

Message

From: Remy, Donald [/O=NCAA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DREMY]
Sent: 1/5/2012 7:54:49 PM
To: Omar Y. McNeill [mcneill@freehgroup.com]
CC: Roe, Julie [jroe@ncaa.org]; Walker, Amy [ajwalker@ncaa.org]; Walls, Tommie [twalls@ncaa.org]
Subject: FW: Presentation documents
Importance: High

Confidential

Omar –

Happy New Year. I hope that all is well. Attached are advance materials for our call tomorrow morning. As discussed, this informational briefing is being provided to your team to illustrate how the NCAA enforcement staff historically has examined issues involving institutional control and ethical conduct. We hope that it will be helpful as you independently examine similar issues related to your charge. Of course, it goes without saying that at this time the NCAA does not have an open enforcement inquiry or investigation into the issues at Penn State and this presentation is not focused on that institution. We hope to get you the additional information we discussed in short order.

To structure our discussion, note that we will walk through the power point slowly and the only supplement that would be good to read in advance is Number 3, which you may already have. The others are background reference material. Look forward to talking to you.

Warmest Regards,

Donald

CC: Julie Roe Lach

Institutional Control and Unethical Conduct

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January 6, 2012

NCAA Legislation

- ▶ Constitution 2.1
 - The Principle of Institutional Control and Responsibility

- ▶ Constitution 2.8.1
 - The Principle of Rules Compliance – Responsibility of the Institution (Monitoring)

- ▶ Constitution 6.01.1
 - Institutional Control

NCAA Constitution 2.1.1

It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including the approval of the budget and audit of all expenditures.

NCAA Constitution 2.1.2

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

NCAA Constitution 2.8.1

Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to assure compliance and to identify and report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions.

Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for compliance.

NCAA Constitution 6.01.1

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

Institutional Control Analysis

Analysis attempts to:

- Measure commitment to compliance.
- Understand why violation(s) occurred.
- Evaluate the atmosphere of compliance.

Institutional Control Analysis

Analysis involves examination of control exercised at all levels:

- President/Chancellor.
- Director of athletics.
- Head coach.

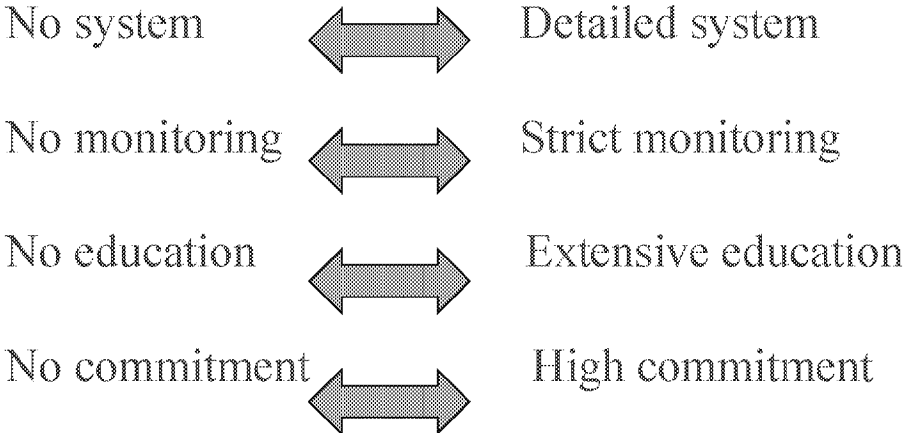
Institutional Control Analysis

Four Pillars of Institutional Control:

- Compliance systems.
- Monitoring/enforcement.
- Rules education.
- Commitment to compliance.

Institutional Control Analysis

Continuum of relevant facts:



Institutional Control Analysis

Determination of whether an institution is exercising proper institutional control involves an extremely fact-sensitive analysis.

- There is no mathematical formula or checklist.
- Situations will be evaluated on a case-by-case basis.

Compliance Systems

Compliance Systems

Systems should deter as well as detect.

- Publicize existence of systems to deter noncompliance.
- Adequacy of systems may be evaluated based on demonstrated history of self-detection.

Compliance Systems

- If a flaw in a system is discovered, promptly correct/improve the system.
- If a system fails to detect a violation, determine why and promptly take steps to improve the system.

Monitoring and Enforcement

Monitoring/Enforcement

Regularly check and document operation of compliance systems:

- Establish procedures for the review of documentation generated by the systems.
- Ensure that compliance forms are being used and used properly.
- Test the accuracy of the information supplied by personnel using the systems.
- Conduct independent, external audits of compliance systems at reasonable intervals.

Rules Education

Rules Education

Rules education efforts should be comprehensive and ongoing.

- Direct education at all persons and organizations promoting the institution's athletics interests.
 - Educate institutional staff members, coaches, student-athletes, season-ticket holders, booster organizations, etc.

Rules Education

Conduct education using different components and at varying intervals.

- Tailor materials to audience.
- Incorporate NCAA and conference programs if specialized knowledge or expertise is required.
- New personnel should be trained shortly after beginning employment.
- “Refresher courses” should be conducted on a regular basis.

Commitment to Compliance

Commitment to Compliance

“The pressure to run a winning program must not overcome the dedication of the institution to ethical conduct in all aspects of its athletics program...” (pg. 10 Principles of Institutional Control)

Commitment to Compliance

Expectation of compliance is communicated from the top level down.

- Make clear that there is an expectation of compliance.
- Make clear that wrongdoing will result in disciplinary action against persons responsible.
- Impose appropriate discipline for those found in noncompliance.

Commitment to Compliance

Emphasize a commitment to investigating and reporting transgressions.

- Promptly and properly investigate allegations.
- If wrongdoing is substantiated, promptly report violations to external authorities.
- Establish a history of self-detecting, self-investigating and self-reporting.

Commitment to Compliance

Effectively communicate the duty to report any perceived incidents of noncompliance.

- Implement a specific policy/procedure for reporting information.
- Advertise the existence of reporting procedures.
- Encourage all institutional staff members and athletes to report information.
- Take steps to prevent retaliatory actions against those who report information.

Commitment to Compliance

Duty to cooperate and self-police:

- Candid search for truth.
 - Ignoring or trying not to find information.
 - Asking the tough questions.

- Advocacy versus failure to fulfill duties.

Lack of Institutional Control Case Precedent

University of Southern California

June 10, 2010

- The general campus environment troubled the NCAA Committee on Infractions ... the behaviors fostered an atmosphere in which student-athletes could feel entitled to special treatment, which contributed to a noncompliant athletics program.
- In violation of its own stated policy at the time, the institution never undertook the follow up necessary to obtain complete information.
- There were signs of possible trouble that went unheeded by the administration of the institution and no follow up occurred.

Texas A&M University-Corpus Christi

March 25, 2009

- The NCAA expects those in leadership positions on its member campuses to act appropriately and report violations.
- NCAA ethical-conduct and exemplary-conduct legislation places an affirmative responsibility on an individual to do what is right, that is, “ethical.”
- The decision not to report information appeared to be based on concern that, if major violations were reported, it could cast the institution and its administration in a negative light while also jeopardizing its recent acceptance as a member of a Division I conference.

University of Kansas

October 12, 2006

- Newly hired AD was instructed by the chancellor to implement compliance changes recommended in the outside auditor's report. The AD stated, "compliance doesn't sell tickets," and changes were never made.
- After the chancellor instructed the AD to make the improvements suggested by the outside auditor, no one in administration followed up to make sure the AD complied.
- Contributing to the lack of institutional control was the fact that during a five-year period, the athletics department failed to timely report multiple secondary violations to the NCAA enforcement staff.

Head Coach Control

NCAA Bylaw 11.1.2.1

Head Coach's Control

NCAA Bylaw 11.1.2.1 - Head coach must:

- Promote an atmosphere of compliance within the program; and
- Monitor activities of assistant coaches and administrators.

Failure to do either may result in a lack of control violation for the head coach.

Head Coach's Control

A head coach is presumed to have knowledge, and therefore, is responsible for actions of individuals associated with his/her program.

- Presumption may be rebutted if coach can show:
 - a proper tone of compliance was set; and
 - appropriate monitoring was done.

University of Connecticut

February 22, 2011

- Head coach failed to promote an atmosphere for compliance and failed to monitor the program.
 - Violations involved phone calls, text messages by staff and inducements from booster to key prospect.

- Head coach “failed to report indicators of possible recruiting improprieties to the compliance office.”
(pg. 16 of Public Infractions Report)

**Ethical Policies and
Expectations:**

**Unethical Conduct
Exemplary Conduct**

NCAA Legislation

- Bylaws 10.01.1 and 11.1.1
 - Honesty and Sportsmanship

- Bylaw 10.1
 - Unethical Conduct

- Bylaw 19.01.2
 - Exemplary Conduct

NCAA Bylaws 10.01.1 and 11.1.1

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

NCAA Bylaw 10.1

Bylaw 10.1 identifies 10 types of unethical conduct, but specifically makes clear that the list of 10 is not limited to those delineated.

- > Bylaws 10.01.1, 10.1 and 11.1.1 collectively make clear that deceitful and dishonest behavior can be found to be unethical conduct.

Ethical Policies and Expectations Case Studies

Tennessee - 2011

Unethical Conduct/Failure to Exhibit Exemplary Conduct
– 10.1 and 19.01.2.

- Former head coach knowingly violated NCAA rules.
- Former head coach provided false and misleading information regarding involvement in violations.
- Former head coach attempted to influence others to furnish false and misleading information.

Tennessee – 2011 (Continued)

Honesty and Sportsmanship – 10.01.1 and 11.1.1.

- Three former assistant coaches provided false and misleading information regarding involvement in violations.
- This case included a finding of failure to monitor by the former head coach and institution – but not directly related to the unethical/exemplary conduct findings.

Texas A&M Corpus Christi - 2009

Unethical Conduct/Failure to Exhibit Exemplary
Conduct – 10.1 and 19.01.2.

- Former compliance director authorized and arranged for violations to occur.
- Former compliance director attempted to enhance personal financial situation by threatening to disclose unreported violations.

Texas A&M Corpus Christi - 2009

(Continued)

Honesty and Sportsmanship/Unethical Conduct – 10.01.1 and 10.1.

- Former athletics director purposely failed to report serious violations.
- This case included a lack of control finding, but not directly related to the ethical/exemplary conduct findings.

Summary

- Black and white definition of lack of institutional control does not exist – case-by-case analysis.
 - Four pillars will be analyzed.
- Head coaches need to promote compliance and monitor activities of staff.
- Unethical conduct involves commission and omission by coaches and administrators.

QUESTIONS & DISCUSSION