

## **Infractions Referral Committee Procedures**

These procedures constitute the operating procedures adopted by the NCAA Division I Board of Directors for the review and issuance of decisions by the Infractions Referral Committee (IRC) regarding requests to transfer infractions cases to the independent accountability resolution structure. The procedures serve as guidance to Division I member institutions, involved individuals, the enforcement staff and the NCAA Division I Committee on Infractions regarding the IRC's duties, responsibilities and process.

The Board of Directors may approve amendments to these procedures in consultation with the Independent Accountability Oversight Committee (Oversight Committee) without prior notice. Amendments are immediately effective when approved by the Board of Directors. The Oversight Committee will make editorial, formatting and/or typographical corrections as needed that do not rise to the level of an amendment.

The procedures do not constitute legal advice, do not have the force of law and do not confer any independent right, contractual or otherwise. The NCAA Division I Constitution and bylaws remain the controlling authority governing infractions cases. The procedures are available on the [Independent Accountability Resolution Process](#) website.

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## Chapter 1 - Definition

- 1-1. Involved Individual.** An involved individual is a current or former institutional staff member and current or former student-athlete who has received notice of involvement in alleged violations (i.e., named in the Notice of Allegations). *(Effective: 7/31/14, Adopted: 10/30/12, 7/31/2019)*

## Chapter 2 - Infractions Referral Committee

- 2-1. Defined.** The Infractions Referral Committee is an independent administrative body charged with deciding whether to approve or reject requests for referral of an infractions case to the independent accountability resolution structure. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-2. Duties.** The Infractions Referral Committee shall:
- 2-2-1.** Review referral requests and positions taken by parties and Committee on Infractions chair in response to the request. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
  - 2-2-2.** Prepare and issue the referral decision. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
  - 2-2-3.** Report to the Oversight Committee. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
  - 2-2-4.** Carry out such other duties as assigned by the Oversight Committee. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-3. Composition.** The committee shall consist of five members, including one Independent Resolution Panel (IRP) member, one Committee on Infractions member, one NCAA Division I Infractions Appeals Committee member, the NCAA Division I Council chair and the Council vice chair. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-4. Appointment.** The Oversight Committee shall appoint members to the IRC from the IRP, Committee on Infractions and Infractions Appeals Committee. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-5. Terms of Service.** The terms of service for the committee members shall be as follows:
- 2-5-1.** The IRP, Committee on Infractions and Infractions Appeals Committee members shall serve three-year terms and are not immediately eligible for reappointment. The terms commence on August 1 in the year in which the Oversight Committee appointed the member. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

- 2-5-2.** The terms of service for the IRP, Committee on Infractions and Infractions Appeals Committee members may expire on a staggered basis to provide continuity within the IRC. Such a member may be appointed for less than a full term. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-5-3.** The IRP, Committee on Infractions and Infractions Appeals Committee members who serve more than one-half of a term shall be considered to have served a full term. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-5-4.** An IRP, Committee on Infractions and Infractions Appeals Committee member who serves for one-half or less of a term may be reappointed to a new three-year term. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-5-5.** The terms of service of the Council chair and Council vice chair shall commence and coincide with their respective terms as the Council chair and vice chair. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-6. Quorum.** A minimum of three members must be present before the committee can begin to deliberate and take action on a referral request or other committee business-related matters. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-7. Conflict of Interest.**
- 2-7-1. Committee-Specific Conflict of Interest Policy.** Committee members shall not participate in the review, deliberation and decision on whether to refer an infractions case to the independent accountability resolution structure, if he or she is directly connected with the institution under investigation, or if he or she has a personal, professional or institutional affiliation that may create the appearance of partiality. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-7-2. Association-wide Conflict of Interest Policy.** Committee members shall not participate in the committee's review, deliberation, discussion or vote on any action that might bring direct or indirect financial benefit to the member or any organization in which the member is financially interested (other than the member's institution or the conference of which it is a member). A violation of this rule by a committee member shall not invalidate the action taken by the committee if, following disclosure of the conflict of interest, the committee authorizes, ratifies or approves the action by a vote sufficient for the purpose, without counting the vote of the committee member with the conflict of interest, and the Oversight Committee approves such action. All committee members shall agree to this policy prior to committee service and shall abide by the policy at all times. The current Association-wide conflict of interest policy is located on the NCAA website ([ncaa.org](http://ncaa.org)) or may be obtained from the NCAA national office. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

- 2-7-3. Recusal.** Committee members are responsible for identifying conflicts of interest. If a conflict exists, the committee member is expected to recuse himself or herself from the review, deliberation and decision related to the referral request. A substitute committee member may be appointed in accordance with Procedure 2-8. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-7-4. Disqualification by Party Request.** A party may seek to disqualify a committee member based on a conflict of interest. A party seeking disqualification must submit in writing the basis for disqualification to the committee chair through the secure filing and case management system not later than 15-calendar days after notification of the submission of a referral request unless otherwise specified by the committee chair. The committee chair may consult with the Oversight Committee chair regarding the party's request. The Oversight Committee has the final authority to determine whether a conflict of interest exists. If the Oversight Committee determines that a committee member has a conflict of interest, the committee member will be recused and a substitute committee member may be appointed in accordance with Procedure 2-8. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-8. Committee Member Substitution.** If a committee member is unable to participate in the review of a referral request, the Oversight Committee may, at the request of the committee chair, appoint a substitute committee member to participate in the review, deliberation and decision related to the referral request. The substitute committee member shall be from the same body as the committee member who is unable to participate. *(Effective: 8/1/2019, Adopted 7/31/2019)*
- 2-9. Ex Parte Communication.** Outside of the established process for the review of referral requests, the parties shall not communicate individually or collectively with the members of the Independent Referral Committee regarding referral requests, responses to referral requests or any decisions related to the review of a referral request. After the submission of a referral request, all communications shall be directed to the managing director of the Infractions Appeals Committees Office. Committee members receiving communications from a party concerning a referral request, referral response, referral decision or other matters before the committee should direct that communication to the chair of the committee. *(Effective: 6/23/2020, Adopted:6/23/20)*
- 2-10. Committee Chair.** The IRP member of the committee shall be the chair of the committee. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 2-10-1. Duties of the Chair.** The chair will be responsible for coordinating with the national office staff regarding the administration of the following duties:
- a. Overseeing logistics, administrative and other support related to the processing of referral requests.

- b. Scheduling of telephone conferences, video conferences or in-person meetings.
- c. Presiding over telephone conferences, video conferences or in-person meetings related to referral requests or other business.
- d. Reviewing and approving decisions made by the committee.
- e. Scheduling the release of referral decisions.
- f. Serving as the primary contact between the committee and the Oversight Committee. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

**2-10-2. Delegation of Duties.** The chair, or the vice chair when the chair is unavailable, may resolve procedural and docket management requests related to the processing of an open referral request review case. Such requests may include but are not limited to:

- a. Time and date extensions related to a referral request, a response to referral request and the submission of additional information requested by the committee.
- b. Leave for a party to file a submission that exceeds prescribed page limits.
- c. Any other requests the chair deems not to be substantial in nature. *(Effective: 6/23/2020, Adopted: 6/23/20)*

**2-10-3. Vacancy.** If the chair leaves the committee prior to the expiration of the chair's term, the Oversight Committee will appoint a new chair. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

**2-11. Vice Chair.** The vice chair is responsible for fulfilling the duties as chair, if the chair is unable to fulfill his or her duties. The vice chair will be elected by the committee. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

### **Chapter 3 – Confidentiality**

**3-1. Confidentiality.** Consistent with Article 19, infractions matters are confidential. *(Effective: 8/29/2019, Adopted: 8/29/2019)*

**3-1-1. Confidential Information.** The committee shall not disclose confidential information to those outside of the infractions process in contravention of applicable bylaws and procedures. Confidential information includes, but is not

limited to, submissions or filings related to a request for referral; investigative information; all other filings and other information submitted through the secure filing and case management system; and all other case-related information. *(Effective: 8/29/2019, Adopted: 8/29/2019)*

- 3-1-2 Limited Disclosure.** The committee may make a limited disclosure, including identifying the institution, when it accepts a case into the Independent Accountability Resolution Process. The disclosure will be limited to the fact the case is in the independent structure and note that no additional information will be provided until the release of a decision by the Independent Resolution Panel. *(Effective: 8/29/2019, Adopted: 8/29/2019)*

## **Chapter 4 – Referral Request Processing**

- 4-1. Secure Filing and Case Management System.** The committee will use a case management system to notify parties of actions taken by the committee related to the processing of an infractions case, as appropriate. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

## **Chapter 5 - Referral Standard and Factors**

- 5-1. Referral Standard.** The committee will approve referral requests to the independent accountability resolution structure if it determines the Association's interests are best served by resolving the case under the independent accountability resolution structure, including when a case involves unique policy issues or factors that when weighed in totality could impede accurate and effective resolution of the case under the current internal infractions resolution structure. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

**5-1-1. Referral Factors.** Factors pertinent to the committee's determination may include, but are not limited to, the following:

- a. Cases involving major policy issues that may implicate NCAA core values and commitments to the collegiate model.
- b. Stale or incomplete facts.
- c. Lack of acceptance of the core principles of self-governance such as adversarial posturing or refusal to cooperate.
- d. Actual or perceived misconduct by the involved parties.
- e. The scope, scale and duration of the case and other factual complications.



- f. Breaches of confidentiality.
- g. Increased stakes including potential penalties or other pressures driving institutional decision-making. *(Effective: 8/1/2019, Adopted 7/31/2019)*

## **Chapter 6 - Referral Request**

**6-1. Who May Submit a Referral Request.** The institution, vice president of enforcement and the Committee on Infractions chair may request the committee to refer a case to the independent accountability resolution structure. Involved individuals may not submit a request to refer a case to the independent accountability resolution structure. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

### **6-2. Timing for Submission of Referral Requests.**

**6-2-1.** The involved institution or vice president of enforcement may request referral at any time after the enforcement staff issues the notice of inquiry and within 15 calendar days after the Committee on Infractions receives the enforcement staff's reply to the case. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

**6-2-2.** The Committee on Infractions chair may request referral at any time after the enforcement staff issues the notice of allegations and within 15 calendar days after the Committee on Infractions receives the enforcement staff's reply to a case. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

### **6-3. Content of Referral Request.**

**6-3-1. Page Limit.** Referral requests shall be a written statement and must be limited to 10 pages. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

**6-3-2. Content.** The referral request should include an analysis of how the Association's interests are best served by resolving the case under the independent accountability resolution structure. As part of this analysis, the referral request should identify the referral factors and the impact of the referral factors within the case. Also, the referral request should reference supporting documentation by attaching or hyperlinking relevant documents to the referral request. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

**6-3-3. Multiple Requests During Case Processing.** In accordance with Procedure 9-5, the committee's decision in response to a referral request is final, binding, conclusive and not subject to further review. The institution, vice president of enforcement and Committee on Infractions chair may submit a subsequent referral request based on new information. All subsequent referral requests shall identify

the new information and explain the distinction between the current referral request and any previously denied referral requests in the case. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

**6-4. Submission of Referral Request.** Referral request must be submitted through the secure filing and case management system. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

**6-4-1. Notification of Other Parties.** Simultaneously with the submission of a referral request, the party submitting the referral request must provide a copy of the referral request to the other relevant parties to the infractions case (e.g., institution, involved individuals, vice president of enforcement and/or chair of the Committee on Infractions). *(Effective: 6/23/2020, Adopted: 6/23/20)*

**6-5. Confirmation of Referral Request.** Once a referral request is submitted, a confirmation of receipt is provided to the parties and the Committee on Infractions chair. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

**6-6. Access to Referral Request and Other Related Documents.** All referral requests and other documents or submissions related to the referral requests will be maintained in the secure filing and case management system and will be accessible to all parties in the case. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

## **Chapter 7 - Response to Referral Request**

**7-1. Who May Submit a Response to Referral Request.** All parties to an infractions case, including involved individuals, and the Committee on Infractions chair may submit a response to a referral request. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

**7-2. Timing for Submission of Response to Referral Request.** Any response to a referral request must be submitted within 20 calendar days of the confirmation of the submission of the referral request. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

**7-3. Content of Response to Referral Request.**

**7-3-1. Page Limit.** The response to the referral request shall be a written statement and must be limited to 10 pages. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

**7-3-2. Content.** The response to the referral request should include: (1) a clear articulation of position on the referral request; (2) a statement addressing the arguments and the analysis included in the referral request; and (3) a reference to supporting documentation. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

- 7-4. Submission of Response to Referral Request.** Response to referral request is submitted through the secure filing and case management system. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 7-5. Confirmation of Response to Referral Request.** Once a response to a referral request is submitted, the committee and all parties in the case will receive notification that a response to the referral request has been submitted. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 7-6. Access to Response to Referral Request.** All parties to the case will have access to the response to a referral request through the secure filing and case management system. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

## **Chapter 8 - Additional Information Requested by the Committee**

- 8-1. Request for Additional Information.** The committee may request additional information from institutions, involved individuals, the vice president of enforcement and/or the Committee on Infractions chair to assist the committee in making its determination to grant or deny a referral request. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 8-2. Submitting Additional Information.** The institutions, involved individuals, vice president of enforcement and/or the Committee on Infractions chair will be notified of the information requested and how it should be submitted, if the committee requests additional information. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

## **Chapter 9 - Referral Decision**

- 9-1. Referral Decision.** The committee's decision will be based on a review of the referral request, responses to the referral request and any additional information requested by the committee. There will not be an in-person hearing with the parties and the Committee on Infractions chair to decide the request. The referral decision will be determined by a majority vote of the committee. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 9-2. Contents of Referral Decision.** The committee shall include in its decision the rationale and the analysis for or against the referral to the independent accountability resolution structure. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 9-3. Timing of Referral Decision.** A decision related to the referral request will be drafted and released by the committee promptly following the review of submitted and requested information. *(Effective: 8/1/2019, Adopted: 7/31/2019)*
- 9-4. Notification and Provision of Referral Decision.** The institution involved individual(s), the vice president of enforcement, the Committee on Infractions chair, and the conference

office, for which the institution is a member, will receive a copy of the decision through the secure filing and case management system. Copies of the referral decision will also be sent to the Oversight Committee and select NCAA staff members. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

- 9-5. Finality of Referral Decision.** The committee's decision in response to a referral request is the final determination of whether it is in the best interest of the Association to resolve a case under the independent accountability resolution structure. Therefore, all decisions made by the committee are final, binding, conclusive and not subject to further review. Once a case has been referred to the independent accountability resolution structure, the case shall be resolved under the procedures and NCAA legislation governing that structure. *(Effective: 8/1/2019, Adopted: 7/31/2019)*

## **Chapter 10 - NCAA Policies<sup>1</sup>**

- 10-1. Expenses.** The committee is subject to Association expense policies. These include:

**10-1-1.** NCAA travel policies are provided to each new committee member. The Association's policies regarding meeting expenses are set forth in Bylaw 31.7.2. The NCAA pays for transportation to and from committee meetings, hotel room and tax charges at the meetings and a \$75 per diem for each day, or part thereof, involved in traveling to and from and attendance at the meeting. All members are expected to use Short's Travel, the Association's travel agency, for their transportation arrangements to committee meetings or other events paid for by the NCAA.

**10-1-2.** Airline transportation and the hotel room and tax are billed directly to the NCAA; the member needs only to pay incidental charges to his or her room when leaving the meeting site. After the meeting, each member will receive electronically a form on which to claim per diem and any other expenses permitted under NCAA policies. The member will receive reimbursement for those expenses from the NCAA national office after each meeting. Also, early in each calendar year, each member will receive a Form 1099 reporting the amounts paid during the preceding year, if that amount exceeds \$600. In such instances, the member will declare that amount in filing his or her income tax return for that year; therefore, members will want to record their committee-related expenses in order to deduct the appropriate amount. Some Board members may prefer to have their expense reimbursement paid directly to their institutions to eliminate the need for such personal record keeping.

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<sup>1</sup> These NCAA policies have been previously adopted by the Association prior to July 2019 and are effective for this committee August 1, 2019.

- 10-2. Speaking Agent Policy.** The president of the Association, and the chair of the Board of Governors, are the only individuals authorized to speak on behalf of the Association, except as outlined below.

An individual on a committee who speaks or opines on an Association issue only has the authority to express the view of that individual or the member institution or conference that the individual represents on the committee, unless the individual has been designated by the Board of Governors as a speaking agent of the Association on that issue.

Committee chairs are hereby designated as speaking agents of their committees regarding issues within their committees' jurisdiction on which there is a consensus, except that positions of advocacy on behalf of the committee or Association to be communicated in writing or orally to persons or entities external to the Association, must have prior approval by the Board of Governors or the president of the Association.

The president of the Association is hereby granted authority to designate additional speaking agents of the Association.

- 10-3. Defense and Indemnity.** The Association shall defend and indemnify any present or former employee, committee member or agent of the Association who was or is a party to, is threatened to be a party to, or who is subpoenaed to be deposed or to give evidence in, any civil, criminal, administrative investigative action or proceeding, including those brought by the Association, provided the conditions enumerated below are met. For purposes of this policy, "committee" shall include all Association committees, boards, cabinets, councils, subcommittees and panels. Conditions for defense and indemnification are:

**10-3-1.** The person requesting defense and indemnification is being named as a party, subpoenaed to be deposed, or to give evidence by reason of the fact that the person was or is an employee, committee member or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another association, corporation, partnership, joint venture, trust or other enterprise.

**10-3-2.** The person is deemed to have been acting within the scope of the person's duties to the Association.

**10-3-3.** The person is determined to have been acting in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Association in the performance of the person's duties to the Association. In respect to any alleged criminal action or proceeding, the person must also be determined to have had no reasonable cause to believe the alleged conduct was unlawful.

[Note: The termination of any action or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself,

create a presumption in regard to these determinations. However, if a person is adjudged to be liable for negligence or misconduct in the performance of the person's duty to the Association, there shall be no indemnification unless and only to the extent that the court in which such action or suit was brought, shall determine that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.]

**10-3-4.** The person promptly and timely notifies the Association's general counsel of the actual or threatened service of the process, subpoena and notice of deposition or other legal process, before incurring attorney fees or other expenses.

**10-3-5.** The person accepts counsel provided or approved by the Association and agrees to accede to the legal strategies approved by the Association's general counsel, including any settlement determinations. In the event that the person wishes to hire other counsel, or not accede to the Association's legal strategies, the Association shall not be obligated to defend or indemnify the person, except when it is determined that a conflict of interest exists with the Association, such that retaining separate counsel is warranted.

**10-3-6.** The person agrees to repay any expenses, including attorney fees, incurred in bringing or defending a civil or criminal action or proceeding paid by the Association in advance of the final disposition of such action or proceeding if it is ultimately determined that the person is not entitled to be indemnified by the Association as authorized in this policy.

For purposes of the policy, indemnification shall consist of payment against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action or proceeding.

Determinations as to whether indemnification is proper in circumstances because the person has met the applicable standards of conduct set forth in this policy shall be made:

- a. By the Board of Governors, by a majority vote of a quorum, consisting of members who are not parties to such action or proceeding.
- b. If such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested Board of Governors members so directs, by independent legal counsel in a written opinion.
- c. By the Association's president, if so delegated by the Board of Governors.

The indemnification provided by this policy is not exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of members or is

interested Board of Governors members otherwise, both as to action in the person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be an employee, committee member or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association may purchase and maintain insurance on behalf of any person who is or was an employee, committee member or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against the person and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the Association would have the power to indemnify the person against such liability under the provisions of this policy.

Effect of Change in Indemnification Law. If any change in any applicable law, statute, or rule expands the power of the Association to indemnify a person, the change shall be within the purview of the person's rights and the Association's obligations under this policy. If any change in any applicable law, statute, or rule narrows the right of the Association to indemnify a person, the change shall have no effect on this policy or the parties' rights and obligations under this policy, except to the extent otherwise required by law, statute, or rule to be applied to this policy.