



**Buckner**

**NCAA ENFORCEMENT INVESTIGATIONS TOOLKIT**  
**(Division I Version)**

Revised: August 2013

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## **SECTION 1: INTRODUCTION**

## **1.1 OVERVIEW OF THE TOOLKIT**

Buckner provides the “NCAA Enforcement Investigations Toolkit” (Toolkit) for the use and benefit of Division I member institutions of the National Collegiate Athletic Association (NCAA). The Toolkit contains information and recommendations that are designed to assist campus and athletics administrators with preparing policies, procedures, strategies and protocols to address investigations of alleged NCAA rules-violations that are processed under the new enforcement process (which will be contained in the substantially revised Bylaw 19; the new process took effect on August 1, 2013). The Toolkit includes:

- A summary of the new NCAA enforcement process.
- Internal investigation strategies.
- Investigation-related checklists and templates.

The Toolkit was developed based on information derived from various sources, including industry research, NCAA legislation and enforcement staff reference materials. The Toolkit is not intended to be an institution’s sole source of information. Please contact Buckner (954-941-1844), the NCAA enforcement staff or an appropriate athletics conference official for additional guidance on this topic. Further, the enforcement staff will post information and resources on various aspects of the new process on the NCAA website ([www.ncaa.org](http://www.ncaa.org)).

## **1.2 SUMMARY OF THE NEW NCAA ENFORCEMENT PROCESS**

### Introduction

In October 2012, the NCAA Division I Board of Directors adopted an overhaul of the enforcement structure. The revision creates additional levels of violations, revamps the investigation process and enhances penalties for the most serious rules-violations.

According to the NCAA media release announcing the changes, “the Board’s action culminates a year-long effort from a 13-member group of presidents, athletics directors, commissioners and others assigned after participants at a presidential retreat in August 2011 called for a more stringent and efficient enforcement structure to uphold the integrity of the collegiate model of athletics.” NCAA president Mark Emmert noted: “We have sought all along to remove the ‘risk-reward’ analysis that has tempted people – often because of the financial pressures to win at all costs – to break the rules in the hopes that either they won’t be caught or that the consequences won’t be very harsh if they do get caught. The new system the Board adopted today is the result of a lot of hard work and membership input devoted to protecting the collegiate model.”

The new enforcement process for Division I member institutions include the following features:

- A four-tier violation structure that tops off with “severe breaches of conduct” and sets “incidental infractions” as the lowest violation category. The structure replaces the current two-tier approach (major and secondary violations), and is “designed to focus

most on conduct breaches that seriously undermine or threaten the integrity of the NCAA Constitution.”

- Head coach responsibility/accountability enhancement, as well as potential consequences for head coaches who fail to direct their staffs and student-athletes to uphold NCAA bylaws. The penalties under the new process can include game suspensions that can range from ten (10) percent of the season to an entire season.
- Division I Committee on Infractions membership increase from 10 to as many as 24 voting members. Infractions cases will be processed by panels of the full committee, which “will be assembled to review cases more quickly and efficiently.”
- Penalties (e.g., postseason bans, scholarship reductions, recruiting limits, head coach suspensions, show-cause orders and financial penalties) “that align more predictably with the severity of the violations.” Further, “the new penalty structure also places a premium on aggravating and mitigating circumstances in each case.”
- Shared-responsibility emphasis, which includes highlighting “a culture among head coaches, the compliance community, institutional leadership and conferences to assume a shared responsibility for upholding the values of intercollegiate athletics.”

The new enforcement process becomes effective on August 1, 2013. Accordingly, on August 1 the NCAA will process cases pursuant to the following methodology:

- Breaches of conduct (violations) that occurred before October 30, 2012, and are processed before August 1, 2013, will be subject to the current process and penalties.
- Breaches of conduct that occurred before October 30, 2012, and are processed after August 1, 2013, will be subject to the new process; however, such cases would incur the more lenient of the two penalty structures (current and revised).
- Breaches of conduct that occurred during a period that includes time before and after October 30, 2012, and are processed after August 1, 2013, will be subject to the new process and the revised penalties as long as most of the violations occurred after October 30, 2012.
- Breaches of conduct that occur after October 30, 2012, and are processed after August 1, 2013, will be subject to both the new process and the revised penalty structure.

### The Four-Tier Violations Structure

#### **Level I: Severe Breach of Conduct**

Violations that seriously undermine or threaten the integrity of the NCAA collegiate model as set forth in the Constitution and bylaws, including any violation that provides or is intended to provide a substantial or extensive recruiting, competitive or other advantage, or a substantial or extensive impermissible benefit. Multiple Level II and III violations may collectively be considered a severe breach of conduct.

#### **Level II: Significant Breach of Conduct**

Violations that provide or are intended to provide more than a minimal but less than a substantial or extensive recruiting, competitive or other advantage; includes more than a minimal but less than a substantial or extensive impermissible benefit; or involves conduct that may compromise the integrity of the NCAA collegiate model as set forth in the Constitution and bylaws. Multiple Level III violations may collectively be considered a significant breach of conduct.

### **Level III: Breach of Conduct**

Violations that are isolated or limited in nature; provide no more than a minimal recruiting, competitive or other advantage; and do not include more than a minimal impermissible benefit. Multiple or repeated Level IV violations may collectively be considered a breach of conduct.

### **Level IV: Incidental Infractions**

Minor infractions that are inadvertent and isolated, technical in nature and result in a negligible, if any, competitive advantage. Level IV infractions generally will not affect eligibility for intercollegiate athletics.

### Revised Procedures to Investigate and Process Alleged Rules-Violations

The NCAA enforcement process addresses instances wherein a member institution is in non-compliance with NCAA legislation. Some athletic conferences, including the Pacific-12 Conference, also have formal enforcement processes to review alleged violations of conference and NCAA rules. The enforcement process is designed to be a cooperative program involving member institutions, involved individuals, athletic conferences and the NCAA enforcement staff to: a) reduce violations of NCAA legislation; and b) impose appropriate corrective measures and penalties if violations occurred at an institution.

### Initiation of the Enforcement Process<sup>1</sup>

The NCAA enforcement process is initiated in a number of ways. For example, the NCAA enforcement staff can initiate an investigation when it receives information or an allegation from a media report or an anonymous or non-attributable source (e.g., high-school and college coaches, student-athletes, general public) concerning a possible violation of NCAA legislation at a member institution. In addition, enforcement staff investigations begin after a member institution discovers and self-reports violations to the staff. Finally, the enforcement staff conducts proactive efforts to discover potential violations, including: a) interviewing highly recruited prospective student-athletes and student-athletes that have transferred from member institutions; or b) attending selected athletic contests and events (e.g., high-school or two-year college all-star games) that may be attended by college coaches.

When the enforcement staff receives allegations or other information concerning a possible violation of NCAA legislation, the information is evaluated by the staff. If the information

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<sup>1</sup> Quotations in the text are from Bylaw 19 (as of August 1, 2013). The legislation may have been modified since the preparation of this publication. Thus, institutions should refer to LSDBi to review the most current version of Bylaw 19.

pertains to a Level III or IV violation of NCAA legislation, the information may be provided to the member institution or the institution's athletic conference for review and processing under the applicable procedures. If the information is deemed to be of a serious nature (alleged Level I and II violations or multiple Level III violations), however, it is assigned to an associate or assistant director for a follow-up examination.

The enforcement staff is permitted to start a review of a member institution only when the staff has reasonable cause to believe that the institution may have violated NCAA legislation. If this burden is satisfied, the staff determines whether the possible violation should be reviewed via correspondence with the involved member institution or its athletic conference, or whether the enforcement staff should conduct its own in-person inquiries.

#### Notice of Inquiry and Investigation of Allegations

When the staff receives reasonably reliable information that an intentional violation has occurred, that a significant competitive or recruiting advantage may have been gained, or that false or misleading information may have been reported to the member institution or to the enforcement staff, the enforcement staff begins to investigate the information in order to determine its credibility.

Before the enforcement staff conducts an inquiry on an institution's campus, the enforcement staff is required to notify the institution's president or chancellor of the inquiry. The "notice of inquiry" can be made orally or in writing. The notice of inquiry tolls the statute of limitations for alleged rules-violations. The notice of inquiry explains the institution's "obligation to cooperate and of the confidential nature of the inquiry." Further, the notice of inquiry informs the institution "that if the inquiry develops reliable information of a possible Level I or II violation, a notice of allegations will be produced." The enforcement staff, conversely, could notify the institution "that the matter may be processed as a Level III violation or that the matter has been concluded."

#### Notice of Allegations and Pre-Hearing Procedures

The enforcement staff conducts investigations for a reasonable period of time to assess whether information exists that shows evidence of NCAA rules-violations leading to a possible Level I or II case. If the staff determines that sufficient information exists to determine that a severe breach of conduct or significant breach of conduct occurred at a member institution, then a notice of allegations is sent to the institution's chief executive officer. The notice of allegations contains a "notice of the alleged violation(s), the details of the allegations, the possible Level of each violation, the available hearing procedures and the opportunity to answer the allegations. The notice of allegations shall also identify the factual information and aggravating and/or mitigating factors on which the enforcement staff may rely in presenting the case." The enforcement staff also notifies athletic department personnel and student-athletes – whose employment or athletic eligibility could be affected – of the allegations in a notice of allegations in which they are named.

The institution and involved individuals have 90 days to respond to the notice of allegations. However, the institution and involved individuals may request additional time to respond to the allegations; the chief hearing officer of a Committee on Infractions hearing panel grants such extensions. Under the legislation, 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.” If a party fails to “submit a timely response,” then the panel may view it “as an admission that the alleged violation(s) occurred.” Finally, “an institution or involved individual may not submit additional documentary evidence without prior authorization from the chief hearing officer.”

The enforcement staff, within 60 days after the institution and involved individuals submitted written responses to the notice of allegations, is required to “submit a written reply to the hearing panel, and pertinent portions to an involved individual or institution.” Further, the enforcement staff is mandated to “prepare a statement of the case setting forth a brief history of the case, a summary of the parties' positions on each allegation and a list of any remaining items of disagreement.” Involved individuals will be provided “those portions of the statement in which they are named.”

The enforcement staff will establish a custodial site, which contains “copies of recorded interviews, interview summaries and/or interview transcripts, and other evidentiary information pertinent to the case.” The custodial site can take the form of a secure website or hard copy of files at the NCAA national office. The enforcement staff will provide the institution and involved individuals with access to the custodial site.

The enforcement staff, within 60 days after the institution and involved individuals submitted written responses to the notice of allegations, will conduct pre-hearing conferences. A pre-hearing conference involves the enforcement staff consulting with “institutional representatives and other involved individuals in order to clarify the issues to be discussed 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 amend or withdraw.” The enforcement staff conducts “independent prehearings with the institution and/or any involved individuals, unless mutually agreed by all parties to do otherwise.”

All written material from the institution and involved individuals to be considered by the hearing panel must be received by the hearing panel, enforcement staff, institution and any involved individuals at least 30 days prior to the date the panel considers the case. This deadline can be revised by an order of the chief hearing officer. However, “information may be submitted at the hearing subject to the limitations set forth in Bylaw 19.7.7.3”, which states: “At a hearing and subject to procedures of the Committee on Infractions, the parties or their legal counsel may deliver opening and closing statements, present factual information, make arguments, explain the alleged violations and answer questions from panel members. Any oral or documentary information may be received, but the panel may exclude information that it determines to be irrelevant, immaterial or unduly repetitious.”

Finally, the chief hearing officer has the “authority to resolve procedural matters that arise prior to an infractions hearing.”

#### Alternate Processing Options for Infractions Cases

An institution and involved individuals can elect to process a Level I or II case using one of four methods:

1. Summary disposition (Level I and II Cases).
2. Expedited hearing (Level II Cases).
3. Written record (Level II Cases).
4. Committee on Infractions hearing (Level I and II Cases).

### **Summary Disposition (Level I and II Cases)**

Eligible member institutions and involved individuals may elect to process a Level I or II case through summary disposition, which is a procedure used in place of a formal committee hearing. Summary disposition procedures can be used only if “the enforcement staff, involved individuals, if participating, and the institution” agree to the process. Further, under the rules, “the institution, an involved individual or the enforcement staff may require, as a condition of agreement, that the parties jointly submit the proposed findings to the chair of the Committee on Infractions or his or her designee for a preliminary assessment of the appropriateness of the use of the summary disposition process.”

A hearing panel of the Committee on Infractions shall consider the summary disposition case during a subsequent meeting. Per Bylaw 19.6.4, the hearing panel is permitted to perform one or more of the following actions:

- The panel determines whether a thorough investigation of possible violations of the NCAA Constitution or bylaws has been conducted (by the enforcement staff and/or the institution). If the panel determines that the investigation was inadequate, it shall notify the enforcement staff and the parties and allow them to respond as appropriate.
- The panel may contact the institution, enforcement staff and involved individuals for additional information or clarification prior to accepting or rejecting the proposed findings.
- If the agreed-upon findings and proposed penalties are approved, the panel prepares a report of its decision or adopt the written report of the parties. The panel may make additional comments explaining its analysis or amend the proposed findings, provided any addition or amendment is editorial and does not alter the substance of the findings. The written report may identify the chancellor or president of the institution (in cases involving lack of institutional control); the director of athletics and/or any individual with direct responsibility and oversight of the athletics department (in cases involving lack of control and failure to monitor); the head coach of the sport(s) involved; and, if appropriate, the chair or other members of the institution's governing body. The panel shall forward the report to the enforcement staff and the parties and publicly announce the resolution of the case.
- If the panel does not approve the findings, the case is processed through an infractions hearing or expedited hearing or on the written record.
- If the panel accepts the agreed-upon findings but proposes penalties in addition to those set forth in the parties' written report, the institution and/or involved individuals may accept those penalties or request an expedited hearing on penalties before the panel. The institution and/or involved individuals may appear before the panel in person, by video-conference or other mode of distance communication as the panel

may deem appropriate to discuss the proposed additional penalties. The institution and/or involved individuals also may provide a written submission in lieu of a hearing. The panel shall only consider information relevant to the imposition of penalties during the expedited hearing or, if no hearing is requested, on the written record. At the conclusion of the expedited hearing or review of the written record, the panel shall prepare a written report and provide notification of its decision. The institution and/or any involved individuals may appeal additional penalties to the Infractions Appeals Committee.

### **Expedited Hearing (Level II Cases)**

The institution or involved individual may petition the chief hearing officer for an expedited hearing in Level II cases. The petition shall be submitted no later than 30 days after the date of the notice of allegations. The enforcement staff may respond to the petition within five business days. The chief hearing officer may grant or deny such a petition and set a reasonable schedule in his or her discretion.

### **Written Record (Level II Cases)**

The institution or involved individual may petition the chief hearing officer for an accelerated schedule for written submissions in Level II cases. The petition shall be submitted no later than 30 days after the date of the notice of allegations. The enforcement staff may respond to the petition within five business days. The chief hearing officer may grant or deny such a petition and set a reasonable schedule in his or her discretion. If approved, the hearing panel will consider the case based on written submissions of the enforcement staff, institution and involved individuals.

### **Committee on Infractions Hearing (Level I and II Cases)**

A panel of the Division I Committee on Infractions conducts hearings on Level I and II cases. The hearing panel will schedule an institution's hearing appearance in half-day or full-day blocks depending on the sophistication of its case.

Unless ordered by the Committee of Infractions chair, Level I and II cases "will be presented to and decided by hearing panels consisting of no less than five and no more than seven members of the full Committee on Infractions. Decisions issued by hearing panels are made on behalf of the Committee on Infractions." Panels will be overseen by a chief hearing officer, who possesses the following authority:

- Consider and decide scheduling requests and extensions of time regarding hearing-related deadlines;
- For each hearing panel, appoint an individual responsible for conducting the press conference when the panel's decision is released;
- For each case set for hearing and in consultation with the committee chair, designate a panel member to serve as the committee appeals advocate for any appeal from the decision of the panel; and

- Coordinate with the office of the Committees on Infractions as necessary for logistic, administrative or other support related to hearings to which the chief hearing officer is assigned.

A hearing panel will be assigned to the case. The hearing panel “shall hold a hearing to make factual findings and to conclude whether violations of the NCAA Constitution or bylaws occurred and, if so, to determine appropriate penalties as set forth” in Bylaw 19.7.7. An appearance by video-conference or other distance communication may be available “in cases that involve a small number of contested issues or cases in which the contested issues are relatively uncomplicated” upon request. The decision regarding the use of videoconferencing or other mode of communication “rests with the panel.” Further, in Level II cases, “the hearing will be conducted by telephone or videoconference unless an in-person hearing is requested by the panel, institution, enforcement staff or involved individual, or unless all participating parties agree to submit the case in writing without a hearing.”

Generally, the institution is represented at the hearing by its chief executive officer, faculty athletics representative, the director of athletics, the current or former head coach of the involved sport, compliance officer, legal counsel, or other pertinent individuals requested by the committee. The associate or assistant director of enforcement who conducted the investigation, the director of enforcement who supervised the processing of the case and the vice-president for enforcement services represent the enforcement staff at the hearing. Staff members who may have participated in some way in the processing of the case or who are present for other cases before the committee also may represent the enforcement staff at the hearing. The committee permits involved individuals appearing at a hearing to be present with legal counsel. The hearing is transcribed by a certified court reporter and tape-recorded by the committee.

The chief hearing officer opens the hearing by providing general background information concerning the hearing process. Next, the institution, the enforcement staff and other involved individuals present opening statements. The enforcement staff follows with its presentation on the specifics of an allegation. The institution and other involved individuals make their respective presentations concerning the allegation at the conclusion of the enforcement staff’s presentation. During this process, the hearing panel may ask questions of the enforcement staff, the institution and other involved individuals. The next allegation is addressed only after the conclusion of a thorough discussion of the current allegation. After each allegation has been discussed, the enforcement staff, the institution and involved individuals provide closing statements.

### The Infractions Report

After the conclusion of the hearing, the hearing panel deliberates in private and determines: a) what findings should be made, if any; and b) what penalties should be assessed, if any. The hearing panel bases its decisions concerning violations on information deemed to be “credible, persuasive, and of a nature that reasonably prudent persons would rely upon in the conduct of serious affairs”. The hearing panel prepares and approves a “final written infractions decision containing a statement of findings, conclusions, penalties, corrective actions, requirements and (for institutions) any other conditions and obligations of membership.” The Committee on Infractions releases the report approximately six to eight

weeks after the hearing. The NCAA public affairs staff notifies the media of the infractions report on the morning of the release. However, the member institution and involved individuals obtain a copy of the infractions report prior to the public release. A member designated by the chief hearing officer shall conduct a press conference to announce the results of the committee's decision in each case. The committee also releases a public infractions report detailing the specific findings and penalties in the case, but with the names of all involved individuals redacted, on the day of the report's public release. Public infractions reports are posted on the NCAA website (<http://www.ncaa.org>). The committee does not comment on any case until it issues its infractions report.

### Penalties

The committee can impose a variety of penalties, including, but not limited to, probationary periods, reduction of athletic scholarships, reduction of recruiting activities and restrictions on a coach's athletically-related duties. For violations that commence before October 30, 2012, and continue after October 30, 2012, the hearing panel prescribes the penalties set forth in Bylaw 19.9 "unless it determines that the conduct constituting a violation predominately occurred before October 30, 2012." The hearing panel will determine whether any factors present in a case may affect the imposition of penalties. The panel is required to "weigh any factors and determine if a case should be subject to standard penalties or if the case should be classified with aggravation or mitigation, and therefore subject to a higher or lower range of penalties." The legislation notes that "absent extenuating circumstances, core penalties corresponding to the classification shall be prescribed" as set forth in the current version of the NCAA Division I Manual.

### **Aggravated Case and Aggravating Factors**

An aggravated case is one "where aggravating factors outweigh mitigating factors." However, the legislation notes "cases should not be classified as aggravated solely because the number of aggravating factors is larger than the number of mitigating factors" and "an egregious aggravating factor may outweigh multiple mitigating factors." Aggravating factors are defined as "circumstances that warrant a higher range of penalties in a particular case." The hearing panel is authorized to determine "whether aggravating factors are present in a case and the weight assigned to each factor." Bylaw 19.9.3 provides examples of aggravating factors:

- Multiple Level I violations by the institution or involved individual.
- A history of Level I, Level II or major violations by the institution, sport program(s) or involved individual.
- Lack of institutional control.
- Obstructing an investigation or attempting to conceal the violation.
- Unethical conduct, compromising the integrity of an investigation, failing to cooperate during an investigation or refusing to provide all relevant or requested information.
- Violations were premeditated, deliberate or committed after substantial planning.

- Multiple Level II violations by the institution or involved individual.
- Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct.
- One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospective student-athlete.
- Conduct or circumstances demonstrating an abuse of a position of trust.
- A pattern of noncompliance within the sport program(s) involved.
- Conduct intended to generate pecuniary gain for the institution or involved individual.
- Intentional, willful or blatant disregard for the NCAA Constitution or bylaws.
- Other facts warranting a higher penalty range.

### **Standard Case**

A standard case is one “where no mitigating or aggravating factors are present or where aggravating and mitigating factors are generally of equal weight.” A standard case may warrant the standard range of penalties.

### **Mitigation Case and Mitigating Factors**

A mitigation case is one “where mitigating factors outweigh aggravating factors.” The legislation notes “cases should not be classified as mitigated solely because the number of mitigating factors is larger than the number of aggravating factors.” Mitigating factors are defined as “circumstances that warrant a lower range of penalties in a particular case.” The hearing panel is authorized to determine “whether mitigating factors are present in a case and the weight assigned to each factor.” Bylaw 19.9.4 provides examples of mitigating factors:

- Prompt self-detection and self-disclosure of the violation(s).
- Prompt acknowledgement of the violation, acceptance of responsibility and (for an institution) imposition of meaningful corrective measures and/or penalties.
- Affirmative steps to expedite final resolution of the matter.
- An established history of self-reporting Level III or secondary violations.
- Implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches control standards.
- Exemplary cooperation.
- The violations were unintentional, limited in scope and represent a deviation from otherwise compliant practices by the institution or involved individual.
- Other facts warranting a lower penalty range.

### Appeals of Committee on Infractions Findings and Penalties

Institutions and involved individuals have the option to appeal the Committee on Infractions hearing panel's findings and penalties to the Infractions Appeals Committee by filing a notice of appeal with the NCAA president "not later than 15 calendar days from the date of the public release of the committee's report." Afterwards, the appealing parties and the Committee on Infractions submit papers to the appeals committee. Next, the appeals committee conducts a hearing involving the appealing party and the Committee on Infractions representative. However, if the appealing party chooses to submit its appeal in writing only, the appeals committee considers the appeal based on the parties' written submissions without a hearing.

The Infractions Appeals Committee can reverse or modify a finding of the Committee on Infractions hearing panel only if the institution or involved individual shows one or more of the following grounds:

- The Committee on Infractions hearing panel's finding is clearly contrary to the evidence presented to the hearing panel;
- The facts found by the Committee on Infractions hearing panel do not constitute a violation of the NCAA Constitution or bylaws; and
- There was a procedural error and but for the error, the Committee on Infractions hearing panel would not have made the finding of violation.

A penalty determined by the Committee on Infractions hearing panel, "including determinations regarding the existence and weighing of any aggravating or mitigating factors, shall not be set aside on appeal except on a showing by the appealing party that the panel abused its discretion."

The current procedure for processing an appeal is posted on the Infractions Appeals Committee webpage, which is located on the NCAA website (<http://www.ncaa.org>).

After deliberating, the appeals committee issues its decision in an infraction appeals report. Public infraction appeals reports are posted on the NCAA website.

## **SECTION 2: INTERNAL INVESTIGATION STRATEGIES**

## **2.1 CORE UNIVERSITY POLICIES, PROCEDURES AND MANUALS**

A college or university with the following policies, procedures and manuals will enhance NCAA rules-compliance, promote mitigating factors, minimize aggravating factors and encourage the understanding of important rules.

- Code of ethics or conduct.
- Athletics governance policy (for the governing board, president and athletics department).
- Internal investigation policies and procedures:
  - A process for reporting allegations or concerns.
  - A process for investigating and reporting allegations of Level I and II violations.
  - A process for investigating and reporting allegations of Level III and IV violations.
- University or athletics department personnel manual or handbook (which includes provisions to comply with NCAA personnel legislation).
- Athletics operational manual (which address key operational and administrative issues).
- Athletics compliance manual (which addresses NCAA legislation and conference regulations).
- Student-athlete handbook.
- Head coach control protocols and resources (to assist head coaches with adhering to Bylaw 11.1.2.1).
- External athletics compliance audit process.
- Rules-education program.

## **2.2 METHODS THAT IDENTIFY POTENTIAL NCAA RULES-VIOLATIONS**

Revised NCAA Bylaw 19 places more responsibility on institutions to ensure rules-compliance and to conduct comprehensive investigations of alleged rules-violations. The following section contains a list of methods to detect issues that require due-diligence or an internal investigation:

- Complaint and consultation process.
  - Method for persons to report alleged rules-violations or present compliance-related questions.
  - Persons or offices identified to field questions concerning rules-compliance issues.

- Red-flag systems (e.g., triggers in university computer systems or athletics compliance software).
- Risk-assessment procedures.
- Audit and assessment process.
- Self-assessment protocols.
- Rules-education program.

### **2.3 NCAA ENFORCEMENT INVESTIGATION BEST PRACTICES**

1. Prepare a written investigation policy and procedure. A comprehensive investigation policy and procedure should address: a) What specific event triggers an inquiry; b) How complaints, tips, rumors and anonymous reports concerning possible violations of NCAA legislation are received and reviewed; c) Who conducts the inquiry; and d) What methodologies are used to review possible Level I, II, III and IV violations. Overall, an investigation policy and procedure should include the following elements:
  - Expectation statement documenting the obligation of institutional personnel, students and athletic representatives to report possible violations of NCAA legislation.
  - Procedures designed to impose “immediate and severe consequences” for failing to report alleged violations of NCAA legislation or to act immediately once an alleged violation is discovered.
  - Regularly scheduled compliance meetings with the compliance officer, compliance staff, faculty athletics representative, initial eligibility certifying officer and other personnel with compliance-related duties. The meetings enable personnel with compliance-related duties to share or piece together rumors or possible allegations of improper conduct.
  - Procedures designating an institutional official as responsible for contacting the NCAA vice-president for enforcement services and the conference office when the institution has determined it will investigate possible Level I and II cases.
  - Procedures governing how internal investigators will be retained or appointed.
  - Procedures to conduct an independent and thorough investigation and plan the investigation report. The procedures also should require the report’s submission to institutional administrators, including the chief executive officer and the director of athletics, within a reasonable period.
  - Procedures defining clear duties and responsibilities for administrators (including the director of athletics, compliance coordinator, faculty athletics representative and general counsel) during an investigation.
  - Procedures to address and correct identified deficiencies in policies, procedures and processes within the institution and the athletics program.
  - Procedures for reporting rules-violations, corrective measures and self-imposed penalties to the institution’s athletic conference and the NCAA enforcement staff.

- Procedures to incorporate the investigation policy and procedure into the athletic compliance education program.
2. Investigate all complaints and allegations thoroughly and efficiently (e.g., no “half-hearted efforts,” no delays in investigating). Performing an incomplete investigation and delaying the conduct of an investigation are two of the most crucial mistakes institutions make in the NCAA enforcement process. A thorough investigation avoids: failing to interview key persons; neglecting to gather and review relevant documents; and ignoring issues that surface during the investigation. Further, investigators, in a thorough investigation, conduct interviews that include open-ended and follow-up questions. A complete and thorough interview also is recorded (via an audio device and written notes). Finally, materials in a thorough investigation are organized and maintained in a secured place.
  3. Make consistent investigation related decisions (e.g., consistent employee punishment, investigating certain allegations according to standard operating procedure). Otherwise, athletics staff and student athletes who feel they are being treated differently than other persons who committed similar violations may bring a discrimination lawsuit against the institution.
  4. Prohibit retaliation against employees or student-athletes that complain or assert allegations. Institutions should not permit negative actions to be made against athletics staff or student-athletes that submitted a complaint or an allegation concerning NCAA rule violations. This prohibition prevents the “whistleblower” from filing a lawsuit against the institution for retaliation.
  5. Prepare a coordinated media strategy (and do not investigate through the media). The institution’s media strategy should be coordinated among the various campus offices and departments charged with public and external relations, including the sports information office and university public relations department. The chief executive officer, director of athletics, general counsel, faculty athletics representative and chairperson of the institutional governing body also should be involved in the preparation and implementation of the media strategy. The institution should communicate to the public in one voice. Most importantly, investigation strategy and activities should not be discussed in the media. This protects the investigation’s integrity. Remember, the NCAA enforcement staff may read every article in local papers concerning the institution during the investigation.
  6. Discuss the investigation only with persons who have the “need to know.” An investigation should be kept confidential in order to maintain its integrity, as well as protect any legal privileges (if an attorney conducts the investigation). As a result, information obtained during the investigation should be discussed only with persons at the institution in key decision making positions (e.g., chief executive officer, director of athletics, faculty athletic representative, general counsel, other appropriate administrators).
  7. Stay objective throughout the investigation. Administrators should remain objective and open-minded throughout an investigation. This prevents personal feelings to sway the

direction of an investigation. Further, an objective investigation avoids accusations of discrimination or bias by athletics staff, student-athletes and other persons.

8. Use fair investigation tactics (do not violate federal and/or state privacy rights or physically restrain employees or student-athletes by locking doors during interviews). Interviews and document collection should follow all federal, state, local and institutional rules and regulations. For example, institutional investigators should not create an environment during an interview where a witness feels his or her freedom has been restrained by the investigators. If such an environment is created during an interview, then a possible consequence is a lawsuit filed by the witness who accuses the institution of false imprisonment.
9. Prepare a detailed self-report. Self-reports to the NCAA enforcement staff and conference office should reflect the thoroughness of the institution's investigation. Thus, it is important to prepare a self-report that provides the sufficient details on the investigation's methodology, summary of facts, each identified violation and all unsubstantiated allegations.

#### **2.4 INVESTIGATIONS OF ALLEGED NCAA RULES-VIOLATIONS: THE FIRST 48 HOURS**

The revised concepts of shared-responsibility and cooperative principle in the new NCAA enforcement process will place more of an emphasis on colleges and universities to conduct prompt, comprehensive and legally sufficient internal investigations. Institutions should use internal investigations to collect the relevant facts pertaining to an allegation in an objective manner. A well-run internal investigation permits an institution's decision makers to make a reliable and legally-defensible finding as to what occurred, as well as to develop sound policy and procedural recommendations to improve campus operations. However, institutions conducting an internal investigation should exercise care to avoid the common mistakes that can disrupt an inquiry and increase the organization's liability. The institution's initial response after receiving allegations of NCAA rules-violations will have a long-term impact on the enforcement case. For example, an institution's swiftness in launching an inquiry increases the potential quality and quantity of the evidence that can be collected. Experts, as well as Buckner's experience, note that each passing hour provides more time for the target of the investigation to develop a cover story, a witness to forget crucial testimony and more time for evidence to be misplaced or destroyed. Thus, an institution should apply a "48-hour" principle to internal investigations. In particular, an institution's investigation policy and procedure should require the initiation of an inquiry within the first 48 hours of receiving an allegation. Most importantly, an institution should strive to complete the following tasks within the first 48 hours of receiving an allegation of alleged NCAA rules-violations:

- Appoint or retain a person to conduct an internal investigation of any reports or alleged incidents of NCAA rules-violations.
- Review institutional policy and applicable law to determine if the employee suspected of engaging in alleged NCAA rules-violations should be placed immediately on administrative leave pending the results of the investigation.

- Determine whether the circumstances warrant the institution to report allegations that also implicate possible criminal laws to the appropriate law enforcement agency.
- Develop an investigation plan.
- Interview (if possible) the person making the allegation.
- Secure or collect all available evidence pertinent to the allegation, including: documents; electronic information and data; videos; and other relevant evidence.
- Interview (if your investigation plan and strategy warrant it) any key witnesses and the target of the investigation.
- Review the institution's investigation policy and procedure, which should:
  - Be in writing.
  - Be approved by the president or chancellor (after a review by the general-counsel and human resources offices).
  - Identify the investigator (or describe how an investigator is selected or appointed).
  - List the duties and responsibilities of pertinent institutional personnel during an investigation.
  - Require a timely review of all allegations.
  - Include a procedure to educate institutional personnel about the policy.
  - Address how allegations of alleged rules-violations are processed by the institution.
  - Satisfy due and fair process requirements, state law and, if relevant, collective bargaining agreements.
  - State how findings are reported to the president/chancellor and third-parties (e.g., law enforcement, government entities, NCAA, accrediting agencies).

## **2.5 INVESTIGATION PLAN AND CHART**

A comprehensive internal investigation of alleged NCAA rules-violations begins with the preparation of an investigation plan and investigation chart.

### Investigation Plan

An investigation plan maps out the strategy and steps involved in an inquiry and includes, at a minimum, the following items:

- Documentation of the conclusions reached during the preliminary determination.
- Issues, topics, and matters to be examined during the investigation.
- Detailed investigative task list, including: a) identification of responsibilities for each investigation team member; and b) estimate of the timeline (i.e., anticipated start and completion dates) for each investigative task.

- Plan and procedure for client-investigator communication.
- Identification of staff, areas, offices, and departments that will be involved in the investigation.
- Identification of additional expertise or logistical support required by the investigator.
- Expected fees and costs.
- Milestones and report dates.
- Possible outcomes.

The investigation plan should be reviewed and approved by the institution's chief executive officer or the person at the institution to whom the investigator reports. After the plan has been approved, the internal investigator should review the plan periodically during the course of the inquiry. Most importantly, the plan should be flexible so that it can be revised if the internal investigator receives pertinent additional information or feedback, including: a) addition of tasks to address any oversights; b) adjustments to the investigation timeline; c) determination if additional documents need to be collected or persons interviewed; and d) identification of issues or allegations that require a separate investigation.

### Investigation Chart

Based on the available information, an investigator prepares an initial investigation chart. An investigation chart contains the associations of people and organizations, as well as important events, involved in the alleged violation. This exercise enables an investigator to understand the assorted information in a visual format. Also, an investigation chart can be used to prepare for interviews or to design evidence searches. An investigation chart should be revised as the investigator collects additional information during the investigation.

## **2.6 INTERVIEW STRATEGIES AND TACTICS**

An institution's investigator should use an interview to obtain as many facts as possible to determine whether a rules-violation occurred, the reasons for the violation and the identification of any mitigating factors. As an investigator prepares for, and conducts, interviews during an investigation of alleged NCAA rules-violations, an institution should consider the following strategies and tactics:

- Collect as much relevant evidence (as possible) prior to conducting interviews. A comprehensive analysis of the available evidence will assist the investigator with: (a) understanding the scope and the facts of the allegation; (b) preparing interview questions; and (c) identifying documents to use during an interview.
- Research the applicable law and institutional regulations. An understanding of the applicable law and regulations will enable the investigator to prepare interview questions.
- Conduct interviews at a location that will facilitate accurate information. An investigator should conduct interviews (if feasible) in a location that he or she can

control and that provide the interview subject with an environment conducive to sharing information.

- Provide the interview subject his or her rights and obligations. An investigator should advise the interview subject prior to the interview of any applicable right and obligations afforded by law, regulation or collective bargaining agreement (e.g., right to an advocate).
- If required by institutional policy, collective bargaining agreements or state law, advise the interview subject that they have a right to have legal counsel or an advocate present during the interview.
- Conduct an interview of the complainant/accuser before conducting other interviews (if possible). The interview of the complainant/accuser will assist the investigator with: (a) understanding the scope and the facts of the allegation; (b) preparing questions for subsequent interviews; and (c) identifying core documents and possible interview subjects.
- Conduct an exhaustive search of all relevant evidence from all parties. A comprehensive collection of all available and relevant information ensures the accuracy and objectivity of an investigation.
- Conduct an interview of all witnesses identified by the complainant/accuser, the target of the investigator and other interview subjects. An investigator should ask all interview subjects to identify any persons with information concerning the allegations. Unless the identified witnesses are clearly irrelevant (and if so, note the reason in the investigation file), the investigator should interview all persons named in an interview.
- Document the interviews. The institution's investigator should thoroughly document the interviews by digital/audio recording, court reporter or notes. The most accurate methods are a digital recorder or a court reporter. Naturally, an investigator should obtain the permission and consent of the interview subject prior to recording the interview. Further, regardless of the method, the investigator should document the date, time, location and method (e.g., in-person, telephone-conference, video-conference) of all interviews conducted during the investigation.
- Conduct an interview of all persons to whom the complainant/accuser and the target of the investigation made contemporaneous statements. During interviews with the complainant/accuser and target, ask if he or she reported or discussed the alleged conduct to colleagues or other parties. Unless the identified witnesses are clearly irrelevant (and if so, note the reason in the investigation file), the investigator should interview all persons named in an interview who participated in contemporaneous statements. [Note: Legally, the information obtained from the witnesses may be a possible exception to the hearsay rule.]
- Tie-up loose ends in the investigation. An investigator should re-interview witnesses, re-examine documents and conduct supplemental research to address new issues that arise during the investigation.
- Refrain from promising complete confidentiality. Although the institution can and should inform the complainant/accuser, target of the investigation and other interview subjects that the matter will be handled discreetly and with as much confidentiality as

possible, the investigator should advise all interview subjects that certain facts may be disclosed to institutional decision-makers or could be used in legal or administrative proceedings.

- Retain expert consultation when needed. An investigator should seek the advice of subject-matter experts when issues arise during an investigation.
- Research the websites of the relevant government, regulatory and accreditation agencies. The agencies may provide subject-matter advisories or resources suggesting best practices in conducting interviews (e.g., interview questions for workplace violence or sexual harassment allegations).
- Follow-up the information obtained during the interview as quickly as possible. An investigator should respond promptly to pertinent information obtained during an interview by: (a) conducting interviews of witness identified; (b) collecting evidence described; and (c) initiating research on all issues discussed.

## **2.7 STRATEGIES TO ENHANCE MITIGATING FACTORS AND REDUCE AGGRAVATING FACTORS**

The Committee on Infractions hearing panel can impose a variety of penalties, including, but not limited to, probationary periods, reduction of athletic scholarships, reduction of recruiting activities and restrictions on a coach's athletically-related duties. The hearing panel will determine whether any factors present in a case may affect the imposition of penalties. The panel is required to "weigh any factors and determine if a case should be subject to standard penalties or if the case should be classified with aggravation or mitigation, and therefore subject to a higher or lower range of penalties." Prior to the initiation of an investigation of an alleged rules-violation, an institution is well-advised to develop a strategy to promote the existence of mitigating factors and decrease the occurrence of aggravating factors. Specifically, an institution should conduct a self-assessment and determine the existence and extent of the following four factors:

- **Monitoring:** the institution should possess a comprehensive rules-compliance program, which contains methods to thoroughly monitor compliance with institutional procedures and NCAA legislation.
- **Self-reporting:** the institution should have a process for persons to self-report allegations or complaints relating to rules-violations, as well as a protocol to investigate and report rules-violations to the NCAA and the conference office.
- **Correction:** the institution should implement steps to correct any deficiencies identified during any self-assessment, external audit or internal investigation as quickly as possible.
- **Cooperation:** the institution should conduct an objective investigation of any allegations and provide full cooperation to the enforcement staff and the conference office during any joint proceedings.

Further, the institution should analyze Bylaws 19.9.3 and 19.9.4 and:

- Create strategies to minimize any aggravating factors that currently or could exist in the institution.
- Develop methods to enhance the existence of mitigating factors.
- Incorporate an evaluation of mitigating and aggravating factors during the institution's next external athletics compliance audit.

## 2.8 BYLAW 11.1.2.1 PRIMER FOR DIVISION I HEAD COACHES

### Overview of NCAA Bylaw 11.1.2.1

Bylaw 11.1.2.1 places the responsibility on the head coach of an intercollegiate athletics program to promote an atmosphere of NCAA rules-compliance within his/her program and to monitor the activities of his/her staff to ensure compliance with NCAA legislation.

Under this legislation, a head coach is ***presumed*** to have knowledge of what is occurring in his/her program and therefore, can be responsible for the actions of his/her staff and other individuals associated with his/her program. These individuals can include both direct and indirect reports.

Should the NCAA enforcement staff allege a Bylaw 11.1.2.1 allegation against a head coach, the head coach and his counsel ***must rebut this presumed knowledge*** and provide evidence the head coach: (1) promoted a proper atmosphere of rules-compliance; and (2) reasonably monitored his/her program, his/her staff and other individuals associated with his/her program.

### NCAA Bylaw 11.1.2.1 Implications

Under the new NCAA enforcement process, which will be effective August 1, 2013, the violation structure will move from the current two-tier structure (major and secondary) to a four-tier structure. As it relates to NCAA Bylaw 11.1.2.1 findings, the new system will provide the NCAA Division I Committee on Infractions a penalty matrix to provide game suspensions for head coaches for identified Level I and II violations. The penalty matrix the Committee on Infractions will utilize is as follows:

- Level I Violations (Severe Breach of Conduct)
  - Aggravation: 50 to 100% of season.
  - Standard: 30 to 50% of season.
  - Mitigation: 0 to 30% of season.
- Level II Violations (Significant Breach of Conduct)
  - Aggravation: 30 to 50% of season.
  - Standard: 0 to 30% of season.
  - Mitigation: 0 to 10% of season.

Further, the new system will also allow head coaches to be suspended for identified Level III violations committed by assistant coaches.<sup>2</sup> In addition, these suspensions will be publicized and made available to institutions that request such information.

### Head Coach Monitoring Strategies

Although there will not be specific “safe-harbor” standards that will automatically rebut a presumption of knowledge of the head coach, the NCAA has recommended a three-step approach for head coaches to take in order to meet the responsibilities associated with NCAA Bylaw 11.1.2.1. This approach includes the following measures.

- **Communication:** A head coach should demonstrate a commitment to compliance through ongoing communication with his/her president or chancellor, director of athletics, sport administrator, athletics compliance staff, program staff and student-athletes. This communication should include, but is not limited to, rules-compliance resources, rules-compliance philosophy, program expectations and how the athletics compliance staff and head coach will share responsibility.
- **Monitoring:** A head coach should also demonstrate a commitment to compliance through monitoring his/her staff’s activities in consultation with the athletics compliance staff. This communication should include, but is not limited to, assigning specific responsibilities to coaches and athletics compliance staff members and written policies and procedures regarding responsibilities and reporting lines. These measures should be monitored on an ongoing basis.
- **Documentation:** A head coach should document the ways in which he/she has demonstrated his/her commitment to compliance and monitoring activities. This communication should include, but is not limited to, meeting notes, agendas and attendance logs, written policies and procedures regarding responsibilities and reporting lines, any reports of investigations into alleged rules-violations and any other monitoring/communication documentation.

Further, Buckner recommends head coaches go beyond the NCAA’s recommended approach institute the following additional proactive measures.

- **Rules-Education Programming:** In addition to rules-education programming by the athletics compliance staff, head coaches should conduct rules-education sessions on a regular basis with program coaches, staff members and student-athletes. Head coaches should also send out compliance reminders and educational information program to coaches, staff members and student-athletes on a regular basis.
- **Program Audit:** In addition to evaluating Bylaw 11.1.2.1 responsibilities on an internal basis, institutions should retain an experienced outside firm to conduct regular external, independent audits of its’ head coaches monitoring responsibilities.

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<sup>2</sup> The NCAA has also reserved the right to suspend an involved coach for a Level III violation that is not included on the identified list.

This audit should be made independently of an institution's regular rules-compliance audit.

### Head Coach Control Program Implementation Checklist<sup>3</sup>

1. The head coach, in conjunction with the athletics compliance staff, should create an identifiable policy regarding the rules-compliance and monitoring of his/her athletics program. This policy should involve consultation with involved employees and staff members, outside consultants/experts and other identified parties.
2. Once an identifiable policy is drafted (with a defined purpose and scope), the head coach, in conjunction with the athletics compliance staff, should prepare specific principles, procedures and forms for all issues related to the control of his/her program. These principles and procedures should include, but are not limited to, the following issues:

#### **Communication**

- a. A specific timeline regarding the head coach's communications with his/her president or chancellor, director of athletics, athletics compliance staff and direct/indirect reports. This timeline should also address both initial discussions as well as continued dialogue regarding the head coach monitoring program.
- b. The expectations of the institution and athletics department for the head coach monitoring program.
- c. The compliance-related and other resources available for the head coach to properly implement his/her head coach monitoring program.
- d. A detailed identification of how "shared responsibility" will operate between the head coach and his/her staff and the athletics compliance office in terms of monitoring the sport program. This should also include expectations for regular communication between the coaching staff and the compliance staff.
- e. Expectations for reporting actual and suspected NCAA rules issues (e.g., immediate action; reporting lines).

#### **Monitoring**

- a. The assignment of a staff liaison to the athletics compliance office.
- b. The assignment of staff members to monitor specific areas of compliance (e.g., recruiting contacts; initial eligibility; amateurism; telephone contacts).

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<sup>3</sup> The following checklist represents the initial steps a head coach should take when implementing a head coach monitoring program. If you are interested in more information regarding head coach monitoring responsibilities and programming, please contact Justin Sievert at 954-941-1844 or jsievert@michaelbucknerlaw.com.

This should also include how these staff members are evaluated in terms of monitoring their assigned areas.

- c. As the program is implemented, the head coach, in conjunction with the athletics compliance staff, must seek to continuously improve the program. This involves the creation of a culture whereby: a) a plan is developed to improve the program over time; b) the program is examined and tested; c) the results of the test are analyzed; d) if successful, the program is revised and implemented; and e) the improvement process begins again and the cycle is repeated.
- d. A determination of how reporting lines will operate for reported violations of NCAA legislation. This should function within the institution's already established internal investigation policies and procedures and organizational structure.

### **Documentation**

A head coach should document the ways in which he has communicated and/or demonstrated a commitment to compliance and be able to produce documentation relating to the procedures in place for monitoring the program's rules compliance. This should include, but is not limited to, the following measures:

- Meetings with athletics director, compliance staff and coaching staff.
- Procedures for monitoring specific areas of compliance.
- Reports to compliance of actual and suspected NCAA rules issues.
- Monitoring efforts undertaken by the program to ensure that the staff and student-athletes are complying with NCAA rules and compliance obligations.

### **Rules-Education**

A written guide to how the head coach, in conjunction with the athletics compliance staff, will conduct rules-education for institutional staff members who directly and indirectly report to the head coach. This should include, but is not limited to, the following measures:

- The timing and duration of rules-education meetings;
- The direct and indirect reports who will be involved in any rules-education meetings;
- Documentation of attendance at rules-education meetings;

- The creation and documentation of any corresponding rules-educational materials utilized or handed out at any rules-education meeting;
- Additional formats for providing rules-education (i.e., e-mails, newsletters, etc.) and who these materials will be sent to and how this information will be tracked.

## **SECTION 3: FORMS AND CHECKLISTS**

### **3.1 POLICY DEVELOPMENT PROCESS CHECKLIST**

This checklist can be used by an institution to assist the development of athletically-related policies.

1. Identify the problem: Decide what the policy development process will address.
2. Consultation: Seek the perspective of involved employees, students, organizations and experts.
3. Gain support of the administration and stakeholders: Identify and consult the persons responsible for the development, implementation and enforcement of the policy.
4. Develop the policy vision, strategy and related procedures:
  - a. Define the purpose, scope and usefulness of the policy; and
  - b. Prepare the related procedures and forms.
5. Educate the university community: Discuss different policy options, including policy benefits, costs and effects on the athletics program and university community.
6. Disseminate ideas: Distribute the rationale, guidelines, procedures and findings concerning the proposed policy.
7. Test:
  - a. Conduct targeted and limited pilot programs to test the new procedures or techniques;
  - b. Analyze the test results; and
  - c. Revise the applicable procedures.
8. Implement the policy: Institute the policy university-wide.
9. Continuous improvement: Create a culture whereby:
  - a. A plan is developed to improve the policy;
  - b. The plan is examined and tested;
  - c. The results of the test are analyzed;
  - d. If successful, the policy is revised and implemented; and
  - e. The improvement process begins again and the cycle is repeated.

### 3.2 POLICY DEVELOPMENT QUESTIONS

The following questions are provided to guide an institution through a policy planning process:

1. Statement of principle. The policy should build on the institution's core ideology (e.g., core values and purpose). This should cover the institution's goals for promoting NCAA rules compliance and investigating possible violations of NCAA legislation.
  - a. What is the institution's definition for all common terms pertaining to internal investigations?
  - b. How will the institution express its commitment to rules compliance concerning internal investigations?
  - c. What areas of the university community will the policy cover?
  - d. What persons will the policy apply to (e.g., administrators, employees, coaches, students, athletic representatives, others)?
2. Legal framework.
  - a. What is the relevant NCAA enforcement legislation (will the institution intend to go further than NCAA legislation in developing its standard operating procedure)?
  - b. What will be the roles, obligations and responsibilities of the institution's key actors and stakeholders under the policy?
  - c. How will administrators, employees, coaches, student-athletes and other persons in the university community be made aware of their policy roles, obligations and responsibilities?
  - d. What positive action(s) will the institution take in the area of internal investigations?
3. Policy framework.
  - a. Does the policy provide a framework for other institutional or athletics policies?
  - b. How will other institutional or athletics policies fit with this policy?
  - c. How will the principles in the policy be reflected in other related policies and procedures?
4. Policy development.
  - a. How will the policy be developed and by whom (e.g., planning committee, designated administrator)?
  - b. What training or experience do the members of the committee (or the administrator) have in policy planning?
  - c. How will pertinent constituencies of the university community be involved in the process?
  - d. How will student-athletes be involved in the process?
  - e. What other persons or groups will be consulted about the policy (e.g., legal counsel, campus organizations, experts, stakeholders)?

- f. How will the institution ensure full commitment to the policy and to its implementation?
  - g. How will the institution review and audit the policy (what outside entity will evaluate the policy at least once every four years)?
  - h. What procedures and forms should be revised or created during this process?
  - i. What will be the institution's statement or policy regarding specific internal investigation areas?
  - j. A statement of the institution's internal investigation philosophy.
  - k. A description of the method used to develop the policies.
  - l. A description of the educational component.
  - m. A statement of the responsibilities of involved institutional personnel.
  - n. Internal investigation-related forms.
  - o. Communication of an internal investigation and its findings to the NCAA enforcement staff and the conference office.
5. Monitoring and education.
- a. How will the institution ensure that each area of the policy is incorporated into the rules education, staff orientation and professional development programs?
  - b. What steps will be taken to ensure that all persons have access to education, training and support so that they can fulfill their responsibilities under the policy?
  - c. How will the policy be communicated to the university community (e.g., newsletter, compliance presentations at organizational meetings, conference call and web-based seminars, websites, intranet, e-mail)?
  - d. How will the institution monitor and evaluate the effectiveness of its rules education, staff orientation and professional development programs concerning the policy?
6. Policy implementation and follow-up.
- a. How will the institution's legal counsel or other appropriate campus offices provide appropriate input?
  - b. How will the chief executive officer provide input before approving the policy?
  - c. How will the policy be put into practice?
  - d. What action plans and targets will be created for policy implementation and when will the plans and targets be reviewed (e.g., annually, semi-annually)?
  - e. Who will be responsible for the action plan and target implementation?
  - f. Where will the policy be filed for official purposes?

### **3.3 SAMPLE FORMAT FOR AN ATHLETICS INVESTIGATION POLICY**

#### **CHAPTER 10: INTERNAL INVESTIGATION POLICY AND PROCEDURE**

##### Section 10.1 Overview and Purpose

This policy establishes guidelines by which the allegations of NCAA rules-violations. ...

##### Section 10.2 Persons Affected

This policy covers all employees, student-athletes. ...

##### Section 10.3 Guidelines, Policies and Procedures

The institution's policy concerning investigating allegations of NCAA rules-violations is to:

10.3.1 Pursue the. . . .

10.3.2 Continuously improve. ...

##### Section 10.4 Definitions

10.4.1 Severe Breach of Conduct (Level I Violation): A severe breach of conduct is one or more violations that seriously undermine or threaten the integrity of the NCAA Collegiate Model. ...

10.4.2 Breach of Conduct (Level II Violation): A significant breach of conduct is one or more violations that provide or are intended to provide more than a minimal but less than a substantial or extensive recruiting, competitive or other advantage. ...

##### Section 10.5 Responsibilities

10.5.1 The chief executive officer shall review and approve. ...

10.5.2 The director of athletics is responsible for. ...

##### Section 10.6 Procedures

###### 10.6.1 Reporting a Violation

10.6.1.1 The institution. ...

10.6.1.2 All employees, student-athletes. ...

###### 10.6.2 Initiation of an Internal Investigation

10.6.2.1 The chief executive officer, director of athletics. ...

10.6.2.2 Once the violation. ...

## Section 10.7 Revision History

- New document (January 1, 2005).
- Update (June 1, 2010).
- Revision (August 1, 2013).

### **3.4 PRE-INTERVIEW TASKS CHECKLIST**

The following checklist details the items that should be completed by the investigator prior to an interview of a subject.

1. Confirm the date, time, and location of the scheduled interview with all involved individuals, including, but not limited to, the NCAA enforcement staff (if conducting a joint investigation).
2. Review the investigation plan.
3. Review the investigation chart.
4. Review memoranda, reports and notes of prior interviews.
5. Review relevant documents and other evidence.
6. Prepare an outline of the interview questions.
7. Prepare a contingency plan to address issues that may arise during the interview.
8. Makes copies of any documents that will be used during the interview.
9. Coordinate pertinent activities with involved individuals (e.g., court reporter, interview room reservation).

### **3.5 INTERVIEW MATERIALS CHECKLIST**

The following checklist details the materials that should be brought by the investigator to the interview.

1. Notepads and writing instruments.
2. Recording device and extra batteries.
3. Labels (to note the date and time of evidence produced during the interview).
4. Copy of NCAA legislation, institutional rules and federal and state laws.
5. Interview outline.
6. Copies of relevant documents for the interview subject and other persons sitting in on the interview.
7. Blank copies of the interview notice/statement of confidentiality and other forms.
8. Documentation to identify yourself to the interview subject.
9. Any other item needed to conduct the interview.

**3.6 SAMPLE INTERVIEW NOTICE AND STATEMENT OF CONFIDENTIALITY**

**Interview Notice and Statement of Confidentiality**

You are advised of the following:

- The purpose of the interview is to determine whether you have knowledge of, or has been involved, directly or indirectly, in any violation of NCAA, conference and/or University rules and regulations.
- You have an affirmative obligation to cooperate fully with, and assist, the NCAA, conference and/or University—which includes protecting the integrity of the investigation and to make a full and complete disclosure of any relevant information, including any information requested by the University, the conference, the enforcement staff or the infractions committees.
- You have an affirmative obligation to report instances of noncompliance to the NCAA, conference and/or University in a timely manner and assist in developing full information to determine whether a possible violation has occurred and the details thereof.
- Exemplary cooperation by you may constitute a mitigating factor for purposes of calculating a penalty when a violation has occurred.
- Failing to satisfy the responsibility to cooperate may result in an independent allegation and/or be considered an aggravating factor for purposes of calculating a penalty.
- Refusing to furnish information or providing false or misleading information to the NCAA, conference and/or the University may result in an allegation that you have violated NCAA, conference and/or University ethical-conduct rules.
- The interview is confidential pursuant to NCAA, conference and/or University rules and regulations. In other words, with the exception of your legal counsel, you may not disclose the substance of this interview to any third-party, including other employees or anyone outside of the University.
- You have the right to have legal counsel present during the interview.

I hereby acknowledge:

- I reviewed and understood the purpose of the interview, as well as my rights and obligations under NCAA, conference and/or University rules and regulations.
- Any statement I make can be used in any NCAA, NCAA Eligibility Center, conference and/or University proceeding.
- If it is found that I was involved directly or indirectly in any violation of NCAA, conference and/or University rules and regulations, any statement I make can affect adversely my eligibility at, or employment or affiliation with, the University.
- I can be subject to disciplinary or corrective action, under NCAA, conference and/or University rules and regulations, should I fail to abide by the above-stated principles.

\_\_\_\_\_  
Interview Subject Name (Print)

\_\_\_\_\_  
Witness Name (Print)

\_\_\_\_\_  
Interview Subject's Signature

\_\_\_\_\_  
Witness's Signature

\_\_\_\_\_  
Date and Time of Subject's Signature

\_\_\_\_\_  
Date and Time of Witness's Signature

### **3.7 ACCUSER, TARGET AND INTERVIEW SUBJECT CREDIBILITY CHECKLIST**

An investigator must determine the credibility of the accuser, target of the investigation<sup>4</sup>, interview subjects and any other person whose veracity must be relied on during the case. An investigator can use the following checklist to ascertain the credibility of interview statements.<sup>5</sup>

1. **Plausibility**
  - a. Whose testimony is the most plausible?
  - b. Could the accuser, target or witnesses have heard or seen what they claimed to have witnessed?
  - c. Should the accuser, target or witnesses have heard and seen things that they did not admit?
2. **Source of information**
  - a. Did the accuser, target or witnesses see or hear the alleged event directly?
  - b. Did the accuser or witness who reported the information obtained it firsthand or secondhand (e.g., relied on information other persons, rumors)?
3. **Detail**
  - a. How general or specific was each person's testimony?
  - b. Were details in the testimony corroborated by other evidence?
  - c. Did the target deny the allegation in detail or only generally?
4. **Corroboration and conflicting testimony**
  - a. What witnesses or documents support the testimony of the accuser and the target?
  - b. Does the evidence contradict the testimony of the accuser and the target?
  - c. Do the witnesses support the person's testimony who suggested you interview them?
  - d. If there are conflicts in testimony, do they involve minor or significant issues?
5. **Contradictions**
  - a. Was each person's testimony consistent throughout the interview?
  - b. Did any of the interview subjects contradict themselves?
  - c. If an interview subject provided a contradiction, did the change involve a minor issue or a matter of substance?
6. **Demeanor**
  - a. How did the accuser, target or witnesses act during the interview?

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<sup>4</sup> The target of the investigation is the person alleged to have committed the rules-violation.

<sup>5</sup> This checklist is developed based on a similar list contained in Lisa Guerin, *Workplace Investigations: A Step-by-Step Guide* (Berkeley: Nolo, 2004).

- b. Did the accuser, target or witnesses appear to be telling the truth or lying?
  - c. Did the target have a strong reaction to the allegation or no reaction at all?
  - d. Did the accuser seem genuinely upset?
  - e. Were any witnesses' reactions unusual, based on each person's ordinary demeanor or behavior?
7. **Omissions:**
- a. Did the accuser, target or witnesses leave out important information during their interview?
  - b. Does a reasonable explanation exist for the person omitting the information during the interview?
8. **Prior incidents**
- a. Does the target of the investigation possess a history (undocumented and documented) of similar activity or behavior?
  - b. Has the accuser filed prior allegations against the target or other employees?
  - c. Did the institution receive other allegations, complaints or incidents regarding, or between, the accuser and the target?
9. **Motive**
- a. Does any party involved in the case have a motive to lie about, exaggerate or deny the alleged activities or behavior?
  - b. Is there any history between the parties involved that affect their credibility?
  - c. Do any of the involved individuals have a special loyalty to, or grudge against, anyone involved in the alleged activities?

### **3.8 DOCUMENT REQUEST/PRODCUTION CHECKLIST**

An investigator should request evidence that is relevant to an allegation. The following checklist contains a non-exhaustive list of information that may be relevant during an internal investigation of an alleged NCAA rules-violation.

1. Athletically-related policies for the University governing board (e.g., board of trustees).
2. Employee handbooks and manuals.
3. Athletics operational manual.
4. Athletics compliance manual.
5. Student-athlete handbook.
6. Telephone and cell phone records.
7. Email messages.
8. Text messages.
9. Postings to university bulletin boards (e.g., electronic, office corkboard).
10. Correspondence (e.g., letters, memos, notecards).
11. The personnel file of the target and other pertinent employees.
12. Student file for the involved student-athletes:
  - a. Academic file.
  - b. Athletics compliance file.
  - c. Athletics training records.
13. Reports, complaints or allegations filed by the accuser.
14. Coach's practice plans and scripts.
15. Video and film records of athletically-related activities.
16. Sports team's policies, procedures and rules (e.g., team rules).
17. Documentation of education and training provided to student-athletes and coaches.
18. E-mails and other electronic information submitted.
19. Compliance forms (e.g., countable athletically-related activities logs, recruiting logs).
20. Rules-education records (e.g., agendas, handouts, PowerPoint presentation slides, attendance records).
21. Self-reports of NCAA rules-violations.
22. Athletics compliance audit reports.
23. Head coach monitoring documentation (for allegations involving a head coach or members of a sports team).
24. Allegations, complaints or comments reported to the University related to the allegation.

25. Commendations of target and other pertinent employees.
26. Documents signed by the employees involved (such as hiring agreements, employment contracts and other agreements).
27. Expense reports.
28. Computer records (e.g., Internet sites visited, productivity).
29. Files from any previous investigations of the same employees or the same type of allegations.

### **3.9 INTERNAL INVESTIGATION REPORT CHECKLIST**

An institution prepares a written self-report after the conclusion of a comprehensive and objective internal investigation into alleged NCAA rules-violations. A self-report resulting from an investigation of a Level I and II case should include, at a minimum, nine main sections:

1. Introduction.
  - a. Purpose of the report.
  - b. Case chronology.
2. Overview of the findings.
  - a. Identification of the types of rules-violations and persons involved.
  - b. List, and brief bios, of all involved individuals and parties.
  - c. List of, and eligibility information for, involved student-athletes.
3. Summary of the institution's internal investigation.
  - a. Investigation methodology.
  - b. List of interview subjects.
  - c. Summary of evidence collected.
4. Findings of specific rules-violations.
  - a. NCAA legislation involved in the violation.
  - b. Date of the violation.
  - c. Location of the violation.
  - d. Description of the violation.
  - e. Who was involved in the violation.
  - f. How was the allegation reported/violation discovered.
  - g. Summary of the information developed during the institution's internal investigation.
  - h. Mitigating and aggravating factors.
  - i. Cause of the violation.
5. Possible rules-violations.
  - a. List of possible rules-violations that were investigated, but the evidence revealed it did not occur.
  - b. List of possible rules-violations that were investigated, but the evidence is inconclusive.
6. Self-corrective measures and self-imposed penalties.
  - a. Measures undertaken to correct or strengthen the athletics program.
  - b. Penalties implemented by the school or conference.

7. Background information on the institution and athletics program.
  - a. History of the university.
  - b. NCAA division.
  - c. Conference membership(s).
  - d. Number of NCAA-sponsored sports.
  - e. Overview of the institution's history of Level I, Level II and major infractions.
8. Conclusion.
  - a. Summation of the institution's internal investigation.
  - b. Comments on the institution's commitment to rules-compliance, institutional control or other NCAA-imposed duty.
  - c. Miscellaneous information.
9. Appendix.
  - a. Athletically-related information needed to process the report (e.g., squad lists, practice logs).
  - b. Important documents obtained during the investigation.

### **3.10 TIPS TO AVOID INTERNAL INVESTIGATION ERRORS**

An institution prepares a written self-report after the conclusion of a comprehensive and objective internal investigation into alleged NCAA rules-violations. The following are some tips to avoid the most common errors in conducting an internal investigation and preparing the subsequent self-report:

1. Follow the institution's written internal investigation policy and procedure.
2. Maintain accurate records of all investigation interviews and evidence collected.
3. Recognize and address all student-athlete eligibility issues during the internal investigation and in the self-report.
4. Provide all student-athletes, institutional employees and athletics representatives (boosters) a notice of their NCAA Bylaw 10.1 (ethical conduct) obligations prior to an investigation interview.
5. Submit all relevant information, including pertinent documents, data and evidence that corroborates or refutes the alleged rules-violation, in the self-report.
6. State the specific NCAA bylaw that was violated in the self-report.
7. Develop evidence to demonstrate the existence of mitigating factors and to address the occurrence of aggravating factors.
8. Identify who reported the allegation in the self-report.
9. Describe the institution's self-corrective measures and self-imposed penalties that relate to the reported violations in the self-report.
10. Document (through a report or memorandum) if the internal investigation determines no rules-violation occurred.

## **SECTION 4: REFERENCES AND RESOURCES**

## 4.1 REFERENCES

Buckner relied on the following materials and sources in the preparation of the Toolkit:

- Brigida Benitez, “Best Practices for Internal Investigations,” CLE Materials, ABA Section of Litigation (February 15, 2013).
- Bradley J. Bondi and Martin T. Biegelman, “Best Practices for Conducting Board-Managed Independent Internal Investigations,” Association of Certified Fraud Examiners, Inc. (December 15, 2011).
- Michael L. Buckner, *Athletics Investigation Handbook: A Guide for Institutions and Involved individuals During the NCAA Enforcement Process* (New York: iUniverse, 2004).
- Michael L. Buckner, “Investigations of Alleged Student-Athlete Abuse by Coaches, Part I: The First 48 Hours,” *College Athletics Best Practices Alert* newsletter (May 15, 2013).
- Michael L. Buckner, “Investigations of Alleged Student-Athlete Abuse by Coaches, Part II: Interview Strategies and Tactics,” *College Athletics Best Practices Alert* newsletter (June 10, 2013).
- Buckner website ([www.bucknersportslaw.com](http://www.bucknersportslaw.com)).
- Lisa Guerin, *Workplace Investigations: A Step-by-Step Guide* (Berkeley: Nolo, 2004).
- Hayes Hunt, “Best Practices for Corporate Internal Investigations,” *The Legal Intelligencer* (January 23, 2013).
- NCAA Divisions I, II and III Manuals (Indianapolis, IN: NCAA, 2013).
- NCAA, “Guidelines for NCAA Member Institutions Submitting Results of Internal Inquiries Concerning Possible Major Violations.”
- NCAA Web site ([www.ncaa.org](http://www.ncaa.org)).

## 4.2 CONTACT INFORMATION

Administrators, general-counsel and educational professionals are encouraged to refer to this list for additional information concerning the preparation of policies, procedures and protocols concerning the NCAA enforcement process:

- Buckner (Contact: Michael L. Buckner, Esquire; Lori A. Williams, Esquire; Justin P. Sievert, Esquire)—
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  - Web site: [bucknersportslaw.com](http://bucknersportslaw.com).
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[llwilliams@bucknersportslaw.com](mailto:llwilliams@bucknersportslaw.com); [jsievert@bucknersportslaw.com](mailto:jsievert@bucknersportslaw.com).
  - Street and Mailing Address: 1000 West McNab Road, Pompano Beach, Florida 33069.

- National Collegiate Athletic Association (NCAA)—
  - Telephone: 317-917-6222.
  - Facsimile: 317-917-6888.
  - Web site: [www.ncaa.org](http://www.ncaa.org).
  - Street Address: 700 West Washington Street, Indianapolis, Indiana 46206.
  - Mailing Address: P.O. Box 6222, Indianapolis, Indiana 46206-6222.
- Institution's athletics conference.