

Compliance Corner

VOLUME 2; ISSUE 4

JANUARY 2013

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Recent Interpretations

COACH TRAVELING WITH A PSA'S PARENTS TO AN OFFICIAL VISIT

... if a PSA flies to an institution for an official visit and his or her parents or legal guardians drive to the institution's campus to accompany the PSA on the official visit, it is permissible for a member institution's coach to ride with the PSA's parents or legal guardians from their home to the institution and back to their home. In such circumstances, the 48-hour period for the official visit is initiated when the PSA's parents or legal guardians begin transporting the coach to campus. Any dialogue in excess of an exchange of a greeting with the PSA's parents or legal guardians prior to the trip to campus is a countable contact. Therefore, such contact may only occur during a permissible contact period (recruiting period in men's basketball). At the conclusion of the 48-hour period, the coach shall immediately terminate contact with the prospective student-athlete and his or her parents or legal guardians.

UNDERGRADUATE STUDENT ASST. COACH RECEIVING MEAL DURING AN OFFICIAL VISIT

... confirmed that a ... undergraduate student assistant coach may receive a meal with a PSA during the PSA's official visit, within a 30-mile radius of the institution's campus.

DONATIONS TO GROUPS THAT INCLUDE PSAs

... confirmed that in sports other than men's basketball, an institution (or an institution's coach/staff member or representative of its athletics interests) may contribute to a bona fide youth organization that includes prospective student-athletes and non-prospective student-athletes (e.g., YMCA, YWCA, Boys and Girls Clubs), provided the assistance is not earmarked for a particular prospective student-athlete, is not earmarked for the purpose of contributing to a boys' basketball program, and is offered in conjunction with the organization's regular fund-raising activities.

NEW ENFORCEMENT STRUCTURE

(Gary Brown, ncaa.org)

Among the most frequently stated reasons for the new enforcement structure the Division I Board of Directors adopted in October was the need to squelch the risk/reward analysis NCAA members believed some people were conducting as they weighed the consequences of violating bylaws. Now that the new structure is poised to be implemented this August, among the most frequently stated reactions to it is how its penalty guidelines will make potential rule-breakers realize there's no reward for the risk. Seeking stronger sanctions and a clearer "if you do this, then you can expect that" model for violations and penalties, the Enforcement Working Group developed a matrix that succinctly lays out the consequences that can be expected for various breaches of conduct. While it wasn't designed as a scare tactic per se, it figures to be persuasive.

"It was clear we needed to have stiffer and more predictable penalties so that people who were doing the risk/reward calculation would think twice whether it was in their interests to engage in bad behavior," said working group chair Ed Ray, the president at Oregon State University. Having penalty guidelines "and having the penalties that are in those guidelines be more severe than what we have now was a good way of sending clear signals to people.

The penalty guidelines signal stringent change, indeed. For the most serious conduct breaches, violators can expect as a matter of course penalties like a one- or two-year postseason ban, a fine of \$5,000 plus 1 to 3 percent of the total budget for the affected sports program (which could be a significant dollar amount), and scholarship reductions by percentage rather than number, up to 25 percent of the scholarship allocations in the affected sport. An array of other penalties exist as well, including head coach suspensions and show-cause orders, and limits on recruiting visits and other contact with recruits. Those are all laid out in the matrix, too. And those are just for cases deemed as standard in a given category. If there are aggravating factors, "violation beware" as the severity of sanctions magnify in each category.

While it may appear at first glance that the working group made all of these decisions on its own, the fact is that the group was reacting to membership demand. "We wanted to give some guidance on where the membership is right now on what they expect from our enforcement program. And where they are right now is that they want to see tougher penalties and they want more clarity on what the penalties are likely to be," said Ivy League Executive Director Robin Harris. Harris is among 13 members of the working group composed of presidents, athletics directors, commissioners and others assigned after NCAA President Mark Emmert assembled more than 50 presidents at a retreat in August 2011. Among the outcomes was a call for a more stringent and efficient enforcement structure to uphold the integrity of the collegiate model of athletics.

The working group surveyed the membership from the start and quickly encountered a "we're not going to take it anymore" kind of response. Harris said the risk/reward analysis was a recurring theme. "We kept hearing stories about people researching past cases and judging whether the risk of being caught was worth it," she said. "They could cite teams in the past that had been caught but had rebounded pretty quickly. So there was a sense from the working group that we needed to ratchet up the penalties."

Thus, while postseason bans, scholarship reductions, fines and recruiting limits have always been in the Committee on Infractions' arsenal, the length of those bans and the severity of the withholdings are much greater in the new structure. "Coming out of the presidential retreat, our marching orders were to make the penalties more stringent and more consistent," said working group member Eleanor Myers, the faculty athletics representative at Temple University and a current member of the Committee on Infractions. "And you can't really do either of those without a guideline or matrix. But getting the proper range of sanctions and filling in those boxes on the matrix became very important."

The working group got help in that regard from the membership survey, which clearly indicated that postseason bans and scholarship reductions were considered the most influential deterrents. Postseason competition is such a reward for teams; the school receives publicity for it and coaches often receive bonuses for achieving it. Taking all of that away, particularly for multiple years, is significant. Scholarship reductions have a longer-term effect, especially with the percentage model in the new matrix. Harris in fact said that in her experience with the Committee on Infractions, which she worked with when she was an NCAA staff member in the 1990s, strict scholarship reductions had a longer-term impact than postseason bans.

NEW ENFORCEMENT STRUCTURE (cont....)

Working group member David Williams, the vice chancellor for university affairs and athletics at Vanderbilt and a current member of the Division I Infractions Appeals Committee, said the group borrowed from a legal model to develop its matrix. "We provided a range, as is done with sentencing guidelines, where the judge has to pretty much stay within those unless there are extraordinary circumstances," he said. In the new enforcement structure, there are four levels of violations, or "conduct breaches." The matrix is essentially designed to address Levels I and II (severe and significant breaches of conduct), which are the violations that most threaten the integrity of the collegiate model. Violations can be "significant" when they have more than a passing consequence to the benefit of those who cheat. But they can escalate to "severe" if the violations are much broader and deeper in terms of who is implicated and the kind of behavior those people engaged in to get the result they did.

The matrix lists a range of expected outcomes in various penalty categories for Level I and II cases that are processed normally (in the matrix, those are called "standard"). Those ranges can change, though, if there are mitigating or aggravating circumstances. In the postseason ban category, for example, the length of the ban can go from one to two years to two to four years if there are aggravating circumstances. Conversely, the range can be reduced to zero with mitigating factors. And while the matrix offers specific guidelines, the Division I Committee on Infractions panels that will apply them still will have flexibility and discretion to impose penalties that fit a particular case. It is formulaic in a sense, but there is a subjective element to that formula," Harris said. "The committee will slot a case and figure out the penalties, but the committee has the discretion to depart from the guidelines, which account for mitigating and aggravating factors, if there truly are extraordinary circumstances. Harris added that the panels will be held accountable to explain such deviations, "because we have clearer expectations in this new structure about the mix of penalties we expect to see. There still are other penalties at the committee's disposal just as there are now," she said. "These guidelines focus on a handful of penalties with specificity. Beyond that, the committee can still fashion penalties as they see fit."

That was important to Myers. She said in general, people know what constitutes the "worst of the worst" because those cases have been highly publicized. But they don't have as good an understanding about the full range of the other ones because those don't hit the news as much. "Not everything we see is the worst of the worst, she said, calling on her Committee on Infractions perspective. "Institutions often do not set out to cheat. They may have devoted fewer resources to compliance than they needed to or they might have one person on staff or a booster who gets them in trouble. And maybe they did their best to cooperate in the investigation and to get it cleaned up." As such, the new structure reserves the ability for the panels to impose a lesser penalty than the guidelines recommend. It was important to Myers as an infractions committee member to retain that discretion in cases where it is deserved. "I also thought it was important that this new system be about creating incentives for good behavior," she said. "If we have a case in which people did everything right and uncovered something in their own program, say a head coach uncovered the behavior and tried to do something to rectify it, " we should be able to reward the person. Where that would automatically result in penalties for them in the current system, this new structure makes it possible to mitigate those penalties in cases where people have tried to make things right."

The penalty guidelines also have the added benefit of addressing a membership concern about the current process in which seemingly similar cases incur different sanctions. The consistency element is even more important given the way cases will be managed with in the new structure. By the time the structure is implemented in August, the Committee on Infractions will increase from its current 10 members to as many as 24 members who will be assembled into smaller panels to review cases more quickly and efficiently (and allow people from diverse backgrounds to serve on the panels). When that was proposed, some people in the membership worried that different panels would dole out different penalties. The guidelines should quell that concern. "Absolutely, they will help," Ray said. "When you give people side rails and tell them to stay within them, presumably there will be a lot of commonality among the judgments that emerge."

Working group members are eager to see how the new structure will be received, though that won't be apparent until the new penalty guidelines begin being applied. (For the most part, the new penalty guidelines will apply for cases in which conduct breaches occurred after Oct. 30, 2012, the date the Board adopted the new structure, and are processed after Aug. 1, 2013.) For now, working group members feel comfortable that they produced a system the membership wanted. "We made a point to stop a number of times to make sure we were listening to and talking with the membership," Williams said. "At a few points early on, we weren't getting the kind of response we expected from some of our colleagues, and we said, "If you're not going to take the time now to respond, then don't take the time later to criticize."



**iupui compliance
staff newsletter**

Phone: 317-278-4110

Fax: 317-274-0505

E-mail: metzgerk@iupui.edu or
jchasey@iupui.edu

ASK BEFORE YOU ACT!!!!

WHAT'S COUNTABLE?

What counts?

Practice (4 hour per day limit)
Athletic meetings initiated/required by coach
Competition
Walk throughs and visits to competition sites
Captains practices
Film review
Chalk talk
Skill instruction
** This list is not inclusive and is meant to be a general guide.*

What doesn't count?

Study tables
Athletic training treatments and medical exams
Recruiting activities
Fundraising activities
CHAMPS/Life Skills meetings
Voluntary workouts (not observed by coach)
Banquets
Team travel
Team community service or appearances

NEW ENFORCEMENT STRUCTURE cont.

Working group member Dan Beebe, former commissioner of the Big 12 Conference and a current partner in a risk-management firm, said nobody should be surprised when the new structure is rolled out. "It cannot be said that there weren't plenty of opportunities to challenge the direction the working group was taking," he said. "It also can't be said that the prongs of due process weren't met. There was adequate notice and opportunity to be heard."

Myers said she continues to believe in the NCAA's enforcement model and how the Committee on Infractions operates. But no matter what process is in place, she said, schools that are penalized may be predisposed to beef about it. "That's just the way it is," she said. "It's kind of like the legal profession- 'everyone hates the legal profession but loves their own lawyer, right? People in general are going to say we need a strong enforcement process and coaches will say they are behind these changes, but when it comes down to specifics, everyone hates the outcome when it involves them. But the membership clearly wanted us to take this direction.'"