

Proposal Number: 2018-16

Title: ATHLETICS PERSONNEL AND INFRACTIONS PROGRAM -- CONTRACTUAL AGREEMENTS AND EXPECTATIONS AND SHARED RESPONSIBILITY -- RESPONSIBILITY TO COOPERATE

Status: Adopted Final

Intent: To: (a) Require that contractual agreements or appointments between an institution and a president or chancellor, director of athletics and any contracted or appointed athletics department staff member include a stipulation that the individual cooperate fully in the infractions process and be subject to investigation, adjudication and penalties, up to and including discharge; (b) Further define full cooperation in the infractions process; (c) Authorize the Committee on Infractions and/or the Independent College Sports Adjudication Panel to prescribe penalties during the investigation for failure to cooperate; (d) Establish that a hearing panel may infer that failure or refusal to produce requested materials supports an alleged violation; (e) Establish that a hearing panel may view that failure or refusal to participate in an interview supports an alleged violation; (f) Protect a "whistleblower" who voluntarily reports information about a potential violation; (g) Expand the mitigating factor of affirmative steps to expedite final resolution of the matter to include the timely submission of a summary disposition report; and (h) Confirm that information upon which a hearing panel bases its decision could be information that both directly and circumstantially supports an alleged violation.

A. Bylaws: Amend 11.2, as follows: *(Immediate; for contracts or appointments executed on or after 8/8/18.)*

11.2 Contractual Agreements.

11.2.1 Stipulation That NCAA Enforcement Provisions Apply. Contractual agreements or appointments between a ~~coach~~ **president or chancellor, director of athletics or any contracted or appointed athletics department staff member** and an institution shall include the stipulation that;

(a) The individual has an affirmative obligation to cooperate fully in the infractions process, including the investigation and adjudication of a case (see Bylaw 19.2.3); and

(b) ~~a coach~~ An individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process **(see Bylaw 19)**, including suspension without pay or termination of employment ~~for significant or repetitive violations.~~

B. Bylaws: Amend 19, as follows: *(2/1/19 for provisions related to penalties for failure to cooperate. Immediate for all other provisions.)*

19 Infractions Program.

[19.01 through 19.1 unchanged.]

19.2 Expectations and Shared Responsibility.

[19.2.1 through 19.2.2 unchanged.]

19.2.3 Responsibility to Cooperate. Current and former institutional staff members or prospective or enrolled student-athletes of member institutions have an affirmative obligation to cooperate fully with and assist the NCAA enforcement staff, the Committee on Infractions and the Infractions Appeals Committee to further the objectives of the Association and its infractions program. ~~The responsibility to cooperate requires institutions and individuals to protect the integrity of investigations and to make a full and complete disclosure of any relevant information, including any information requested by the enforcement staff or relevant committees. Current and former institutional staff members or prospective or enrolled student-athletes of member institutions have an affirmative obligation to report instances of noncompliance to the Association in a timely manner and assist in developing full information to determine whether a possible violation has occurred and the details thereof.~~ **Full cooperation includes, but is not limited to:**

(a) Affirmatively reporting instances of noncompliance to the Association in a timely manner and assisting in developing full information to determine whether a possible violation has occurred and the details thereof;

- (b) Timely participation in interviews and providing complete and truthful responses;**
- (c) Making a full and complete disclosure of relevant information, including timely production of materials or information requested, and in the format requested;**
- (d) Disclosing and providing access to all electronic devices used in any way for business purposes;**
- (e) Providing access to all social media, messaging and other applications that are or may be relevant to the investigation; and**
- (f) Preserving the integrity of an investigation and abiding by all applicable confidentiality rules and instructions.**

[19.2.3.1 unchanged.]

19.2.3.2 Failure to Cooperate. Failing to satisfy the responsibility to cooperate may result in an independent allegation and/or be considered an aggravating factor for purposes of determining a penalty. Institutional representatives and the involved individual may be requested to appear before a hearing panel of the Committee on Infractions at the time the allegation is considered.

19.2.3.2.1 Failure or Refusal to Produce Materials. If an institution or individual fails or refuses to produce materials requested by the enforcement staff during an investigation, the hearing panel may infer that the requested materials would support an alleged violation for which the party may be subject to penalty pursuant to Bylaw 19.9 (see Bylaw 19.7.8.3.1).

19.2.3.2.2 Failure or Refusal to Participate in Interview. If an individual fails or refuses to participate in an interview requested by the enforcement staff, and he or she is later deemed to be an involved individual, the hearing panel may view the failure or refusal as an admission that an alleged violation, for which the individual may be subject to penalty pursuant to Bylaw 19.9, occurred (see Bylaw 19.7.8.3.2).

19.2.3.2.3 Immediate Penalties for Failure to Cooperate. The chair of the Committee on Infractions or the chief hearing officer, if assigned, shall have the authority to prescribe penalties during the investigation if an institution or individual fails to satisfy the responsibility to cooperate, including, when appropriate, loss of the right to participate in postseason competition and other NCAA events and loss of associated revenues.

19.2.3.3 Protection for Cooperation. An institution shall not retaliate against a current or former institutional staff member or prospective or enrolled student-athlete who voluntarily reports information about potential violations to his or her conference, member institution and/or the Association.

19.3 Committee on Infractions.

[19.3.1 through 19.3.5 unchanged.]

19.3.6 Authority and Duties of Committee. Disciplinary or corrective actions other than suspension or termination of membership may be prescribed by members of hearing panels of the Committee on Infractions present and voting at any duly called hearing thereof, provided the call of such a hearing shall have contained notice of the situation presenting the disciplinary problem. Actions of panels in cases involving Level I or Level II violations, however, may be subject to review by the Infractions Appeals Committee. The penalties prescribed by a panel are separate and apart from any penalties prescribed as part of the Academic Performance Program by the Committee on Academics. The Committee on Infractions shall:

[19.3.6-(a) through 19.3.6-(f) unchanged.]

(g) Formulate and revise internal operating procedures and revise investigative guidelines. Committee amendments to the procedures and guidelines shall be effective immediately and subject to review and approval by the Board of Directors; ~~and~~

(h) Prescribe penalties during the investigation if an institution or individual fails to satisfy the responsibility to cooperate (see Bylaw 19.2.3.2.3); and

[19.3.6-(h) relettered as 19.3.6-(i), unchanged.]

[19.3.7 through 19.3.8 unchanged.]

[19.4 through 19.6 unchanged.]

19.7 Notice of Allegations and Opportunity to Respond.

[19.7.1 through 19.7.7 unchanged.]

19.7.8 Posthearing Committee Deliberations. After all presentations have been made and the hearing has been concluded, the hearing panel shall excuse the parties and deliberate in private.

[19.7.8.1 through 19.7.8.2 unchanged.]

19.7.8.3 Basis of Decision. The hearing panel shall base its decision on information presented to it that it determines to be credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs. **The information upon which the panel bases its decision may be information that directly or circumstantially supports the alleged violation.**

19.7.8.3.1 Materials Not Produced. The hearing panel may infer that materials requested during an investigation by the enforcement staff but not produced by an institution or individual would support an alleged violation for which the party may be subject to penalty pursuant to Bylaw 19.9.

19.7.8.3.2 Failure or Refusal to Participate in Interview. The hearing panel may view the failure or refusal to participate in an interview requested by the enforcement staff as an admission that an alleged violation, for which the individual may be subject to penalty pursuant to Bylaw 19.9, occurred.

19.7.8.3.3 Failure to Submit Timely Response to Notice of Allegations. The hearing panel may view the failure by an institution or individual to submit a timely response to a notice of allegations as an admission that an alleged violation, for which the party may be subject to penalty pursuant to Bylaw 19.9, occurred.

[19.7.8.4 unchanged.]

[19.8 unchanged.]

19.9 Penalties.

[19.9.1 through 19.9.3 unchanged.]

19.9.4 Mitigating Factors. Mitigating factors are circumstances that warrant a lower range of penalties for a particular party. A hearing panel of the Committee on Infractions determines whether mitigating factors are present in a case and the weight assigned to each factor. Examples of mitigating factors include, but are not limited to, the following:

[19.9.4-(a) through 19.9.4-(b) unchanged.]

(c) Affirmative steps to expedite final resolution of the matter, **including timely submission of a summary disposition report pursuant to Bylaw 19.6.2;**

[19.9.4-(d) through 19.9.4-(i) unchanged.]

[19.9.5 through 19.9.11 unchanged.]

[19.10 through 19.12 unchanged.]

Source: NCAA Division I Board of Directors (Commission on College Basketball Enforcement and Infractions Working Group)

Effective Date:

Section A: Immediate; for contracts or appointments executed on or after 8/8/18.

Section B: 2/1/19 for provisions related to penalties for failure to cooperate. Immediate for all other provisions.

Rationale: The Commission on College Basketball recommended that the NCAA require institutions to include in contracts with presidents or chancellors, athletics administrators and coaches the obligation to cooperate fully with the infractions process and submit to investigation, adjudication and penalties. Relatedly, the Commission recommended that the failure to promptly respond to investigators' requests should have significant consequences and that "whistleblowers" be protected. The Commission further recommended that the infractions process be modified to provide investigators and adjudicators with the necessary tools and authority, respectively, to effectively investigate and adjudicate violations. Requiring institutions to include in contracts with presidents or chancellors and all athletics department staff members a stipulation to fully cooperate in the infractions process and submit to investigation, adjudication and penalties, giving hearing panels the authority to prescribe penalties during an investigation for failure to cooperate and protecting "whistleblowers" will significantly strengthen the infractions process. Likewise, enhancing the tools available to the enforcement staff and Complex Case Unit through further defining full cooperation, as well as extending the authority in decision-making available to hearing panels, will create efficiency in the investigation and adjudication of cases.

Proposal Number: 2018-17

Title: ATHLETICS PERSONNEL -- CONTRACTUAL AGREEMENTS -- ATHLETICALLY RELATED INCOME AND BENEFITS

Status: Adopted Final

Intent: To require that: (a) Contractual agreements, including letters of appointment, between a full-time or part-time athletics department staff member and an institution shall include the stipulation that an athletics department staff member who receives athletically related income or benefits from a source outside the institution must report such earnings to the president or chancellor on an annual basis, as specified; and (b) A full-time or part-time athletics department staff member who receives athletically related income or benefits from a source outside the institution must report such earnings to the president or chancellor on an annual basis.

Bylaws: Amend 11, as follows:

11 Conduct and Employment of Athletics Personnel

[11.01 through 11.1 unchanged.]

11.2 Contractual Agreements.

[11.2.1 unchanged.]

11.2.2 Athletically Related Income and Benefits. Contractual agreements, including letters of appointment, between a full-time or part-time athletics department staff member and an institution shall include the stipulation that an athletics department staff member who receives athletically related income or benefits from a source outside the institution (e.g., income from endorsement or consultation contracts with apparel companies, equipment manufacturers, television and radio programs; income from ownership, control or management of a foundation, organization or other entities; etc.) must report such earnings [other than cash or cash equivalent (as opposed to tangible items) if the total amount received is \$600 or less] to the president or chancellor on an annual basis. (See Bylaw 11.3.2.1.1.)

11.3 Compensation and Remuneration.

[11.3.1 unchanged.]

11.3.2 Income in Addition to Institutional Salary.

11.3.2.1 Bona Fide Outside Employment. A staff member may earn income **and receive benefits** in addition to the institutional salary by performing services for outside groups consistent with the institution's policy related to outside income and benefits **applicable to all full-time or part-time employees. The approval of such income and benefits shall be consistent with the institution's policy.**

11.3.2.1.1 Noninstitutional Income and Benefits Disclosure. A full-time or part-time athletics department staff member who receives athletically related income or benefits from a source outside the institution (e.g., income from endorsement or consultation contracts with apparel companies, equipment manufacturers, television and radio programs; income from ownership, control or management of a foundation, organization or other entities; etc.) must report such earnings to the president or chancellor on an annual basis; however, the athletics staff member is not required to report any cash or cash equivalent (as opposed to tangible items) if the total amount received is \$600 or less. (See Bylaw 11.2.2.)

[11.3.2.2 through 11.3.2.8 unchanged.]

[11.4 through 11.7 unchanged.]

Source: NCAA Division I Board of Directors (Commission on College Basketball Apparel Companies Topical Working Group)

Effective Date: Immediate

Rationale: The Commission on College Basketball noted that efforts to reform the nonscholastic basketball culture must include increased financial transparency and greater individual accountability for institutional athletics personnel who enter into agreements with outside entities. The Commission noted that these agreements may negatively impact the collegiate enterprise and can result in NCAA rules violations. Requiring athletics department staff to provide a written account of all athletically related income and benefits received from sources outside the institution will increase institutional control of athletics department personnel and promote increased transparency and accountability between NCAA institutions and outside entities. This requirement will ensure that all athletically related outside income and benefits receive appropriate institutional review and encourage adherence to NCAA rules. The exception applicable to outside income (cash and cash equivalents) less than \$600 is consistent with Internal Revenue Service reporting requirements.
