

NCAA DIVISION II INFRACTIONS APPEALS COMMITTEE

POLICIES AND PROCEDURES GUIDE

1. INTRODUCTION.

This guide has been created to aid NCAA Division II institutions and individuals in understanding the infractions appeals process and procedures. These procedures and policies have been developed by NCAA member institutions through adopted legislation and by the NCAA Division II Infractions Appeals Committee. Questions regarding situations in the appeals process not specifically addressed by these procedures and policies should be submitted in writing to the NCAA primary staff liaison, who will refer them to the Infractions Appeals Committee. Contact information for the committee and staff is contained on the last page of this guide.

A letter outlining the appeals process will accompany the NCAA Division II Committee on Infractions report informing the institution of its right to appeal and the exact deadline for the submission of its notice of appeal to the NCAA primary staff liaison. A copy of the Infractions Appeals Policies and Procedures Guide will be included in the Committee on Infractions' notice.

An appeal is not a new hearing that provides a second chance to argue the case. The Infractions Appeals Committee will reverse or modify a ruling of the Committee on Infractions only if the individual or institution can show one or more of the following grounds:

- a. That the ruling was clearly contrary to the evidence;
- b. That the individual's or institution's actions did not constitute an infraction of NCAA rules;
- c. There was a procedural error and but for the error, the Committee on Infractions would not have made the finding of violation; or
- d. The penalty assessed was excessive such that its imposition constitutes an abuse of discretion.

The Infractions Appeals Committee acts on the basis of the record in the case. It will not consider evidence that was not presented to the Committee on Infractions, except in the limited circumstances.

All previous Infractions Appeals Committee reports may be found on the NCAA's Web site at www.ncaa.org in the Legislative Services Database for the Internet. Institutions and individuals are encouraged to review these reports and to use those involving similar violations and issues on appeal as guides when presenting an appeal.

2. THE RIGHT TO APPEAL.

a. Standing: Who may appeal?

An institution or an individual who has been found by the Committee on Infractions to have been involved in a violation of NCAA rules may appeal to the Infractions Appeals Committee. An individual may appeal regardless of whether the institution does so, and vice-versa. The appeals are independent of each other. An institution/individual may accept the findings of a violation and still appeal the penalty, and may appeal one element of the penalty while accepting others.

The appeal may be heard through either an in-person oral argument or written presentation. An institution may not request an in-person oral argument before the Infractions Appeals Committee unless the institution has made an in-person appearance before the Committee on Infractions. An involved individual may not request an in-person oral argument before the Infractions Appeals Committee unless the involved individual has made an in-person appearance before the Committee on Infractions.

The Infractions Appeals Committee will not hear an appeal submitted by an individual who has not attended (either in person or through written presentation) the Committee on Infractions' hearing. See NCAA Bylaw 19.6.3.

A letter explaining how to initiate an appeal and a copy of this Policies and Procedures Guide will accompany the Committee on Infractions report informing the institution and individual(s) of the right to appeal and the deadline for submission of the Notice of Appeal to the Infractions Appeals Committee.

b. Grounds for an appeal and standard of review.

Determinations of fact and violations found by the Committee on Infractions shall not be set aside on appeal, except after a showing that:

- (1) The Committee on Infractions' finding is clearly contrary to the evidence presented;
- (2) The facts found by the Committee on Infractions do not constitute a violation of the Association's rules; or
- (3) There was a procedural error and but for the error, the Committee on Infractions would not have made the finding of violation. See Bylaw 32.10.4.2.

A penalty imposed by the Committee on Infractions shall not be set aside on appeal, except after a showing that the penalty assessed was excessive such that its imposition constitutes an abuse of discretion. See Bylaw 32.10.4.1.

3. THE APPEAL.

a. Notice of Appeal.

- (1) Deadline for Submission.

Written notice of appeal by an institution/individual must be received by the NCAA primary staff liaison not later than 15 calendar days from the date of the public release of the Committee on Infractions' report. See Bylaw 32.10.1.

- (2) Notice of Appeal Content.

- (a) The institution/individual must submit the Notice of Appeal on the form provided by the Committee on Infractions.
- (b) The Notice of Appeal must identify on the form the specific findings and/or penalties being appealed to the Infractions Appeals Committee. The institution/individual must indicate the basis for appealing each finding or penalty.
- (c) The Notice of Appeal must indicate whether the institution/individual will submit its appeal only in writing or

will also appear in-person at the oral argument before the Infractions Appeals Committee. See Bylaw 32.10.1.

- (d) If an institution/individual appeals only a finding made by the Committee on Infractions, the penalties are not stayed and remain in full effect during the appeals process. If the institution/individual appeals one or more of the penalties imposed, only the specific penalties appealed are stayed pending the Infractions Appeals Committee's decision. This stay is automatic.¹
- (e) If an institution/individual appeals only specific penalties imposed by the Committee on Infractions, the Infractions Appeals Committee will confine its decision to the specific penalty (or penalties) appealed, but will consider all of the penalties imposed when making this decision.

b. Written Appeal.

The Infractions Appeals Committee will acknowledge receipt of a timely notice of appeal in writing. The institution/individual has 30 days from the date of the acknowledgement letter to file a written appeal with the Infractions Appeals Committee. The institution/individual must submit a written appeal in order to perfect its appeal to the Infractions Appeals Committee. Failure to submit a written appeal will result in dismissal of the appeal.

The written appeal must be sent directly to each member of the Infractions Appeals Committee. In addition, one electronic version (i.e., Word or pdf version e-mailed to NCAA staff liaison and their administrative assistant) **OR** 13 copies of the written appeal must be sent to the NCAA staff liaison to the Infractions Appeals Committee at the national office.

c. Access to the Record on Appeal.

After the institution/individual has filed a notice of appeal, the institution/individual will be provided access to the custodial file through the Web-based custodian system. If use of the Web-based custodian system is unavailable, the NCAA staff liaison will designate a custodial site for

¹ This does not affect the application of Bylaws 13.1.1.2.3 and 14.8.1.2 and the application of the official interpretation: [Reference 9/19/95, Item No. 2].

purposes of providing the institution/individual with access to portions of the record on appeal. The staff will consult with the institution/individual so that a convenient and appropriate custodian is selected.

Those portions of the record on appeal that may only be reviewed through the custodial arrangement include: (1) a copy of the official transcript of the Committee on Infractions' hearing; (2) the Committee on Infractions' report; (3) the Committee on Infractions' response to the written appeal; and (4) any additional materials which the Infractions Appeals Committee has authorized to become part of the record of appeal.

These materials may only be reviewed by the individual and authorized representatives of the institution/individual (including legal counsel). Duplication of material is prohibited. Those reviewing the material may take handwritten notes or may use a mechanical recording device to make verbal notes, provided no verbatim records of the reviewed information are made.

The institution/individual also may review these portions of the record on appeal at the NCAA national office.

d. Committee on Infractions Response to the Written Appeal.

- (1) The Committee on Infractions must file a response to a written appeal with the Infractions Appeals Committee within 30 days from the date of the letter acknowledging receipt of the written appeal. In addition, one electronic version (i.e., Word or pdf version e-mailed to NCAA staff liaison and their administrative assistant) **OR** one copy of response should be forwarded to NCAA staff liaison to the Infractions Appeals Committee, at the NCAA national office.
- (2) This response shall include: (a) a statement of the origins of the case; (b) the violations of the NCAA constitution and bylaws found by the Committee on Infractions; (c) disciplinary or corrective actions taken by the institution or conference or any other agency involved in the particular incident; (d) the Committee on Infractions' proposed penalties; (e) the issue(s) raised in the appeal; (f) the Committee on Infractions' response to the issue(s) raised on appeal; and (g) any additional information that was

presented to the Committee on Infractions during its consideration of the case that the Committee on Infractions deems relevant to consideration of the appeal. See Bylaw 32.10.5.

e. Institutional/Individual Rebuttal to the Committee's Response.

The institution/individual may submit a rebuttal to the Committee on Infractions' response. This rebuttal must be submitted within 14 days and must be confined to specific matters set forth in the Committee on Infractions' response.

The rebuttal must be sent directly to each member of the Infractions Appeals Committee. In addition, one electronic version (i.e., Word or pdf version e-mailed to NCAA staff liaison and their administrative assistant) **OR** 13 copies must be sent to the NCAA staff liaison to the Infractions Appeals Committee at the national office.

f. Written Submission by Enforcement Staff.

The enforcement staff may submit written information regarding perceived new information, errors, misstatements and/or omissions relating to the written appeal, Committee on Infractions' response and/or rebuttal documents. This submittal must be received within 10 days of the notification of the receipt of the rebuttal to the Committee on Infractions' response.

The submittal from the enforcement staff shall be limited to a direct and specific identification of the new information, errors, misstatements and/or omissions, and shall contain no argument. In addition, the identification shall include the specific page(s) at which the new information, errors, misstatements, and/or omissions appear and where in the record the information which the enforcement staff believes is correct or accurate appears.

g. Response to Written Submission by Enforcement Staff.

Within 10 days of the submittal by the enforcement staff, the appellant shall be permitted to provide a response which shall be limited solely to an identification of record information, if any, which supports the accuracy of the alleged error, misstatement, or omission identified by the enforcement staff. The appellant's submittal shall include no argument beyond such direct and limited identification. The Infractions Appeals

Committee will notify all parties of its determination of the accuracy of the challenged information.

h. Access to Appeal Submissions by other Parties.

- (1) **Appeal by the individual.** If the Committee on Infractions' decision involves an individual as well as an institution and the individual appeals to the Infractions Appeals Committee, the institution is not entitled, in every case, to receive a copy of the individual appellant's written appeal or rebuttal to the Committee on Infractions' response. The institution may request a copy from the individual appellant. If this request is denied, the institution may request a copy from the Infractions Appeals Committee. The Infractions Appeals Committee will make a copy available in appropriate circumstances.
- (2) **Appeal by the institution.** If the Committee on Infractions' decision involves an individual as well as an institution and the institution appeals to the Infractions Appeals Committee, the individual is not entitled, in every case, to receive a copy of the institution's written appeal or rebuttal to the Committee on Infractions' response. The individual may request a copy from the institution. If this request is denied, the individual may request a copy from the Infractions Appeals Committee. The Infractions Appeals Committee will make a copy available in appropriate circumstances.

i. Record on Appeal.

The Infractions Appeals Committee will consider only the record on appeal that shall consist of:

- (1) The official transcript and report of the Committee on Infractions' hearing;
- (2) The institution/individual's notice of appeal and written appeal;
- (3) The Committee on Infractions' response to the written appeal;
- (4) The institution/individual's rebuttal; and

- (5) The case summary developed by the NCAA enforcement services staff in preparation for the Committee on Infractions only to the extent the parties have stipulated to it or the Committee on Infractions has incorporated specific portions of it in its findings of fact.

The Infractions Appeals Committee may consider requests to supplement the record with additional material.

It is permissible for an institution/individual or the Committee on Infractions to provide, as part of its appeal submission, brief portions of materials submitted to the Committee on Infractions in conjunction with the hearing before that body. In appeals in which a summary disposition report is referenced, only relevant portions of the report should be attached to the appeal submission.

j. Consideration of Evidence.

The Infractions Appeals Committee shall consider only the information contained in the record(s) of proceedings before the Committee on Infractions and the record on appeal.

- (1) If an institution or involved individual seeks to introduce information/evidence during the appeals process that was not presented to the Committee on Infractions for its consideration **and** could reasonably have been ascertained prior to the Committee on Infractions hearing, it will not be considered by the Infractions Appeals Committee. (Bylaws 19.02.3, 32.10.5)
- (2) If an institution or involved individual seeks to introduce information/evidence during the appeals process that was not presented to the Committee on Infractions for its consideration **and** could not reasonably have been ascertained prior to the Committee on Infractions hearing, it is considered “new evidence” and should be handled accordingly. (Bylaws 19.02.3, 32.10.5)

k. Handling of New Evidence.

Any party wishing to rely on new evidence shall submit such evidence to the chair of the Infractions Appeals Committee. The Infractions Appeals Committee chair will forward material suggested to be “new evidence” to the Committee on Infractions appeals coordinator. Within 10

days, the Committee on Infractions, through the appeals coordinator, will state in writing whether such evidence could have materially affected any decision made by the Committee on Infractions. The Infractions Appeals Committee will make specific findings and notify all parties whether the case will be remanded to the Committee on Infractions or the new evidence excluded.

In no event will any party be permitted to present for the first time at a oral argument of the Infractions Appeals Committee any information that was not presented to the Committee on Infractions for its consideration.

4. THE ORAL ARGUMENT.

- **Oral Argument Procedures and Format.**

(1) The institution/individual shall be permitted a reasonable time to make an oral presentation to supplement its written appeal. The representative of the Committee on Infractions shall then be permitted a reasonable time to orally present the Committee on Infractions' response. The period of time for the presentation by the institution/individual and the Committee on Infractions shall be left to the discretion of the chair of the Infractions Appeals Committee.

(2) Oral Argument Attendance:

A minimum of three Infractions Appeals Committee members must be present to consider an appeal. If one or more of the Infractions Appeals Committee members is unable to participate in hearing a case, the chair may request the NCAA Division II Management Council to designate a former member or members of the Infractions Appeals Committee as a temporary substitute member for purposes of hearing and deciding that case. See By-law 19.2.1.

(a) Institution/Conference.

The chief executive officer and director of athletics of an appealing institution are required to attend the oral argument. Faculty athletics representatives may attend, but

are not required. Other university representatives whom the institution deems appropriate or a conference representative may attend the oral argument.

(b) Individual.

The individual who has requested an in-person oral argument, or their representative, is required to attend.

(c) The Committee on Infractions will be represented by its coordinator of appeals and the NCAA director for the Committee on Infractions.

(d) Others.

- i. The vice president for enforcement and two NCAA enforcement staff members familiar with the case may attend the oral argument.
- ii. Two representatives of nonappealing party may attend the oral argument as a silent observer.

(3) Participation in the Oral Argument by the Enforcement Staff:

The presentation by the enforcement staff in an Infractions Appeals oral argument shall not be accepted during either party's presentation, but instead must be made, if at all, at the conclusion of the presentation during which the information to which the enforcement staff wishes to respond is presented. The enforcement staff may identify new information, error, misstatement or omission only if such allegedly offending material is raised for the first time during the oral argument. If the new information, error, misstatement, or omission is contained in the parties' written submissions and is identified by the enforcement staff in the enforcement's written submittal, then the enforcement staff may not correct again if the information is repeated during the oral argument. Further, if the new information, error, misstatement, or omission is contained in the parties' written submissions and is not identified by the enforcement staff in the enforcement staff's written submittal, then the enforcement staff may not identify such material for the first time during the oral argument. This presentation may occur upon oral request by the enforce-

ment staff at the conclusion of the oral argument period during which the enforcement staff believes that the offending material was presented.

5. POST-ORAL ARGUMENT PROCEDURES AND POLICIES.

- (a) The Infractions Appeals Committee shall act on an appeal by majority vote of the members present and voting. See Bylaw 32.11.1.
- (b) The decision of the Infractions Appeals Committee is final and shall not be subject to further review by any other authority. See Bylaw 32.11.4.
- (c) The Infractions Appeals Committee's final written report shall be sent to the appellant institution/individual and all other appropriate parties involved one day prior to the public release.
- (d) The Infractions Appeals Committee chair will announce its final decision publicly in coordination with the NCAA's public relations staff.

Committee Members – Roster Posted on NCAA.ORG	
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