

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO, as duly appointed representative  
of the ESTATE and FAMILY of JOSEPH PATERNO;

RYAN McCOMBIE, ANTHONY LUBRANO,  
AL CLEMENS, and ADAM TALIAFERRO, members of  
the Board of Trustees of Pennsylvania State University;

PETER BORDI, TERRY ENGELDER, SPENCER NILES, and  
JOHN O'DONNELL, members of the faculty of Pennsylvania  
State University;

WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO,  
former football coaches at Pennsylvania State University; and

ANTHONY ADAMS, GERALD CADOGAN, SHAMAR  
FINNEY, JUSTIN KURPEIKIS, RICHARD GARDNER, JOSH  
GAINES, PATRICK MAUTI, ANWAR PHILLIPS, and  
MICHAEL ROBINSON, former football players of  
Pennsylvania State University,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION  
("NCAA");

MARK EMMERT, individually and as President of the NCAA;  
and

EDWARD RAY, individually and as former Chairman of the  
Executive Committee of the NCAA,

Defendants,

and

THE PENNSYLVANIA STATE UNIVERSITY,

Nominal Defendant.

Civil Division

Docket No.  
2013-2082

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**FIRST AMENDED COMPLAINT**

Plaintiffs, by and through counsel, hereby file this First Amended Complaint (the “Complaint”) against the National Collegiate Athletic Association (“NCAA”), its President Mark Emmert, and the former Chairman of its Executive Committee Edward Ray (collectively, the “NCAA Defendants”). The Pennsylvania State University (“Penn State”) is also named as a nominal defendant.

## **INTRODUCTION**

1. This action challenges the unlawful conduct of the NCAA Defendants in connection with their improper interference in and gross mishandling of a criminal matter that falls far outside the scope of their authority. In particular, this lawsuit seeks to remedy the harms caused by unprecedented sanctions included in a Consent Decree imposed by the NCAA Defendants on Penn State for conduct that did not violate the NCAA’s rules and was unrelated to any athletics issue the NCAA could permissibly regulate. As part of their unlawful conduct, and as alleged in more detail below, the NCAA Defendants breached their contractual obligations and violated their duties of good faith and fair dealing, intentionally and tortiously interfered with Plaintiffs’ contractual relations, and defamed and commercially disparaged Plaintiffs.

2. The NCAA is a voluntary association of member institutions of higher education that operates pursuant to a constitution and an extensive set of bylaws. The constitution and bylaws define and constrain the scope of the NCAA’s authority, and are designed to regulate athletic competition between members in a manner that promotes fair competition and amateurism. The constitution and bylaws authorize the NCAA to prohibit and sanction conduct that is intended to provide any member institution with a recruiting or competitive advantage in athletics.

3. The NCAA has no authority to investigate or impose sanctions on member institutions for criminal matters unrelated to recruiting or athletic competition at the collegiate

level. Moreover, when there is an alleged violation of the NCAA's rules, the constitution and bylaws require the NCAA to provide interested parties with certain, well-defined procedural protections, including rights of appeal. The constitution and bylaws are expressly intended to benefit not only the member institutions, but also individuals subject to potential NCAA oversight and sanctions.

4. In the course of the events that gave rise to this lawsuit, the NCAA Defendants engaged in malicious, unjustified, and unlawful acts, including penalizing and irreparably harming Plaintiffs for criminal conduct committed by a former assistant football coach. But the criminal conduct, which occurred in 1998 and 2001, was not an athletics issue properly regulated by the NCAA. The NCAA Defendants' actions far exceeded the scope of the NCAA's lawful authority and were taken in knowing and reckless disregard of Plaintiffs' rights.

5. Among other things, the NCAA Defendants circumvented the procedures required by the NCAA's rules and violated and conspired with others to violate Plaintiffs' rights, causing Plaintiffs significant harm. The NCAA Defendants took these actions based on conclusions reached in a flawed, unsubstantiated, and controversial report that the NCAA Defendants knew or should have known was not the result of a thorough, reliable investigation; had been prepared without complying with the NCAA's investigative rules and procedures; reached conclusions that were false, misleading, or otherwise unworthy of credence; and reflected an improper "rush to judgment" based on unsound speculation and innuendo. The NCAA Defendants also knew or should have known that by embracing the flawed report, they would effectively terminate the search for truth and cause Plaintiffs grave harm. Nonetheless, the NCAA Defendants took their unauthorized and unlawful actions in an effort to deflect attention away from the NCAA's

institutional failures and to expand the scope of their own authority by exerting control over matters unrelated to recruiting and athletic competition.

6. In failing to comply with required procedures, the NCAA Defendants unlawfully accused Plaintiffs, members of the coaching staff and the Penn State Board of Trustees, of failing to prevent unethical conduct, and deprived them of important procedural protections required under the NCAA's rules.

7. Because the NCAA breached its duties and contractual obligations to Plaintiffs, and because the NCAA Defendants' unlawful and unauthorized conduct has caused and is continuing to cause substantial harms, Plaintiffs are bringing this lawsuit to remedy the harms caused by the NCAA's conduct, to enforce the NCAA's obligations, and to put an end to the NCAA Defendants' ongoing misconduct.

#### **PARTIES**

8. Plaintiff George Scott Paterno is a resident of Pennsylvania and the son of the former head football coach of Penn State, Joseph ("Joe") Paterno. He brings this action to enforce Joe Paterno's rights and as the duly authorized representative of and on behalf of the Estate and Family of Joe Paterno. At all relevant times before his death, Joe Paterno was a resident of Pennsylvania.

9. Plaintiffs Ryan McCombie, Anthony Lubrano, and Adam Taliaferro are current members of the Board of Trustees of Penn State. As members of the Board, they are vested with legal responsibility and authority for managing and governing the University.

10. Plaintiff Al Clemens is a current member of the Board of Trustees of Penn State, and was also a member of the Board of Trustees in 1998 and 2001. As a member of the Board, he has a fiduciary responsibility to take actions that are in the best interests of the entire

University community. He and his fellow trustees are parties to this action with that intention and in that spirit. At all relevant times, Mr. Clemens was a resident of Pennsylvania.

11. Plaintiffs Peter Bordi, Terry Engelder, Spencer Niles, and John O'Donnell are current members of the faculty of Penn State.

12. Plaintiffs Anthony Adams, Gerald Cadogan, Shamar Finney, Justin Kurpeikis, Richard Gardner, Josh Gaines, Patrick Mauti, Anwar Phillips, and Michael Robinson are former players on the Penn State football team who participated in the program between the years 1998 and 2011.

13. Plaintiffs William Kenney and Joseph V. ("Jay") Paterno are former coaches of the Penn State football team and former employees of Penn State. At all relevant times, they were residents of Pennsylvania.

14. Defendant NCAA is an unincorporated association headquartered in Indianapolis, Indiana. It has members in all fifty states, the District of Columbia, Puerto Rico, and Canada, and effectively enjoys a monopoly over the popular world of college sports.

15. Defendant Mark Emmert is the current president of the NCAA.

16. Defendant Edward Ray is the president of Oregon State University and the former chairman of the NCAA's Executive Committee.

17. Penn State is a state-related institution of higher learning based in Centre County, Pennsylvania. Because the NCAA has successfully argued that Penn State is an indispensable party to certain of the claims set forth below, Plaintiffs have joined Penn State to this action as a nominal defendant. Although Plaintiffs seek modification or rescission of the Consent Decree imposed by the NCAA Defendants, Plaintiffs seek no direct injunctive or monetary relief against Penn State. As alleged in more detail below, Penn State was at all relevant times and remains a

victim of the NCAA Defendants' ongoing misconduct and abuse of power, including but not limited to threats by the NCAA Defendants that Penn State would be subject to the so-called "death penalty" if the Consent Decree were revoked. Plaintiffs have been damaged as a result of these same wrongful acts.

### **JURISDICTION AND VENUE**

18. Jurisdiction is proper in this Court under 42 Pa. C.S. § 931(a).

19. The Court has jurisdiction over the NCAA because it carries on a continuous and systematic part of its general business in Pennsylvania. *See* 42 Pa. C.S. § 5301(a)(3)(iii). The Court also has jurisdiction because, among other things, the NCAA transacted business and caused harm in Pennsylvania with respect to the causes of action asserted herein. *See id.* § 5322(a).

20. The Court has jurisdiction over Emmert and Dr. Ray in their personal capacities because they caused harm in Pennsylvania with respect to the tortious causes of action asserted herein. *See id.*

21. The Court has jurisdiction over Penn State because it is chartered under state law. *See* Act of February 22, 1855, P.L. 46, § 1 (codified at 24 P.S. § 2531).

22. Venue is proper in Centre County under Pennsylvania Rules of Civil Procedure 1006(a) and 2156(a). The NCAA regularly conducts business and association activities in this County, the causes of action arose in this County, and the transactions and/or occurrences out of which the causes of action arose took place in this County.

## GENERAL ALLEGATIONS

### **The NCAA's Rules, Constitution, And Bylaws**

23. The NCAA is an unincorporated association of institutions of higher education with the common goal of achieving athletic and academic excellence. The NCAA was first formed in 1906 and is today made up of three membership classifications — Divisions I, II, and III.

24. The NCAA's basic purpose is to maintain intercollegiate athletics as an integral part of university educational programs and the athlete as an integral part of the student body and, by doing so, to retain a clear line of demarcation between intercollegiate athletics and professional sports.

25. Student athletes are not paid, but the NCAA brings in substantial revenues each year. In 2012 alone, the NCAA generated \$872 million in revenue, \$71 million of which was treated as "surplus" and retained by the organization.

26. The NCAA is governed by a lengthy set of rules that define both the scope of the NCAA's authority and the obligations of the NCAA's member institutions. The relevant set of rules for purposes of this lawsuit is the 2011–2012 NCAA Division I Manual, which is available at <http://www.ncaapublications.com/p-4224-2011-2012-ncaa-division-i-manual.aspx>. (A copy of relevant portions of the NCAA's Manual is attached to this Complaint as Exhibit A.)

a. Articles 1 through 6 of the Manual comprise the NCAA's Constitution, which sets forth information relevant to the NCAA's purposes, its structure, its membership, the legislative process, and the more important principles governing the conduct of intercollegiate athletics.

b. Articles 10 through 23 are the Operating Bylaws, which consist of legislation adopted by member institutions to promote the principles enunciated in the Constitution and to achieve the NCAA's stated purposes.

c. Articles 31 through 33 are the Administrative Bylaws, adopted and modified by the NCAA subject to amendment by the membership through the regular legislative process. The Administrative Bylaws implement the NCAA's general legislative actions, setting forth policies and procedures for NCAA championships, the NCAA's business, its enforcement program, and its athletics certification program.

27. The rules governing NCAA sports, as reflected in the Manual, are developed through a membership-led governance system. Under that system, member institutions introduce and vote on proposed legislation. In turn, member institutions are obligated to apply and enforce the member-approved legislation, and the NCAA has authority to use its enforcement procedures when a member institution fails to fulfill its enumerated obligations.

28. The NCAA's rules are premised on the principle of according fairness to student athletes and staff, whether or not they may be involved in potential rules violations. The rules expressly protect and benefit students, staff, and other interested parties, recognizing that fair and proper procedures are important because the NCAA's actions can have serious repercussions on their lives and careers.

29. In substance, the NCAA's rules govern "basic athletics issues such as admissions, financial aid, eligibility and recruiting." In that context, the rules contain principles of conduct for institutions, athletes, and staff, including the principles of "institutional control" and "ethical conduct."



30. The principle of “institutional control,” found in Article 6 of the Constitution, places the responsibility for “compliance with the rules and regulations of the Association” on each member institution. “Institutional control” is defined as “[a]dministrative control,” “faculty control,” or both. Article 6 contains no enforcement provision.

31. The principle of “ethical conduct,” found in Article 10 of the Bylaws, is intended to “promote the character development of participants.” Article 10 refers to “student-athlete[s]” and defines unethical conduct with reference to a list of examples, all of which involve violations related to securing a competitive athletic advantage. Article 10 provides that any corrective action for the unethical conduct of an athlete or staff member shall proceed through the enforcement process set forth in Article 19 of the Bylaws.

32. The authorized enforcement process, detailed in Articles 19 and 32, is required to begin with an investigation, conducted by the NCAA enforcement staff. In conducting an investigation, the staff is required to comply with the operating policies, procedures, and investigative guidelines established in accordance with Article 19.

33. The staff has responsibility for gathering information relating to possible rules violations and for classifying alleged violations. Information that an institution has failed to meet the conditions and obligations of membership is to be provided to the enforcement staff, and must be channeled to the enforcement staff if received by the NCAA president or by the NCAA’s Committee on Infractions.

34. The rules recognize two types of violations subject to the NCAA’s enforcement authority: (1) “major” violations, and (2) “secondary” violations.

a. Major violations are violations intended to provide a member institution with an extensive recruiting or competitive advantage, such as the provision of significant impermissible benefits to student athletes.

b. Secondary violations are violations that are isolated or inadvertent in nature, and that are intended to provide the institution with only a minimal recruiting, competitive, or other impermissible benefit. Secondary violations occur frequently, are usually resolved administratively, and are not typically made public.

35. The NCAA's enforcement staff may interview individuals suspected of violations, but they must provide notice of the reason for the interview, and the individual has a right to legal counsel. Interviews must be recorded or summarized and, when an interview is summarized, the staff is required to attempt to obtain a signed affirmation of accuracy from the interviewed individual. The enforcement staff is responsible for maintaining evidentiary materials on file at the national office in a confidential and secure manner.

36. If the enforcement staff learns of reasonably reliable information indicating that a member institution has violated the NCAA's rules, it must provide a "notice of inquiry" to the chancellor or president of the institution, disclosing the nature and details of the investigation and the type of charges that appear to be involved. The "notice of inquiry" presents the institution with an opportunity to address the issue and either convince the NCAA that no wrongdoing has occurred or, if there is wrongdoing, cooperate and play a role in the investigation.

37. If the enforcement staff determines after conducting its initial inquiry that there is sufficient information to support a finding of a rules violation, the staff must then send a "notice of allegations" to the institution. That notice must list the NCAA rule alleged to have been

violated and the details of the violation. If the allegations suggest the significant involvement of any individual staff member or student, that individual is considered an “involved individual” and must be notified and provided with an opportunity to respond to the allegations. The issuance of the notice of allegations initiates a formal adversarial process, which allows the institution and involved individuals the opportunity to respond and defend themselves.

38. After the notice of allegations is issued, the matter is referred to the Committee on Infractions. A member institution has the right to pre-hearing notice of the charges and the facts upon which the charges are based, and an opportunity to be heard and to produce evidence. The institution and all involved individuals have the right to be represented by legal counsel at all stages of the proceedings.

39. The Committee must base its decision on evidence that is “credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs.” Oral or documentary information may be presented to the Committee, subject to exclusion on the ground that it is “irrelevant, immaterial or unduly repetitious.” Individuals have the opportunity, and are encouraged, to present all relevant information concerning mitigating factors.

40. The Committee may not under any circumstances rely on information provided anonymously.

41. After the Committee has completed its review, it is authorized to impose sanctions in appropriate circumstances. The sanctions for violating the rules are calibrated to the rules’ substantive prohibitions. Permissible sanctions for major violations include the imposition of probationary periods, reduction in permissible financial aid awards to student athletes, prohibitions on postseason competition, vacation of team records (but only in cases where an

ineligible student athlete has competed), and financial penalties. Those penalties thus aim to erase the competitive advantage that the violations were intended to achieve.

42. The most severe sanction available to the NCAA is the “death penalty,” so called because, in prohibiting an institution’s participation in a sport for a certain period of time, it has enormous consequences for a program’s future ability to recruit players, retain staff, and attract fans and boosters. It is well known that imposing the “death penalty” can ruin the livelihood of those associated with an institution’s program and harm involved individuals well beyond the penalty’s immediate economic impact. For these and other reasons, the rules allow the death penalty to be imposed only on “repeat violators” — *i.e.*, institutions that (i) commit a major violation, seeking to obtain an extensive recruiting or competitive advantage, and (ii) have also committed at least one other major violation in the last five years.

43. At the conclusion of the hearing, the Committee is required to issue a formal Infractions Report detailing all the Committee’s findings and the penalties imposed. The Committee must submit the report to the institution and all involved individuals. The report shall be made publicly available only after the institution and all involved individuals have had an opportunity to review the report. Names of individuals must be deleted before the report is released to the public or forwarded to the Infractions Appeals Committee. The report must also describe the opportunities for further administrative appeal.

44. The rules provide a member institution the right to appeal to the Infractions Appeals Committee if the institution is found to have committed major violations. In addition, an individual has the right to appeal if he or she is named in the Committee on Infraction’s report finding violations of the NCAA’s rules.

45. On appeal, the penalties imposed must be overturned if they constitute an abuse of discretion. Factual findings must be overturned if they are clearly contrary to the evidence presented, if the facts found do not constitute a violation of the NCAA's rules, or if procedural errors occurred in the investigation process. The Infraction Appeals Committee's decision is final and cannot be reviewed by any other NCAA authority.

46. The rules include certain alternatives to the formal investigative and hearing process outlined above. For example, an institution is encouraged to self-report violations, and a self-report is considered as a mitigating factor when imposing sanctions. A self-report typically involves a formal letter sent to the enforcement staff by a member institution setting forth the relevant facts. After receiving a self-report, the enforcement staff has a duty to conduct an investigation, to determine whether the self-reported violation is "secondary" or "major," and to prepare and send a notice of allegations to the institution. Based on the enforcement staff's investigation, if a major violation is identified and the staff is satisfied with the institution's self-report, the parties may agree to use a summary disposition process.

47. The summary disposition process and an expedited hearing procedure may be used only with the unanimous consent of the NCAA's enforcement staff, all involved individuals, and the participating institution. During the summary disposition process, the Committee on Infractions is required to determine that a complete and thorough investigation of possible violations has occurred, especially where the institution, and not NCAA enforcement staff, conducted the investigation. After the investigation, the involved individuals, the institution, and enforcement staff are required to submit a joint written report. A hearing need not be conducted if the Committee on Infractions accepts the parties' submissions, but the

Committee must still prepare a formal written report and publicly announce the resolution of the case.

48. If the Committee accepts the findings that a violation occurred but does not accept the parties' proposed penalties, it must hold an expedited hearing limited to considering the possibility of imposing additional penalties. After that hearing, the Committee must issue a formal written report, and the institution and all involved individuals have the right to appeal to the Infractions Appeals Committee any additional penalties that may be imposed.

49. These enforcement policies and procedures are subject to amendment only in accordance with the legislative process set forth in Article 5. No other NCAA body, including the Executive Committee and the Board of Directors, has authority to bypass or amend these procedures and impose discipline or sanctions on any member institution. The Executive Committee and the Board of Directors are authorized only to take actions that are legislative in character, to be implemented association-wide on a prospective basis.

50. These procedural protections are a significant and vital part of the bargain involved in each member's decision to participate in the NCAA. Because of the leverage the NCAA has over its member institutions, and because of the significant consequences NCAA sanctions can have for institutions and their administrators, faculty, staff, and students, the NCAA has an express obligation to ensure that any sanctions are fair and imposed consistent with established procedures.

51. The NCAA's Constitution recognizes that it is the NCAA's responsibility to "afford the institution, its staff and student-athletes fair procedures in the consideration of an identified or alleged failure in compliance." According to the mission statement of the NCAA's

enforcement program, “an important consideration in imposing penalties is to provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions.”

### **The Underlying Conduct, The Freeh Report, And The NCAA’s Involvement**

52. On November 4, 2011, the Attorney General of Pennsylvania charged Jerry Sandusky, a former assistant football coach, former assistant professor of physical education, and former employee of Penn State, with various criminal offenses, including aggravated criminal assault, corruption of minors, unlawful contact with minors, and endangering the welfare of minors. Sandusky was convicted and, on October 9, 2012, was sentenced to 30 to 60 years in prison.

53. On November 9, 2011, the Penn State Board of Trustees removed University President Graham Spanier from his position. Rodney Erickson was named interim president, and later became the permanent president of the University. The Board also removed Joe Paterno from his position as head football coach.

54. On November 11, 2011, the Penn State Board of Trustees formed a Special Investigations Task Force, which engaged the firm of Freeh Sporkin & Sullivan, LLP (the “Freeh firm”) to investigate the alleged failure of certain Penn State personnel to respond to and report certain allegations against Sandusky. The Freeh firm was also asked to provide recommendations regarding University governance, oversight, and administrative policies and procedures to help Penn State adopt policies and procedures to more effectively prevent or respond to incidents of sexual abuse of minors in the future.

55. The Freeh firm was not engaged, and had no authority, to investigate or even consider whether any of the actions under its review constituted violations of the NCAA’s rules. It was never retained by the Penn State Board of Trustees for this purpose.

56. The reprehensible incidents involving Sandusky were criminal matters that had nothing to do with securing a recruiting or competitive advantage for Penn State and its athletics program. Defendant Mark Emmert, president of the NCAA, would later acknowledge that “[a]s a criminal investigation, it was none of [the NCAA’s] business.”

57. On November 17, 2011, Emmert sent a letter to President Erickson of Penn State expressing concern over the grand jury presentments and asserting that the NCAA had jurisdiction over the matter and might take action against Penn State. Emmert’s letter did not identify any specific provision in the NCAA’s Constitution or Bylaws that granted the NCAA authority to become involved in criminal matters outside the NCAA’s basic purpose and mission. Nor did the letter identify any NCAA rule that Penn State had allegedly violated. Emmert nonetheless asserted that the NCAA’s Constitution “contains principles regarding institutional control and responsibility” and “ethical conduct,” and that those provisions may justify the NCAA’s involvement. Emmert advised President Erickson that Penn State would need to “prepare for potential inquiry” by the NCAA and posed four written questions to which the NCAA sought responses.

58. Instead of demanding that Penn State provide answers to its questions, the NCAA waited for the Freeh firm to complete its investigation. Attorneys and investigators working for the Freeh firm collaborated with the NCAA and frequently provided information and briefings to the NCAA. During the course of the seven-and-a-half-month investigation, the Freeh firm periodically contacted representatives of the NCAA to discuss areas of inquiry and other strategies. The final report released by the Freeh firm states that as part of its investigative plan, the firm cooperated with “athletic program governing bodies,” *i.e.*, the NCAA.



59. According to Emmert in a speech to the Detroit Economic Club on September 21, 2012, the NCAA waited for the results of the Freeh firm's investigation because the firm "had more power than we have — we don't have subpoena power, which was more or less granted to them by the Penn State Board of Trustees." As late as January 2014, Emmert continued to state publicly that he believed that the Freeh firm had been vested with subpoena power, at least as far as employees of Penn State were concerned.

60. The NCAA's inquiry prompted an investigation by the Big Ten Conference, which sent a letter to President Erickson requesting that it be given the same treatment as the NCAA in the investigative process.

61. On July 12, 2012, the Freeh firm released its report (the "Freeh Report"), a 144-page document with approximately 120 pages of footnotes and exhibits. The Freeh Report stated that top university officials and Coach Joe Paterno had known about Sandusky's conduct before Sandusky retired as an assistant coach in 1999, but failed to take action. According to the report, Penn State officials conspired to conceal critical facts relating to Sandusky's abuse from authorities, the Board of Trustees, the Penn State community, and the public at large.

62. Within hours of the release of the Freeh Report — and before members of the Penn State Board of Trustees had an opportunity to read the full report, discuss it, or vote on its contents — certain Penn State officials held a press conference and released a written statement asserting that the Board of Trustees accepted full responsibility for the purported failures outlined in the Freeh Report.

63. Later the same day, Emmert announced that there had been an "acceptance of the report" by the Penn State Board of Trustees. As he and other NCAA officials later explained, the NCAA decided to rely on the Freeh Report, and he publicly announced that once the NCAA

“had the Freeh Report, the university commissioned it and released it without comment, so [the NCAA] had a pretty clear sense that the University itself accepted the findings.” According to Emmert, the NCAA “and the University both found the Freeh Report information incredibly compelling” and “so with the University accepting those findings,” the NCAA found “that body of information to be more than sufficient to impose” penalties.

64. In reality, however, no full vote of the Board of Trustees was ever taken. The Freeh Report was not approved by the Board of Trustees. The Board of Trustees never took any official action based on the Freeh Report. Nor did the full Board ever accept its findings or reach any conclusions about its accuracy.

65. The NCAA announced that it had no need to “replicat[e]” what it characterized (incorrectly) as an “incredibly exhaustive effort by the Freeh [firm].” But the Freeh Report did not comply with the NCAA’s rules and procedures. In preparing its report, the Freeh firm did not purport to conduct an investigation into alleged NCAA rule violations. It did not record or summarize witness interviews as specified in the NCAA’s rules. Nor did it include in its report any findings concerning alleged NCAA rule violations. The report’s conclusions were not based on evidence that is “credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs,” as the NCAA’s rules require. And individuals named in the report were not given any opportunity to challenge its conclusions.

66. In preparing its report, the Freeh firm did not complete a proper investigation, failed to interview key witnesses, and instead of supporting its conclusions with evidence, relied heavily on speculation and innuendo. The report relies on unidentified, “confidential” sources and on questionable sources lacking any direct or personal knowledge of the facts or support for the opinions they provided. Many of its main conclusions are either unsupported by evidence or

supported only by anonymous, hearsay information of the type specifically prohibited by the NCAA rules.

67. The Freeh Report was an improper and unreliable “rush to injustice,” and it has been thoroughly discredited. Three prominent experts, including Richard Thornburgh, former Attorney General of the United States, have independently concluded that the Freeh Report is deeply flawed and that many of its key conclusions are wrong, unsubstantiated, and unfair.

68. Contrary to suggestions made in the Freeh Report, there is no evidence that Joe Paterno, or any other Penn State coach, covered up known incidents of child molestation by Sandusky to protect Penn State football, to avoid bad publicity, or for any other reason. There is no reason to believe, as the Freeh firm apparently did, that Joe Paterno understood the threat posed by Sandusky better than qualified child welfare professionals and law enforcement, who investigated the matter, made no findings of abuse, and declined to bring charges. There is no evidence that Joe Paterno or any other members of the athletic staff conspired with Penn State officials to suppress information because of publicity concerns or a desire to protect the football program.

69. According to Frank Fina, the Chief Deputy Attorney General for Pennsylvania and the architect of the prosecution’s case against Sandusky, no evidence supports the conclusion that Coach Paterno was part of a conspiracy to conceal Sandusky’s crimes. *See* Armen Keteyian, *Sandusky Prosecutors: Penn State Put School’s Prestige Above Abuse*, CBS News, Sept. 4, 2013, *available at* <http://www.cbsnews.com/news/Sandusky-prosecutors-penn-state-put-schools-prestige-above-abuse>.

70. Despite the fact that it supposedly conducted 430 interviews, the Freeh firm did not speak to virtually any of the persons who had the most important and relevant information

concerning Sandusky's criminal conduct. Three of the most crucial individuals — Gary Schultz, Timothy Curley, and Joe Paterno — were never interviewed. Michael McQueary, the sole witness to the 2001 incident, was also not interviewed.

71. The failure to conduct key interviews was all the more consequential because of the lack of relevant documents. Although the Freeh firm purported to review over 3.5 million documents, the Freeh Report itself references and relies on only approximately 30 documents, including 17 e-mails. Not one of those e-mails was sent to or from Joe Paterno, and he was not copied on any of them.

72. The Freeh Report ignored decades of expert research and behavioral analysis concerning the appropriate way to understand and investigate a child sexual victimization case. If the Freeh firm had undertaken a proper investigation, it would have learned that pedophiles are adept at selecting and grooming their subjects, concealing or explaining away their actions from those around them, and covering their tracks. As experts have determined, Sandusky was a master at these techniques, committing his crimes without detection by courts, social service agencies, police agencies, district attorneys' offices, co-workers, neighbors, and even his own family members. Sandusky was also able to conceal his criminal conduct from employees, volunteers, and families affiliated with The Second Mile, a non-profit organization serving underprivileged and at-risk children and youth in Pennsylvania.

73. In short, the Freeh Report provided no evidence of a cover-up by Joe Paterno or any other Penn State coach and no evidence that Sandusky's crimes were caused by Penn State's football program. A reasonable, objective review of the Report would have revealed that fact to any reader. *See Critique of the Freeh Report: The Rush To Injustice Regarding Joe Paterno* (Feb. 2013), available at <http://paterno.com>.

74. The investigative work of the Freeh firm has come under scrutiny and criticism from highly respected sources in other matters. For example, former U.S. Circuit Judge and U.S. Department of Homeland Security Secretary Michael Chertoff recently found that another report from the Freeh firm was “structurally deficient, one-sided and seemingly advocacy-driven,” was “deeply flawed,” and “lack[ed] basic indicia of a credible investigation.” *Universal Entertainment Corporation: Independent Review Finds the Freeh Report on Allegations Against Kazuo Okado “Deeply Flawed,”* Wall St. J., Apr. 22, 2013 (internal quotation marks omitted), available at <http://online.wsj.com/article/PR-CO-20130422-905271.html>.

#### **The NCAA’s Sanctions**

75. The NCAA has been subject to heavy criticism for the arbitrariness of its enforcement program as it is applied, for its mishandling of alleged rules violations, and for an overall lack of integrity and even corruption in its enforcement decisions. Commentators have noted that the NCAA’s enforcement decisions are often driven by improper monetary and political considerations.

76. Recent reports have disclosed problems that have long infected the organization. For example, one report determined that in the course of an investigation against the University of Miami, the NCAA’s enforcement staff acted contrary to its legal counsel’s advice and failed to adhere to the membership’s understanding of the limits of the NCAA’s investigative powers. Emmert has publicly admitted that, under his leadership, the NCAA has failed its membership. *See Report Details Missteps, Insufficient Oversight; NCAA Commits To Improve* (Feb. 19, 2013), available at <http://www.ncaa.com/news/ncaa/article/2013-02-18/report-details-missteps-insufficient-oversight-ncaa-commits-improve>.

77. Senate majority leader Harry Reid (D-Nev.) has called for Congress to investigate the NCAA's flawed enforcement process, citing the NCAA's "absolute control over college athlet[ics]" and its infamous handling of the case against Jerry Tarkanian, former head coach of the men's basketball team at the University of Nevada, Las Vegas. Alexander Bolton, *Reid: Congress Should Investigate NCAA's "Absolute" Power*, The Hill, Apr. 9, 2013, available at <http://thehill.com/homenews/senate/292603-reid-congress-should-investigate-ncaa-powers>.

78. Before this matter involving Penn State, the NCAA had never before interpreted its rules to permit intervention in criminal matters unrelated to athletic competition. There are numerous publicly reported examples of criminal conduct by student athletes where the university leadership is alleged to have covered up or enabled the crimes, and the NCAA never became involved.

79. The NCAA Defendants recognized that, in this case, they did not "have all the facts about individual culpability," and that imposing sanctions could cause "collateral damage" to many innocent parties. Nonetheless, they viewed the scandal involving Sandusky as an opportunity to deflect attention from mounting criticisms, to shore up the NCAA's faltering reputation, to broaden the NCAA's authority beyond its defined limits, and to impose enormous monetary sanctions on Penn State for their own benefit.

80. The NCAA Defendants agreed to work together to make Penn State an example and to single out its coaches and administrators for harsh penalties, regardless of the facts and with full knowledge that their actions would cause Plaintiffs substantial harm. In particular, the NCAA Defendants took a series of unauthorized and unjustified actions intentionally to harm, or in reckless disregard of, the rights and interests of involved parties. In an abuse of their position,

the NCAA Defendants forced Penn State to accept the sanctions they dictated, even though the sanctions were not authorized, appropriate, or justified by any identified NCAA rule violation.

81. As part of this unlawful course of action, Emmert, Dr. Ray, and other members of the NCAA conspired together and with the Freeh firm to circumvent the NCAA rules, strip Plaintiffs of their procedural protections under those rules, and level allegations against Penn State and certain of its officials in the absence of facts or evidence supporting those allegations. As a result of that agreement, the NCAA's Executive Committee, under the leadership of Dr. Ray, purported to grant Emmert authority to "enter into a consent decree with Penn State University that contains sanctions and corrective measures related to the institution's breach of the NCAA Constitution and Bylaws and core values of intercollegiate athletics based on the findings of the Freeh Report and Sandusky criminal trial." The Committee outlined the sanctions to be taken against Penn State and described its purported authority to act as arising from its power under Article 4 of the NCAA Constitution "to resolve core issues of Association-wide import."

82. Penn State's General Counsel and outside counsel pressed the NCAA to abide by its authorized enforcement process, to no avail. On July 13, 2012, Emmert contacted President Erickson to advise him that the NCAA Executive Committee had decided to accept the Freeh Report and substitute its flawed findings for the NCAA's obligation to conduct its own investigation pursuant to the required procedures set forth in the NCAA rules.

83. The NCAA Defendants knew or should have known that the Freeh Report was an unreliable rush to judgment and that the conclusions reached in the report were unsupported. The NCAA Defendants also knew or should have known that by accepting the Freeh Report they

would dramatically increase the publicity given to its unreliable conclusions and effectively terminate the search for the truth.

84. The NCAA Defendants knew or should have known that the conduct described in the Freeh Report was not a violation of the NCAA's rules and could not substitute for the procedures required under the NCAA's rules. Among other things, the NCAA's staff had not completed a thorough investigation, as required under the NCAA's rules. The staff had not identified any major or secondary violations committed by Penn State in connection with the criminal matters involving Sandusky. The actions taken by the NCAA Defendants were not authorized by any general legislation adopted by the NCAA's member institutions. Neither Penn State nor any involved individual authorized the NCAA to use a summary disposition process and, in any event, the NCAA did not comply with that process.

85. At no time did Penn State self-report any rules violations to the NCAA.

86. Emmert took the position that because the Penn State Board of Trustees had commissioned the Freeh Investigation, the NCAA would take it upon itself to treat the Freeh Report as the equivalent of a self-report in an infractions case. Emmert stated that had there been no Freeh Report, the NCAA would have conducted its own investigation and proceeded through the traditional infractions process, but only after all legal proceedings had concluded, including the criminal trials of Curley and Schultz.

87. Penn State's outside counsel, Eugene Marsh, who was specially engaged to deal with the NCAA on this issue, had several conversations with NCAA representatives between July 16 and July 22, 2012. In the course of those conversations, the NCAA indicated that the "death penalty" was a possibility for the Penn State football program, but that other alternatives would also be considered.



88. As discussions progressed, the NCAA told Marsh that the majority of the NCAA Board of Directors believed that the “death penalty” should be imposed. That statement was used as further leverage to extract a severe package of sanctions from Penn State. But it was untrue. According to published statements by Dr. Ray, made after the issuance of the NCAA’s Consent Decree, the NCAA Board had voted to reject the imposition of the “death penalty.”

89. The discussion was not a negotiation, but an unlawful and non-negotiable “cram down” of a list of predetermined sanctions and penalties. The NCAA’s focus was not on actual bylaw violations, but on purported concerns about the football-centric “culture” at Penn State based on the flawed and unsubstantiated conclusions set out in the Freeh Report. As Emmert later acknowledged, the NCAA’s goal was to force Penn State to change its culture and values, and to punish and penalize Penn State’s football program and individuals associated with the program.

90. In his discussions that same week with President Erickson, Emmert warned Erickson that he was not to disclose the content of their discussions with Penn State’s Board of Trustees. The NCAA threatened Erickson by telling him that if there was a leak about the proposed sanctions to the media, the discussion would end and imposition of the “death penalty” would be all but certain. At no point during that week did Erickson share with the full Board the array of crippling and historic penalties being threatened by Emmert and the NCAA.

91. Although the NCAA frequently takes *years* to conduct and complete an investigation, the NCAA Defendants moved to impose sanctions on Penn State almost immediately after the Freeh firm released its report.

92. On Friday or Saturday, July 20 or 21, Marsh received an email in the form of a nine page document, the NCAA's draft "Consent Decree." Once this document was received, it remained largely unchanged except for a few minor clarifications.

93. The Consent Decree's title, the "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," accurately reflects the coercive nature of the Consent Decree. The Consent Decree was signed by Rodney Erickson and Mark Emmert and released to the public on July 23, 2012. (A copy of the Consent Decree imposed by the NCAA is attached to this Complaint as Exhibit B.)

94. Before signing the NCAA-imposed Consent Decree, Erickson did not comply with the governing requirements of the Charter, Bylaws, and Standing Orders of Penn State. Erickson failed to present the NCAA-imposed Consent Decree to the Board for its approval, even though the Board is the final repository of all legal responsibility and authority to govern the University. Nor did he call for a meeting of the Board or its Executive Committee. Erickson was subject to the threats and coercive tactics of the NCAA, and he failed to inform the Board about these issues in advance of signing the imposed Consent Decree.

95. Erickson did not have the legal or delegated authority to bind the Penn State Board of Trustees to the Consent Decree imposed by the NCAA.

### **The Consent Decree**

96. Although the NCAA imposed the Consent Decree on Penn State, the Consent Decree did not identify any conduct that, under the NCAA's rules, would qualify as either a secondary or a major violation. Nonetheless, the NCAA stipulated that Penn State had violated the principles of "institutional control" and "ethical conduct" contained in the NCAA

Constitution, and that Penn State's employees had not conducted themselves as the "positive moral models" expected by Article 19 of the Bylaws.

97. The Consent Decree's purported "factual findings" related to the alleged conduct of Coach Joe Paterno and the Board of Trustees members in 1998 and 2001, as well as other former Penn State staff and administrators.

a. The decree stated that "Head Football Coach Joseph V. Paterno failed to protect against a child sexual predator harming children for over a decade," "concealed Sandusky's activities from the Board of Trustees, the University community and authorities," and "allow[ed] [Sandusky] to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program."

b. The decree stated that "the Board of Trustees . . . did not perform its oversight duties," and that it "failed in its duties to oversee the President and senior University officials in 1998 and 2001 by not inquiring about important University matters and by not creating an environment where senior University officials felt accountable."

c. The decree found that "[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky's behaviors and no one warned the public about him."

98. These statements are all erroneous and were based on unreliable and unsubstantiated conclusions in the Freeh Report.

99. The NCAA admitted that, ordinarily, "[t]he sexual abuse of children on a university campus by a former university official" would "not be actionable by the NCAA." But the NCAA asserted that it had authority to interfere because "it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse his victims."

According to the NCAA, “the reverence for Penn State football permeated every level of the University community,” and “the culture exhibited at Penn State is an extraordinary affront to the values all members of the Association have pledged to uphold.”

100. Based on this erroneous and unsupported conclusion, the NCAA determined that the sanctions must not only be designed to penalize Penn State and involved individuals but also to “change the culture that allowed this activity to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics.”

101. The imposed Consent Decree is an indictment of the entire Penn State community, including individual institutional leaders, members of the Board of Trustees, those responsible for and participants in athletic programs, the faculty, and the student body. The Consent Decree charges that every level of the Penn State community created and maintained a culture of reverence for, fear of, and deference to the football program, in disregard of the values of human decency and the safety and well-being of vulnerable children.

102. The NCAA and its officials, including Emmert and Dr. Ray, recognized that the issues they sought to address in the Consent Decree were not about disciplining the athletics program for NCAA rules violations.

103. According to Dr. Ray, even though the NCAA never undertook its own investigation or followed its own required processes, it could rely on the Freeh Report because the NCAA’s “executive committee has the authority when it believes something is of a big enough and significant enough nature that it should exercise its ability to expedite the process of reviewing cases.” In fact, no provision of the rules gives the NCAA that authority.

104. According to Emmert, the decision not to comply with required procedures was an “experiment” by the NCAA. Emmert has stated that it was appropriate for the NCAA to rely

on the Freeh Report because the Freeh firm had “subpoena power.” In fact, the Freeh firm did not have any such power. Emmert has also publicly stated that the NCAA decided not to comply with required procedures because completing a thorough investigation would have “taken another year or two” and, in his view, a proper investigation “would have yielded no more information than what was already in front of the [NCAA’s] executive committee.”

105. As sanctions, the Consent Decree imposed a \$60 million dollar fine, a four-year post-season ban, a four-year reduction of grants-in-aid, five years of probation, vacation of all football wins from 1998 to 2011, waiver of transfer rules and grant-in-aid retention (to allow entering or returning student athletes to transfer to other institutions and play immediately), and a reservation of rights to initiate formal investigatory and disciplinary process and to impose sanctions on any involved individuals in the future.

106. Under the terms of the Consent Decree imposed by the NCAA, President Erickson was forced to agree not to challenge the decree and to waive any right to a “determination of violations by the NCAA Committee on Infractions, any appeal under NCAA rule, and any judicial process related to the subject matter of the Consent Decree.”

107. Among others, Ryan J. McCombie, William Kenney, Anthony Adams, Gerald Cadogan, Shamar Finney, Justin Kurpeikis, Richard Gardner, Josh Gaines, Anwar Phillips, Michael Robinson, and the estate of Joe Paterno filed timely appeals of the Consent Decree with the NCAA Infractions Appeals Committee.

108. The NCAA refused to accept those appeals. It took the position that, because it had not sanctioned Penn State through the traditional enforcement process required under the NCAA’s own rules, the procedural protections (such as the right to an appeal) provided by those rules were unavailable, even for the individuals named or referenced in the Consent Decree. In

short, the “experiment” authorized by the NCAA Defendants meant that individuals who were involved and directly harmed by the Consent Decree were given no opportunity to challenge the NCAA’s abuse of discretion or the erroneous factual assertions on which it based the Consent Decree.

109. Even though the Consent Decree relied on purported “facts” that were contrary to the evidence and did not establish a violation of the NCAA’s rules, those issues were never considered by the Appeals Committee and involved individuals were denied the procedural protections required by the NCAA’s rules.

110. The Consent Decree was widely disseminated and received significant national attention. The NCAA’s decision to embrace the Freeh Report was widely viewed as extremely damaging to the Penn State football program and the reputation of those associated with it, including Plaintiffs.

111. The NCAA announced in September of 2013 that it would reduce the penalties against Penn State. Beginning with the 2013-14 year, the number of scholarships available to Penn State is supposed to increase each year, until Penn State returns to a full allocation in 2016.

### **Current and Ongoing Harm**

112. Plaintiffs have been substantially harmed, and will continue to incur future harm, as a direct and intentional result of the NCAA Defendants’ unauthorized and unlawful conduct.

113. Plaintiffs were unlawfully deprived of the required procedures due to them under the NCAA’s rules.

114. Other substantial harms suffered by Plaintiffs as a result of the NCAA Defendants’ conduct include, among many other things, the following:

a. Joe Paterno suffered damage to his good name and reputation, resulting in irreparable and substantial pecuniary harm to the current and long-term value of his estate as well as other substantial harms to his family and estate.

b. William Kenney and Jay Paterno suffered damage to their reputation and standing as football coaches, and have been unable to secure comparable employment despite their qualifications and the existence of employers who would otherwise be willing to hire them.

c. The members of the Board of Trustees, as fiduciaries of the University, are responsible for the governance and the welfare of the institution. They have been rendered unable to fully carry out their administrative and other functions in managing and governing the University because of the NCAA's interference, and have suffered substantial injuries due to a negative impact on Penn State's budget and the University's ability to attract high-caliber students and faculty, whether associated with the football program or not.

d. The considerable achievements of the former student athletes have been wiped out by the NCAA's unjustified and unlawful sanctions, which vacated all of Penn State's wins during the athletes' careers. This has injured their reputations, negatively affecting their professional careers in football and in other fields.

e. Current members of the faculty have been injured by the Consent Decree's disparaging statements about the entire Penn State community, as well as the decree's punitive measures, which have diminished the resources available to fund grants, departments, and programs. The Consent Decree has interfered with the administration of Penn State, and limited the faculty's ability to attract and retain high-caliber faculty, administrators, staff, and students, which has reduced the value of the faculty's own positions and their ability to compete within their fields.

115. The NCAA's unauthorized involvement in criminal matters outside its authority and purview has prevented interested parties from being treated fairly and has undermined the search for truth. Instead of allowing the Freeh Report to be properly evaluated, the NCAA has crystallized its errors and flagrantly violated its own rules.

## **CLAIMS**

### **COUNT I: BREACH OF CONTRACT (The Estate and Family of Joe Paterno on behalf of Joe Paterno, and Al Clemens)**

116. Plaintiffs incorporate by reference paragraphs 1 through 115 as if fully set forth herein.

117. At all relevant times, Penn State was an Active Member of the NCAA, and the NCAA had a valid and enforceable agreement with Penn State, in the form of its Constitution, Operating Bylaws, and Administrative Bylaws.

118. The NCAA and Penn State both intended, upon entering into this contract, to give the benefit of the agreement to any third parties that would be involved in findings of rule violations against a member institution.

119. Joe Paterno was specifically named in the Consent Decree, and Al Clemens, as a member of the Board of Trustees in 1998 and 2001, was also alleged to have engaged in conduct that formed the basis for the Consent Decree (and, therefore, were deemed significantly involved in violations of the NCAA rules). They are "involved individuals" under the NCAA's rules, are intended third party beneficiaries of the agreement between the NCAA and Penn State, and they (or their representatives) may enforce the provisions of that agreement against the NCAA.

120. The agreement between the NCAA and Penn State contains an implied covenant of good faith and fair dealing that requires the NCAA to refrain from taking unlawful, arbitrary,



capricious, or unreasonable actions that have the effect of depriving member institutions and involved individuals of their rights under the agreement.

121. Defendant NCAA materially breached its contractual obligations and violated the implied covenant of good faith and fair dealing by, among other things:

- a. purporting to exercise jurisdiction over a matter not caused by the football program, much less one related to a basic athletics issue such as admissions, financial aid, eligibility, and recruiting;
- b. taking action and imposing sanctions via its Executive Committee, which has power only to address association-wide issues on a prospective basis, and no power to sanction individual members;
- c. refusing to proceed against Penn State through the required traditional enforcement process, the only method of imposing sanctions that is authorized under the rules;
- d. refusing to accept any appeals of the Consent Decree;
- e. treating the Freeh Report as a “self-report” even though the Freeh Report was never voted on by the full Board of Trustees; even though the Freeh Report failed to identify, much less analyze, any purported NCAA rules violations; and even though the Freeh Report failed to comply with required procedures and reached conclusions based on irrelevant or inadmissible evidence developed pursuant to an unreliable and deficient investigation;
- f. imposing sanctions on the basis of alleged violations of vague, inapplicable principles in the NCAA’s Constitution, such as the principle of institutional control and the principle of ethical conduct, both of which relate only to athletics issues, recruiting violations, or other matters properly regulated by the NCAA;

g. imposing sanctions that are available only in cases of “major” violations without explaining why the conduct identified in the Consent Decree constituted a “major” violation intended to provide the institution with an extensive recruiting or competitive advantage;

h. imposing the penalty of vacation of wins on Penn State even though no ineligible student athlete was found to have competed during the years affected;

i. stating that the career record of Joe Paterno would reflect the vacated wins;

j. threatening to impose the “death penalty” on Penn State football when it had no authority to do so because Penn State is not and never has been a repeat offender;

k. failing to conduct its own investigation or explain its own investigative procedures, and relying instead on the flawed Freeh Report, a procedurally and substantively inadequate substitute for the NCAA’s investigation and compliance with required procedures;

l. failing to recognize that Plaintiffs, who are named or referred to in the Consent Decree, are “involved individuals” under the NCAA’s own rules; and

m. failing to afford Plaintiffs “fair procedures” during the NCAA’s determinations and deliberations.

122. The president of Penn State, Rodney Erickson, did not, could not, and lacked any authority to waive Plaintiffs’ rights and entitlement as “involved individuals” to the procedures listed above by signing the Consent Decree imposed by the NCAA.

123. As a direct and proximate result of this breach by the NCAA, Plaintiffs have suffered substantial injuries, economic loss, opportunity loss, reputational damage, emotional

distress, and other damages. Those injuries and damages were foreseeable to the NCAA when it breached the contract.

**COUNT II: INTENTIONAL INTERFERENCE  
WITH CONTRACTUAL RELATIONS  
(William Kenney and Jay Paterno)**

124. Plaintiffs incorporate by reference paragraphs 1 through 115 as if fully set forth herein.

125. Plaintiffs William Kenney and Jay Paterno had prospective and existing employment, business, and economic opportunities with many prestigious college and professional football programs, including at Penn State, as a result of the favorable reputations that each of them had earned during their service as coaches of the Penn State football program. This was or should have been known to the NCAA Defendants.

126. With knowledge of Plaintiffs' future prospective employment, business, and economic opportunities, the NCAA Defendants took the purposeful actions described in this Complaint to harm Coach Kenney and Coach Jay Paterno and to interfere with their contractual relations.

127. The NCAA Defendants lacked justification for their intentional interference with Plaintiffs' contractual relationships, or alternatively, the NCAA Defendants abused any privilege they had to take the actions outlined in this Complaint.

128. As a direct and proximate result of the wrongful, arbitrary, capricious, and unreasonable actions of the NCAA Defendants, and as described in more detail below, Coach Kenney and Coach Jay Paterno have been unable to secure comparable employment opportunities in their chosen field.

129. The NCAA Defendants' conduct in tortiously interfering with Plaintiffs' contractual relations was malicious and outrageous and showed a reckless disregard for the rights of Coach Kenney and Coach Jay Paterno.

130. As a direct and proximate result of these actions by the NCAA Defendants, Coach Kenney and Coach Jay Paterno have suffered economic loss, opportunity loss, reputational damage, emotional distress, and other damages.

**Coach William ("Bill") Kenney**

131. As of the date of the Consent Decree imposed by the NCAA, Coach Kenney had served as a Division I collegiate football coach for 27 years. He spent three years as a graduate assistant at the University of Nebraska, and 24 years coaching at Penn State. For most of his career, he coached offensive linemen and tight ends. He was well respected within the profession and was responsible for training and developing dozens of college football players who went on to play in the National Football League ("NFL"), including several first-round draft choices.

132. After Coach Kenney was let go by Penn State following the 2012 football season, he made a determined effort to secure other employment as a football coach. He applied for open positions with various Division I college football programs, including Illinois, Wisconsin, Purdue, Virginia Tech, Florida State, Massachusetts, North Carolina State, Boston College, Arizona, Delaware, Syracuse, and several others. He also applied for open coaching positions in the NFL, with franchises such as the New York Giants, the Indianapolis Colts, and the Cleveland Browns. Coach Kenney was experienced and well-qualified for these positions.

133. Coach Kenney received a few interviews with college and professional teams. His interviewers asked him questions focused on the NCAA's unsupported finding that he and other coaches had ignored "the red flags of Sandusky's behaviors" at Penn State, and not Coach

Kenney's credentials and approach as a football coach. Despite interviews or discussions with schools such as the University of Massachusetts and NFL teams such as the New York Giants and the Indianapolis Colts, he was not offered a position. In most instances, the positions he applied for went to less experienced and less qualified candidates.

134. During the course of his pursuit for new employment, Coach Kenney learned that other college teams and NFL programs did not want to deal with the potential recruiting issues and the adverse public reaction that would likely follow their decision to hire him. Coach Kenney made inquiries at or applied to at least one Division I school that instructed its Head Coach not to interview or consider hiring any former coaches from Penn State. Coach Kenney was exceptionally well-qualified for the positions for which he applied and was interviewed, and upon information and belief, he would have received job offers from these programs had it not been for the disparaging accusations leveled against him by the NCAA Defendants.

135. After over a year of frustration and disappointment, Coach Kenney eventually secured employment as an offensive line coach at Western Michigan University. While Coach Kenney enjoys his new role and greatly appreciates the opportunity, he earns significantly less in salary than he once earned at Penn State, or would have earned had he been hired by one of the larger Division I programs or NFL teams. Coach Kenney's professional career has suffered an extraordinary set-back and his future opportunities and earning potential have been harmed by the NCAA Defendants.

#### **Coach Joseph ("Jay") Paterno**

136. As of the date of the Consent Decree, Coach Jay Paterno had served as a Division I collegiate football coach for 21 years. He began his coaching career as a graduate assistant at the University of Virginia, coached for one year each at the University of Connecticut and James Madison University, and then coached for 17 years at Penn State. At Penn State, Coach Jay

Paterno spent 12 years as the quarterbacks coach and play-caller. Before the NCAA Defendants imposed the Consent Decree, Coach Jay Paterno was a top candidate for open head coaching positions at other institutions. He had received awards and accolades for his coaching efforts at Penn State, and he had been approached during his time there by other universities and search firms exploring his potential interest in head coaching vacancies.

137. After Coach Jay Paterno was let go by Penn State following the 2012 football season, he sought other employment either as a head football coach or a media commentator. Transitioning from his position to a head coaching role was a logical and customary progression for someone with his experience and reputation. He was well-qualified to receive such an offer.

138. He applied for the open head coaching positions at the University of Connecticut and James Madison University, where he had worked earlier in his career. Based on his qualifications and experience, he was a strong candidate for each position. But he was not even interviewed by either school, and the open positions went to candidates with less coaching experience.

139. Coach Jay Paterno also applied for head coaching vacancies at the University of Colorado and Boston College. He was not granted an interview at either school. He also inquired about the head coaching position at another Division I school in the mid-Atlantic region, but the university administration considered the coaches from Penn State “too toxic,” given the findings of the Consent Decree. The program in question did not grant interviews to any candidates from Penn State. Coach Jay Paterno was extremely well-qualified for the positions he sought and would have received job offers from these programs had it not been for the disparaging accusations leveled against him by the NCAA Defendants in the Consent Decree.

140. Coach Jay Paterno also engaged in discussions with various media companies, including ESPN, CBS Sports, and Fox Sports, about serving as a college football commentator. He had prior dealings with officials at each company, and they were aware of his experience as a columnist for StateCollege.com for nearly three years. Before the NCAA Defendants imposed the Consent Decree, ESPN advised Coach Jay Paterno that they were interested in his services and suggested that they wanted to have him involved in a spring 2012 telecast and at least a couple of in-studio college football shows. The plan was to have him start working as a commentator during the 2012 football season. These discussions were later discontinued. Upon information and belief, officials at the network were nervous about the Sandusky scandal and the NCAA's unsupported finding that he and other coaches had ignored "the red flags of Sandusky's behaviors" at Penn State.

141. Coach Jay Paterno had further discussions with ESPN during the off-season before the 2013 season about the possibility of having him work as a commentator during lower-profile college football games. Despite these discussions, that position never came to fruition and no offer was forthcoming. During the spring of 2013, Coach Jay Paterno had similar discussions with representatives of CBS Sports and Fox Sports, who had earlier expressed some interest in his services. Again, nothing materialized. His hiring was considered too controversial, because if they placed him on-the-air, the networks would have no choice but to have Coach Jay Paterno publicly address past events and developments arising from the Sandusky scandal, given the findings of the NCAA Defendants.

142. Coach Jay Paterno is not currently employed, other than as a freelance sports columnist.

**COUNT III: INJURIOUS FALSEHOOD/  
COMMERCIAL DISPARAGEMENT  
(The Estate and Family of Joe Paterno  
on behalf of Joe Paterno)**

143. Plaintiffs incorporate by reference paragraphs 1 through 115 as if fully set forth herein.

144. The NCAA-imposed Consent Decree published and relied on statements that disparaged Joe Paterno and the property of the Estate and Family of Joe Paterno. It unfairly and improperly maligned Joe Paterno's moral character and the fulfillment of his duties as Head Coach at Penn State, and concerned his business and property.

145. Before the NCAA Defendants' unlawful actions, Joe Paterno or his estate possessed a property interest in his name and reputation, and there was a readily available, valuable commercial market concerning Joe Paterno's commercial property.

146. The statements in the Consent Decree regarding Joe Paterno's character and conduct as Head Coach and concerning the business and property of his estate were false and defamatory.

147. The statements in the Consent Decree regarding Joe Paterno's character and conduct were libel per se, because they imputed dishonest conduct to Joe Paterno.

148. These statements were widely disseminated by the NCAA, on its website and through numerous press outlets across the country.

149. The NCAA Defendants either intended the publication of these statements to cause pecuniary loss or reasonably should have recognized that publication would result in pecuniary loss to the Estate and Family of Joe Paterno.

150. The Estate and Family of Joe Paterno did in fact suffer pecuniary loss, reputational harm, and other damages, as a result of the publication of these statements due to the



actions of third persons relying on the statements. The commercial interests and value of the Estate and Family of Joe Paterno substantially and materially declined as a direct result of the NCAA Defendants' conduct.

151. The NCAA Defendants either knew that the statements they made and published were false or acted in reckless disregard of their falsity.

152. The NCAA Defendants' conduct was malicious and outrageous and showed a reckless disregard for Joe Paterno's rights.

**COUNT IV: DEFAMATION**  
**(William Kenney, Jay Paterno, and Al Clemens)**

153. Plaintiffs incorporate by reference paragraphs 1 through 115 as if fully set forth herein.

154. The NCAA adopted the false statements in the Freeh Report and put its imprimatur on the baseless allegations that the Board of Trustees "did not perform its oversight duties" and "failed in its duties to oversee the President and senior University officials in 1998 and 2001 by not inquiring about important University matters and by not creating an environment where senior University officials felt accountable." These statements concerned Al Clemens, who was a member of the Board of Trustees in 1998 and 2001.

155. The NCAA also stated that "[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky's behaviors and no one warned the public about him." This statement concerned Jay Paterno and William Kenney, who were assistant coaches of the Penn State football program during the relevant times.

156. These statements were entirely unsupported by evidence and made with intentional, reckless, or negligent disregard for their truth.

157. The statements were published in the Consent Decree, which the NCAA disseminated to the entire world on its website, or were made in front of large audiences and disseminated through national news media.

158. These statements were false, defamatory, and irreparably harmed Plaintiffs' reputations and lowered them in the estimation of the nation. Every recipient of the statements understood their defamatory meaning and understood that the Plaintiffs were the objects of the communication.

159. The publication of the statements resulted in actual harm to Plaintiffs because it adversely affected their reputations; caused them emotional distress, mental anguish, and humiliation; and inflicted financial and pecuniary loss on them.

160. The NCAA had no privilege to publish the false and defamatory statements, or if it did, it abused that privilege.

**COUNT V: CIVIL CONSPIRACY  
(All Plaintiffs)**

161. Plaintiffs incorporate by reference paragraphs 1 through 115 as if fully set forth herein.

162. Emmert, Dr. Ray, and other unknown NCAA employees, along with the Freeh firm, conspired to work together and did work together to impose unwarranted and unprecedented sanctions on Penn State, thereby unlawfully harming Plaintiffs as set forth herein, breaching the contract between the NCAA and Penn State, and depriving Plaintiffs of their rights, including their rights under that contract. These actions were unlawful or taken for an unlawful purpose.

163. Among other things, Emmert, Dr. Ray, and other unknown NCAA employees, along with the Freeh firm, agreed to:

a. bypass the NCAA's rules and procedural requirements in conducting the Penn State investigation;

b. deprive Plaintiffs of their rights, including their rights to notice and an opportunity to be heard, before imposing unprecedented sanctions; and

c. impose sanctions on Penn State and implicate the entire Penn State community in wrongdoing, based on an obviously flawed investigation that did not consider whether Penn State had violated any of the NCAA's rules.

164. Emmert, Dr. Ray, and other NCAA employees, along with the Freeh firm, acted with malice. They intended to injure Plaintiffs through their actions or acted in reckless disregard of Plaintiffs' rights. They had no valid justification for their actions.

165. Emmert, Dr. Ray, and other NCAA employees, along with the Freeh firm, performed a series of overt acts in furtherance of this conspiracy, including but not limited to the following:

a. the Executive Committee and Dr. Ray purported to grant Emmert authority to investigate Penn State and impose sanctions, despite knowing they did not have the power to do so;

b. Emmert, Dr. Ray, and other NCAA employees worked closely and coordinated with the Freeh firm to help it prepare a report that they knew or should have known included false conclusions that had not been reached by means of an adequate investigation;

c. Emmert advised President Erickson that the NCAA would use the Freeh Report as a substitute for its own investigation, in reckless disregard of the falsity and inadequacy of that report, and the various NCAA procedural rules violations committed thereby;

d. unknown NCAA employees communicated to Penn State's counsel that the "death penalty" was on the table for Penn State, despite knowing that no such penalty could have lawfully been imposed under the NCAA rules;

e. Emmert threatened that if Penn State went to the media, the death penalty would be certain, thus extorting silence from President Erickson; and

f. Emmert imposed the Consent Decree on Penn State based on the allegations in the Freeh Report, although doing so was impermissible under the NCAA's own rules.

166. As a result of this conspiracy, Plaintiffs suffered actual damages.

167. The NCAA Defendants' conduct in engaging in this civil conspiracy was malicious and outrageous and showed a reckless disregard for Plaintiffs' rights.

#### **RELIEF REQUESTED**

168. WHEREFORE, Plaintiffs respectfully request the entry of judgment against each of the NCAA Defendants, and the following legal and equitable relief:

- (1) A declaratory judgment that the actions of the NCAA Defendants were unlawful and violated Plaintiffs' contractual and legal rights;
- (2) Issuance of a permanent injunction preventing the NCAA from further enforcing the Consent Decree or the sanctions improperly imposed therein;
- (3) An award of compensatory damages for the tortious and improper conduct and breach of contract resulting in the losses and damages described herein;
- (4) An award of punitive damages for outrageous, reckless, and intentional misconduct resulting in the losses and damages described herein;
- (5) Costs and disbursements of this action; and
- (6) Any other legal or equitable relief as the Court may deem just and proper.

169. Plaintiffs respectfully request the following equitable relief as against the NCAA Defendants and Penn State:

- (1) A declaratory judgment that
  - a. Joe Paterno was an “involved individual” within the meaning of the NCAA Rules;
  - b. Penn State did not have the authority to waive any rights that Joe Paterno had as an “involved individual” under the NCAA Rules; and
  - c. The NCAA-imposed Consent Decree was unauthorized, unlawful, and void *ab initio*.
- (2) Such other and further equitable relief as may be necessary to remedy the harm caused by the imposition of the Consent Decree.

#### **JURY DEMAND**

Plaintiffs demand a jury on all issues triable to a jury.



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Dated: February 5, 2014

# **Exhibit A**



2011-12 NCAA®

# DIVISION I **MANUAL**

EFFECTIVE  
AUGUST 1, 2011

CONSTITUTION  
OPERATING BYLAWS  
ADMINISTRATIVE BYLAWS





THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

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Distributed to: directors of athletics; faculty athletics representatives; senior woman administrators; presidents or chancellors; conference commissioners; senior compliance administrators; and reclassifying and affiliated members.

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## CONSTITUTION, ARTICLE 1

# Name, Purposes and Fundamental Policy

---

1.1	Name .....	1
1.2	Purposes .....	1
1.3	Fundamental Policy .....	1

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## 1.1 NAME [\*]

The name of this organization shall be "The National Collegiate Athletic Association."

## 1.2 PURPOSES [\*]

The purposes of this Association are:

- (a) To initiate, stimulate and improve intercollegiate athletics programs for student-athletes and to promote and develop educational leadership, physical fitness, athletics excellence and athletics participation as a recreational pursuit;
- (b) To uphold the principle of institutional control of, and responsibility for, all intercollegiate sports in conformity with the constitution and bylaws of this Association;
- (c) To encourage its members to adopt eligibility rules to comply with satisfactory standards of scholarship, sportsmanship and amateurism;
- (d) To formulate, copyright and publish rules of play governing intercollegiate athletics;
- (e) To preserve intercollegiate athletics records;
- (f) To supervise the conduct of, and to establish eligibility standards for, regional and national athletics events under the auspices of this Association;
- (g) To cooperate with other amateur athletics organizations in promoting and conducting national and international athletics events;
- (h) To legislate, through bylaws or by resolutions of a Convention, upon any subject of general concern to the members related to the administration of intercollegiate athletics; and
- (i) To study in general all phases of competitive intercollegiate athletics and establish standards whereby the colleges and universities of the United States can maintain their athletics programs on a high level.

## 1.3 FUNDAMENTAL POLICY [\*]

**1.3.1 Basic Purpose. [\*]** The competitive athletics programs of member institutions are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports.

**1.3.2 Obligations of Member Institutions. [\*]** Legislation governing the conduct of intercollegiate athletics programs of member institutions shall apply to basic athletics issues such as admissions, financial aid, eligibility and recruiting. Member institutions shall be obligated to apply and enforce this legislation, and the enforcement procedures of the Association shall be applied to an institution when it fails to fulfill this obligation.

# Principles for Conduct of Intercollegiate Athletics

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## 2.01 GENERAL PRINCIPLE [\*]

Legislation enacted by the Association governing the conduct of intercollegiate athletics shall be designed to advance one or more basic principles, including the following, to which the members are committed. In some instances, a delicate balance of these principles is necessary to help achieve the objectives of the Association.

## 2.1 THE PRINCIPLE OF INSTITUTIONAL CONTROL AND RESPONSIBILITY [\*]

**2.1.1 Responsibility for Control. [\*]** It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures. *(Revised: 3/8/06)*

**2.1.2 Scope of Responsibility. [\*]** The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution.

## 2.2 THE PRINCIPLE OF STUDENT-ATHLETE WELL-BEING [\*]

Intercollegiate athletics programs shall be conducted in a manner designed to protect and enhance the physical and educational well-being of student-athletes. *(Revised: 11/21/05)*

**2.2.1 Overall Educational Experience. [\*]** It is the responsibility of each member institution to establish and maintain an environment in which a student-athlete's activities are conducted as an integral part of the student-athlete's educational experience. *(Adopted: 1/10/95)*

**2.2.2 Cultural Diversity and Gender Equity. [\*]** It is the responsibility of each member institution to establish and maintain an environment that values cultural diversity and gender equity among its student-athletes and intercollegiate athletics department staff. *(Adopted: 1/10/95)*

**2.2.3 Health and Safety. [\*]** It is the responsibility of each member institution to protect the health of, and provide a safe environment for, each of its participating student-athletes. *(Adopted: 1/10/95)*

**2.2.4 Student-Athlete/Coach Relationship. [\*]** It is the responsibility of each member institution to establish and maintain an environment that fosters a positive relationship between the student-athlete and coach. *(Adopted: 1/10/95)*

**2.2.5 Fairness, Openness and Honesty. [\*]** It is the responsibility of each member institution to ensure that coaches and administrators exhibit fairness, openness and honesty in their relationships with student-athletes. *(Adopted: 1/10/95)*

**2.2.6 Student-Athlete Involvement. [\*]** It is the responsibility of each member institution to involve student-athletes in matters that affect their lives. *(Adopted: 1/10/95)*

## **2.3 THE PRINCIPLE OF GENDER EQUITY [\*]**

**2.3.1 Compliance With Federal and State Legislation. [\*]** It is the responsibility of each member institution to comply with federal and state laws regarding gender equity. *(Adopted: 1/11/94)*

**2.3.2 NCAA Legislation. [\*]** The Association should not adopt legislation that would prevent member institutions from complying with applicable gender-equity laws, and should adopt legislation to enhance member institutions' compliance with applicable gender-equity laws. *(Adopted: 1/11/94)*

**2.3.3 Gender Bias. [\*]** The activities of the Association should be conducted in a manner free of gender bias. *(Adopted: 1/11/94)*

## **2.4 THE PRINCIPLE OF SPORTSMANSHIP AND ETHICAL CONDUCT [\*]**

For intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society, student-athletes, coaches, and all others associated with these athletics programs and events should adhere to such fundamental values as respect, fairness, civility, honesty and responsibility. These values should be manifest not only in athletics participation, but also in the broad spectrum of activities affecting the athletics program. It is the responsibility of each institution to: *(Revised: 1/9/96)*

- (a) Establish policies for sportsmanship and ethical conduct in intercollegiate athletics consistent with the educational mission and goals of the institution; and *(Adopted: 1/9/96)*
- (b) Educate, on a continuing basis, all constituencies about the policies in Constitution 2.4-(a). *(Adopted: 1/9/96)*

## **2.5 THE PRINCIPLE OF SOUND ACADEMIC STANDARDS [\*]**

Intercollegiate athletics programs shall be maintained as a vital component of the educational program, and student-athletes shall be an integral part of the student body. The admission, academic standing and academic progress of student-athletes shall be consistent with the policies and standards adopted by the institution for the student body in general.

## **2.6 THE PRINCIPLE OF NONDISCRIMINATION [\*]**

The Association shall promote an atmosphere of respect for and sensitivity to the dignity of every person. It is the policy of the Association to refrain from discrimination with respect to its governance policies, educational programs, activities and employment policies, including on the basis of age, color, disability, gender, national origin, race, religion, creed or sexual orientation. It is the responsibility of each member institution to determine independently its own policy regarding nondiscrimination. *(Adopted: 1/16/93, Revised: 1/16/00)*

## **2.7 THE PRINCIPLE OF DIVERSITY WITHIN GOVERNANCE STRUCTURES [\*]**

The Association shall promote diversity of representation within its various divisional governance structures and substructures. Each divisional governing body must assure gender and ethnic diversity among the membership of the bodies in the division's administrative structure. *(Adopted: 1/9/96 effective 8/1/97)*

## **2.8 THE PRINCIPLE OF RULES COMPLIANCE [\*]**

**2.8.1 Responsibility of Institution. [\*]** Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to assure compliance and to identify and report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions. Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.

**2.8.2 Responsibility of Association. [\*]** The Association shall assist the institution in its efforts to achieve full compliance with all rules and regulations and shall afford the institution, its staff and student-athletes fair procedures in the consideration of an identified or alleged failure in compliance.

**2.8.3 Penalty for Noncompliance. [\*]** An institution found to have violated the Association's rules shall be subject to such disciplinary and corrective actions as may be determined by the Association.

## **2.9 THE PRINCIPLE OF AMATEURISM [\*]**

Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.

## **2.10 THE PRINCIPLE OF COMPETITIVE EQUITY [\*]**

The structure and programs of the Association and the activities of its members shall promote opportunity for equity in competition to assure that individual student-athletes and institutions will not be prevented unfairly from achieving the benefits inherent in participation in intercollegiate athletics.

## **2.11 THE PRINCIPLE GOVERNING RECRUITING [\*]**

The recruiting process involves a balancing of the interests of prospective student-athletes, their educational institutions and the Association's member institutions. Recruiting regulations shall be designed to promote equity among member institutions in their recruiting of prospective student-athletes and to shield them from undue pressures that may interfere with the scholastic or athletics interests of the prospective student-athletes or their educational institutions.

## **2.12 THE PRINCIPLE GOVERNING ELIGIBILITY [\*]**

Eligibility requirements shall be designed to assure proper emphasis on educational objectives, to promote competitive equity among institutions and to prevent exploitation of student-athletes.

## **2.13 THE PRINCIPLE GOVERNING FINANCIAL AID [\*]**

A student-athlete may receive athletically related financial aid administered by the institution without violating the principle of amateurism, provided the amount does not exceed the cost of education authorized by the Association; however, such aid as defined by the Association shall not exceed the cost of attendance as published by each institution. Any other financial assistance, except that received from one upon whom the student-athlete is naturally or legally dependent, shall be prohibited unless specifically authorized by the Association.

## **2.14 THE PRINCIPLE GOVERNING PLAYING AND PRACTICE SEASONS [\*]**

The time required of student-athletes for participation in intercollegiate athletics shall be regulated to minimize interference with their opportunities for acquiring a quality education in a manner consistent with that afforded the general student body.

## **2.15 THE PRINCIPLE GOVERNING POSTSEASON COMPETITION AND CONTESTS SPONSORED BY NONCOLLEGIATE ORGANIZATIONS [\*]**

The conditions under which postseason competition occurs shall be controlled to assure that the benefits inherent in such competition flow fairly to all participants, to prevent unjustified intrusion on the time student-athletes devote to their academic programs, and to protect student-athletes from exploitation by professional and commercial enterprises.

## **2.16 THE PRINCIPLE GOVERNING THE ECONOMY OF ATHLETICS PROGRAM OPERATION [\*]**

Intercollegiate athletics programs shall be administered in keeping with prudent management and fiscal practices to assure the financial stability necessary for providing student-athletes with adequate opportunities for athletics competition as an integral part of a quality educational experience.

# NCAA Membership

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## 3.01 GENERAL PRINCIPLES

**3.01.1 Classes of Membership.** Division I offers three classes of membership: active, conference and affiliated. Eligibility for and method of election to membership, obligations and conditions for continuing membership, voting rights and other membership privileges for each class are defined in this article. *(Revised: 1/11/94 effective 9/2/94, 1/15/11 effective 8/1/11)*

**3.01.2 Division Membership.** Active and conference members of the NCAA may be divided into divisions for purposes of legislation and competition in NCAA championships. Criteria for membership in these divisions are defined in Bylaw 20.

**3.01.3 Obligation to Meet Division Criteria.** Division membership criteria constitute enforceable legislation. Each member institution shall comply with all applicable criteria of its division, and an institution that fails to do so shall be subject to the enforcement procedures and to possible reclassification.

**3.01.4 Termination or Suspension of Membership.** All rights and privileges of a member shall cease immediately upon termination or suspension of its membership.

## 3.02 DEFINITIONS AND APPLICATIONS

**3.02.1 Competitive Body.** A competitive body is an athletics conference that conducts competition among its member institutions and determines a conference champion in one or more sports.

**3.02.2 Legislative Body.** A legislative body is an athletics conference that develops and maintains rules and regulations governing the athletics programs and activities of its member institutions.

### 3.02.3 Membership Categories.

**3.02.3.1 Active Member.** An active member is a four-year college or university that is accredited by the appropriate regional accrediting agency and duly elected to active membership under the provisions of this article (see Constitution 3.2.3). Active members have the right to compete in NCAA championships, to vote on legislation and other issues before the Association, and to enjoy other privileges of membership designated in the constitution and bylaws of the Association. *(Revised: 1/15/11 effective 8/1/11)*

**3.02.3.1.1 Athletics Consortium.** An athletics consortium consists of one member institution and neighboring member or nonmember institutions (but not more than one nonmember institution), recognized and approved by a two-thirds vote of the Administration Cabinet. The student-athletes of the combined institutions are permitted to compete on the NCAA member institution's athletics teams, provided they meet the eligibility requirements of the NCAA and the member institution (see Constitution 3.1.2). *(Revised: 11/1/07 effective 8/1/08)*

**3.02.3.2 Member Conference.** A member conference is a group of colleges and/or universities that conducts competition among its members and determines a conference champion in one or more sports (in which the NCAA conducts championships or for which it is responsible for providing playing rules for intercollegiate competition), duly elected to conference membership under the provisions of this article (see Constitution 3.3.3). A member conference is entitled to all of the privileges of active members except the right to compete in NCAA championships (see Constitution 3.3.2). Only those conferences that meet specific criteria as competitive and legislative bodies (see Constitution 3.02.1 and 3.02.2) and minimum standards related to size and division status are permitted to vote on legislation or other issues before the Association.

**3.02.3.3 Affiliated Member.** An affiliated member is a coaches or sports association whose function and purpose are directly related to one or more sports in which the NCAA conducts championships or an emerging sport for women, or an association that consists of college/university administrators and has a direct connection to either the NCAA or its member institutions, duly elected to affiliated membership under the provisions of this article (see Constitution 3.4.3). An affiliated member is entitled to be represented by one nonvoting delegate at

**3.2.6 Discipline of Active Members.** Disciplinary or corrective actions other than suspension or termination of membership may be effected during the period between annual Conventions for violation of NCAA rules. (See Bylaws 19 and 32 for enforcement regulations, policies and procedures.)

**3.2.6.1 Restoration of Good Standing.** Disciplined members shall resume good standing in accordance with the terms of the disciplinary action taken, or may be restored to good standing at any time by a majority vote of the members of the Committee on Infractions present and voting. If fewer than eight members are present, any committee action requires a favorable vote of at least four committee members. Disciplined members also may be restored to good standing at the annual Convention, by vote of a majority of the members present and voting.

### 3.3 MEMBER CONFERENCE

#### 3.3.1 Eligibility.

**3.3.1.1 Competitive and Legislative Body.** A member conference shall be both a competitive and a legislative body on the conference level (see Constitution 3.02.1 and 3.02.2). *(Revised: 1/15/11 effective 8/1/11)*

**3.3.1.2 Conference Competition Requirement.** Conference membership is available to duly elected athletics conferences of colleges and universities that conduct conference competition and determine a champion in one or more sports in which the Association conducts championships or for which it is responsible for providing playing rules for intercollegiate competition.

**3.3.1.3 Composition of Conference.** All of the members of the conference shall be active members of Division I or be engaged in the reclassification process pursuant to Bylaw 20.5. *(Revised: 1/11/94 effective 9/2/94, 1/15/11 effective 8/1/11)*

#### 3.3.2 Privileges.

**3.3.2.1 Privileges of Member Conferences.** Member conferences shall be entitled to all of the privileges of active members except the right to compete as such in NCAA championships. A copy of NCAA Champion magazine shall be sent to each member of the NCAA.

**3.3.2.2 Voting Rights.** Only those member conferences that meet the criteria of Bylaw 20.02.5 shall be permitted to vote on issues before the Association. *(Revised: 1/15/11 effective 8/1/11)*

**3.3.2.2.1 Football Issues.** Conference championship competition shall be conducted in football in order for the conference to vote on issues pertaining only to football. *(Revised: 1/15/11 effective 8/1/11)*

**3.3.2.3 Use of Association's Registered Marks.** Member conferences may use the registered marks of the Association (the Association's name, logo or other insignia) only in accordance with guidelines established by the Executive Committee.

#### 3.3.3 Election Procedures.

**3.3.3.1 Application.** An athletics conference desiring to become a member conference shall make application on a form available from the national office by June 1 for membership effective August 1 of the following academic year. A check in the appropriate amount for annual dues (see Constitution 3.7.2) shall accompany the application. Should the applicant fail election, the dues paid shall be refunded. *(Revised: 4/25/02, 1/15/11 effective 8/1/11)*

**3.3.3.2 Election.** Athletics conferences may be elected as member conferences by a majority vote of the delegates present and voting at an annual Convention or by a majority vote of the Board of Directors, effective the following August 1. *(Revised: 4/25/02, 1/11/07 effective 8/1/08, 10/28/10, 1/15/11 effective 8/1/11)*

#### 3.3.4 Conditions and Obligations of Membership.

**3.3.4.1 General.** The member conferences of this Association agree to administer their athletics programs in accordance with the constitution, bylaws and other legislation of the Association.

**3.3.4.2 Athletics Certification Program.** Member conferences shall facilitate the athletics certification program of the Association in accordance with the Association's constitution and bylaws. *(Adopted: 1/16/93 effective 1/1/94)*

**3.3.4.3 Conference Competition.** Member conferences shall conduct conference competition and determine a champion in one or more sports in which the Association conducts championships or for which it is responsible for providing playing rules for intercollegiate competition.

**3.3.4.4 Officiating.** A multisport conference shall provide oversight of the officiating programs for selecting, training and assigning officials for its men's and women's basketball programs. *(Adopted: 1/15/11 effective 8/1/11)*

**3.3.4.5 Compliance Program.** A multisport conference shall have a comprehensive compliance program. *(Adopted: 1/15/11 effective 8/1/11)*

**3.3.4.6 Conference Student-Athlete Advisory Committee.** Each conference shall establish a student-athlete advisory committee for its member institutions' student-athletes. The composition and duties of the committee shall be determined by the conference. *(Adopted: 10/27/98 effective 8/1/99)*

# Organization

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4.2	Division I Board of Directors .....	21			

## 4.01 GENERAL PRINCIPLES

**4.01.1 Structure. [\*]** The Association's administrative structure shall include an Executive Committee comprised of institutional presidents or chancellors that oversees Association-wide issues and shall ensure that each division operates consistent with the basic purposes, fundamental policies and general principles of the Association (see Constitution 1 and 2). In addition, the administrative structure of each division shall empower a body of institutional presidents or chancellors to set forth the policies, rules and regulations for operating the division. Further, the administrative structure of each division shall empower a body of athletics administrators and faculty athletics representatives (and in Division III, institutional presidents and chancellors) to make recommendations to the division's body of institutional presidents or chancellors and to handle responsibilities delegated to it. *(Adopted: 1/9/96 effective 8/1/97, Revised: 3/8/06)*

**4.01.2 Guarantees. [\*]** The Association's overall governance structure guarantees its members the following: *(Adopted: 1/9/96 effective 8/1/97)*

**4.01.2.1 Budget Allocations. [\*]** Members are guaranteed revenue through allocations made to each division from the Association's general operating revenue. Division II shall receive at least 4.37 percent of the Association's annual general operating revenue. Division III shall receive at least 3.18 percent of the Association's annual general operating revenue. *(Adopted: 1/9/96 effective 8/1/97)*

**4.01.2.1.1 General Operating Revenue. [\*]** General operating revenue, as used in this section, shall include at least all sources of revenue existing as of January 9, 1996, including revenue from contracts for these existing sources and revenue from any modified, extended or successor contract for such sources. *(Adopted: 1/9/96 effective 8/1/97)*

**4.01.2.2 Revenue Guarantee. [◆]** All members shall receive revenue from all gross revenue sources received by the Association, unless specifically excluded, through the division's revenue distribution formulas. *(Adopted: 1/9/96 effective 8/1/97)*

**4.01.2.2.1 Revenue from New Subdivision Championship. [◆]** This provision shall not apply to the distribution of revenue produced directly by a new subdivisional championship in a sport that has a subdivisional championship at the time of the adoption of this legislation. Any revenue produced by such a new subdivisional championship shall be distributed as determined by that subdivision. *(Adopted: 1/9/96 effective 8/1/97)*

**4.01.2.2.2 Revenue Distribution Formula. [◆]** As used in this section, the components of the division's revenue distribution formulas as they existed at the time of the adoption of this legislation include the Academic Enhancement, Basketball, Conference Grant, Grant-in-Aid, Special Assistance, and Sports Sponsorship funds, and the supplemental and reserve funds intended for distribution to the membership. *(Adopted: 1/9/96 effective 8/1/97)*

**4.01.2.2.2.1 Proportion of Revenue. [◆]** The revenue distributed through these funds shall be allocated among the funds in the same proportion as existed in the fiscal year 2001-02. *(Adopted: 1/9/96 effective 8/1/97, Revised: 1/14/97)*

**4.01.2.2.2.2 Formula for Allocation. [◆]** The formula for allocating each such fund among the members shall be as it existed at the time of the adoption of this legislation. *(Adopted: 1/9/96 effective 8/1/97)*

**4.01.2.2.2.3 Waiver of Proportionality Requirement.** The Board of Directors may waive the proportionality requirements of the revenue guarantee to permit uniform increases to all programs in the Academic Enhancement, Conference Grant and Special Assistance funds. *(Adopted: 1/14/97 effective 8/1/97)*

**4.01.2.2.3 Joint Ventures.** All marketing joint ventures, involving sports (other than bowl subdivision football) in which the NCAA sponsored a championship as of January 15, 1997, between the Association (or the Association's representative or agent) and a member conference or member institution (or the rep-



**4.02.6.2.2 Leadership Council and Legislative Council.** The term of office for the Leadership Council and Legislative Council shall be as follows: *(Adopted: 11/1/07 effective 8/1/08)*

- (a) Members shall serve a four-year term. Members are not eligible for immediate re-appointment;
- (b) A conference may remove its representative during a term;
- (c) The terms of office of Football Bowl Subdivision positions and Football Championship Subdivision and Division I Subdivision positions shall expire on a staggered basis to provide for continuity. Members may be appointed for less than full terms; and
- (d) Members who serve more than one-half of a term shall be considered to have served a full term.

**4.02.6.3 Institution's Membership in Different Subdivision.** An institution's representative to the Board of Directors, Leadership Council and Legislative Council is eligible to serve on behalf of the multisport conference in which the institution holds membership, even if the institution's NCAA membership is in a different subdivision. *(Adopted: 11/1/07 effective 8/1/08)*

## **4.1 EXECUTIVE COMMITTEE [\*]**

**4.1.1 Composition. [\*]** The Executive Committee shall consist of 20 members. The NCAA president and the chairs of the Division I Leadership Council and the Division II and Division III Management Councils shall be ex officio nonvoting members, except that the NCAA president is permitted to vote in the case of a tie among the voting members of the Executive Committee present and voting. The other 16 voting members of the Executive Committee shall include: *(Adopted: 1/9/96 effective 8/1/97, Revised: 3/8/06, 11/1/07 effective 8/1/08)*

- (a) Eight chancellors or presidents from the Division I Board of Directors from Football Bowl Subdivision institutions; *(Revised: 3/8/06, 12/15/06)*
- (b) Two chancellors or presidents from the Division I Board of Directors from Football Championship Subdivision institutions; *(Revised: 3/8/06, 12/15/06)*
- (c) Two chancellors or presidents from the Division I Board of Directors from Division I Subdivision institutions; *(Revised: 3/8/06, 12/15/06)*
- (d) Two Division II chancellors or presidents from the Division II Presidents Council; and *(Revised: 3/8/06)*
- (e) Two Division III chancellors or presidents from the Division III Presidents Council. *(Revised: 3/8/06)*

**4.1.2 Duties and Responsibilities. [\*]** The Executive Committee shall: *(Adopted: 1/9/96 effective 8/1/97)*

- (a) Provide final approval and oversight of the Association's budget;
- (b) Employ the NCAA president, who shall be administratively responsible to the Executive Committee and who shall be authorized to employ such other persons as may be necessary to conduct efficiently the business of the Association; *(Revised: 3/8/06)*
- (c) Provide strategic planning for the Association as a whole;
- (d) Identify core issues that affect the Association as a whole;
- (e) Act on behalf of the Association by adopting and implementing policies to resolve core issues and other Association-wide matters; *(Revised: 1/12/08)*
- (f) Initiate and settle litigation;
- (g) Convene at least one combined meeting per year of the three divisional presidential governing bodies;
- (h) Convene at least one same-site meeting per year of the Division I Legislative Council and the Division II and Division III Management Councils;
- (i) Forward proposed amendments to Constitution 1 and 2 and other dominant legislation to the entire membership for a vote;
- (j) Call for a vote of the entire membership on the action of any division that it determines to be contrary to the basic purposes, fundamental policies and general principles set forth in the Association's constitution. This action may be overridden by the Association's entire membership by a two-thirds majority vote of those institutions voting;
- (k) Call for an annual or special Convention of the Association;
- (l) Review and coordinate the catastrophic-injury and professional career insurance (disabling injury/illness) programs; and *(Adopted: 8/5/99)*
- (m) Compile the names of those individuals associated with intercollegiate athletics who died during the year immediately preceding the annual Convention. *(Adopted: 11/1/01)*

### **4.1.3 Election/Term of Office. [\*]**

**4.1.3.1 Election. [\*]** Division I members of the Executive Committee shall be appointed by the Division I Board of Directors. Divisions II and III members of the Executive Committee shall be appointed by the Divisions II and III Presidents Councils, respectively. *(Adopted: 1/9/96 effective 8/1/97)*

**4.1.3.2 Terms.** [\*] The terms of service of members of the Executive Committee shall coincide with their service on the applicable divisional presidential governing body, unless otherwise specified by that governing body. *(Adopted: 1/9/96 effective 8/1/97)*

**4.1.3.3 Committee Chair.** [\*] The Executive Committee shall elect one of its members to serve for a two-year period as chair. *(Adopted: 1/9/96 effective 8/1/97)*

## 4.2 DIVISION I BOARD OF DIRECTORS

**4.2.1 Composition.** Giving due weight to gender and ethnic diversity per Constitution 4.02.5, the Board of Directors shall include 18 members and shall be comprised of presidents or chancellors. The members of the Board shall include: *(Adopted: 1/9/96 effective 8/1/97, Revised: 1/14/97 effective 8/1/97, 8/5/99, 11/1/07 effective 8/1/08)*

- (a) One institutional president or chancellor from each of the following 11 conferences: *(Revised: 8/5/99, 4/24/03)*
  - (1) Atlantic Coast Conference;
  - (2) Big East Conference;
  - (3) Big Ten Conference;
  - (4) Big 12 Conference;
  - (5) Conference USA;
  - (6) Mid-American Conference;
  - (7) Mountain West Conference;
  - (8) Pacific-12 Conference;
  - (9) Southeastern Conference;
  - (10) Sun Belt Conference; and
  - (11) Western Athletic Conference.
- (b) Seven institutional presidents or chancellors from among the following conferences: *(Revised: 1/14/97, 8/5/99, 4/24/03)*
  - (1) America East Conference;
  - (2) Atlantic Sun Conference;
  - (3) Atlantic 10 Conference;
  - (4) Big Sky Conference;
  - (5) Big South Conference;
  - (6) Big West Conference;
  - (7) Colonial Athletic Association;
  - (8) Horizon League;
  - (9) Ivy Group;
  - (10) Metro Atlantic Athletic Conference;
  - (11) Mid-Eastern Athletic Conference;
  - (12) Missouri Valley Conference;
  - (13) Northeast Conference;
  - (14) Ohio Valley Conference;
  - (15) Patriot League;
  - (16) Southern Conference;
  - (17) Southland Conference;
  - (18) Southwestern Athletic Conference;
  - (19) The Summit League; or
  - (20) West Coast Conference.

**4.2.1.1 Conference Representation.** No conference listed in Constitution 4.2.1-(b) may have more than one conference representative serving on the Board of Directors simultaneously. *(Adopted: 1/9/96 effective 8/1/97, Revised: 8/5/99, 12/15/06)*

**4.2.1.2 Increase or Decrease.** The number of Board members from each category set forth in Constitution 4.2.1-(a) and 4.2.1-(b) shall remain the same regardless of an increase or decrease in the number of voting member conferences. *(Adopted: 1/9/96 effective 8/1/97, Revised: 8/5/99)*

**4.2.1.3 Rotation of Representatives.** The rotation of Board of Directors conference representatives between the conferences listed in Constitution 4.2.1-(b), shall be developed, maintained and revised by those conferences. *(Adopted: 1/14/97 effective 8/1/97, Revised: 12/15/06)*

**4.2.2 Duties and Responsibilities.** The Board of Directors shall: (*Adopted: 1/9/96 effective 8/1/97, Revised: 8/7/03*)

- (a) Establish and direct general policy;
- (b) Establish a strategic plan;
- (c) Adopt or defeat legislative proposals independent of the Legislative Council (e.g., emergency, noncontroversial or other proposals sponsored by the Board); (*Revised: 11/1/07 effective 8/1/08*)
- (d) At its discretion, ratify, amend or defeat legislation adopted by the Legislative Council (see Constitution 5.3.2); (*Revised: 11/1/07 effective 8/1/08*)
- (e) Delegate to the Leadership Council or Legislative Council responsibilities for specific matters it deems appropriate; (*Revised: 11/1/07 effective 8/1/08*)
- (f) Appoint members of the NCAA Division I Committee on Infractions and the Division I Infractions Appeals Committee; (*Adopted: 11/1/07 effective 8/1/08*)
- (g) Review and approve policies and procedures governing the enforcement program; (*Adopted: 11/1/07 effective 8/1/08*)
- (h) Ratify, amend or rescind the actions of the Leadership Council or Legislative Council; (*Revised: 11/1/07 effective 8/1/08*)
- (i) Assure that there is gender and ethnic diversity among its membership and the membership of each of the other bodies in the administrative structure; (*Revised: 11/1/07 effective 8/1/08*)
- (j) Require bodies in the administrative structure to alter (but not expand) their membership to achieve diversity;
- (k) Approve an annual budget;
- (l) Approve regulations providing for the expenditure of funds and the distribution of income consistent with the provisions of Constitution 4.01.2.2;
- (m) Approve regulations providing for the administration of championships;
- (n) Advise the Executive Committee concerning the employment of the NCAA president and concerning the oversight of his or her employment; (*Revised: 3/8/06*)
- (o) Be responsible for the administration, compilation and disclosure of information concerning the Academic Progress Rate (APR) and Academic Performance Census (APC); and (*Adopted: 8/7/03 effective 8/1/04*)
- (p) Elect institutions to active Division I membership. (*Adopted: 10/28/10*)

**4.2.3 Voting Method.** The method of voting on issues considered by the Board of Directors shall be by roll call, except for those actions taken by the unanimous consent of the Board members present and voting. Roll-call vote results shall be reported to the membership. (*Adopted: 1/9/96 effective 8/1/97*)

## **4.5 DIVISION I LEADERSHIP COUNCIL**

**4.5.1 Composition.** Giving due weight to gender and ethnic diversity per Constitution 4.02.5, the Leadership Council shall include 31 members and shall be comprised of athletics administrators (e.g., athletics directors, senior woman administrators, assistant athletics directors, conference administrators), faculty athletics representatives and institutional administrators to whom athletics departments report or who have other significant duties regarding athletics. The members of the Leadership Council shall include: (*Adopted: 11/1/07 effective 8/1/08*)

- (a) One administrator or representative (who shall have three votes) from each of the following seven conferences:
  - (1) Atlantic Coast Conference;
  - (2) Big East Conference;
  - (3) Big Ten Conference;
  - (4) Big 12 Conference;
  - (5) Conference USA;
  - (6) Pacific-12 Conference; and
  - (7) Southeastern Conference.
- (b) One administrator or representative (who shall have 1.5 votes) from each of the following four conferences:
  - (1) Mid-American Conference;
  - (2) Mountain West Conference;
  - (3) Sun Belt Conference; and
  - (4) Western Athletic Conference.
- (c) One administrator or representative (who shall have 1.2 votes) from each of the following conferences:
  - (1) America East Conference;
  - (2) Atlantic Sun Conference;
  - (3) Atlantic 10 Conference;
  - (4) Big Sky Conference;

## CONSTITUTION, ARTICLE 5

# Legislative Authority and Process

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## 5.01 GENERAL PRINCIPLES [\*]

**5.01.1 Basis of Legislation. [\*]** All legislation of the Association that governs the conduct of the intercollegiate athletics programs of its member institutions shall be adopted by the membership in Convention assembled, or by the divisional governance structures as set forth in Constitution 4, as determined by the constitution and bylaws governing each division, and shall be consistent with the purposes and fundamental policy set forth in Constitution 1, and shall be designed to advance one or more principles such as those set forth in Constitution 2. *(Revised: 1/9/96 effective 8/1/97)*

**5.01.2 Approaches to Legislative Process. [\*]** The membership of the Association recognizes that certain fundamental policies, practices and principles have applicability to all members, while others are applicable to division groupings of members, based on a common philosophy shared among the individual members of the division and on special policies and concerns that are common to the nature and purposes of the institutions in the division. *(Revised: 1/9/96 effective 8/1/97)*

## 5.02 DEFINITIONS AND APPLICATIONS

### 5.02.1 Legislative (Constitution and Bylaw) Provisions.

**5.02.1.1 Dominant. [\*]** A dominant provision is a regulation that applies to all members of the Association and is of sufficient importance to the entire membership that it requires a two-thirds majority vote of all delegates present and voting in joint session at an annual or special Convention. Dominant provisions are identified by an asterisk (\*).

**5.02.1.2 Division Dominant. [\*]** A division dominant provision is a regulation that applies to all members of a division and is of sufficient importance to the division that it requires a two-thirds majority vote of all delegates present and voting at a division's annual or special Convention. Division dominant provisions are identified by the diamond symbol (◆). *(Revised: 1/9/96 effective 8/1/97)*

**5.02.1.3 Common. [\*]** A common provision is a regulation that applies to more than one of the divisions of the Association. A common provision shall be adopted by each of the applicable divisions, acting separately pursuant to the divisional legislative process described in Constitution 5.3, and must be approved by all applicable divisions to be effective. Common provisions are identified by the pound sign (#). *(Adopted: 1/14/97 effective 8/1/97)*

**5.02.1.4 Federated. [\*]** A federated provision is a regulation adopted by a majority vote of the delegates present and voting of one or more of the divisions or subdivisions of the Association, acting separately pursuant to the divisional legislative process described in Constitution 5.3. Such a provision applies only to the division(s) or subdivision(s) that adopts it. *(Revised: 1/9/96 effective 8/1/97)*

**5.02.1.5 Football Championship Subdivision Dominant. [FCSD]** A Football Championship Subdivision dominant provision is a regulation that applies only to the Football Championship Subdivision and is of sufficient importance to the subdivision that it requires a two-thirds majority vote for adoption or to be amended pursuant to the legislative process set forth in Constitution 5.3. Football Championship Subdivision dominant provisions are identified by the initialization FCSD. *(Adopted: 1/15/11)*

## 5.1 CONVENTIONS AND MEETINGS

### 5.1.1 Authorization.

**5.1.1.1 Annual Convention. [\*]** There shall be an annual Convention of this Association during the second week of January or at such other time as may be prescribed by the Executive Committee.

## 5.4 OTHER LEGISLATIVE AND AMENDMENT PROCEDURES

### 5.4.1 Interpretations of Constitution and Bylaws.

**5.4.1.1 Authorization.** The Board of Directors and the Legislative Council, and the Legislative Review/Interpretations Committee in the interim between meetings of the Board of Directors and Legislative Council, are empowered to make interpretations of the constitution and bylaws (see Constitution 5.2.5). (*Revised: 1/9/96 effective 8/1/97, 11/1/07 effective 8/1/08*)

**5.4.1.1.1 Modification of Wording.** In addition to its general authority to make binding interpretations of NCAA legislation, the Legislative Council, by a two-thirds majority of its members present and voting, may interpret legislation consistent with the intent of the membership in adopting the legislation if sufficient documentation and testimony are available to establish clearly that the wording of the legislation is inconsistent with that intent. The Legislative Council shall initiate the legislative process to confirm any such interpretations. (*Revised: 1/9/96 effective 8/1/97, 11/1/07 effective 8/1/08*)

### 5.4.1.2 Interpretation Process.

**5.4.1.2.1 Staff Interpretation (Determination).** The academic and membership affairs staff shall respond to a request from a member institution for an interpretation of NCAA rules. (*Revised: 1/14/97 effective 8/1/97, 8/5/04, 4/24/08*)

**5.4.1.2.1.1 Appeal of Staff Interpretation.** An institution may appeal a staff interpretation to the Legislative Review/Interpretations Committee. Such a request must be submitted in writing by the institution's conference or by one of the five individuals who are authorized to request interpretations on behalf of the institution (president or chancellor, faculty athletics representative, athletics director, senior woman administrator, senior compliance administrator, or a designated substitute for the president or chancellor and/or athletics director, as specified in writing to the national office). (*Revised: 1/10/91, 1/11/94, 1/14/97 effective 8/1/97, 8/5/04, 3/8/06, 4/24/08*)

**5.4.1.2.1.1.1 Institutional Participation.** An institution may participate by teleconference in the appeal of an interpretation if the activity at issue already has occurred and the interpretative decision could result in an individual or institutional violation. The Legislative Review/Interpretations Committee shall establish policies and procedures relating to an institution's participation. (*Adopted: 4/25/02, Revised: 8/5/04, 4/24/08*)

**5.4.1.2.1.2 Review of Staff Interpretations.** The Legislative Review/Interpretations Committee shall review all staff interpretations. (*Adopted: 4/24/08*)

**5.4.1.2.1.3 Publication and Notification.** A staff interpretation shall be binding on the requesting institution on notification of the response to its interpretation request, unless the interpretation is modified or reversed on appeal or review by the Legislative Review/Interpretations Committee. A staff interpretation that has been reviewed and approved by the Legislative Review/Interpretations Committee shall be binding on all other institutions on publication to the membership (e.g., announced on the NCAA website or Legislative Services Database for the Internet). (*Adopted: 4/24/08*)

**5.4.1.2.2 Review of Legislative Review/Interpretations Committee's Decision.** The Legislative Council shall review all interpretations issued by the Legislative Review/Interpretations Committee and may approve, reverse or modify such interpretations. A member institution may appeal a decision of the Legislative Review/Interpretations Committee to the Legislative Council. The appeal must be submitted in writing by the institution's president or chancellor, faculty athletics representative or director of athletics. The Legislative Council shall establish the procedures for such an appeal. A decision of the Legislative Council is final and no additional appeal opportunity shall exist for a member institution. (*Adopted: 1/11/94, Revised: 1/9/96 effective 8/1/97, 1/14/97 effective 8/1/97, 8/5/04, 3/8/06, 11/1/07 effective 8/1/08, 10/28/10*)

**5.4.1.2.3 Publication and Notification.** Interpretations issued by the Legislative Review/Interpretations Committee shall be binding on notification to affected institutions and on all member institutions after publication and notification to the membership. (*Revised: 1/9/96 effective 8/1/97, 1/14/97 effective 8/1/97, 8/5/04*)

**5.4.1.2.4 Revision.** Interpretations approved by the Legislative Council may not be revised by the Legislative Review/Interpretations Committee. The Legislative Review/Interpretations Committee may only recommend to the Legislative Council revisions of such interpretations. (*Revised: 1/9/96 effective 8/1/97, 1/14/97 effective 8/1/97, 8/5/04, 11/1/07 effective 8/1/08*)

**5.4.1.3 Subcommittee for Legislative Relief of the Legislative Council.** An institution may appeal a decision of the NCAA staff regarding the application of NCAA legislation to a particular situation to the subcommittee when no other entity has the authority to act. In reaching its decision, the subcommittee shall review the complete record in order to determine whether there is sufficient basis to grant relief from the application of the legislation. The Legislative Council shall establish the process for such a review, shall monitor the actions taken under this authorization, and shall report annually to the membership the actions taken, in summary, aggregate form. (*Adopted: 1/16/93, Revised: 1/9/96 effective 8/1/97, 11/1/00, 11/1/07 effective 8/1/08*)

# Institutional Control

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## 6.01 GENERAL PRINCIPLE

**6.01.1 Institutional Control.** The control and responsibility for the conduct of intercollegiate athletics shall be exercised by the institution itself and by the conference(s), if any, of which it is a member. Administrative control or faculty control, or a combination of the two, shall constitute institutional control.

## 6.1 INSTITUTIONAL GOVERNANCE

**6.1.1 President or Chancellor.** A member institution's president or chancellor has ultimate responsibility and final authority for the conduct of the intercollegiate athletics program and the actions of any board in control of that program. *(Revised: 3/8/06)*

**6.1.2 Athletics Board.** A board in control of athletics or an athletics advisory board, which has responsibility for advising or establishing athletics policies and making policy decisions, is not required. However, if such a board exists, it must conform to the following provisions.

**6.1.2.1 Composition.** Administration and/or faculty staff members shall constitute at least a majority of the board in control of athletics or an athletics advisory board, irrespective of the president or chancellor's responsibility and authority or whether the athletics department is financed in whole or in part by student fees. If the board has a parliamentary requirement necessitating more than a simple majority in order to transact some or all of its business, then the administrative and faculty members shall be of sufficient number to constitute at least that majority. *(Revised: 3/8/06)*

**6.1.2.1.1 Administrator Defined.** An administrator (for purposes of this legislation) is an individual employed by the institution as a full-time administrative staff member who holds an academic appointment, is directly responsible to the institution's president or chancellor or serves as a chief administrative official (e.g., admissions director, finance officer, department head, or athletics department head). Other nonacademic staff members and individuals who are members of an institution's board of trustees or similar governing body would not be considered to be administrators for purposes of this regulation. *(Revised: 3/8/06)*

**6.1.2.1.2 Board Subcommittee.** If a board subcommittee is appointed, it is not necessary for the subcommittee to have majority control by administration and/or faculty members (see Constitution 6.1.2.1), provided all actions of the subcommittee are approved by the entire board before becoming effective. However, if the subcommittee's actions are effective permanently or become effective immediately and remain in effect until reviewed by the entire board at a later date, the subcommittee's membership must satisfy the majority-control requirement.

**6.1.2.1.3 Attendance.** A parliamentary majority of administrators and faculty members of a board in control of athletics is not required to be present at any single meeting in order to conduct business.

**6.1.2.2 Chair or Voting Delegate.** Only an administrator or faculty member (as opposed to a student, alumnus or governing board member) may serve as chair of a member institution's board in control of intercollegiate athletics or represent the board as the institution's voting delegate at Conventions. Institutional representatives in these positions have responsibility for advising or establishing athletics policies and making policy decisions that require administrative and/or faculty control.

**6.1.3 Faculty Athletics Representative.** A member institution shall designate an individual to serve as faculty athletics representative. An individual so designated after January 12, 1989, shall be a member of the institution's faculty or an administrator who holds faculty rank and shall not hold an administrative or coaching position in the athletics department. Duties of the faculty athletics representative shall be determined by the member institution. *(Adopted: 1/11/89)*

**6.1.4 Student-Athlete Advisory Committee.** Each institution shall establish a student-athlete advisory committee for its student-athletes. The composition and duties of the committee shall be determined by the institution. *(Adopted: 1/10/95 effective 8/1/95)*

## **6.2 BUDGETARY CONTROL**

**6.2.1 Normal Budgeting Procedures.** The institution's annual budget for its intercollegiate athletics programs shall be controlled by the institution and subject to its normal budgeting procedures.

**6.2.2 President or Chancellor Approval.** The institution's president or chancellor or an institutional administrator designated by the president or chancellor from outside the athletics department shall approve the annual budget in the event that the institution's normal budgeting procedures do not require such action. *(Revised: 3/8/06)*

## **6.3 SELF-STUDY AND EVALUATION**

**6.3.1 Self-Study Report.** Member institutions shall conduct a comprehensive self-study and evaluation of their intercollegiate athletics programs at least once every 10 years pursuant to the athletics certification process (see Bylaws 22 and 33). *(Note: Between April 28, 2011, and August 1, 2013, no active Division I institution shall begin the athletics certification process.) (Revised: 1/14/97 effective 8/1/97, 5/30/07, 4/28/11)*

**6.3.2 Exit Interviews.** The institution's director of athletics, senior woman administrator or designated representatives (excluding coaching staff members) shall conduct exit interviews in each sport with a sample of student-athletes (as determined by the institution) whose eligibility has expired. Interviews shall include questions regarding the value of the students' athletics experiences, the extent of the athletics time demands encountered by the student-athletes, proposed changes in intercollegiate athletics and concerns related to the administration of the student-athletes' specific sports. *(Adopted: 1/10/91 effective 8/1/91)*

## **6.4 RESPONSIBILITY FOR ACTIONS OF OUTSIDE ENTITIES**

**6.4.1 Independent Agencies or Organizations.** An institution's "responsibility" for the conduct of its intercollegiate athletics program shall include responsibility for the acts of an independent agency, corporate entity (e.g., apparel or equipment manufacturer) or other organization when a member of the institution's executive or athletics administration, or an athletics department staff member, has knowledge that such agency, corporate entity or other organization is promoting the institution's intercollegiate athletics program. *(Revised: 2/16/00)*

**6.4.2 Representatives of Athletics Interests.** An institution's "responsibility" for the conduct of its intercollegiate athletics program shall include responsibility for the acts of individuals, a corporate entity (e.g., apparel or equipment manufacturer) or other organization when a member of the institution's executive or athletics administration or an athletics department staff member has knowledge or should have knowledge that such an individual, corporate entity or other organization: *(Revised: 2/16/00)*

- (a) Has participated in or is a member of an agency or organization as described in Constitution 6.4.1;
- (b) Has made financial contributions to the athletics department or to an athletics booster organization of that institution;
- (c) Has been requested by the athletics department staff to assist in the recruitment of prospective student-athletes or is assisting in the recruitment of prospective student-athletes;
- (d) Has assisted or is assisting in providing benefits to enrolled student-athletes; or
- (e) Is otherwise involved in promoting the institution's athletics program.

**6.4.2.1 Agreement to Provide Benefit or Privilege.** Any agreement between an institution (or any organization that promotes, assists or augments in any way the athletics interests of the member institution, including those identified per Constitution 6.4.1) and an individual who, for any consideration, is or may be entitled under the terms of the agreement to any benefit or privilege relating to the institution's athletics program, shall contain a specific clause providing that any such benefit or privilege may be withheld if the individual has engaged in conduct that is determined to be a violation of NCAA legislation. The clause shall provide for the withholding of the benefit or privilege from a party to the agreement and any other person who may be entitled to a benefit or privilege under the terms of the agreement. *(Adopted: 1/10/95)*

**6.4.2.2 Retention of Identity as "Representative."** Any individual participating in the activities set forth in Constitution 6.4.2 shall be considered a "representative of the institution's athletics interests," and once so identified as a representative, it is presumed the person retains that identity.

# Ethical Conduct

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## 10.01 GENERAL PRINCIPLE

**10.01.1 Honesty and Sportsmanship.** Individuals employed by (or associated with) a member institution to administer, conduct or coach intercollegiate athletics and all participating student-athletes shall act with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, shall represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports.

## 10.02 DEFINITIONS AND APPLICATIONS

**10.02.1 Sports Wagering. [#]** Sports wagering includes placing, accepting or soliciting a wager (on a staff member's or student-athlete's own behalf or on the behalf of others) of any type with any individual or organization on any intercollegiate, amateur or professional team or contest. Examples of sports wagering include, but are not limited to, the use of a bookmaker or parlay card; Internet sports wagering; auctions in which bids are placed on teams, individuals or contests; and pools or fantasy leagues in which an entry fee is required and there is an opportunity to win a prize. *(Adopted: 4/26/07 effective 8/1/07)*

**10.02.2 Wager. [#]** A wager is any agreement in which an individual or entity agrees to give up an item of value (e.g., cash, shirt, dinner) in exchange for the possibility of gaining another item of value. *(Adopted: 4/26/07 effective 8/1/07)*

## 10.1 UNETHICAL CONDUCT

Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member, which includes any individual who performs work for the institution or the athletics department even if he or she does not receive compensation for such work, may include, but is not limited to, the following: *(Revised: 1/10/90, 1/9/96, 2/22/01, 10/5/10)*

- (a) Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the individual's institution;
- (b) Knowing involvement in arranging for fraudulent academic credit or false transcripts for a prospective or an enrolled student-athlete;
- (c) Knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid; *(Revised: 1/9/96)*
- (d) Knowingly furnishing or knowingly influencing others to furnish the NCAA or the individual's institution false or misleading information concerning an individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation; *(Revised: 1/16/10)*
- (e) Receipt of benefits by an institutional staff member for facilitating or arranging a meeting between a student-athlete and an agent, financial advisor or a representative of an agent or advisor (e.g., "runner"); *(Adopted: 1/9/96, Revised: 8/4/05)*
- (f) Knowing involvement in providing a banned substance or impermissible supplement to student-athletes, or knowingly providing medications to student-athletes contrary to medical licensure, commonly accepted standards of care in sports medicine practice, or state and federal law. This provision shall not apply to banned substances for which the student-athlete has received a medical exception per Bylaw 31.2.3.5; however, the substance must be provided in accordance with medical licensure, commonly accepted standards of care and state or federal law; *(Adopted: 8/4/05, Revised: 5/6/08)*
- (g) Failure to provide complete and accurate information to the NCAA, the NCAA Eligibility Center or an institution's admissions office regarding an individual's academic record (e.g., schools attended, completion of coursework, grades and test scores); *(Adopted: 4/27/06, Revised: 10/23/07)*
- (h) Fraudulence or misconduct in connection with entrance or placement examinations; *(Adopted: 4/27/06)*



- (i) Engaging in any athletics competition under an assumed name or with intent to otherwise deceive; or (*Adopted: 4/27/06*)
- (j) Failure to provide complete and accurate information to the NCAA, the NCAA Eligibility Center or the institution's athletics department regarding an individual's amateur status. (*Adopted: 1/8/07, Revised: 5/9/07*)

## 10.2 KNOWLEDGE OF USE OF BANNED DRUGS

A member institution's athletics department staff members or others employed by the intercollegiate athletics program who have knowledge of a student-athlete's use at any time of a substance on the list of banned drugs, as set forth in Bylaw 31.2.3.4, shall follow institutional procedures dealing with drug abuse or shall be subject to disciplinary or corrective action as set forth in Bylaw 19.5.2.2.

## 10.3 SPORTS WAGERING ACTIVITIES [#]

The following individuals shall not knowingly participate in sports wagering activities or provide information to individuals involved in or associated with any type of sports wagering activities concerning intercollegiate, amateur or professional athletics competition: (*Adopted: 4/26/07 effective 8/1/07*)

- (a) Staff members of an institution's athletics department;
- (b) Nonathletics department staff members who have responsibilities within or over the athletics department (e.g., chancellor or president, faculty athletics representative, individual to whom athletics reports);
- (c) Staff members of a conference office; and
- (d) Student-athletes.

**10.3.1 Scope of Application. [#]** The prohibition against sports wagering applies to any institutional practice or any competition (intercollegiate, amateur or professional) in a sport in which the Association conducts championship competition, in bowl subdivision football and in emerging sports for women. (*Adopted: 4/26/07 effective 8/1/07*)

**10.3.1.1 Exception. [#]** The provisions of Bylaw 10.3 are not applicable to traditional wagers between institutions (e.g., traditional rivalry) or in conjunction with particular contests (e.g., bowl games). Items wagered must be representative of the involved institutions or the states in which they are located. (*Adopted: 4/26/07 effective 8/1/07*)

**10.3.2 Sanctions. [#]** The following sanctions for violations of Bylaw 10.3 shall apply: (*Adopted: 4/27/00 effective 8/1/00, Revised: 4/26/07 effective 8/1/07*)

- (a) A student-athlete who engages in activities designed to influence the outcome of an intercollegiate contest or in an effort to affect win-loss margins ("point shaving") or who participates in any sports wagering activity involving the student-athlete's institution shall permanently lose all remaining regular-season and postseason eligibility in all sports. (*Revised: 4/26/07 effective 8/1/07*)
- (b) A student-athlete who participates in any sports wagering activity through the Internet, a bookmaker or a parlay card shall be ineligible for all regular-season and postseason competition for a minimum period of one year from the date of the institution's determination that a violation occurred and shall be charged with the loss of a minimum of one season of eligibility. If the student-athlete is determined to have been involved in a later violation of any portion of Bylaw 10.3, the student-athlete shall permanently lose all remaining regular-season and postseason eligibility in all sports. (*Revised: 4/26/07 effective 8/1/07*)

## 10.4 DISCIPLINARY ACTION [#]

Prospective or enrolled student-athletes found in violation of the provisions of this regulation shall be ineligible for further intercollegiate competition, subject to appeal to the Committee on Student-Athlete Reinstatement for restoration of eligibility. (See Bylaw 10.3.2 for sanctions of student-athletes involved in violations of Bylaw 10.3.) Institutional staff members found in violation of the provisions of this regulation shall be subject to disciplinary or corrective action as set forth in Bylaw 19.5.2.2 of the NCAA enforcement procedures, whether such violations occurred at the certifying institution or during the individual's previous employment at another member institution. (*Revised: 1/10/90, 4/27/00 effective 8/1/00, 4/26/07 effective 8/1/07*)

# Conduct and Employment of Athletics Personnel

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## 11.01 DEFINITIONS AND APPLICATIONS

**11.01.1 Bonus.** A bonus is a direct cash payment over and above an athletics department staff member's institutional salary in recognition of a specific and extraordinary achievement (see Bylaw 11.3.2.3).

**11.01.2 Coach, Head or Assistant.** A head or assistant coach is any coach who is designated by the institution's athletics department to perform coaching duties and who serves in that capacity on a volunteer or paid basis. *(Revised: 1/10/91 effective 8/1/92)*

**11.01.3 Coach, Graduate Assistant—Bowl Subdivision Football and Women's Rowing.** **[FBS]** In bowl subdivision football, a graduate assistant coach is any coach who has received a baccalaureate degree and has either received his or her first baccalaureate degree or has exhausted athletics eligibility (whichever occurs later) within the previous seven years and qualifies for appointment as a graduate assistant under the policies of the institution. In women's rowing, a graduate assistant coach is any coach who has received a baccalaureate degree and qualifies for appointment as a graduate assistant under the policies of the institution. In bowl subdivision football and women's rowing, the individual is not required to be enrolled in a specific graduate degree program unless required by institutional policy. The following provisions shall apply: *(Revised: 1/10/91, 1/10/92, 1/9/06 effective 8/1/06, 12/15/06, 1/8/07 effective 8/1/07, 4/29/10 for new appointments)*

- (a) The individual shall be enrolled in at least 50 percent of the institution's minimum regular graduate program of studies, except that during his or her final semester or quarter of the degree program, he or she may be enrolled in less than 50 percent of the institution's minimum regular program, provided he or she is carrying (for credit) the courses necessary to complete the degree requirements. If the individual fails to complete all degree requirements during the term in which he or she is enrolled in less than 50 percent of the institution's minimum regular program, the result shall be an institutional violation per Constitution 2.8.1. An institution may appoint a midyear replacement graduate assistant coach who is enrolled in less than 50 percent of the institution's minimum regular graduate program of studies (or is not yet enrolled), provided the graduate assistant coach has been accepted for enrollment in a graduate program beginning with the next regular academic term; *(Adopted: 1/8/07 effective 8/1/07, Revised: 1/16/10 effective 8/1/10)*
- (b) The individual may not receive compensation or remuneration in excess of the value of a full grant-in-aid for a full-time student, based on the resident status of that individual, and the receipt of four complimentary tickets to the institution's intercollegiate football and basketball games;
- (c) Graduate and postgraduate financial assistance administered outside the institution (e.g., NCAA postgraduate scholarship) shall be excluded from the individual's limit on remuneration, provided such assistance is awarded through an established and continuing program to aid graduate students and the donor of the assistance does not restrict the recipient's choice of institutions; *(Adopted: 1/11/89)*
- (d) The individual may not serve as a graduate assistant coach for a period of more than two years except that if the individual successfully completes 24-semester or 36-quarter hours during the initial two-year period, the individual may serve as a graduate assistant coach for a third year. The Legislative Council Subcommittee for Legislative Relief may approve a waiver of these limitations based on the fact that the student's service as a coach and enrollment as a graduate student were interrupted for reasons that are unrelated to athletics, or to personal or family finances, and that are beyond the control of the institution or the coach. Such a waiver may not be granted solely to permit the completion of a graduate program; *(Revised: 1/16/93, 11/1/07 effective 8/1/08)*

than a full-time program of studies, provided he or she is carrying (for credit) the courses necessary to complete the degree requirements;

- (b) The individual may participate in limited on-court or on-field activities during practice (e.g., assist with drills, throw batting practice) or competition (e.g., assist with warm-up activities) involving student-athletes on a regular basis;
- (c) The individual shall not provide instruction to student-athletes;
- (d) The individual shall not participate in countable athletically related activities (e.g., practice player) except as permitted in Bylaw 11.01.6-(b); and
- (e) In baseball, the individual shall forfeit any remaining eligibility in the sport at the institution at which the individual serves as a manager. *(Adopted: 4/29/10 effective 8/1/10)*

**11.01.7 Supplemental Pay.** Supplemental pay is the payment of cash over and above an athletics department staff member's institutional salary by an outside source for the purpose of increasing that staff member's annual earnings (see Bylaw 11.3.2.2).

## 11.1 CONDUCT OF ATHLETICS PERSONNEL

**11.1.1 Honesty and Sportsmanship.** Individuals employed by or associated with a member institution to administer, conduct or coach intercollegiate athletics shall act with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports. (See Bylaw 10 for more specific ethical-conduct standards.)

**11.1.2 Responsibility for Violations of NCAA Regulations.** Institutional staff members found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, whether such violations occurred at the certifying institution or during the individual's previous employment at another member institution.

**11.1.2.1 Responsibility of Head Coach.** It shall be the responsibility of an institution's head coach to promote an atmosphere for compliance within the program supervised by the coach and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach. *(Adopted: 4/28/05)*

**11.1.3 Use of Association Name or Affiliation.** Staff members of member institutions and others serving on the Association's committees or acting as consultants shall not use, directly or by implication, the Association's name or their affiliation with the Association in the endorsement of products or services.

**11.1.4 Representing Individuals in Marketing Athletics Ability/Reputation.** Staff members of the athletics department of a member institution shall not represent, directly or indirectly, any individual in the marketing of athletics ability or reputation to an agent, a professional sports team or a professional sports organization, including receiving compensation for arranging commercial endorsements or personal appearances for former student-athletes, except as specified in Bylaw 11.1.4.1, and shall not receive compensation or gratuities of any kind, directly or indirectly, for such services. *(Revised: 1/10/92, 1/11/94)*

**11.1.4.1 Exception—Professional Sports Counseling Panel and Head Coach.** An institution's professional sports counseling panel or a head coach in a sport may contact agents, professional sports teams or professional sports organizations on behalf of a student-athlete, provided no compensation is received for such services. The head coach shall consult with and report his or her activities on behalf of the student-athlete to the institution's professional sports counseling panel. If the institution has no such panel, the head coach shall consult with and report his or her activities to the president or chancellor [or an individual or group (e.g., athletics advisory board) designated by the president or chancellor]. *(Revised: 11/1/01 effective 8/1/02, 3/8/06)*

**11.1.5 Use of Tobacco Products.** The use of tobacco products is prohibited by all game personnel (e.g., coaches, trainers, managers and game officials) in all sports during practice and competition. Uniform penalties (as determined by the applicable rules-making committees and sports committees with rules-making responsibilities) shall be established for such use. *(Adopted: 1/11/94 effective 8/1/94, Revised: 1/10/95, 1/14/97 effective 8/1/97)*

## 11.2 CONTRACTUAL AGREEMENTS

**11.2.1 Stipulation That NCAA Enforcement Provisions Apply.** Contractual agreements or appointments between a coach and an institution shall include the stipulation that a coach 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 enforcement procedures, including suspension without pay or termination of employment for significant or repetitive violations. *(Revised: 3/10/04)*

**11.2.2 Athletically Related Income.** Contractual agreements, including letters of appointment, between a full-time or part-time athletics department staff member (excluding secretarial or clerical personnel) and an institution shall include the stipulation that the staff member is required to provide a written detailed account annually to the president or chancellor for all athletically related income and benefits from sources outside the institution. In addition, the approval of all athletically related income and benefits shall be consistent with the institution's

policy related to outside income and benefits applicable to all full-time or part-time employees. Sources of such income shall include, but are not limited to, the following: *(Revised: 1/10/92, 1/11/94, 1/10/95, 4/26/01 effective 8/1/01, 3/8/06)*

- (a) Income from annuities;
- (b) Sports camps;
- (c) Housing benefits (including preferential housing arrangements);
- (d) Country club memberships;
- (e) Complimentary ticket sales;
- (f) Television and radio programs; and
- (g) Endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers.

## **11.3 COMPENSATION AND REMUNERATION**

**11.3.1 Control of Employment and Salaries.** The institution, as opposed to any outside source, shall remain in control of determining who is to be its employee and the amount of salary the employee is to receive within the restrictions specified by NCAA legislation.

### **11.3.2 Income in Addition to Institutional Salary.**

**11.3.2.1 Bona Fide Outside Employment.** A staff member may earn income in addition to the institutional salary by performing services for outside groups. *(Revised: 1/10/92, 4/26/01 effective 8/1/01)*

**11.3.2.2 Supplemental Pay.** An outside source is prohibited from paying or regularly supplementing an athletics department staff member's annual salary and from arranging to supplement that salary for an unspecified achievement. This includes the donation of cash from outside sources to the institution earmarked for the staff member's salary or supplemental income. It would be permissible for an outside source to donate funds to the institution to be used as determined by the institution, and it would be permissible for the institution, at its sole discretion, to use such funds to pay or supplement a staff member's salary.

**11.3.2.3 Bonuses for Specific and Extraordinary Achievement.** An institution may permit an outside individual, group or agency to supplement an athletics department staff member's salary with a direct cash payment in recognition of a specific and extraordinary achievement (e.g., contribution during career to the athletics department of the institution, winning a conference or national championship, number of games or meets won during career/season), provided such a cash supplement is in recognition of a specific achievement and is in conformance with institutional policy.

**11.3.2.4 Noninstitutional Publications That Report on Athletics Program.** Athletics department staff members shall not endorse (either orally or in writing) any noninstitutional publication dedicated primarily to reporting on an institution's athletics activities, except as provided in this section, and shall not write for such publications. *(Adopted: 1/16/93, Revised: 1/11/94, 4/26/01 effective 8/1/01)*

**11.3.2.4.1 Educational Articles.** Athletics department staff members may write educational articles related to NCAA rules and crowd control for noninstitutional publications dedicated primarily to reporting on an institution's athletics activities. *(Adopted: 1/11/94)*

**11.3.2.5 Recruiting Service Consultants.** Institutional athletics department staff members may not endorse, serve as consultants or participate on advisory panels for any recruiting or scouting service involving prospective student-athletes. *(Adopted: 1/16/93)*

**11.3.2.6 Quotations and Pictures Used to Promote a Camp.** An institution's coaching staff member may not promote a noninstitutional camp or clinic by permitting the use of his or her quotations and/or pictures in the camp or clinic brochure, unless that coaching staff member is employed by the camp. *(Adopted: 1/14/97 effective 8/1/97)*

**11.3.2.7 Consultant for or Endorsement of Noninstitutional Athletics Events Involving Prospective Student-Athletes.** An athletics department staff member may not serve as a consultant for a noninstitutional athletics event that primarily involves prospective student-athletes and may not endorse or promote such an event. *(Adopted: 1/15/11)*

**11.3.2.8 Promotion or Endorsement of a Prospective Student-Athlete's Team, Coach or Athletics Facility.** An athletics department staff member shall not promote or endorse a prospective student-athlete's team or coach, or an athletics facility that is primarily used by prospective student-athletes. *(Adopted: 1/15/11)*

## **11.4 EMPLOYMENT OF HIGH SCHOOL, PREPARATORY SCHOOL OR TWO-YEAR COLLEGE COACHES, OR OTHER INDIVIDUALS ASSOCIATED WITH PROSPECTIVE STUDENT-ATHLETES**

**11.4.1 High School, Preparatory School or Two-Year College Coach.** An institution may not employ a high school, preparatory school or two-year college coach who remains a coach in the same sport at the high school, preparatory school or two-year college. This provision does not preclude employment of a high school,

## BYLAW, ARTICLE 12

# Amateurism

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## 12.01 GENERAL PRINCIPLES

**12.01.1 Eligibility for Intercollegiate Athletics.** Only an amateur student-athlete is eligible for intercollegiate athletics participation in a particular sport.

**12.01.2 Clear Line of Demarcation.** Member institutions' athletics programs are designed to be an integral part of the educational program. The student-athlete is considered an integral part of the student body, thus maintaining a clear line of demarcation between college athletics and professional sports.

**12.01.3 "Individual" vs. "Student-Athlete."** NCAA amateur status may be lost as a result of activities prior to enrollment in college. If NCAA rules specify that an "individual" may or may not participate in certain activities, this term refers to a person prior to and after enrollment in a member institution. If NCAA rules specify a "student-athlete," the legislation applies only to that person's activities after enrollment.

**12.01.4 Permissible Grant-in-Aid.** A grant-in-aid administered by an educational institution is not considered to be pay or the promise of pay for athletics skill, provided it does not exceed the financial aid limitations set by the Association's membership.

## 12.02 DEFINITIONS AND APPLICATIONS

**12.02.1 Individual.** An individual, for purposes of this bylaw, is any person of any age without reference to enrollment in an educational institution or status as a student-athlete.

**12.02.2 Pay.** Pay is the receipt of funds, awards or benefits not permitted by the governing legislation of the Association for participation in athletics.

**12.02.3 Professional Athlete.** A professional athlete is one who receives any kind of payment, directly or indirectly, for athletics participation except as permitted by the governing legislation of the Association.

**12.02.4 Professional Athletics Team.** A professional team is any organized team that:

- (a) Provides any of its players more than actual and necessary expenses for participation on the team, except as otherwise permitted by NCAA legislation. Actual and necessary expenses are limited to the following, provided the value of these items is commensurate with the fair market value in the locality of the player(s) and is not excessive in nature: (*Revised: 4/25/02 effective 8/1/02*)
  - (1) Meals directly tied to competition and practice held in preparation for such competition;
  - (2) Lodging directly tied to competition and practice held in preparation for such competition;
  - (3) Apparel, equipment and supplies;
  - (4) Coaching and instruction;
  - (5) Health/medical insurance;
  - (6) Transportation (expenses to and from practice competition, cost of transportation from home to training/practice site at the beginning of the season and from training/practice site to home at the end of season);
  - (7) Medical treatment and physical therapy;
  - (8) Facility usage; (*Revised: 4/24/03*)
  - (9) Entry fees; and (*Revised: 4/24/03*)
  - (10) Other reasonable expenses; or (*Adopted: 4/24/03, Revised: 10/28/04*)
- (b) Declares itself to be professional (see Bylaw 12.2.3.2.4). (*Revised: 8/8/02*)

# Enforcement

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## 19.01 GENERAL PRINCIPLES

**19.01.1 Mission of NCAA Enforcement Program.** It shall be the mission of the NCAA enforcement program to eliminate violations of NCAA rules and impose appropriate penalties should violations occur. The program is committed to fairness of procedures and the timely and equitable resolution of infractions cases. The achievement of these objectives is essential to the conduct of a viable and effective enforcement program. Further, an important consideration in imposing penalties is to provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions. *(Adopted: 1/11/94)*

**19.01.2 Exemplary Conduct.** Individuals employed by or associated with member institutions for the administration, the conduct or the coaching of intercollegiate athletics are, in the final analysis, teachers of young people. Their responsibility is an affirmative one, and they must do more than avoid improper conduct or questionable acts. Their own moral values must be so certain and positive that those younger and more pliable will be influenced by a fine example. Much more is expected of them than of the less critically placed citizen.

**19.01.3 Responsibility to Cooperate.** All representatives of member institutions shall cooperate fully with the NCAA enforcement staff, Committee on Infractions, Infractions Appeals Committee and Board of Directors to further the objectives of the Association and its enforcement program. The enforcement policies and procedures are an essential part of the intercollegiate athletics program of each member institution and require full and complete disclosure by all institutional representatives of any relevant information requested by the NCAA enforcement staff, Committee on Infractions or Infractions Appeals Committee during the course of an inquiry. *(Revised: 11/1/07 effective 8/1/08)*

**19.01.4 Violations by Institutional Staff Members.** Institutional staff members found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, whether such violations occurred at the certifying institution or during the individual's previous employment at another member institution.

**19.01.5 Nature of Penalty Structure.** As a guiding principle, a penalty imposed under NCAA enforcement policies and procedures should be broad and severe if the violation or violations reflect a general disregard for the governing rules; in those instances in which the violation or violations are isolated and of relative insignificance, then the NCAA penalty shall be specific and limited. Previous violations of NCAA legislation shall be a contributing factor in determining the degree of penalty.

## 19.02 DEFINITIONS AND APPLICATIONS

**19.02.1 Show-Cause Order.** A show-cause order is one that requires a member institution to demonstrate to the satisfaction of the Committee on Infractions (or the Infractions Appeals Committee per Bylaw 19.2) why it should not be subject to a penalty (or additional penalty) for not taking appropriate disciplinary or corrective action against an institutional staff member or representative of the institution's athletics interests identified by the committee as having been involved in a violation of NCAA regulations that has been found by the committee. *(Revised: 1/10/95, 4/24/03)*

### 19.02.2 Types of Violations.

**19.02.2.1 Violation, Secondary.** A secondary violation is a violation that is isolated or inadvertent in nature, provides or is intended to provide only a minimal recruiting, competitive or other advantage and does not include any significant impermissible benefit (including, but not limited to, an extra benefit, recruiting inducement, preferential treatment or financial aid). Multiple secondary violations by a member institution may collectively be considered as a major violation. *(Revised: 1/11/94, 10/28/10)*

**19.02.2.2 Violation, Major.** All violations other than secondary violations are major violations, specifically including those that provide an extensive recruiting or competitive advantage. *(Revised: 1/11/94)*

**19.02.3 New Evidence.** New evidence is evidence that could not reasonably be ascertained prior to the Committee on Infractions hearing. *(Adopted: 1/6/96)*

## **19.1 COMMITTEE ON INFRACTIONS**

The Board of Directors shall appoint a Committee on Infractions, which shall be responsible for administration of the NCAA enforcement program. *(Revised: 11/1/07 effective 8/1/08)*

**19.1.1 Composition of Committee.** The committee shall be composed of 10 members, seven of whom shall be at present or previously on the staff of an active member institution or member conference of the Association, not more than three and no less than two of whom shall be from the general public and shall not be associated with a collegiate institution, conference, or professional or similar sports organization, or represent coaches or athletes in any capacity. One of the members shall serve as chair and one member shall serve as vice chair. Two members shall be elected as coordinators of appeals, one of whom may be a public member. Two positions shall be allocated for men, two allocated for women and six unallocated. There shall be no subdivision restrictions except that all nonpublic members may not be from the same subdivision; however, the coordinators of appeals shall not be considered in determining whether such a requirement is satisfied. *(Revised: 1/16/93, 10/27/98, 10/28/99, 1/11/00, 11/1/01, 11/31/02)*

**19.1.1.1 Quorum.** Four members present and voting shall constitute a quorum for conduct of committee business, it being understood that the chair shall make a special effort to have full committee attendance when major infractions cases involving violations are to be considered.

**19.1.1.2 Temporary Substitutes.** If it appears that one or more members of the committee will be unable to participate in the hearing of a case, the chair may request the Administration Cabinet to designate a former member or members of the committee to rejoin the committee for purposes of the consideration and disposition of that case. *(Revised: 11/1/07 effective 8/1/08)*

**19.1.1.3 Term of Office.** A member shall serve a three-year term, which shall commence on the first day of September following the member's election. A member may be reappointed but shall not serve more than nine years on the committee, with the exception of the position of coordinator of appeals, which may be filled by a former member of the committee who had previously served nine years. In such instances, a minimum period of three years must have elapsed between the date the committee member previously relinquished duties with the committee and reappointment to the committee as the coordinator of appeals. As with a regular member of the committee, the coordinator of appeals shall serve a three-year term, which commences on the first day of September following the coordinator of appeals' selection. The coordinator of appeals may be reappointed but shall not serve more than nine years on the committee in that capacity. *(Adopted: 1/11/00)*

**19.1.1.4 Duties of the Coordinators of Appeals.** The coordinators of appeals shall: *(Adopted: 10/28/99, Revised: 10/31/02, 4/28/11)*

- (a) Be responsible for processing appeals to infractions cases on behalf of the committee;
- (b) Be present during institutional hearings before the committee, but will not be active participants;
- (c) Be present and actively participate during committee deliberations; and
- (d) Represent the committee in proceedings before the Infractions Appeals Committee.

**19.1.2 Authority of Committee.** Disciplinary or corrective actions other than suspension or termination of membership may be effected by members of the Committee on Infractions present and voting at any duly called meeting thereof, provided the call of such a meeting shall have contained notice of the situation presenting the disciplinary problem. Actions of the committee in cases involving major violations, however, shall be subject to review by the Infractions Appeals Committee per Bylaw 19.2, on appeal. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

**19.1.2.1 Authority of Vice President for Enforcement Services.** Upon review of information developed by the enforcement staff or self-reported by the member institution, the vice president for enforcement services shall identify the charges as involving alleged major or secondary violations, or multiple secondary violations that should be viewed as a major violation. Disciplinary or corrective actions in the case of secondary violations may be effected by the vice president for enforcement services. Said actions shall be taken in accordance with the provisions of the enforcement policies and procedures and shall be subject to review by the committee upon appeal. *(Revised: 4/24/03)*

**19.1.2.2 Authority of Committee Chair.** In the interim between meetings of the committee, the chair shall be empowered to act on behalf of the committee, subject to committee approval at its next meeting. If at any time, at a meeting or between meetings, the chair is unavailable to act as such, the vice chair is empowered to exercise the functions of the chair. *(Revised: 11/1/01)*

**19.1.2.3 Authority of Infractions Appeals Committee.** The Infractions Appeals Committee per Bylaw 19.2, shall hear and act upon an institution's or an involved individual's appeal of the findings of major violations and/or the imposition of associated penalties by the Committee on Infractions. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

**19.1.3 Duties of Committee.** The duties of the Committee on Infractions shall be as follows: *(Revised: 4/24/03)*

- (a) Consider complaints that may be filed with the Association charging the failure of any member to maintain the academic or athletics standards required for membership or the failure of any member to meet the conditions and obligations of membership in the Association;
- (b) Formulate and revise, in accordance with the requirements of Bylaw 19.3, a statement of its established operating policies and procedures, including investigative guidelines (see Bylaw 32);
- (c) Determine facts related to alleged violations and find violations of NCAA rules and requirements;
- (d) Impose an appropriate penalty or show-cause requirement on a member found to be involved in a major violation (or, upon appeal, on a member found to be involved in a secondary violation), or recommend to the Board of Directors suspension or termination of membership; and
- (e) Carry out any other duties directly related to the administration of the Association's enforcement program.

## 19.2 APPEALS COMMITTEES

**19.2.1 Infractions Appeals Committee.** The Board of Directors shall appoint an Infractions Appeals Committee, which shall hear and act upon appeals of the findings of major violations by the Committee on Infractions involving member institutions. *(Adopted: 1/16/93, Revised: 1/10/95, 11/1/07 effective 8/1/08)*

**19.2.1.1 Composition of Committee.** The committee shall be composed of five members. At least one member shall be from the general public and shall not be connected with a collegiate institution, conference, or professional or similar sports organization, or represent coaches or athletes in any capacity. The remaining members shall presently or previously be on the staff of an active member institution or member conference, but shall not serve presently on the Board of Directors. There shall be no subdivision restrictions except that all nonpublic members may not be from the same subdivision. *(Adopted: 1/16/93, Revised: 10/27/98)*

**19.2.1.1.1 Temporary Substitutes.** If it appears that one or more of the committee members will be unable to participate in the disposition of a case, the chair may request the Administration Cabinet to designate a former member or members of the committee to rejoin the committee for purposes of consideration and disposition of that case. *(Adopted: 4/22/98, Revised: 11/1/07 effective 8/1/08, 4/28/11)*

**19.2.1.2 Term of Office.** A member shall serve a three-year term, which shall commence on the first day of September following the member's election. A member may be reappointed but shall not serve more than nine years on the committee. *(Adopted: 1/9/96)*

**19.2.1.3 Authority and Duties of Committee.** The committee shall hear and act on appeals of the findings of major violations by the Committee on Infractions involving member institutions (see Bylaws 32.10 and 32.11). The committee may establish or amend enforcement policies and procedures set forth in Bylaws 32.10 and 32.11 that relate directly to the infractions appeals process, subject to review and approval by the Board of Directors. *(Adopted: 1/16/93, Revised: 1/10/95, 1/14/97, 11/1/07 effective 8/1/08)*

**19.2.1.3.1 Notification to Membership.** To the extent that the infractions appeals policies and procedures are revised, any member institution involved in the processing of an infractions appeals case shall be notified immediately of the change and the general membership shall be advised through the NCAA website. *(Adopted: 1/14/97)*

**19.2.1.3.2 Review by Convention.** Policies and procedures established by the Infractions Appeals Committee, per Bylaw 19.2.1.3, are subject to review and approval by the Board of Directors (see Constitution 5.2.3.3). *(Adopted: 1/14/97, Revised: 4/24/03, 11/1/07 effective 8/1/08)*

## 19.3 ESTABLISHMENT AND REVISION OF ENFORCEMENT POLICIES AND PROCEDURES

**19.3.1 Amendment by Committee and Approval by Board of Directors.** The Committee on Infractions may establish or amend the policies and procedures in regard to issues other than those concerning institutional penalties, restitution, and committee duties and structure. A member institution shall be provided notice of alleged NCAA rules violations for which it is charged before any penalty is imposed, as well as the opportunity to appear before the committee and the opportunity to appeal the committee's findings of major violations or penalties (see Bylaws 19.4 and 19.5). The policies and procedures governing the administration of the Association's enforcement program, as set forth in Bylaw 32, are subject to review and approval by the Board of Directors at its next regularly scheduled meeting. *(Revised: 11/1/07 effective 8/1/08)*

**19.3.1.1 Notification to Membership.** To the extent that the enforcement policies and procedures are revised, any member institution involved in the processing of an infractions case shall be notified immediately of the change.

**19.3.2 Amendment to Enforcement Procedures.** The enforcement policies and procedures set forth in Bylaw 32 may be amended in accordance with the legislative process. *(Revised: 4/24/03)*



## 19.4 NOTICE OF CHARGES AND OPPORTUNITY TO APPEAR

**19.4.1 For Major Violations.** A member under investigation for major violations shall be given the following:

- (a) Notice of any specific charges against it and the facts upon which such charges are based; and
- (b) An opportunity to appear before the Committee on Infractions (or the Infractions Appeals Committee per Bylaw 19.2) to answer such charges by the production of evidence (see Bylaw 19.6.2). *(Revised: 1/16/93, 1/10/95, 4/24/03)*

**19.4.2 For Secondary Violations.** A member under investigation for secondary violations shall be given the following:

- (a) Notice of any specific charges against it and the facts upon which such charges are based; and
- (b) An opportunity to provide a written response to the vice president for enforcement services (or to appear before the Committee on Infractions upon appeal) to answer such charges by the production of evidence (see Bylaw 19.6.1).

**19.4.3 New Findings.** When an institution and involved individual appear before the committee to discuss a response to the notice of allegations, the hearing shall be directed toward the general scope of the notice of allegations but shall not preclude the committee from finding any violation resulting from information developed or discussed during the hearing. *(Revised: 4/24/03)*

## 19.5 PENALTIES

**19.5.1 Penalties for Secondary Violations.** The vice president for enforcement services, upon approval by the chair or another member of the Committee on Infractions designated by the chair, or the committee may determine that no penalty is warranted in a secondary case, that an institutional- or conference-determined penalty is satisfactory or, if appropriate, impose a penalty. Among the disciplinary measures are: *(Revised: 1/11/94)*

- (a) Termination of the recruitment of a prospective student-athlete by the institution or, if the prospective student-athlete enrolls (or has enrolled) in the institution, permanent ineligibility to represent the institution in intercollegiate competition (unless eligibility is restored by the Committee on Student-Athlete Reinstatement upon appeal);
- (b) Forfeit/vacate contests in which an ineligible student-athlete participated;
- (c) Prohibition of the head coach or other staff members in the involved sport from participating in any off-campus recruiting activities for up to one year; *(Revised: 1/11/94)*
- (d) An institutional fine for each violation, with the monetary penalty ranging in total from \$500 to \$5,000, except when an ineligible student-athlete participates in an NCAA championship or other postseason competition, in which case the \$5,000 limit shall not apply; *(Revised: 4/26/01 effective 8/1/01)*
- (e) A limited reduction in the number of financial aid awards that may be awarded during a specified period in the sport involved to the maximum extent of 20 percent of the maximum number of awards normally permissible in that sport;
- (f) Institutional recertification that its current athletics policies and practices conform to all requirements of NCAA regulations;
- (g) Suspension of the head coach or other staff members for one or more competitions; *(Adopted: 1/11/94)*
- (h) Public reprimand (to be invoked only in situations in which the Committee on Infractions or the vice president for enforcement services, upon approval by the committee, determines that a penalty, in addition to any institutional- or conference-determined penalty, is warranted); and *(Adopted: 1/11/94)*
- (i) Requirement that a member institution that has been found in violation, or that has an athletics department staff member who has been found in violation of the provisions of NCAA legislation while representing another institution, show cause why a penalty or an additional penalty should not be imposed if it does not take appropriate disciplinary or corrective action against the athletics department personnel involved, any other institutional employee if the circumstances warrant or representatives of the institution's athletics interests. *(Adopted: 1/11/94)*

**19.5.2 Penalties for Major Violations.** Penalties for a major violation shall be significantly more severe than those for a secondary violation and shall be consistent with the penalty structure and guidelines used by other regulatory committees (e.g., Division I Committee on Academic Performance). The Committee on Infractions may impose one or more of the following penalties: *(Revised: 4/28/11 for any institution that receives a notice of inquiry after 4/28/11)*

- (a) Public reprimand and censure.
- (b) Probationary period for up to five years (including a periodic in-person monitoring system, written institutional reports, and institutional affirmation that current athletics policies and procedures conform to all requirements of NCAA regulations).

- (c) Suspension of institutional staff members from their duties for a specified period if such staff members are determined by the Committee on Infractions to have engaged in or condoned a major violation.
- (d) Reduction in the number of financial aid awards (as defined in Bylaw 15.02.4.1) that may be awarded during a specified period.
- (e) Reduction in the number of expense-paid recruiting visits to the institution in the involved sport.
- (f) Prohibition against, or limits on, recruiting activities by some or all coaching staff members in an involved sport.
- (g) Prohibition against specified competition in the sport (including, but not limited to, postseason competition, invitational tournaments and exempt contests or dates of competition, such as foreign tours or contests in Alaska or Hawaii), particularly in cases in which:
  - (1) An involved individual remains employed at the institution;
  - (2) A significant competitive advantage resulted from the violation;
  - (3) The violation reflects a lack of institutional control, failure to monitor a program, or a violation of the cooperative principle set forth in Bylaw 32.1.4;
  - (4) The violation includes findings of academic fraud; or
  - (5) The institution is a repeat violator (as defined in Bylaw 19.5.2.1).
- (h) Vacation of records in a cases which a student-athlete has competed while ineligible, particularly in cases involving academic fraud, serious intentional violations, direct involvement of a coach or a high-ranking school administrator, a large number of violations, competition while academically ineligible, a finding of failure to monitor or lack of institutional control, a repeat violator, or a case in which vacation or a similar penalty would be imposed if the underlying violations were secondary. The penalties may include one or more of the following:
  - (1) Vacation of individual records and performances;
  - (2) Vacation of team records and performances, including wins from the career record of the head coach in the involved sport, or, in applicable cases, reconfiguration of team point totals; or
  - (3) Return of individual or team awards to the Association.
- (i) Financial penalty.
- (j) Prohibition against television appearances of the institution in the sport in which the violation occurred.
- (k) Requirement that an institution that has been found in violation, or that has an athletics department staff member who has been found in violation of the provisions of NCAA legislation while representing another institution, show cause why a penalty or additional penalty should not be imposed, if, in the opinion of the Committee on Infractions, the institution has not taken appropriate disciplinary or corrective action against athletics department personnel involved in the infractions case or any other institutional employee, if the circumstances warrant, or a representative of the institution's athletics interests:
  - (1) The penalty imposed under this provision may include a recommendation to the membership that the institution's membership in the Association be suspended or terminated;
  - (2) "Appropriate disciplinary or corrective action" may include severance of relations with any representative of the institution's athletics interests who may be involved; the debarment of the head coach or any assistant coach involved in the infraction from coaching, recruiting, or participation in speaking engagements; and the prohibition of all recruiting in a specified sport for a specified period. The nature and extent of such action shall be determined by the institution, but the determination of whether the action is appropriate in the fulfillment of NCAA policies and principles, and its resulting effect on any institutional penalty, shall be solely that of the Committee on Infractions (or the Infractions Appeals Committee per Bylaw 19.2).
  - (3) In the event the Committee on Infractions imposes additional penalties upon an institution, the institution shall be provided the opportunity to appear before the committee, further, the institution shall be provided the opportunity to appeal (per Bylaw 19.6.2) any additional penalty imposed by the Committee on Infractions.
- (l) Other penalties as appropriate.

#### **19.5.2.1 Repeat Violators.**

**19.5.2.1.1 Time Period.** An institution shall be considered a "repeat" violator if the Committee on Infractions finds that a major violation has occurred within five years of the starting date of a major penalty. For this provision to apply, at least one major violation must have occurred within five years after the starting date of the penalties in the previous case. It shall not be necessary that the Committee on Infractions' hearing be conducted or its report issued within the five-year period. *(Revised: 1/14/97 effective 8/1/97)*

**19.5.2.1.2 Repeat-Violator Penalties.** A repeat violator shall be subject to enhanced major violation penalties and any or all of the following additional penalties: *(Revised: 1/11/94, 4/28/11; for any institution that receives notice of inquiry after 4/28/11)*

- (a) The prohibition of some or all outside competition in the sport involved in the latest major violation for a prescribed period as deemed appropriate by the Committee on Infractions and the prohibition of all coaching staff members in that sport from involvement directly or indirectly in any coaching activities at the institution during that period; *(Revised: 4/28/11)*
- (b) The elimination of all initial grants-in-aid and all recruiting activities in the sport involved in the latest major violation in question for a prescribed period; *(Revised: 4/28/11)*
- (c) The requirement that all institutional staff members serving on the Board of Directors, Leadership Council, Legislative Council or other cabinets or committees of the Association resign those positions, it being understood that all institutional representatives shall be ineligible to serve on any NCAA committee for a prescribed period; and *(Revised: 11/1/07 effective 8/1/08, 4/28/11)*
- (d) The requirement that the institution relinquish its voting privilege in the Association for a prescribed period. *(Revised: 4/28/11)*

#### **19.5.2.2 Probationary Periods.**

**19.5.2.2.1 Conditions of Probation.** The committee (or the Infractions Appeals Committee per Bylaw 19.2) may identify possible conditions that an institution must satisfy during a probationary period. Such conditions shall be designed on a case-by-case basis to focus on the institution's administrative weaknesses detected in the case and shall include, but not be limited to, written reports from the institution pertaining to areas of concern to the committee (or the Infractions Appeals Committee), in-person reviews of the institution's athletics policies and practices by the NCAA administrator for the Committee on Infractions, implementation of educational or deterrent programs, and audits for specific programs or teams. If the institution fails to satisfy such conditions, the committee (or the Infractions Appeals Committee per Bylaw 19.2) may reconsider the penalties in the case and may extend the probationary period and/or impose additional sanctions. *(Revised: 1/10/95, 4/24/03)*

**19.5.2.2.2 Review Prior to Restoration of Membership Rights and Privileges.** In the event the committee imposes a penalty involving a probationary period, the institution shall be notified that after the penalty becomes effective, the NCAA administrator for the Committee on Infractions will review the athletics policies and practices of the institution prior to action by the committee to restore the institution to full rights and privileges of membership in the Association. *(Revised: 1/10/95)*

**19.5.2.3 Television Appearance Limitations.** In some instances, an institution is rendered ineligible to appear on television programs. When an institution is banned from such television programs, the penalty shall specify that the institution may not enter into any contracts or agreements for such appearances until the institution's probationary status has been terminated and it has been restored to full rights and privileges of membership. *(Revised: 1/10/92)*

**19.5.2.3.1 Closed-Circuit Telecast Exception.** The Board of Directors is authorized to permit a closed-circuit telecast, limited to the campus of the opponent of the ineligible institution, it being understood that no rights fee is to be paid to the ineligible institution. *(Revised: 11/1/07 effective 8/1/08)*

**19.5.2.4 Disassociation of Representatives of Athletics Interests.** The disassociation of relations with a representative of an institution's athletics interests may be imposed on a permanent basis, for the duration of the applicable probationary period or for another specified period of time. When an institution is required to show cause why a representative of the institution's athletics interests should not be disassociated from its athletics program, such disassociation shall require that the institution:

- (a) Refrain from accepting any assistance from the individual that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes;
- (b) Not accept financial assistance for the institution's athletics program from the individual;
- (c) Ensure that no athletics benefit or privilege be provided to the individual that is not generally available to the public at large; and
- (d) Take such other actions against the individual that the institution determines to be within its authority to eliminate the involvement of the individual in the institution's athletics program.

**19.5.2.5 Notification to Regional Accrediting Agency.** When an institution has been found to be in violation of NCAA requirements, and the report reflects academic violations or questionable academic procedures, the president shall be authorized to forward a copy of the report to the appropriate regional accrediting agency.

#### **19.5.2.6 Review of Penalty.**

**19.5.2.6.1 Newly Discovered Evidence or Prejudicial Error.** When a penalty has been imposed and publicly announced and the appeal opportunity has been exhausted, there shall be no review of the penalty except upon a showing of newly discovered evidence (per Bylaw 19.02.3) that is directly related to the findings in the case or that there was prejudicial error in the procedure that was followed in the processing of the case by the committee. *(Revised: 1/9/96)*

**19.5.2.6.1.1 Review Process.** Any institution that initiates such a review shall be required to submit a brief of its appeal to the committee and to furnish sufficient copies of the brief for distribution to all members of the committee. The committee shall review the brief and decide by majority vote whether it shall grant a hearing of the appeal.

**19.5.2.6.1.2 Institution or Conference Discipline as New Evidence.** Disciplinary measures imposed by the institution or its conference following the NCAA's action may be considered to be "newly discovered evidence" for the purposes of this section.

**19.5.2.6.1.3 No Imposition of New Penalty.** If a hearing of the appeal is granted, the committee may reduce or eliminate any penalty but may not impose any new penalty. The committee's decision with respect to the penalty shall be final and conclusive for all purposes.

**19.5.2.6.2 Reconsideration of Penalty.** The institution shall be notified that should any portion of the penalty in the case be set aside for any reason other than by appropriate action of the Association, the penalty shall be reconsidered by the NCAA. In such cases, any extension or adjustment of a penalty shall be proposed by the Committee on Infractions after notice to the institution and hearing. Any such action by the committee shall be subject to appeal.

### **19.5.3 Discipline of Affiliated Member.**

**19.5.3.1 Termination or Suspension.** The membership of any affiliated member failing to meet the conditions and obligations of membership or failing to support and adhere to the purposes and policies set forth in Constitution 1 may be terminated or suspended or the member otherwise may be disciplined through the following procedure: *(Revised: 1/15/11 effective 8/1/11)*

- (a) The Executive Committee by a two-thirds majority of its members present and voting, may take such action on its own initiative; or *(Adopted: 1/11/89 Revised: 1/15/11 effective 8/1/11)*
- (b) The Committee on Infractions, by majority vote, may recommend such action to the Executive Committee, which may adopt the recommendation by a two-thirds vote of its members present and voting; and
- (c) The affiliated member shall be advised of the proposed action at least 30 days prior to any Committee on Infractions or Executive Committee meeting in which such action is considered and shall be provided the opportunity to appear at any such meeting. *(Revised: 1/15/11 effective 8/1/11)*

**19.5.4 Recommendation to Committee on Athletics Certification.** The Committee on Infractions may recommend to the Committee on Athletics Certification that an institution's certification status be reviewed as a result of the institution's completed infractions case. *(Adopted: 1/16/93 effective 1/1/94)*

## **19.6 RIGHTS OF MEMBER TO APPEAL**

**19.6.1 Appeal of Secondary Violations.** A member shall have the right to appeal actions taken by the vice president of enforcement services in reference to secondary violations. To appeal, the member must submit written notice of appeal to the Committee on Infractions. The Committee on Infractions must receive the written notice of appeal and any supporting information within 30 days of the date the institution receives the enforcement staff's decision. *(Adopted: 1/16/93 effective 1/1/94)*

**19.6.2 Appeal of Major Violations.** A member shall have the right to give written notice of appeal of the committee's findings of major violations (subject to Bylaw 32.10.2), the penalty, or both to the Infractions Appeals Committee per Bylaw 19.2. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

**19.6.3 Appeal by an Institutional Staff Member.** If any current or former institutional staff member participates in a hearing (either in person or through written presentation) before the Committee on Infractions and is involved in a finding of a violation against that individual, the individual shall be given the opportunity to appeal any of the findings in question (subject to the conditions of Bylaw 32.10.2) or the committee's decision to issue a show-cause order to the Infractions Appeals Committee. Under such circumstances, the individual and personal legal counsel may appear before the appeals committee at the time it considers the pertinent findings. *(Revised: 1/16/93, 1/10/95, 1/6/96, 4/24/03)*

**19.6.4 Student-Athlete Appeal.** If an institution concludes that continued application of the rule(s) would work an injustice on any student-athlete, an appeal shall be submitted to the Committee on Student-Athlete Reinstatement and promptly reviewed.

**19.6.4.1 Obligation of Institution to Take Appropriate Action.** When the committee (or the Infractions Appeals Committee per Bylaw 19.2) finds that there has been a violation of the constitution or bylaws affecting the eligibility of an individual student-athlete or student-athletes, the institution involved and its conference(s), if any, shall be notified of the violation and the name(s) of the student-athlete(s) involved, it being understood that if the institution fails to take appropriate action, the involved institution shall be cited to show cause under the Association's regular enforcement procedures why it should not be disciplined for a failure to abide by the conditions and obligations of membership (declaration of ineligibility) if it permits the student-athlete(s) to compete. *(Revised: 1/10/95, 4/24/03)*

## 19.7 RESTITUTION

If a student-athlete who is ineligible under the terms of the constitution, bylaws or other legislation of the Association is permitted to participate in intercollegiate competition contrary to such NCAA legislation but in accordance with the terms of a court restraining order or injunction operative against the institution attended by such student-athlete or against the Association, or both, and said injunction is voluntarily vacated, stayed or reversed or it is finally determined by the courts that injunctive relief is not or was not justified, the Board of Directors may take any one or more of the following actions against such institution in the interest of restitution and fairness to competing institutions: *(Revised: 11/1/07 effective 8/1/08)*

- (a) Require that individual records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;
- (b) Require that team records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;
- (c) Require that team victories achieved during participation by such ineligible student-athlete shall be abrogated and the games or events forfeited to the opposing institutions;
- (d) Require that individual awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;
- (e) Require that team awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;
- (f) Determine that the institution is ineligible for one or more NCAA championships in the sports and in the seasons in which such ineligible student-athlete participated;
- (g) Determine that the institution is ineligible for invitational and postseason meets and tournaments in the sports and in the seasons in which such ineligible student-athlete participated;
- (h) Require that the institution shall remit to the NCAA the institution's share of television receipts (other than the portion shared with other conference members) for appearing on any live television series or program if such ineligible student-athlete participates in the contest(s) selected for such telecast, or if the Board of Directors concludes that the institution would not have been selected for such telecast but for the participation of such ineligible student-athlete during the season of the telecast; any such funds thus remitted shall be devoted to the NCAA postgraduate scholarship program; and *(Revised: 11/1/07 effective 8/1/08)*
- (i) Require that the institution that has been represented in an NCAA championship by such a student-athlete shall be assessed a financial penalty as determined by the Committee on Infractions. *(Revised: 4/26/01 effective 8/1/01)*



# Enforcement Policies and Procedures

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## 32.1 COMMITTEE ON INFRACTIONS—SPECIAL OPERATING RULES

**32.1.1 Confidentiality.** The Committee on Infractions, the Infractions Appeals Committee and the enforcement staff shall treat all cases before them as confidential until they have been announced in accordance with the prescribed procedures. In addition, an institution and any individual subject to NCAA rules involved in a case shall treat that case under inquiry by the enforcement staff, under consideration by the Committee on Infractions and, if appealed, under consideration by the Infractions Appeals Committee, as confidential until the decisions in such a case have been announced in accordance with prescribed procedures. *(Revised: 1/11/94, 4/24/03, 1/13/08, 4/28/11)*

**32.1.2 Public Announcements.** The enforcement staff shall not confirm or deny the existence of an infractions case before complete resolution of the case through normal NCAA enforcement and hearing procedures. However, if the involved institution or any person involved in the case (e.g., involved individual, representative of the institution's athletics interests, interviewee) makes information concerning a case public, the involved institution, enforcement staff and the involved person may confirm, correct or deny the information made public. *(Revised: 4/24/03, 1/13/08)*

**32.1.3 Conflict of Interest.** Any member of the Committee on Infractions or the Infractions Appeals Committee shall neither appear at the hearing or oral argument nor participate on the committee when the member is directly connected with an institution under investigation or has a personal, professional or institutional affiliation that reasonably would result in the appearance of prejudice. It is the responsibility of the committee member or members of the Infractions Appeals Committee per Bylaw 19.2 to remove himself or herself if a conflict exists. Objections to the participation of a committee member or the Infractions Appeals Committee member per Bylaw 19.2 should be raised as soon as recognized, but will not be considered unless raised at least one week in advance of the affected hearing or oral argument. *(Revised: 1/16/93, 1/11/94, 4/24/03, 4/28/11)*

**32.1.4 Cooperative Principle.** The cooperative principle imposes an affirmative obligation on each institution to assist the enforcement staff in developing full information to determine whether a possible violation of NCAA legislation has occurred and the details thereof. An important element of the cooperative principle requires that all individuals who are subject to NCAA rules protect the integrity of an investigation. A failure to do so may be a violation of the principles of ethical conduct. The enforcement staff will usually share information with the institution during an investigation; however, it is understood that the staff, to protect the integrity of the investigation, may not in all instances be able to share information with the institution. *(Adopted: 1/12/99)*

**32.1.5 Definition of Involved Individual.** Involved individuals are former or current student-athletes and former or current institutional staff members who have received notice of significant involvement in alleged violations through the notice of allegations or summary disposition process. *(Adopted: 4/24/03, Revised: 4/17/07)*

## 32.2 PRELIMINARY REVIEW OF INFORMATION

**32.2.1 Enforcement Staff to Receive Complaints and Conduct Investigations.** It is the responsibility of the enforcement staff to conduct investigations relative to an institution's failure to comply with NCAA legislation or to meet the conditions and obligations of membership. Information that an institution failed to meet these obligations shall be provided to the enforcement staff and, if received by the Committee on Infractions or NCAA president, will be channeled to the enforcement staff. *(Revised: 4/24/03)*

**32.2.1.1 Staff Initiation of Investigation.** The enforcement staff may initiate an investigation on its own motion when it receives information that an institution is, has been, or may have been in violation of NCAA legislation. *(Revised: 4/24/03, 4/10/06)*

**32.2.1.2 Self-Disclosure by an Institution.** Self-disclosure shall be considered in establishing penalties, and, if an institution uncovers a violation prior to its being reported to the NCAA and/or its conference, such disclosure shall be considered as a mitigating factor in determining the penalty. *(Revised: 10/12/94)*

**32.2.2 Investigative Guidelines.** The Committee on Infractions shall provide general guidance to the enforcement staff through approved and established investigative and procedural guidelines.

**32.2.2.1 Initial Enforcement Staff Responsibilities.** The enforcement staff is responsible for evaluating information reported to the NCAA staff to determine whether the possible violation should be handled by correspondence with the involved institution or its conference, or whether the enforcement staff should conduct its own in-person inquiries.

**32.2.2.1.1 Basic Information Gathering.** The enforcement staff has a responsibility to gather basic information regarding possible violations and, in doing so, may contact individuals to solicit information. If information indicating a potential NCAA violation believed to be reliable is developed, the procedures provided in Bylaw 32.5 (Notice of Inquiry) are undertaken. *(Revised: 4/24/03)*

**32.2.2.1.2 Identification of Major/Secondary Violation.** The enforcement staff shall identify information developed by it or self-reported by the institution as alleged major or secondary violations (as defined in Bylaw 19.02.2). The staff shall have the discretion to submit information to the Committee on Infractions, or a designated member of the Committee on Infractions, for an initial determination of how that information should be processed. *(Adopted: 4/24/03, Revised: 4/10/06)*

**32.2.2.1.3 Matters Handled by Correspondence.** Matters that clearly are secondary in nature should be handled promptly by correspondence with the involved institution. *(Revised: 4/24/03)*

## **32.3 INVESTIGATIVE PROCEDURES**

**32.3.1 Conformance with Procedures.** Investigations by the enforcement staff shall be conducted in accordance with the operating policies, procedures and investigative guidelines established by the Committee on Infractions, the Board of Directors and membership in accordance with Bylaw 19. *(Revised: 11/1/07 effective 8/1/08)*

**32.3.1.1 Consultation with Committee on Infractions.** If questions arise concerning investigative procedures during the course of an investigation, the chair (or the full Committee on Infractions, if necessary) may be consulted by the enforcement staff. *(Adopted: 4/24/03)*

**32.3.2 Timely Process.** The enforcement staff shall make reasonable efforts to process infractions matters in a timely manner. *(Revised: 4/24/03)*

**32.3.3 Conflict of Interest.** Any enforcement staff member who has or had a personal relationship or institutional affiliation that reasonably would result in the appearance of prejudice should refrain from participating in any manner in the processing of the involved institution's or individual's infractions case. *(Adopted: 1/16/93)*

**32.3.4 Interviews with Member Institution.** The athletics director or other appropriate official of an institution shall be contacted by the enforcement staff in order to schedule interviews on the institution's campus with enrolled student-athletes, coaching staff members or other institutional staff members with athletically related responsibilities or oversight who are involved in possible violations at the institution. *(Revised: 4/24/03)*

**32.3.4.1 Presence of Institutional Representative During Interview.** If an interview with an enrolled student-athlete or athletics department staff member is conducted on the campus of an institution, an institutional representative(s) (as designated by the institution) will be permitted to be present during the interview, provided the subject matter to be discussed in the interview relates directly to the individual's institution or could affect the individual's eligibility or employment at the institution. If the investigator wishes to discuss information with a student-athlete or staff member that is related solely to institutions other than the one in which the student-athlete is enrolled or staff member is employed and would not reasonably affect the student's eligibility or the staff member's employment, the institutional representative shall not be present during that portion of the interview. In such a situation (after the institutional representative has departed), any information inadvertently reported by the student-athlete or the staff member that is related to his or her own institution shall not be used against the student-athlete, staff member or that institution. *(Revised: 4/24/03)*

**32.3.4.2 Conflict with Academic Schedule.** If possible, interviews should be conducted without disrupting the normally scheduled academic activities of the student-athlete. *(Revised: 4/24/03)*

**32.3.5 Proper Identification of NCAA Staff Member.** In no case shall an enforcement staff member misrepresent the staff member's identity or title.

**32.3.6 Representation by Legal Counsel.** When an enforcement staff member conducts an interview that may develop information detrimental to the interests of the individual being questioned, that individual may be represented by personal legal counsel throughout the interview.

### 32.3.7 Notice Requirements.

**32.3.7.1 Disclosure of Purpose of Interview.** When an enforcement representative requests information that could be detrimental to the interests of the student-athlete or institutional employee being interviewed, that individual shall be advised that the purpose of the interview is to determine whether the individual has knowledge of or has been involved directly or indirectly in any violation of NCAA legislation. *(Revised: 4/24/03, 4/10/06)*

**32.3.7.2 Responsibility to Cooperate.** At the beginning of an interview arranged or initiated by the enforcement staff, a current or former student-athlete or institutional employee shall be advised that refusing to furnish information or providing false or misleading information to the NCAA, conference or institution may result in an allegation that the individual has violated NCAA ethical conduct legislation (see Bylaw 10.1).

### 32.3.8 Limited Immunity.

**32.3.8.1 Athletics Personnel.** At the request of the enforcement staff, the Committee on Infractions may grant limited immunity to an institutional employee with responsibilities related to athletics based on information that the employee reports when such an employee otherwise would be subject to disciplinary action as described in Bylaws 19.5.1-(i) and 19.5.2-(k). Such immunity shall not apply to the employee's involvement in violations of NCAA legislation not reported or to future involvement in violations of NCAA legislation by the employee or to any action taken by an institution. In any case, such immunity shall not be granted unless the employee provides information not otherwise available to the enforcement staff. *(Revised: 10/12/94, 4/24/03, 4/28/11)*

**32.3.8.2 Student-Athlete or Prospective Student-Athlete.** At the request of the enforcement staff, the Committee on Infractions may grant limited immunity to a student-athlete or prospective student-athlete when such an individual otherwise might be declared ineligible for intercollegiate competition based on information reported to the enforcement staff by the individual or a third party associated with the individual. Such immunity shall not apply to the individual's involvement in violations of NCAA legislation not reported or to future involvement in violations of NCAA legislation by the individual or to any action taken by an institution. In any case, such immunity shall not be granted unless the relevant information would not otherwise be available to the enforcement staff. *(Adopted: 4/28/11)*

### 32.3.9 Interview Record.

**32.3.9.1 Recordings.** It is preferable that an interview conducted by the enforcement staff be recorded through the use of a mechanical device. If an interviewee objects to being recorded however, or the enforcement staff believes the use of a recording device would have an inhibiting effect on the interviewee, a summary of the information reported shall be prepared per Bylaw 32.3.9.2. *(Revised: 4/10/06, 6/11/07)*

**32.3.9.1.1 Access to Recordings and Transcripts.** Both the enforcement staff and the interviewee may record the interview or the interviewee may receive a copy of the recording and if prepared by the enforcement staff, the interview transcript, subject to the confidentiality provisions of Bylaws 32.3.9.1.4 and 32.3.9.2.1. Copies of recorded interview summaries and any report prepared by the enforcement staff are confidential and shall only be provided to interviewees (and their institutions) as set forth in Bylaws 32.3.9.2 and 32.6.4. *(Revised: 4/24/03, 4/10/06, 6/11/07, 8/7/08)*

**32.3.9.1.2 Institutional Recording of an Interview—Access to Recordings and Transcripts.** Interviews conducted in accordance with Bylaw 32.3.4.1 or jointly with the enforcement staff at any location, may be recorded by the institution under inquiry. If the institution is unable or chooses not to record such an interview, the institution may receive a copy of the enforcement staff's recording of the interview and/or a copy of the interview transcript, if prepared by the enforcement staff. Institutional recordings of NCAA interviews under any other circumstances must be approved by the Committee on Infractions. *(Adopted: 10/12/94)*

**32.3.9.1.2.1 Access to Recordings and Transcripts by Conference.** For interviews conducted in accordance with Bylaw 32.3.4.1 or jointly by the institution and enforcement staff, and on consent of the institution, a conference may receive a copy of the interview recording and/or transcript, if prepared by the enforcement staff or institution. *(Adopted: 6/11/07)*

**32.3.9.1.3 Use of Court Reporters.** Institutional representatives or individuals being interviewed may use a court reporter to transcribe and interview subject to the following conditions. The institution or individual shall:

- (a) Pay the court reporter's fees;
- (b) Provide a copy of the transcript to the enforcement staff at no charge; and
- (c) Agree that the confidentiality standards of Bylaw 32.3.9.1.4 apply. An institutional representative or individual who chooses to use a court reporter shall submit a written notice of agreement with the required conditions to the enforcement staff prior to the interview. If the enforcement staff chooses to use a court reporter, the NCAA will pay all costs of the reporter. A copy of the transcript prepared by the court reporter for the enforcement staff shall be made available to the institution and the involved individuals. *(Adopted: 4/24/03, Revised: 5/22/09)*



**32.3.9.1.4 Statement of Confidentiality.** Individuals and institutional representatives shall be required to agree not to release recordings or interview transcripts to a third party. A statement of confidentiality shall be signed or recorded prior to an interview. Failure to enter into such an agreement would preclude the individual or institutional representative from recording or transcribing the interview. *(Adopted: 4/23/03, Revised: 4/10/06)*

**32.3.9.2 Nonrecorded Interviews.** When an interview is not recorded or if the recording device malfunctions, the enforcement staff shall prepare a written summary of the information and attempt to obtain a signed affirmation of its accuracy from the interviewee. The interviewee shall be permitted to make additions or corrections to the memorandum before affirming its accuracy. In order to obtain the interviewee's signature, the enforcement staff may provide a copy of the unsigned summary to the interviewee and his or her counsel. After the summary is signed, the interviewee and his or her counsel may receive a signed copy. Testimony as to the substance of an unrecorded interview for which a signed affirmation was not obtained may nevertheless be considered by the Committee on Infractions to the extent the Committee on Infractions determines the testimony to be reliable. *(Revised: 4/24/03, 4/10/06, 8/7/08)*

**32.3.9.2.1 Confidentiality of Nonrecorded Interview Documents.** Copies of nonrecorded interview summaries and any report prepared by the enforcement staff are confidential and shall not be provided to individuals (or their institutions) who may be involved in reporting information during the processing of an infractions case except as set forth in Bylaws 32.3.9.2, 32.3.10 and 32.6.4. *(Revised: 4/24/03, 8/7/08)*

**32.3.9.3 Handwritten Notes.** It shall be permissible for all individuals involved in interviews conducted by the enforcement staff to take handwritten notes of the proceedings. *(Adopted: 4/23/03)*

### **32.3.10 Enforcement Staff's Responsibility to Maintain Case Information.**

**32.3.10.1 Case File.** The enforcement staff is responsible for maintaining evidentiary materials involved with an infractions case, including copies of recorded interviews, interview summaries and/or interview transcripts and other evidentiary information. Such materials shall be retained on file at the national office. *(Adopted: 1/13/08 for all cases heard by the Committee on Infractions, unless not feasible due to security, format or technology issues)*

**32.3.10.2 Secure Website.** The enforcement staff shall make available copies of recorded interviews, interview summaries and/or interview transcripts and other evidentiary information pertinent to an infractions case. The institution and involved individuals may review such information in the national office or through a secure website in accordance with the provisions of Bylaw 32.6.4. *(Adopted: 1/13/08 for all cases heard by the Committee on Infractions, unless not feasible due to security, format or technology issues)*

**32.3.11 Failure to Cooperate.** In the event that a representative of an institution refuses to submit relevant information to the Committee on Infractions or the enforcement staff on request, a notice of inquiry may be filed with the institution alleging a violation of the cooperative principles of the NCAA bylaws and enforcement procedures. Institutional representatives and the involved individual may be requested to appear before the Committee on Infractions at the time the allegation is considered. *(Revised: 4/24/03)*

**32.3.12 Meeting with Chancellor or President.** The enforcement staff may meet personally with the chancellor or president or a designated representative of the involved institution to discuss the allegations investigated and information developed by the NCAA in a case that has been terminated. *(Revised: 4/24/03, 3/8/06)*

## **32.4 PROCESSING INFORMATION FOR SECONDARY VIOLATIONS**

**32.4.1 Authority of Conference Commissioners.** Selected secondary violations that have been identified by the Committee on Infractions, and for which specific disciplinary or corrective actions have been prescribed by the Committee on Infractions, shall be processed by the institution's conference when such violations occur for the first time in a particular sport. Any violations processed and penalties imposed by the conference commissioner shall be reported to the NCAA enforcement staff on a quarterly basis. If an institution believes that a case warrants action that is less than the prescribed penalty, it may request further review by the vice president for enforcement services. *(Adopted: 10/21/97 effective 1/1/98, Revised: 4/24/03)*

**32.4.2 Review of Institutional or Conference Actions or Penalties In Secondary Cases.** If the Committee on Infractions or the enforcement staff, after review of institutional or conference action taken in connection with a rules infraction in a secondary case, concludes that the corrective or punitive measures taken by the institution or conference are sufficient, the Committee on Infractions or the enforcement staff may accept the self-imposed measures and take no further action. Failure to fully implement the self-imposed measures may subject the institution to further disciplinary action by the NCAA. *(Revised: 10/12/94, 4/24/03)*

**32.4.2.1 Insufficient Actions.** If the institutional or conference actions appear to be insufficient, the enforcement staff shall notify the institution of additional penalties in a secondary case. *(Revised: 10/12/94, 4/24/03)*

**32.4.3 Action Taken by Enforcement Staff (Non-Institution or Non-Conference).** If the enforcement staff, after reviewing the information that has been developed and after consulting with the institution involved, determines that a secondary violation has occurred, the enforcement staff may determine that no penalty is warranted or impose an appropriate penalty (see Bylaw 19.6.1). *(Revised: 4/24/03)*

**32.4.4 Appeal of Secondary Cases.** An institution may appeal penalties imposed by the enforcement staff for a secondary violation by submitting a written notice of appeal to the Committee on Infractions. The Committee on Infractions must receive the written notice of appeal and any supporting information within 30 days of the date the institution receives the enforcement staff's decision. An institution may request the opportunity to appear in person or through participation in a telephone conference call. If no such request is made, or if the request is denied, the Committee on Infractions will review the institution's appeal on the basis of the written record. (*Adopted: 1/12/99, Revised: 4/24/03*)

## 32.5 NOTICE OF INQUIRY

**32.5.1 Notice to Institution.** If the enforcement staff has developed reasonably reliable information indicating that an institution has been in violation of NCAA legislation that requires further investigation, the enforcement staff shall provide a notice of inquiry in writing to the chancellor or president unless the institution and enforcement staff have agreed to pursue the summary disposition process as set forth in Bylaw 32.7. The notice of inquiry shall advise the chancellor or president that the enforcement staff will engage in an investigation, that the investigation will be conducted under the direction of the vice president for enforcement services and that members of the enforcement staff if requested, shall meet in person with the chancellor or president to discuss the nature and details of the investigation, and the type of charges that appear to be involved. The notice of inquiry shall state that if the investigation develops significant information of a possible major violation, a notice of allegations will be produced in accordance with the provisions of Bylaw 32.6, or, in the alternative, the institution will be notified that the matter has been concluded. To the extent possible, the notice of inquiry also shall contain the following information: (*Adopted: 4/24/03, Revised: 3/8/06, 4/17/07*)

- (a) The involved sport;
- (b) The approximate time period during which the alleged violations occurred;
- (c) The identity of involved individuals;
- (d) An approximate time frame for the investigation;
- (e) A statement indicating that the institution and involved individuals may be represented by legal counsel at all stages of the proceedings;
- (f) A statement requesting that the individuals associated with the institution not discuss the case prior to interviews by the enforcement staff and institution except for reasonable campus communications not intended to impede the investigation of the allegations and except for consultation with legal counsel;
- (g) A statement indicating that other facts may be developed during the course of the investigation that may relate to additional violations; and
- (h) A statement regarding the obligation of the institution to cooperate in the case.

**32.5.1.1 Status Notification within Six Months.** The enforcement staff shall inform the involved institution of the general status of the inquiry within six months of the date after the chancellor or president receives the notice of inquiry from the enforcement staff. (*Adopted: 4/24/03, Revised: 3/8/06*)

**32.5.1.2 Review After One Year.** If the inquiry has not been processed to conclusion within one year of the date that the chancellor or president receives the notice of inquiry from the enforcement staff, the staff shall review the status of the case with the Committee on Infractions. The Committee on Infractions shall determine whether further investigation is warranted, and its decision shall be forwarded to the involved institution in writing. If the investigation is continued, additional status reports shall be provided to the institution in writing at least every six months thereafter, until the matter is concluded. (*Adopted: 4/24/03, Revised: 3/8/06*)

**32.5.2 Termination of Investigation.** The enforcement staff shall terminate the investigation related to any notice of inquiry in which information is developed that does not appear to be of sufficient substance or reliability to warrant a notice of allegations, it being understood that the Committee on Infractions shall review each such decision. (*Adopted: 4/24/03*)

## 32.6 NOTICE OF ALLEGATIONS

**32.6.1 Notice to Chancellor or President.** When the enforcement staff determines that there is sufficient information to warrant, it shall issue a cover letter and notice of allegations to the chancellor or president of the institution involved (with copies to the faculty athletics representative and the athletics director and to the executive officer of the conference of which the institution is a member). (*Revised: 4/24/03, 3/8/06*)

**32.6.1.1 Contents of the Notice of Allegations Cover Letter.** The cover letter accompanying each notice of allegations shall: (*Adopted: 4/24/03*)

- (a) Inform the president or chancellor of the matter under inquiry and request the cooperation of the institution in obtaining all the pertinent facts and provide specific information on how to investigate the allegation. (*Revised: 3/8/06*)

- (b) Request the president or chancellor to respond to the allegations and to provide all relevant information that the institution has or may reasonably obtain, including information uncovered related to new violations. The responsibility to provide information continues until the case has been concluded. *(Revised: 3/8/06)*
- (c) Request the president or chancellor and other institutional staff to appear before the Committee on Infractions at a time and place determined by the Committee on Infractions. *(Revised: 3/8/06)*
- (d) Inform the president or chancellor that if the institution fails to appear after having been requested to do so, it may not appeal the committee's findings of fact and violations, or the resultant penalty. *(Revised: 3/8/06)*
- (e) Direct the institution to provide any involved individual the opportunity to submit in writing any information the individual desires that is relevant to the allegation in question. *(Revised: 5/22/09)*
- (f) Inform the president or chancellor that the enforcement staff's primary investigator in the case will be available to discuss the development of its response and assist in locating various individuals who have, or may have, important information regarding the allegations. *(Revised: 3/8/06)*

**32.6.1.1.1 Enforcement Staff Basis for Allegation.** The enforcement staff shall allege a violation when it believes there is sufficient information to conclude that the Committee on Infractions could make a finding. *(Adopted: 4/24/03)*

**32.6.1.2 Contents of Notice of Allegations.** The notice shall list the NCAA legislation alleged to have been violated, as well as the details of each allegation. *(Adopted: 4/24/03)*

**32.6.2 Notice to Involved Individuals.** The enforcement staff shall notify involved individuals (as defined in Bylaw 32.1.5) of the allegations in a notice of allegations in which they are named. A copy of the notification shall also be forwarded to the chancellor or president of the current institution of the involved individual. All involved individuals shall submit responses to the Committee on Infractions, and the institution under inquiry shall provide a copy of pertinent portions of its response to each involved individual in the case. Involved individuals who have submitted a response must also share their response with the involved institutions or other involved individuals as necessary. Failure to submit a response may be viewed by the Committee on Infractions as an admission that the alleged violations occurred. The enforcement staff shall notify those involved individuals named in the notice of allegations who may be subject to the show-cause requirements as outlined in Bylaw 19.5.2.2 if violations are found in which they are named. *(Adopted: 4/24/03, Revised: 3/8/06, 4/10/06, 6/11/07, 1/17/09)*

**32.6.3 Statute of Limitations.** Allegations included in a notice of allegations shall be limited to possible violations occurring not earlier than four years before the date the notice of inquiry is forwarded to the institution or the date the institution notifies (or, if earlier, should have notified) the enforcement staff of its inquiries into the matter. However, the following shall not be subject to the four-year limitation: *(Revised: 10/12/94, 4/24/03)*

- (a) Allegations involving violations affecting the eligibility of a current student-athlete;
- (b) Allegations in a case in which information is developed to indicate a pattern of willful violations on the part of the institution or individual involved, which began before but continued into the four-year period; and
- (c) Allegations that indicate a blatant disregard for the Association's fundamental recruiting, extra-benefit, academic or ethical-conduct regulations or that involve an effort to conceal the occurrence of the violation. In such cases, the enforcement staff shall have a one-year period after the date information concerning the matter becomes available to the NCAA to investigate and submit to the institution a notice of allegations concerning the matter.

**32.6.4 Access to Information Through Secure Website.** The institution and involved individuals shall have reasonable access to all pertinent evidentiary materials as described in Bylaw 32.3.10.2. Such information shall be made available within 30 days from the date the notice of allegations is sent by the enforcement staff to the institution and involved individuals. *(Adopted: 1/16/93, Revised: 10/12/94, 4/24/03, 1/13/08 for all cases heard by the Committee on Infractions, unless not feasible due to security, format or technology issues)*

**32.6.4.1 Additions to Secure Website.** Additions made to a secure website more than 30 days after the notice of allegations is sent to the institution and involved individuals shall be limited to exculpatory information and/or new information that could not be reasonably ascertained prior to the date the notice of allegations was sent. The enforcement staff shall notify the institution and involved individuals of the availability of the additional information. *(Adopted: 1/13/08 for all cases heard by the Committee on Infractions, unless not feasible due to security, format or technology issues)*

**32.6.5 Deadline for Responses.** Any response to the notice of allegations shall be on file with the Committee on Infractions, the institution, all involved individuals and the enforcement staff not later than 90 days from the date of the notice of allegations, unless the Committee on Infractions grants an extension. The enforcement staff may establish a deadline for the submission of responses to any reasonable time within the 90-day period, provided the institution and all involved individuals consent to the expedited deadline. An institution or involved individual may not submit additional documentary evidence (in addition to its initial response) without prior authorization from the Committee on Infractions (see Bylaw 32.6.8 for additional instructions regarding information submitted to the Committee on Infractions). *(Revised: 1/16/93, 4/24/03, 4/10/06, 1/13/08)*

**32.6.6 Prehearing Conference.** Within 30 days of an institution's submission of its written response to the notice of allegations, in a case involving an alleged major violation, the enforcement staff shall consult with institutional representatives and other involved individuals who will attend the hearing in order to clarify the issues to be discussed in the case during the hearing, make suggestions regarding additional investigation or interviews that should be conducted by the institution to supplement its response and identify allegations that the staff intends to withdraw. The enforcement staff shall conduct independent prehearings with the institution and/or any involved individuals, unless mutually agreed by all parties to do otherwise. *(Revised: 1/16/93, 10/12/94, 4/24/03)*

**32.6.6.1 Extension.** The Committee on Infractions may approve additional time for representatives of the involved individuals and institution and the enforcement staff to conduct such prehearing conferences. *(Adopted: 1/16/93)*

**32.6.7 NCAA Enforcement Staff Case Summary.** The enforcement staff shall prepare a summary of the case that indicates the status of each allegation and identifies the individuals on whom and the information on which the staff will rely in presenting the case. Within 14 days prior to the hearing, the case summary shall be provided to the members of the Committee on Infractions and to representatives of the institution. Involved individuals will be provided those portions of the summary in which they are identified as at risk. The Committee on Infractions may waive this 14-day period for good cause shown. *(Adopted: 10/12/94, 4/24/03)*

**32.6.8 Deadline for Submission of Written Material.** Unless specifically approved by the Committee on Infractions for good cause shown, all written material to be considered by the Committee on Infractions at the infractions hearing must be received by the Committee on Infractions, enforcement staff, institution and any involved individuals attending the hearing not later than 10 days prior to the date of the hearing. Evidence may be submitted at the hearing; but subject to the limitations set forth in Bylaw 32.8.7.4. *(Revised: 4/24/03)*

**32.6.9 Prehearing Procedural Issues.** The chair of the Committee on Infractions (or his or her designee) has the authority to resolve procedural matters that arise prior to an infractions hearing. *(Adopted: 1/13/08)*

## 32.7 SUMMARY DISPOSITION AND EXPEDITED HEARING

**32.7.1 Summary Disposition Election.** In major infractions cases, institutions, involved individuals and the enforcement staff may elect to process the case through the summary disposition procedures specified below. The enforcement staff, involved individuals, if participating, and the institution must agree to use the summary disposition process. *(Adopted: 1/16/93, Revised: 4/22/98, 6/11/07, 8/12/10)*

**32.7.1.1 Thorough Investigation.** The Committee on Infractions shall determine that a thorough investigation of possible violations of NCAA legislation has been conducted. The investigation may be conducted by the enforcement staff and/or the institution, but the enforcement staff must agree that a complete and thorough investigation has been conducted and that the institution fully cooperated in the process. *(Adopted: 1/16/93)*

**32.7.1.2 Written Report.** The institution, involved individuals and the enforcement staff shall submit a written report setting forth: *(Adopted: 1/16/93)*

- (a) The proposed findings of fact;
- (b) A summary of information on which the findings are based;
- (c) A stipulation that the proposed findings are substantially correct;
- (d) The findings that are violations of NCAA legislation; and
- (e) A statement of unresolved issues that are not considered substantial enough to affect the outcome of the case.

**32.7.1.3 Proposed Penalties.** The institution and involved individuals shall submit proposed penalties within the guidelines set forth in the penalty structure for major violations specified in Bylaw 19.5.2. The institution and involved individuals also may submit a statement regarding mitigating factors. *(Adopted: 1/16/93)*

**32.7.1.4 Committee on Infractions Review.** The Committee on Infractions shall consider the case during its next scheduled meeting. *(Adopted: 1/16/93)*

**32.7.1.4.1 Approval of Findings and Penalties.** If the agreed-on findings and proposed penalties are approved, the Committee on Infractions shall prepare a written report, forward it to the institution and involved individuals and publicly announce the resolution of the case under the provisions of Bylaw 32.9. *(Adopted: 1/16/93)*

**32.7.1.4.2 Findings Not Approved.** If the Committee on Infractions does not approve the findings, the hearing process set forth in Bylaws 32.8 and 32.9 shall be followed. *(Adopted: 1/16/93, Revised: 6/11/07)*

**32.7.1.4.3 Penalties Not Approved.** If the Committee on Infractions accepts the agreed-on findings but proposes penalties in addition to those set forth in the summary disposition report, the institution and/or involved individuals may request an expedited hearing on penalties before the Committee on Infractions. The committee shall only consider information relevant to the imposition of penalties during the expedited hearing. At the conclusion of the expedited hearing, the committee shall prepare a written report and provide notification of the committee's actions consistent with Bylaw 32.9. The institution and/or any involved individuals may appeal the additional penalties to the Infractions Appeals Committee in accordance with Bylaws 32.10 and 32.11. *(Adopted: 1/16/93, Revised: 6/11/07, 8/7/08)*

**32.7.1.4.4 Additional Information or Clarification.** The Committee on Infractions may contact jointly the institution, enforcement staff and involved individuals for additional information or clarification prior to accepting or rejecting the proposed findings. *(Revised: 6/11/07)*

**32.7.1.4.5 Authority to Amend Findings.** The Committee on Infractions has the authority to make editorial or nonsubstantive changes in the proposed findings as long as these changes do not affect the substance of the findings.

## **32.8 COMMITTEE ON INFRACTIONS HEARINGS**

**32.8.1 Committee Authority.** The Committee on Infractions shall hold a hearing to determine the existence of the alleged violation of NCAA regulations and to impose any appropriate penalties. *(Adopted: 4/24/03)*

**32.8.2 Determination of Meeting Date.** The Committee on Infractions shall set the dates and times for all hearings before the committee. The committee shall notify all relevant parties of the hearing date and site. *(Adopted: 4/24/03)*

**32.8.3 Limitations on Presentation of Staff Evidence.** In major cases requiring an institutional hearing before the Committee on Infractions or when processing a case through means of a summary disposition, specific information and evidence developed by the staff related to alleged violations of NCAA legislation shall not be presented to the committee prior to the institution's appearance, except as provided in these procedures. *(Adopted: 4/24/03)*

**32.8.4 Obligation to Provide Full Information.** At any appearance before the Committee on Infractions, the involved institution and the enforcement staff, to the extent reasonably possible, have the obligation to ensure that the Committee on Infractions has benefit of full information concerning each allegation, whether such information corroborates or refutes an allegation. *(Adopted: 4/24/03)*

**32.8.5 Notification of Hearing Procedures.** An institution and involved individuals shall be advised in writing prior to an appearance before the committee of the general procedures to be followed during the hearing. Such notification shall contain a specific reference to Bylaw 32.8 and shall indicate that, as a general rule, the discussion during the hearing will follow the numbering of the allegations in the notice of allegations. *(Adopted: 4/24/03)*

### **32.8.6 Appearance of Individuals at Hearings.**

**32.8.6.1 Request for Specific Individuals.** Institutional officials, staff members or enrolled student-athletes who are specifically requested to appear before the Committee on Infractions at an institutional hearing are expected to appear in person and may be accompanied by personal legal counsel. The Committee on Infractions also may request that former institutional staff members appear at a hearing. Such individuals also are expected to appear in person and may be accompanied by personal legal counsel. Failure to attend may result in a violation of this bylaw in a show-cause action by the Committee on Infractions.

**32.8.6.2 Attendance at Hearings.** At the time the institution appears before the Committee on Infractions, its representatives should include the institution's chancellor or president, the head coach of the sport in question, the institution's director of athletics, legal counsel, enrolled student-athletes whose eligibility could be affected by information presented at the hearing and any other representatives whose attendance has been requested by the Committee on Infractions. Additional individuals may be included among the institution's party only if specifically approved to be present by the Committee on Infractions. An individual who appears before the Committee on Infractions may appear with personal legal counsel. *(Revised: 4/24/03, 3/8/06)*

### **32.8.6.3 Exclusion of Individuals from Hearings.**

**32.8.6.3.1 Exclusions Requested by the Institution.** At the request of the institution, the Committee on Infractions may exclude an individual from certain portions of the hearing when the matters to be discussed are not those in which the individual is at risk. When an individual is excluded from the hearing room for a period of time, it shall be with the understanding that matters discussed in the hearing during that time will not relate to that individual. *(Revised: 4/24/03)*

**32.8.6.3.2 Limited Attendance of Student-Athletes.** Any student-athlete (and personal legal counsel) included among the institution's representatives may attend the hearing only during the discussion of the allegations in which the student-athlete is involved.

**32.8.6.4 Representation of Member Conference.** The executive officer or other representative of a conference's executive office may attend an institutional hearing involving a conference member. *(Revised: 4/24/03)*

**32.8.6.5 Prohibited Attendee.** A member of the Committee on Infractions or the Infractions Appeals Committee who is prohibited under the provisions of Bylaw 32.1.3 from participating in any NCAA proceedings may not attend a Committee on Infractions hearing involving the committee member's institution unless specifically requested by the Committee on Infractions to be present as a witness.

**32.8.6.6 Designation of Presentation Coordinators.** The chair shall request each institution appearing before the Committee on Infractions to select one person to coordinate institutional responses during the hear-

ing. In addition, one individual from the enforcement staff will be responsible for coordinating the presentation of the enforcement staff.

**32.8.7 Hearing Procedures.** The exact procedure to be followed in the conduct of the hearing will be determined by the Committee on Infractions.

**32.8.7.1 Opening and Closing Statements.** At the outset of the hearing, a representative of the institution shall make an opening statement, followed by an opening statement from any involved individual and by a representative of the enforcement staff. The contents of such a statement should not relate to the substance of the specific items contained in the notice of allegations. Statements concerning the nature or theory of the case are encouraged. An institutional representative and involved individuals also may make a closing statement at the conclusion of the hearing, followed by a closing statement by a representative of the enforcement staff. *(Revised: 4/24/03)*

**32.8.7.2 Staff Presentation.** During the hearing, the enforcement staff first shall present the information that its investigation has developed.

**32.8.7.3 Institutional or Involved Individual's Presentation.** The institution and involved individual then will present their explanation of the alleged violations and any other arguments or information deemed appropriate in the Committee on Infractions' consideration of the case. *(Revised: 4/24/03)*

**32.8.7.4 Type of Information.** Any oral or documentary information may be received, but the Committee on Infractions may exclude information that it determines to be irrelevant, immaterial or unduly repetitious.

**32.8.7.4.1 Information from Confidential Sources.** In presenting information and evidence for consideration by the Committee on Infractions during an infractions hearing, the enforcement staff shall present only information that can be attributed to individuals who are willing to be identified. Information obtained from individuals not wishing to be identified shall not be relied on by the Committee on Infractions in making findings of violations. Such confidential sources shall not be identified to either the Committee on Infractions or the institution.

**32.8.7.4.2 Information Concerning Mitigating Factors.** Institutional, conference and enforcement staff representatives and any involved individuals are encouraged to present all relevant information concerning mitigating or other factors that should be considered in arriving at appropriate penalties. *(Revised: 4/24/03)*

**32.8.7.5 Scope of Inquiry.** If an institution appears before the Committee on Infractions to discuss its response to the notice of allegations, the hearing shall be directed toward the allegations set forth in the notice of allegations but shall not preclude the committee from finding any violation resulting from information developed or discussed during the hearing. *(Revised: 4/24/03)*

**32.8.7.6 Committee on Infractions Questioning.** The Committee on Infractions, at the discretion of any of its members, shall question representatives of the institution or the enforcement staff, as well as any involved individuals or other persons appearing before it, in order to determine the facts of the case. Further, under the direction of the Committee on Infractions, questions and information may be exchanged between and among all parties participating in the hearing. *(Revised: 5/22/09)*

**32.8.7.7 Recording of Proceedings.** The proceedings of infractions hearings shall be recorded by a court reporter (unless otherwise agreed) and shall be recorded by the Committee on Infractions. No additional verbatim recording of these proceedings will be permitted by the Committee on Infractions. The Committee on Infractions shall maintain custody of the recordings and any transcriptions. In the event of an appeal, a transcript of the hearing proceedings shall be reproduced and submitted to the Infractions Appeals Committee and made available for review at the NCAA national office or through a secure website. [Note: Involved individuals will receive only those portions of the hearing transcripts in which they were in attendance at the hearing.] *(Revised: 1/16/93, 4/24/03, 4/10/06)*

**32.8.8 Posthearing Committee Deliberations.** After all presentations have been made and the hearing has been concluded, the Committee on Infractions shall excuse all others from the hearing, and the Committee on Infractions shall make its determinations of fact and violation in private.

**32.8.8.1 Request for New Information.** In arriving at its determinations, the Committee on Infractions may request additional information from any source, including the institution, the enforcement staff or an involved individual. In the event that new information is requested from the institution, the enforcement staff or an involved individual to assist the Committee on Infractions, all parties will be afforded an opportunity to respond at the time such information is provided to the Committee on Infractions. *(Revised: 6/11/07)*

**32.8.8.2 Request for Interpretation.** The Committee on Infractions may confidentially request that the academic and membership affairs staff provide an interpretation of applicable legislation based on facts submitted by the Committee on Infractions. *(Adopted: 4/28/11)*

**32.8.8.3 Basis of Findings.** The Committee on Infractions shall base its findings 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.

**32.8.8.4 Imposition of Penalty.** If the Committee on Infractions determines that there has been a violation, it shall impose an appropriate penalty (see Bylaw 19.5); or it may recommend to the Board of Directors suspension or termination of membership in an appropriate case. Failure to fully implement the adopted and/or imposed penalty may subject the institution, and/or involved individual under a show-cause restriction, to further disciplinary action by the Committee on Infractions. *(Revised: 4/24/03, 4/28/11)*

**32.8.8.5 Voting Requirements.** The finding of a violation or the imposition of a penalty or recommended action shall be by majority vote of the members of the Committee on Infractions present and voting. If fewer than eight members are present, any Committee on Infractions action requires a favorable vote of at least four committee members. *(Revised: 10/12/94)*

## **32.9 NOTIFICATION OF COMMITTEE ON INFRACTIONS ACTION**

**32.9.1 Infractions Report.** The Committee on Infractions, without prior public announcement, shall be obligated to submit promptly an infractions report, to the chancellor or president of the institution (with copies to those individuals receiving copies of the notice of allegations) and to all involved individuals, as defined in Bylaw 32.1.5. The following procedures shall apply to the infractions report: *(Revised: 4/24/03, 3/8/06, 1/13/08)*

- (a) After an institutional hearing, the Committee on Infractions shall prepare and approve the final infractions report; *(Revised: 10/12/94)*
- (b) The infractions report(s) of the Committee on Infractions and the Infractions Appeals Committee shall contain a consolidated statement of all findings and penalties, corrective actions, requirements, and other conditions and obligations of membership imposed on an institution found in violation of NCAA legislation. The statement of such actions shall include, but not be limited to, the penalties imposed on the institution, eligibility rules to be applied, applicable executive regulations, the adjustment of individual and team standings in NCAA championship events, and the request for the return of any awards and net receipts received for participation in an NCAA championship; and *(Revised: 10/12/94, 4/24/03, 1/13/08)*
- (c) The committee's infractions report shall be sent to the chancellor or president of the involved institution and any involved individuals under the chair's signature or under the signature of a committee member selected to act for the chair. In addition, the committee will notify all involved individuals directly of the appeal opportunities outlined in Bylaws 32.9 and 32.10. The report shall be sent by overnight mail service, and the committee's administrator shall confirm receipt by the institution and involved individuals in order that the 15-day appeal period applicable to this report may be established. *(Revised: 10/12/94, 3/8/06, 1/13/08)*

**32.9.2 Release to Media.** Once the infractions report has been received by the institution and involved individuals, the report, with names of individuals deleted, shall be made available to the national wire services and other media outlets. *(Revised: 1/13/08)*

**32.9.2.1 Public Comment Prior to Release.** The Committee on Infractions' public announcement related to an infractions case shall be made available to the national wire services and other media outlets. In this regard, the involved institution and/or any involved individuals shall be advised of the text of the announcement prior to its release and shall be requested not to comment publicly concerning the case prior to the time the NCAA's public announcement is released. *(Revised: 4/24/03)*

**32.9.2.2 Public Announcement and Comment at Release.** The chair or a member of the Committee on Infractions shall make the committee's public announcement related to major infractions when the committee determines that an announcement is warranted in addition to distribution of the written report. *(Adopted: 1/16/93)*

**32.9.3 Report to Infractions Appeals Committee.** The Committee on Infractions shall forward a copy of the report, with names of individuals deleted, to the Infractions Appeals Committee at the time of the public announcement. *(Adopted: 1/13/08)*

## **32.10 APPEAL PROCEDURE**

**32.10.1 Notice of Intent to Appeal.** A notice of intent to appeal must be presented in writing to the Infractions Appeals Committee not later than 15 calendar days from the date of the public release of the Committee on Infractions' public infractions report. The notice of intent to appeal shall contain a statement identifying the date of the public release of the committee's report and a statement indicating whether the appealing party desires to submit its appeal in writing only or requests an in-person oral argument before the Infractions Appeals Committee. *(Revised: 1/16/93, 1/10/95, 4/26/95, 4/24/03, 1/13/08, 4/28/11)*

**32.10.1.1 Appeal by Institution.** The institution may appeal the Committee on Infractions' findings and penalties, corrective actions, requirements and/or other conditions and obligations of membership imposed for violations of NCAA legislation. An institution may not request an in-person oral argument before the Infractions Appeals Committee unless the institution has made an in-person appearance before the Committee on Infractions. *(Adopted: 1/13/08, Revised: 4/28/11)*



**32.10.1.2 Appeal by Involved Individual.** An involved individual may appeal the Committee on Infractions' findings and/or show-cause order imposed for violations of NCAA legislation in which he or she is named. An involved individual may not request an in-person oral argument before the Infractions Appeals Committee unless the involved individual has made an in-person appearance before the Committee on Infractions. The notice of the appeal must state whether the individual is employed at an NCAA institution (regardless of division). Further, if the individual's employment changes during the course of the appellate process (from the time of the submission of the notice of appeal through the release of the final Infractions Appeals Committee report), the individual must notify the Infractions Appeals Committee of the change, including the identity of the new employer. *(Adopted: 1/13/08, Revised: 10/29/09, 4/28/11)*

**32.10.2 Committee on Infractions' Response to an Appeal.** The Committee on Infractions shall submit a response to the Infractions Appeals Committee on each case that has been appealed. This response shall include: *(Revised: 1/16/93, 10/12/94, 1/10/98, 4/11/01, 4/24/03, 1/13/08)*

- (a) A statement of the origin of the case;
- (b) The violations of the NCAA Constitution and bylaws, as determined by the Committee on Infractions; *(Revised: 10/12/94)*
- (c) Disciplinary or corrective actions taken by the institution or conference or any other agency involved in the particular incident;
- (d) A statement of the Committee on Infractions' penalties, corrective actions, requirements and other conditions and obligations of membership imposed for violations of NCAA legislation; *(Revised: 1/13/08)*
- (e) The issues raised in the appeal;
- (f) The Committee on Infractions' responses to the issues raised in the appeal; and
- (g) A transcript of any hearing conducted by the Committee on Infractions (submitted as an attachment to the response). *(Adopted: 10/12/94, Revised: 1/13/08)*

**32.10.3 Enforcement Staff Information.** The enforcement staff may provide written information to the Infractions Appeals Committee regarding perceived new information, errors, misstatements and omissions relating to the written appeal, Committee on Infractions' response and/or rebuttal documents, as long as any such written information is received by the Infractions Appeals Committee not later than 10 calendar days from notification from the Infractions Appeals Committee of whether rebuttal materials have been submitted as established under the policies and procedures of the Infractions Appeals Committee. *(Adopted: 1/13/08, Revised: 1/13/09)*

#### **32.10.4 Basis for Granting an Appeal.**

**32.10.4.1 Penalties.** A penalty determined by the Committee on Infractions shall not be set aside on appeal except on a showing by the appealing party that the penalty is excessive such that it constitutes an abuse of discretion. *(Adopted: 1/13/08)*

**32.10.4.2 Findings.** Findings of violations made by the Committee on Infractions shall not be set aside on appeal, except on a showing by the appealing party that: *(Adopted: 1/13/08)*

- (a) A finding is clearly contrary to the evidence presented to the Committee on Infractions;
- (b) The facts found by the Committee on Infractions do not constitute a violation of the Association's rules; or
- (c) There was a procedural error and but for the error, the Committee on Infractions would not have made the finding of violation.

**32.10.5 New Evidence.** In making a determination pursuant to Bylaw 32.10.4, the Infractions Appeals Committee shall consider only the information contained in the record(s) of proceedings before the Committee on Infractions and the record on appeal. If an institution or involved individual seeks to introduce information during the appeals process that was not presented to the Committee on Infractions for its consideration, the Infractions Appeals Committee shall: *(Adopted: 1/6/96)*

- (a) Determine whether the information is "new evidence" per Bylaw 19.02.3. If the Infractions Appeals Committee determines that the information meets the definition of "new evidence" per Bylaw 19.02.3, the Infractions Appeals Committee, after input from a Committee on Infractions' designee, shall determine whether the "new evidence" could have materially affected any decision made by the Committee on Infractions, and if so the case shall be referred back to the Committee on Infractions for its review. If the information does not meet the definition of "new evidence" per Bylaw 19.02.3 or if the "new evidence" would not have materially affected a decision made by the Committee on Infractions, the information shall not be included in the record on appeal and shall not be considered by the Infractions Appeals Committee; and *(Revised: 1/13/08)*
- (b) Enter findings in the record on appeal regarding all decisions made pursuant to Bylaw 32.10.5-(a). *(Adopted: 1/13/08)*

**32.10.6 Determination of Appeal Procedures.** The specific procedures to be followed during the written appeals process will be determined by the Infractions Appeals Committee. *(Adopted: 1/13/08)*



## **32.11 ORAL ARGUMENTS**

**32.11.1 Oral Argument Procedures.** An institution or involved individual may appeal the Committee on Infractions' findings of violations and penalties, corrective actions, requirements, and other conditions and obligations of membership imposed by the Committee on Infractions for violations of NCAA legislation. Should one or more of the parties request an oral argument, the oral argument will be conducted according to the following procedures: *(Revised: 1/16/93, 1/10/95, 4/24/03, 1/13/08, 4/28/11)*

- (a) Consistent with the requirements of Bylaw 32.10.1, if the institution and/or involved individual elects to be represented in person before the Infractions Appeals Committee, the institution and/or involved individual shall be permitted a reasonable time to make its oral presentation to supplement the written appeal. The coordinator of appeals or another member of the Committee on Infractions then shall be permitted a reasonable time to make its oral presentation. The period of time for the presentation by the institution, involved individual and the Committee on Infractions shall be left to the discretion of the chair of the Infractions Appeals Committee; *(Revised: 1/10/95, 4/24/03, 1/13/08)*
- (b) The enforcement staff may elect to be represented in person by a maximum of three persons, and may participate during the oral argument. Any participation by the enforcement staff shall be limited to the opportunity to provide information regarding perceived new information, errors, misstatements and omissions. *(Adopted: 1/13/08, Revised: 4/28/11)*
- (c) If an institution or involved individual appeared before the Committee on Infractions but waived the right to appeal, the institution or involved individual may elect to be present in person and/or by counsel, by a maximum of three persons, as a silent observer during the oral argument before the Infractions Appeals Committee. *(Adopted: 1/14/08, Revised: 4/28/11)*
- (d) If the institution or involved individual elects to appeal in writing only, the Committee on Infractions' written response specific to that written appeal shall be considered without an in-person appearance by a Committee on Infractions representative; and *(Revised: 1/14/08, 1/13/08)*
- (e) Consistent with Bylaw 32.10.2, the Infractions Appeals Committee then shall act on the institution's and/or involved individual's appeal, by majority vote of the members of the Infractions Appeals Committee present and voting, and may affirm, reverse or vacate and remand the Committee on Infractions' findings of violations, penalties, corrective actions, requirements, and/or other conditions and obligations of membership imposed for violations of NCAA legislation. *(Revised: 8/2/91, 1/10/95, 1/6/96, 4/24/03, 1/13/08)*

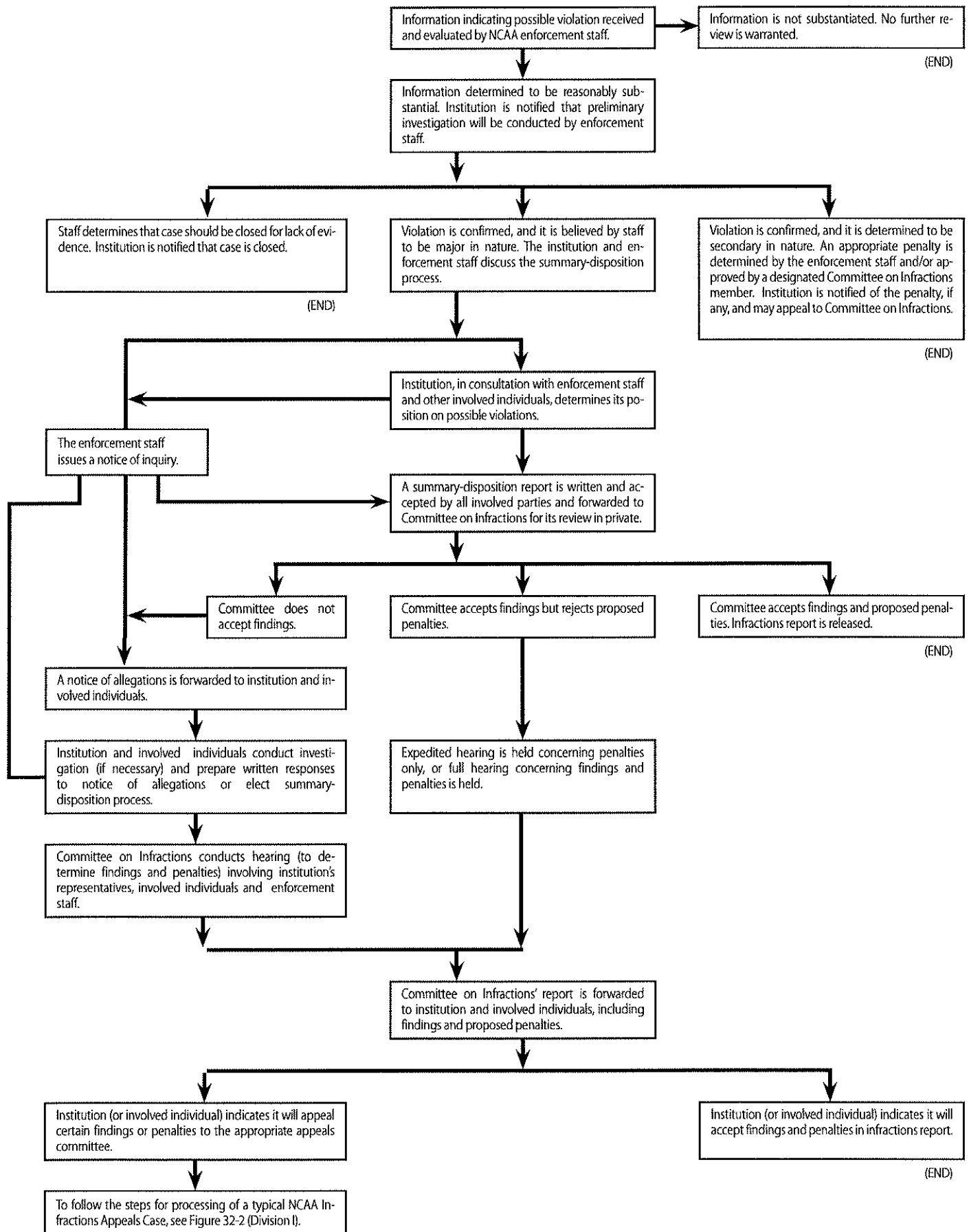
**32.11.2 Consideration by Infractions Appeals Committee.** The Infractions Appeals Committee shall consider the statements and evidence presented and, at the discretion of any of its members, may question representatives of the institution, the Committee on Infractions or enforcement staff, as well as any other persons appearing before it, in order to determine the issues related to the appeal. Further, under the direction of the Infractions Appeals Committee, questions and information may be exchanged between and among those individuals present and participating in the oral argument. *(Revised: 1/16/93, 1/10/95, 4/24/03, 1/13/08, 4/28/11)*

**32.11.3 Infractions Appeals Committee—Determination of Oral Argument Procedures.** The procedure to be followed in the conduct of the oral argument will be determined by the Infractions Appeals Committee, but shall be consistent with the operating policies and procedures that apply to hearings conducted by the Committee on Infractions. *(Revised: 1/16/93, 1/10/95, 4/24/03, 1/13/08, 11/1/07 effective 8/1/08, 4/28/11)*

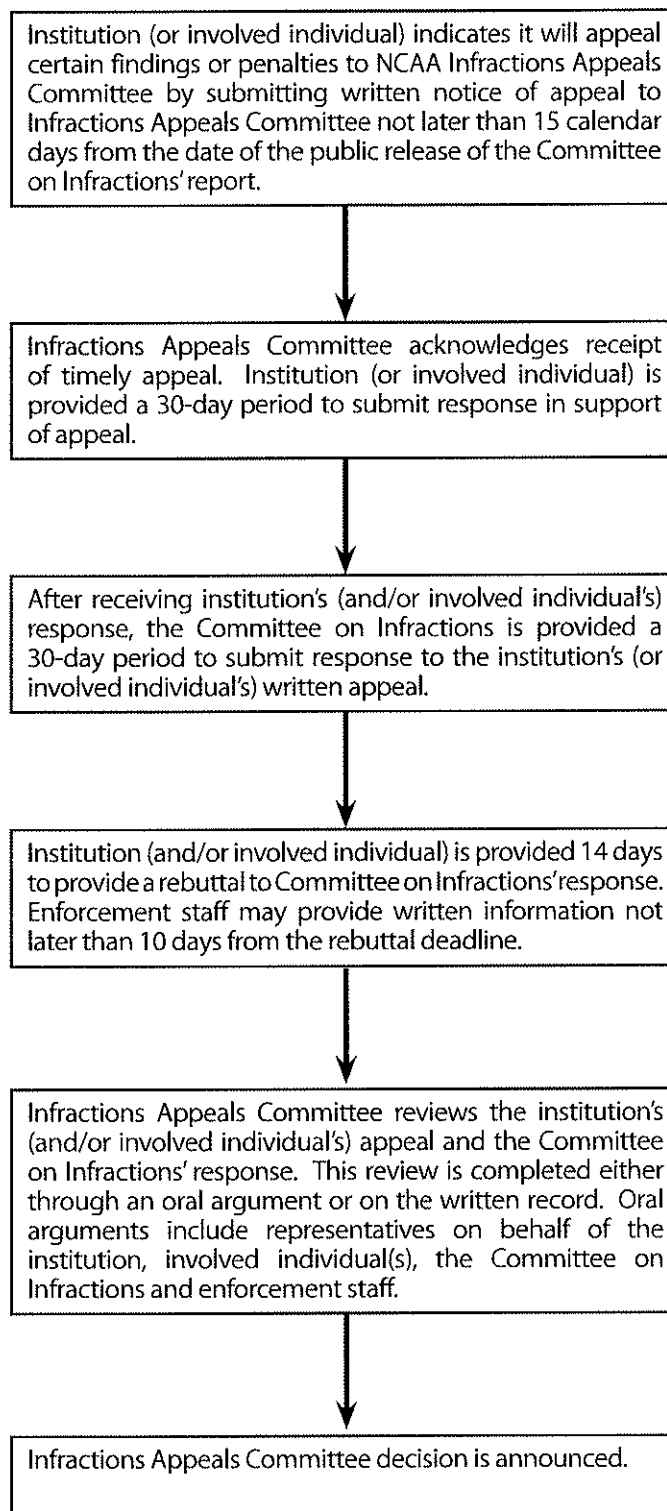
**32.11.4 Decision Final.** Any decision in an infractions case by the Infractions Appeals Committee shall be considered final. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

**32.11.5 Further Review.** Determinations of fact and violations arrived at in the foregoing manner by the Committee on Infractions or by the Infractions Appeals Committee, on appeal, shall be final, binding and conclusive and shall not be subject to further review by the Leadership Council or any other authority. *(Revised: 1/16/93, 1/10/95, 4/24/03, 11/1/07 effective 8/1/08)*

**FIGURE 32-1**  
**Processing of a Typical NCAA Infractions Case**



**FIGURE 32-2**  
**Processing of a Typical NCAA Infractions Appeals Case**



# **Exhibit B**

**BINDING CONSENT DECREE IMPOSED BY THE NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION AND ACCEPTED BY THE PENNSYLVANIA  
STATE UNIVERSITY**

**I. BASIS FOR CONSENT DECREE**

On November 5, 2011, the National Collegiate Athletic Association (“NCAA” or the “Association”) learned of allegations of child sexual abuse occurring in the athletic facilities of The Pennsylvania State University (“University” or “Penn State”), perpetrated by former assistant football coach Gerald A. Sandusky (“Sandusky”). The University commissioned Freeh Sporkin & Sullivan, LLP (“FSS”), led by former FBI Director Louis Freeh, to investigate the alleged failure of University personnel to respond to and report Sandusky’s misconduct, and “[t]he circumstances under which such abuse could occur in University facilities or under the auspices of University programs for youth.”<sup>1</sup> On June 22, 2012, a Criminal Jury convicted Sandusky on 45 criminal counts related to 10 victims, including a 2001 incident that occurred in the University athletic showers and was witnessed by a then-graduate assistant. On July 12, 2012, FSS released its investigative report (the “Freeh Report”). The Freeh Report’s findings depict an environment shaped by the actions and inactions of members of the leadership and board of Penn State that allowed Sandusky’s serial child sexual abuse.

The NCAA recognizes that the circumstances involved in the Penn State matter are, in many respects, unlike any matter encountered by the NCAA in the past; it is doubtful, hopefully, that a similar circumstance would arise on any other campus in the future. In particular, the egregiousness of the predicate conduct is unprecedented, amounting to a failure of institutional and individual integrity far exceeding a lack of institutional control or individual unethical conduct. The University has undertaken a commendable process by commissioning the independent FSS investigation. FSS has established an exhaustive factual record compiled from, *inter alia*, more than 430 interviews and analysis of more than 3.5 million pieces of electronic data and documents.<sup>2</sup>

In light of this record and the University’s willingness, for purposes of this resolution, to accept the Freeh Report, which the University itself commissioned, traditional investigative and administrative proceedings would be duplicative and unnecessary. Rather, the existing record permits fashioning an appropriate remedy for the violations on an expedited timetable, which benefits current and future University students, faculty and staff.

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<sup>1</sup> Freeh Sporkin & Sullivan, LLP, Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky, July 12, 2012, page 8, *available at* [http://www.thefreehreportonpsu.com/REPORT\\_FINAL\\_071212.pdf](http://www.thefreehreportonpsu.com/REPORT_FINAL_071212.pdf).

<sup>2</sup> *Id.* at 9.

## II. FINDINGS AND CONCLUSIONS

In a November 17, 2011 letter from NCAA President Mark Emmert to University President Rodney Erickson, Dr. Emmert noted that the membership of the Association has made clear in its Constitution and Bylaws what is expected of member institutions, administrators and coaches. Penn State was asked to describe how the University and relevant personnel have met their obligations to the Association. Penn State has communicated to the NCAA that it accepts the findings of the Freeh Report for purposes of this resolution and acknowledges that those facts constitute violations of the Constitutional and Bylaw principles described in the letter. Penn State expressly agrees not to challenge the consent decree and waives any claim to further process, including, without limitation, any right to a determination of violations by the NCAA Committee on Infractions, any appeal under NCAA rules, and any judicial process related to the subject matter of this Consent Decree.

Therefore, without further investigation or response, the findings of the Criminal Jury and the Freeh Report establish a factual basis from which the NCAA concludes that Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws.

1. A failure to value and uphold institutional integrity demonstrated by inadequate, and in some instances non-existent, controls and oversight surrounding the athletics program of the University, such as those controls prescribed by Articles 2.1, 6.01.1, and 6.4 of the NCAA Constitution.
2. A failure to maintain minimal standards of appropriate and responsible conduct. The NCAA seeks to foster an environment and culture of honesty, as exemplified by NCAA Bylaws 10.01.1 and 11.1.1, and by Bylaw 10.1 on ethical conduct. Indeed, NCAA Bylaw 10.1 enumerates a non-exhaustive list of examples of inappropriate conduct. In addition, Article 2.4 of the NCAA Constitution requires athletic programs to adhere to fundamental values of respect, fairness, civility, honesty and responsibility.
3. A lack of adherence to fundamental notions of individual integrity. An institution's head coach should promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach. Further, NCAA Bylaw 19.01.2, consistent with Article 2.4 of the NCAA Constitution, demands the employees associated with intercollegiate athletics to serve as positive moral models for students in order "for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society."

The entirety of the factual findings in the Freeh Report supports these conclusions. A detailed recitation of the Freeh Report is not necessary, but these conclusions rely on the following key factual findings with respect to the University's oversight of its football program:

- [University] President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Shultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno [] failed to protect against a child sexual predator harming children for over a decade. These men concealed Sandusky's activities from the Board of Trustees, the University community and authorities. . . .
- These individuals, unchecked by the Board of Trustees that did not perform its oversight duties, empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program. Indeed, that continued access provided Sandusky with the very currency that enabled him to attract his victims. Some coaches, administrators and football program staff members ignored the red flags of Sandusky's behaviors and no one warned the public about him.
- By not promptly and fully advising the Board of Trustees about the 1998 and 2001 child sexual abuse allegations against Sandusky and the subsequent Grand Jury investigation of him, Spanier failed in his duties as President. The Board also failed in its duties to oversee the President and senior University officials in 1998 and 2001 by not inquiring about important University matters and by not creating an environment where senior University officials felt accountable.<sup>3</sup>

FSS recognized that Spanier, Schultz, Paterno and Curley provided various explanations for their deficient conduct, but FSS found that it was

- more reasonable to conclude that, in order to avoid the consequences of bad publicity, the most powerful leaders at the University – Spanier, Schultz, Paterno and Curley – repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at large.<sup>4</sup>

Although FSS concluded that avoiding the consequences of bad publicity was the most significant cause for the University's failure to protect child victims and report to authorities, FSS further concluded it was not the only cause. FSS also noted, among other causes, that

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<sup>3</sup> *Id.* at 14-15.

<sup>4</sup> *Id.* at 15-16.

- the President “discouraged discussion and dissent”;
- Spanier, Schultz, Paterno, and Curley allowed Sandusky to retire as a valued member of the University’s football legacy, with “ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults”;
- the football program “did not fully participate in, or opted out, of some University programs, including Clery Act compliance. . .”; and
- the University maintained a “culture of reverence for the football program that is ingrained at all levels of the campus community.”<sup>5</sup>

### III. SANCTIONS

The NCAA concludes that this evidence presents an unprecedented failure of institutional integrity leading to a culture in which a football program was held in higher esteem than the values of the institution, the values of the NCAA, the values of higher education, and most disturbingly the values of human decency. The sexual abuse of children on a university campus by a former university official – and even the active concealment of that abuse – while despicable, ordinarily would not be actionable by the NCAA. Yet, in this instance, it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse his victims. Indeed, the reverence for Penn State football permeated every level of the University community. That imbalance of power and its result are antithetical to the model of intercollegiate athletics embedded in higher education. Indeed, the culture exhibited at Penn State is an extraordinary affront to the values all members of the Association have pledged to uphold and calls for extraordinary action.

As a result, the NCAA has determined that the University’s sanctions be designed to not only penalize the University for contravention of the NCAA Constitution and Bylaws, but also to change the culture that allowed this activity to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics. Moreover, the NCAA recognizes that in this instance no student-athlete is responsible for these events and, therefore, the NCAA has fashioned its sanctions in consideration of the potential impact on all student-athletes. To wit, after serious consideration and significant discussion, the NCAA has determined not to impose the so-called “death penalty.” While these circumstances certainly are severe, the suspension of competition is most warranted when the institution is a repeat violator and has failed to cooperate or take corrective action. The University has never before had NCAA major violations, accepted these penalties and corrective actions, has removed all of the individual offenders identified by FSS from their past senior leadership roles, has itself commissioned the FSS investigation and provided unprecedented access and openness, in some instances, even agreed to waive attorney-client privilege, and already has implemented many corrective actions. Acknowledging these and other factors, the NCAA does not deem the so-called “death penalty” to be appropriate.

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<sup>5</sup> *Id.* at 16-17.



In light of the foregoing, the NCAA imposes the following sanctions on the University:

**A. Punitive Component**

- **\$60 million fine.** The NCAA imposes a \$60 million fine, equivalent to the approximate average of one year's gross revenue from the Penn State football program, to be paid over a five-year period beginning in 2012 into an endowment for programs preventing child sexual abuse and/or assisting the victims of child sexual abuse. The minimum annual payment will be \$12 million until the \$60 million is paid. The proceeds of this fine may not be used to fund programs at the University. No current sponsored athletic team may be reduced or eliminated in order to fund this fine.
- **Four-year postseason ban.** The NCAA imposes a four-year ban on participation in postseason play in the sport of football, beginning with the 2012-2013 academic year and expiring at the conclusion of the 2015-2016 academic year. Therefore, the University's football team shall end its 2012 season and each season through 2015 with the playing of its last regularly scheduled, in-season contest and shall not be eligible to participate in any postseason competition, including a conference championship, any bowl game, or any post-season playoff competition.
- **Four-year reduction of grants-in-aid.** For a period of four years commencing with the 2013-2014 academic year and expiring at the conclusion of the 2016-2017 academic year, the NCAA imposes a limit of 15 initial grants-in-aid (from a maximum of twenty-five allowed) and for a period of four years commencing with the 2014-2015 academic year and expiring at the conclusion of the 2017-2018 academic year a limit of 65 total grants-in-aid (from a maximum of 85 allowed) for football during each of those specified years. In the event the number of total grants-in-aid drops below 65, the University may award grants-in-aid to non-scholarship student-athletes who have been members of the football program as allowed under Bylaw 15.5.6.3.6.
- **Five years of probation.** The NCAA imposes this period of probation, which will include the appointment of an on-campus, independent Integrity Monitor and periodic reporting as detailed in the Corrective Component of this Consent Decree. Failure to comply with the Consent Decree during this probationary period may result in additional, more severe sanctions.
- **Vacation of wins since 1998.** The NCAA vacates all wins of the Penn State football team from 1998 to 2011. The career record of Coach "Joe" Paterno will reflect the vacated records.

- **Waiver of transfer rules and grant-in-aid retention.** Any entering or returning football student-athlete will be allowed to immediately transfer and will be eligible to immediately compete at the transfer institution, provided he is otherwise eligible. Any football student-athlete who wants to remain at the University may retain his athletic grant-in-aid, as long as he meets and maintains applicable academic requirements, regardless of whether he competes on the football team.
- **Individual penalties to be determined.** The NCAA reserves the right to initiate a formal investigatory and disciplinary process and impose sanctions on individuals after the conclusion of any criminal proceedings related to any individual involved.

## **B. Corrective Component**

- **Adoption of all recommendations presented in Chapter 10 of the Freeh Report.** The NCAA requires the University to adopt all recommendations for reform delineated in Chapter 10 of the Freeh Report. The University shall take all reasonable steps to implement the recommendations in spirit and substance by December 31, 2013.
- **Implementation of Athletics Integrity Agreement.** The Freeh Report includes a number of recommendations related to the University's Athletic Department. Specifically, in Chapter 10, Section 5.0, the Report addresses the integration of the Athletic Department into the greater University community. Within 10 days of this Consent Decree, the University will be required to enter into an "Athletics Integrity Agreement" ("AIA") with the NCAA and the Big Ten Conference, which obligates the University to adopt all of the recommendations in Section 5.0 of the Freeh Report as described in the above paragraph and, at a minimum, the following additional actions:
  - **Compliance Officer for Athletics.** Establish and select an individual for a position of a compliance officer or equivalent who is, at a minimum, responsible for the ethical and compliance obligations of the Athletic Department.
  - **Compliance Council.** Create a Compliance Council (or Council Subcommittee) composed of faculty, senior University administrators, and the compliance officer for athletics, which shall be responsible for review and oversight of matters related to ethical, legal and compliance obligations of the Athletic Department.

- Disclosure Program. Create a reporting mechanism, including a hotline, for named or anonymous individuals to disclose, report, or request advice on any identified issues or questions regarding compliance with (i) the AIA; (ii) the Athletic Department's policies, conduct, practices, or procedures, or (iii) the NCAA Constitution, Bylaws, or the principals regarding institutional control, responsibility, ethical conduct, and integrity reflected in the Constitution and Bylaws.
- Internal Accountability and Certifications. Appoint a named coach, manager, or administrator for each of the University's NCAA-sanctioned intercollegiate athletic teams who shall be assigned to monitor and oversee activities within his or her team and shall annually certify to the Compliance Council that his or her team is compliant with all relevant ethical, legal, compliance and University standards and obligations.
- External Compliance Review/Certification Process. The Athletic Director shall annually certify to the Compliance Council, the Board of Trustees, and the NCAA that the Athletic Department is in compliance with all ethical, compliance, legal and University obligations. If the Department fails to earn a certification, the Board of Trustees (or subcommittee thereof) or an appropriate University administrator shall take appropriate action against the Athletic Department, including the possibility of reduction in athletic funding.
- Athletics Code of Conduct. Create or update any code of conduct of the Athletic Department to codify the values of honesty, integrity and civility.
- Training and Education. In addition to Chapter 10, Section 5.5 of the Freeh Report, require all student-athletes and University employees associated with the Athletic Department, including faculty and staff to complete a yearly training course that addresses issues of ethics, integrity, civility, standards of conduct and reporting of violations. Each person who is required to complete training shall certify, in writing, that he or she has received such training. All training shall be overseen by the Compliance Council. The Board of Trustees also should receive training and education on these issues, including its relationship, role and responsibilities regarding the athletics program.
- If the NCAA determines, in its sole discretion, that the University materially breached any provision of the AIA, such action shall be considered grounds for extending the term of the AIA or imposing additional sanctions, up to and including, a temporary ban on participation in certain intercollegiate athletic competition and additional fines. The NCAA shall be permitted to accept as true and take into consideration all factual findings of the Freeh Report in imposing additional sanctions related to breach of the AIA and may initiate further NCAA investigative and administrative proceedings. The NCAA will provide the University notice of the allegation of a material breach and an opportunity to

respond, but the final determination rests with the NCAA.

- **Appointment of an independent Athletics Integrity Monitor for a five-year period.** The NCAA requires that the University appoint an independent Athletics Integrity Monitor (the "Monitor") for a five-year period, at the University's expense. The Monitor will prepare a quarterly report to the University's Board of Trustees, the Big Ten Conference, and the NCAA regarding the University's execution and maintenance of the provisions of the AIA. The Monitor will make recommendations to the University to take any steps he or she reasonably believes are necessary to comply with the terms of the AIA and to enhance compliance with NCAA rules and regulations. The Monitor will operate under the following conditions:
  - He or she will be selected by the NCAA, in consultation with the University and the Big Ten Conference.
  - He or she will have access to any University facilities, personnel and non-privileged documents and records as are reasonably necessary to assist in the execution of his or her duties. The University shall preserve all such records as directed by the Monitor.
  - He or she will have the authority to employ legal counsel, consultants, investigators, experts and other personnel reasonably necessary to assist in the proper discharge of his or her duties. His or her expenses will be paid by the University, and the University shall indemnify and hold harmless the Monitor and his or her professional advisors from any claim by any third party except for conduct: a) outside the scope of the Monitor's duties; b) undertaken in bad faith; or c) constituting gross negligence or willful misconduct.

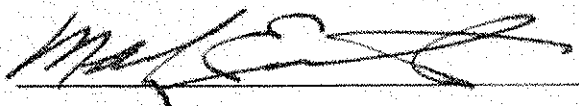
This Consent Decree may be modified or clarified by mutual written consent of the parties.

By signature of its President below, the University represents (i) that it has taken all actions necessary, to execute and perform this Consent Decree and the AIA and will take all actions necessary to perform all actions specified under this Consent Decree and the AIA in accordance with the terms hereof and thereof; (ii) its entry into this Consent Decree and the AIA is consistent with, and allowed by, the laws of Pennsylvania and any other applicable law.

IN WITNESS WHEREOF, this Consent Decree has been signed by or on behalf of each of the parties as of July 23, 2012.



Rodney A. Erickson, President  
The Pennsylvania State University



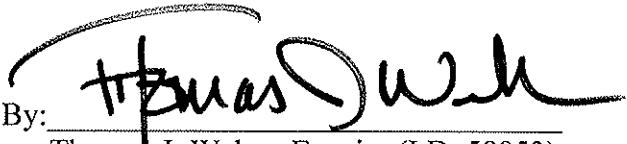
Mark A. Emmert, President  
National Collegiate Athletic Association

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing First Amended Complaint on this date has been forwarded to the individuals listed below as addressed, by first class mail:

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Harrisburg, PA 17108-0886

Everett C. Johnson, Jr., Esquire  
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By: 

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*Attorney for Plaintiffs*

Date: **FEB. 5, 2014**