforcement staff will allege a violation of Bylaw 10.1-(c) when an individual provides false or misleading information during an investigation and when one or more of the following factors exist:
 - The alleged false or misleading information hinders the ability to discover pertinent information, slows the timely progress of the matter or otherwise negatively impacts efforts to conduct a thorough investigation;
 - There is a lapse in time between the provision of false or misleading information and any later corrected statement;
 - Any later corrected statement was secured by the enforcement staff or the institution, rather than being volunteered by the interviewee; or
 - There is a nexus between the underlying alleged violation and the provision of false or misleading information.

Unless extenuating circumstances exist, the enforcement staff will allege a violation of Bylaw 10.1-(c) when an individual attempts to influence others to furnish false or misleading information to the enforcement staff, particularly when the individual exercises some degree of oversight or authority over the other individual (such as a coach influencing a student-athlete to report false or misleading information to the enforcement staff).¹

Pursuant to Bylaws 10.1 and 19.2.3, current and former institutional staff members have an affirmative obligation to cooperate with NCAA investigations. Where conduct giving rise to a Bylaw 10.1-(a) or 10.1-(c) allegation occurred while the involved individual was not employed at the institution where the underlying alleged infraction(s) occurred, the enforcement staff will not attach the unethical-conduct allegation to that institution.² Instead, the enforcement staff will issue a separate notice of allegations and any resulting show-cause order would apply to NCAA member institutions.

Pursuant to Bylaw 19.9.1-(d), unethical conduct is presumed to be a Level I violation. In rare situations based on individual facts of a case, the enforcement staff may exercise its discretion to allege unethical conduct as a Level II violation instead of Level I.

Head Coach Responsibility

If there is a potential Level I or II violation in a sport program, the head coach is presumed responsible for the violation pursuant to Bylaw 11.1.1.1, and the enforcement staff will gather information regarding whether the head coach promoted an atmosphere of compliance and monitored the activities of his or her staff.

In determining whether the head coach promoted an atmosphere of compliance and monitored the activities of his or her staff, the enforcement staff will consider the head coach's overall communications, monitoring efforts and activities that demonstrate his or her commitment to compliance as well as the specific circumstances surrounding the alleged underlying violation(s). Examples of factual information that may inform the enforcement staff's analysis include, but are not limited to, the following:³

Examples of Commitment to Compliance:

- A demonstration that compliance is a shared responsibility by establishing clear expectations that all coaches, staff members and student-athletes will understand and comply with NCAA rules.

¹ In circumstances where an individual refuses to furnish information and/or attempts to influence others to furnish false or misleading information, the enforcement staff may consider alleging a violation of Bylaw 19.2.3 (responsibility to cooperate) in addition to an alleged violation of Bylaw 10.1-(a) or Bylaw 10.1-(c). Bylaw 19.2.3 may also be cited in the absence of an alleged violation of Bylaw 10.1.

² A subsequent employing institution would only be responsible for the violation if it occurred while the individual was employed by that institution.

³ Some of the factors were identified by the Infractions Appeals Committee in December 2015.

- A demonstration that ultimate responsibility for the integrity of the program rests with the head coach, including understanding that staff actions reflect on the head coach and violations will result in clearly articulated discipline.
- Establishment of a program that includes immediate reporting of actual and potential issues to the compliance staff and allowing an independent inquiry into those issues.

Example of Commitment to Communication:

- Timely, consistent and continuing education of all coaches, staff members and student-athletes as to rules and regulations, including written agendas and documentation of subjects covered and issues discussed.
- A history of consulting with the compliance staff on a regular basis and asking before acting.

Examples of Commitment to Monitoring:

- Establishment of a program of prompt and consistent review of documentation related to monitoring of forms, logs, evaluations and questionnaires within the sport program.
- A history of the head coach and/or the sport program staff's self-detecting and reporting potential NCAA violations to the appropriate institutional personnel in a timely manner.
- Frequent spot checks to uncover potential or existing compliance problems, including the head coach actively looking for and evaluating red flags, and asking pointed questions.
- Regularly soliciting honest feedback to determine if monitoring systems are functioning properly, and protecting from retribution any person who reports violations or potential violations.

These should not be viewed as a checklist or a so-called safe harbor. Instead, they are examples of factors the enforcement staff will consider in analyzing potential allegations.

If the enforcement staff alleges a Bylaw 11.1.1.1 violation and the head coach disagrees with the allegation, it is the head coach's responsibility to present information to a hearing panel of the Division I Committee on Infractions demonstrating that he or she promoted an atmosphere of compliance in his or her program and monitored the activities of the institutional staff members involved with the program who reported, directly or indirectly, to the head coach.

Lack of Institutional Control

The enforcement staff does not assume that an institution violated the NCAA Principle of Institutional Control when one or more Level I or II violations may have occurred. Instead, consistent with guidance from the membership regarding institutional control, the enforcement staff takes a common sense approach in considering the nature and scope of the violation(s) in a case, together with the institution's specific efforts to create and maintain a positive culture of compliance. Where the institution did not have a structure in place to create a culture of compliance, or where there was a breakdown in that structure, an institutional control allegation may be appropriate.

Factors indicating institutional control include but are not limited to those outlined below.⁴ Generally, it is necessary to determine whether an institution's efforts to comply with all applicable rules and regulations of the Association were (a) in place at the time the alleged violation(s) occurred; (b) established to deter violations and not merely to discover their existence after they occurred; and (c) adequately promoted, monitored and enforced.

- Promotion of a culture of compliance – The institution demonstrated by words and actions that compliance with NCAA legislation was an obligation shared by all athletics staff members, student-athletes and others who interact with the athletics program (including institutional staff members, representatives of athletics interests and third parties). This includes the institution clearly communicating that any individual involved in its intercollegiate athletics program (1) had an obligation to report perceived or potential violations of NCAA legislation and (2) could do so without fear of reprisal.
- Oversight – The leadership of the athletics programs at the institution (e.g., director of athletics, faculty athletics representative, senior athletics compliance administrator) was knowledgeable about the content and operation of the athletics department's compliance program and exercised oversight with respect to its implementation and/or effectiveness.
- Policies and procedures – The institution established reasonable written policies and procedures to effectively deter and prevent violations, and detect in a timely manner any violations that occur⁵. The institution communicated and evaluated the policies and procedures on a regular basis, and made them readily available to all staff with athletics compliance responsibilities (e.g., athletics department staff, enrollment management staff and financial aid staff).
- Education and training – The institution took reasonable steps to provide regular and effective rules education by communicating applicable legislation, policies, procedures and other aspects of the athletics department compliance program to all student-athletes, institutional staff members and third parties who interact with the athletics department.
- Due diligence in delegating authority – The institution delegated authority to athletics compliance staff members who were appropriately supported and empowered to fulfill their obligation of administering an effective and ethical compliance program. The

⁴ These factors were developed after reviewing, among other resources, the following: (1) the NCAA Division I Constitution and bylaws; (2) prior NCAA Division I Committee on Infractions reports; (3) the 1996 "Principles of Institutional Control" white paper prepared by the Division I Committee on Infractions; (4) the June 5, 2013, "Standards for Effective Compliance and Risk Management Programs Maintaining Institutional Control" prepared by the Division I-A Athletic Directors Association Compliance and Enforcement Task Force; and (5) the National Association for Athletics Compliance (NAAC) Reasonable Standards.

⁵ By way of example, NAAC developed a number of reasonable standards. Adoption of and adherence to such reasonable standards may help demonstrate satisfaction of subparagraphs c, d and/or f.

institution also ensured that the compliance staff was appropriately educated and trained to perform its obligations at a high level⁶.

- Program monitoring and review – Pursuant to its established policies and procedures, the institution monitored its athletics program for compliance with NCAA legislation. The institution heightened its monitoring of individuals who were known to have engaged in prior noncompliant conduct.
- Enforcement, response and prevention of reoccurrence – The institution (1) consistently promoted, investigated (in consultation with the enforcement staff for potential Level I and/or II violations) and enforced NCAA legislation as well as conference, campus, department and other applicable policies; (2) took swift and appropriate corrective action when noncompliance occurred, including reporting to the NCAA (and when appropriate, to the institution's conference office) any instance of noncompliance with NCAA legislation; and (3) took reasonable steps to prevent further similar non-compliant conduct.
- Risk assessment and modification – The institution established a system and periodically conducted assessments to determine risks relating to NCAA compliance matters and then implemented controls to mitigate the identified risks. The institution also (1) used an entity outside the athletics department to conduct regular and periodic reviews of athletics operations, and (2) reviewed and implemented reasonable recommendations of the outside entity and/or implemented other reasonable remedies or corrective action identified by the institution.

Failure to Monitor

An institution's obligation to monitor extends beyond its athletics compliance office. Even as a shared responsibility across an institution, the enforcement staff understands that universal monitoring of every NCAA rule presents a very practical or difficult challenge. Accordingly, the enforcement staff will not assume that an institution violated the NCAA Principle of Rules Compliance when one or more violations may have occurred. In fact, effective compliance and monitoring systems are expected to detect violations, and the enforcement staff will not consider a failure to monitor allegation based only on isolated Level III violations. Instead, consistent with guidance from the membership, the enforcement staff will take a common sense approach in considering an institution's specific efforts to monitor individuals and operations consistent with the NCAA constitution and bylaws.

Factors indicating satisfactory monitoring include but are not limited to the following:

- Policies and procedures – The institution established reasonable written policies and procedures to effectively deter and prevent violations, and detect in a timely manner any

⁶ Examples of training opportunities include completing the NAAC Education Certification for compliance administrators, and regular attendance at rules education seminars, NCAA Convention workshops, conference meetings or other legislation education sessions.

violations that occur⁷. The institution communicated and evaluated the policies and procedures on a regular basis, and made them readily available to all staff with athletics compliance responsibilities (e.g., athletics department staff, enrollment management staff and financial aid staff).

- Education and training – The institution took reasonable steps to provide regular and effective rules education by communicating applicable legislation, policies, procedures and other aspects of the athletics department compliance program to all student-athletes, institutional staff members and third parties who interact with the athletics department.
- Program monitoring and review – Pursuant to its established policies and procedures, the institution monitored its athletics program for compliance with NCAA legislation. The institution heightened its monitoring of individuals who were known to have engaged in prior noncompliant conduct.
- Enforcement, response and prevention of reoccurrence – The institution (1) consistently promoted, investigated (in consultation with the enforcement staff for potential Level I and/or II violations) and enforced NCAA legislation as well as conference, campus, department and other applicable policies; (2) took swift and appropriate action when noncompliance occurred, including reporting to the NCAA (and when appropriate, to the institution's conference office) any instance of noncompliance with NCAA legislation; and (3) took reasonable steps to prevent further similar non-compliant conduct.

The enforcement staff will also consider decisions of the Committee on Infractions, legislation education materials, other related factors that may inform on an institution's monitoring efforts and applicable NAAC reasonable standards in determining whether it believes an institution satisfied its obligation to monitor. If the enforcement staff believes a failure to monitor allegation is appropriate, the allegation will identify the specific context of the types of behavior(s) it believes were monitored insufficiently.

⁷ By way of example, NAAC developed a number of reasonable standards. Adoption of and adherence to such reasonable standards may help demonstrate satisfaction of subparagraphs a and b.