

Executive Summary - Preliminary Report to the NCAA Membership

NCAA Working Group on Collegiate Model - Enforcement
February 2012

[Note: This document is an executive summary of the Preliminary Report to the Membership working draft. The working group's efforts are continuing, and the group expects it will make changes to these proposals based on feedback from the membership and affiliated groups. The group intends to submit proposals to the Division I Board of Directors in April and August 2012 after gaining significant feedback, revising the proposals as warranted and circulating revisions to the extent possible.]

A. Background.

In August 2011, NCAA President Mark Emmert and more than 50 presidents and chancellors gathered to examine in broad terms how to sustain the collegiate model and restore public trust in college sports and the NCAA. The presidents identified five significant areas of concern: (1) standards and metrics for the academic success of Division I student-athletes; (2) the allocation of financial resources within intercollegiate rules; (3) the financial well-being of student-athletes; (4) a realigning of how rules governing intercollegiate athletics are determined and an enhanced expectation of shared responsibility at the campus, conference and national levels; and (5) the strong and swift enforcement of those rules that places the greatest emphasis on those violations that if left unattended most significantly denigrate the collegiate model.

The presidents emphasized that there are four acknowledged enduring values that are guiding the entirety of their efforts and will be the measures against which all policies and judgments will be tested:

- Student-athlete success academically and athletically is paramount.
- The collegiate model, in which athletics is embedded in the values of higher education, including shared responsibility and accountability, should be protected and sustained.
- Amateurism as a student-participation model guides the relationship between students and institutions in the collegiate model of athletics.
- Fair opportunity to compete among institutions of similar commitment to inter-collegiate athletics should guide the administration of the collegiate model.

The Working Group on Collegiate Model - Enforcement was formed to primarily focus on the fifth concern, along with contributing to a better definition and clearer expectation of shared responsibility (part of the fourth concern). As one of five committees or working groups addressing a broad spectrum of change, this is the preliminary report to the membership.

B. Brief Overview of Proposed Changes.

This working group was tasked with creating a multi-level NCAA rules violation structure and an enhanced penalty structure for NCAA rules infractions; and re-establishing a sense of shared responsibility, among the interested individuals and entities in intercollegiate athletics, for NCAA rules compliance and enforcement.

Based on the guiding principles of fairness, accountability and process integrity, the working group has (1) reached a number of conclusions regarding the NCAA's current violation, process and penalty structures, as well as the means by which responsibilities for enforcement efforts are currently shared among interested individuals and entities; (2) developed a series of recommended actions to address noted concerns with the current structures and definition of shared responsibility for rules enforcement; and (3) identified the anticipated outcomes for each of the proposed actions. .

1. Violation structure.

The working group is recommending a move from the current model (secondary/major) to a four-level violation structure. The proposed violation structure would be composed of the following levels:

- Level I – The most egregious violations. A Level I violation is a violation that seriously undermines or threatens the integrity of any of the NCAA enduring values (student-athlete success, the collegiate model, amateurism as a student model, competitive equity), including any violation that provides or is intended to provide a significant or extensive recruiting, competitive or other advantage, or significant or extensive impermissible benefit. Multiple Level II, III and/or IV violations collectively may be considered a Level I violation. Individual conduct that is unethical may be classified as a Level I violation, even if the underlying institutional violations are not considered Level I.
- Level II – Serious violations that currently fall between major and secondary violations. A Level II violation is a violation that provides or is intended to provide a minimal to significant recruiting, competitive or other advantage; or includes a minimal to significant impermissible benefit; or involves a pattern of systemic violations in a particular area. Multiple Level III and/or IV violations collectively may be considered a Level II violation. Some limited individual conduct that is unethical or dishonest may be classified as a Level II violation, even if the underlying institutional violations are not considered Level II.
- Level III – Violations that provide some advantage or impermissible benefit that warrant NCAA enforcement staff review. A Level III violation is a

violation that is isolated or limited in nature; provides no more than a minimal recruiting, competitive or other advantage; and does not include more than a minimal impermissible benefit. Multiple Level IV violations collectively may be considered a Level III violation.

- Level IV – Minor or technical issues that do not rise to the level of a serious violation. (The working group notes that this level may not be necessary, or may include only limited violations, depending on the adopted work of the rules working group.) A Level IV issue is an action/inaction that is inadvertent and isolated; limited or technical in nature; and results in a negligible, if any, recruiting, competitive or other advantage or negligible, if any, impermissible benefit. Level IV issues will not impact eligibility.

2. Process structure.

The working group recommends that the NCAA Committee on Infractions be retained to hear and decide the most significant allegations of rules violations. However, the working group recommends that the committee be composed of a more diverse group of persons (e.g., former university presidents, vice presidents, athletics administrators with compliance experience).

The working group recommends that the committee be composed of a larger pool of individuals (a minimum of 18 but ideally at least 24 voting members) from which panels will be composed. In cases involving the most serious allegations of rules violations (Level I), the group recommends that either six or seven committee members will be randomly selected from each representative group to hear the cases. In cases involving allegations of Level II violations, the group proposes that three-member panels will be selected to hear the cases.

The working group recommends a number of other process modifications, applicable to cases categorized as Level I or Level II, including the following:

- Increase the availability of written case submissions to the Committee on Infractions, at the option of the institution and/or affected individuals, with agreement by the enforcement staff, even when there is disagreement on the facts, so that certain matters may be decided without the need for a full hearing.
- Redesign the notice of allegations to allow the member institution and/or involved individuals immediate access to the information on which the allegations are based and eliminate the need for a staff-prepared case summary, yet allowing for staff rebuttal when necessary.

- Introduce the availability of informally resolved infractions cases in situations in which the involved institution and/or affected individuals do not dispute the allegations or penalties in Level I and Level II cases (as reflected in the Penalty Guidelines), thereby significantly reducing the cost and anticipated timeline in serious infractions cases.
- Introduce the option of decreasing the amount of time between the notice of allegations and the institution's response from 90 to 60 days.
- Introduce the concept of a prehearing conference, with the Committee on Infractions panel chair presiding, in which preliminary issues are resolved prior to the full hearing of the infractions case including, when applicable, any disputes regarding the level at which the allegations have been charged.
- Use of an online case materials submission system and videoconferencing.
- Introduce the concept of NCAA staff-recommended penalties, pursuant to the Penalty Guidelines.
- Increase the availability of an expedited hearing before a Committee on Infractions representative at the request of the involved institution and/or involved individuals.
- Introduce time limitations for the preparation of hearing transcripts (two weeks), as well as the issuance of infractions reports and appeals reports (four weeks).
- Add additional staff to support the office of the Committees on Infractions.

With respect to matters categorized as Level III or Level IV, the working group recommends the following:

- In situations involving Level III violations, NCAA staff will continue to work with institutions, much the same as under the current secondary violations process, to determine whether infractions have occurred and, if so, the appropriate penalties to be imposed.
- In Level III matters, member institutions would continue to have access to a case precedent database, thereby allowing confirmation that staff-imposed penalties are consistent with those imposed in previously decided similar situations.
- In situations involving Level IV issues, the conference with which the involved institution is associated will work with the institution to determine

whether issues need to be addressed and, if so, the appropriate penalties to be imposed, if any. The group anticipates that the conferences will report these actions annually to the NCAA and/or will share information of issues/responses with the other conferences.

3. Penalty structure.

For cases involving allegations of Level I and Level II violations, the working group recommends a range of penalties set out in Penalty Guidelines. The working group recommends that a number of penalties constitute core penalties and form the basis for the Penalty Guidelines. Each of these penalties includes varying degrees of severity. The working group believes that the severity of the penalty imposed must correspond with the significance of the rule violation(s). The recommended core penalties:

- (a) Competition limitations [e.g., limitations imposed on participation in postseason play for varying lengths of time (depending upon the severity of the infractions) in given sport(s)].
- (b) Financial penalties [e.g., return revenue received from a given (fact-specific) event or series of events (e.g., revenues received for participation in tournament, bowl game or televised broadcasts)].
- (c) Scholarship limitations [e.g., limitations of athletics scholarships in head count sports [by number or percentage, depending upon the sport(s) involved] for varying lengths of time in given sport(s)].
- (d) Recruiting limitations [e.g., limitations of the number of allowable official paid visits at the institution for varying lengths of time in given sport(s)].
- (e) Probation.
- (f) Show cause orders (if applicable in a given case).

The working group recommends that the best means by which the committee may impose a penalty that falls within a more/less severe range of penalties is if it determines that certain aggravating and/or mitigating circumstances exist in Level I or II cases. The group continues to refine the lists of aggravating and mitigating factors. The Committee on Infractions will determine the presence and weight of the individual factors in a given case and may balance these factors in the decision-making process.

The committee may determine whether the presence of one or more of the aggravating and/or mitigating factors exist and, if so, how those factors affect the classification of the case. As a result, the presence of some aggravating factors and no mitigating factors may elevate the case classification to "aggravation" or "significant aggravation." Conversely, if there are mitigating factors in a case and no aggravating factors, the case classification would be "mitigation" or "significant mitigation."

4. Shared responsibility specific to compliance efforts and investigations.

The working group recommends that the concept of shared responsibility be better defined and specific expectations be identified for given roles within the compliance and enforcement processes. The working group will provide a final report on this issue to the Board in August 2012.

5. Head coach responsibility.

The working group proposes that the rationale for Proposal No. 2004-102, which is currently Bylaw 11.1.2.1, be amended to presume that the head coach is responsible (instead of knowledgeable and, therefore responsible) for not promoting an atmosphere of compliance and/or monitoring his/her staff. The working group recommends that at the April 2012 meeting, the Board of Directors support a recommitment to the original intent of Bylaw 11.1.2.1 and the addition of clarifying language to the rationale.

The working group is recommending that the penalty guidelines emphasize that Level I and II violations of Bylaw 11.1.2.1 should result in a show cause order with suspension from contests as one of the show cause requirements. The working group recognizes that employment decisions related to coaches or any athletics personnel rest solely with our member institutions. The recommended specific suspension requirements are:

- For the head coach who commits a Standard Level II violation of this bylaw, his/her employing institution will be required to withhold the coach from 10 to 30 percent of the institution's next games. The suspensions may include postseason contests and/or carry over to the next season.
- For the head coach who commits a Standard Level I violation of this bylaw, his/her employing institution will be required to withhold the coach from 20 to 50 percent of the institution's next games. The suspensions may include postseason contests and/or carry over to the next season.

The working group proposes that for Level III violations, a list of identified violations warranting head coach suspension for football, men's basketball and possibly other sports be examined and expanded as appropriate to address what are presumed to be intentional secondary recruiting violations.

D. Desired Outcomes.

The specific outcomes the working group expects from the changes to the violation, process and penalty structures are noted below:

1. Violation structure.

A new violation structure that appropriately categorizes the severity of infractions and allows for different levels of accountability for institutions and individuals.

2. Process structure.

- a. A much faster mode for processing violations that delivers expediency without compromising process integrity or fairness.
 - Clear metrics for every stage of processing a case.
- b. Clear understanding of what aspects of enforcement and student-athlete reinstatement cases can be more transparent and corresponding transparency where appropriate.

3. Penalty structure.

- a. Strong penalties that are predictable, deter the risk-reward analysis and address any unfair advantage.
- b. Clear definition of institutional control.
 - Rewards/incentives for effective compliance programs.
 - Rewards/incentives for strong institutional action to address wrongdoing.
- c. Rewards/incentives for individuals acknowledging violations.
- d. Increased accountability for head coaches.

4. Shared responsibility.

- Strengthened support for institutional leadership.

Clear definition of shared responsibility and resulting expectations of individuals, institutions, conferences and the national office staff.