

**D-1A Athletics Directors Association
Compliance and Enforcement Task Force**
*Standards for Effective Compliance and Risk Management Programs/
Maintaining Institutional Control*
June 15, 2013

An effective compliance and risk management program must include policies and practices to allow responsible campus officials to exercise due diligence to prevent and detect inappropriate conduct and promote an ethical organizational culture. The following key elements provide for a comprehensive set of mechanisms to assist institutions with establishing a strong ethical organizational culture that proactively mitigates risks, and manages, controls, and responds to inappropriate conduct. The manner in which these measures are developed, implemented, and followed along with the overall attitude toward and atmosphere of compliance within the institution are vital factors.

Key elements of an effective compliance and risk management program that, if implemented and followed, may be sufficient to demonstrate institutional control and serve as mitigation in infractions cases include:

1. Promoting an ethical organizational culture.

Compliance is everyone's obligation. 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 and to compliance with NCAA regulations and policies of their respective conferences and institutions.

This is achieved through the following measures:

- a. The university president or chancellor, athletics director(s), head coaches and faculty athletics representative make clear, by words and actions, the university's and athletics department's core values related to ethical behavior with student-athletes, athletics department staff, university staff with day-to-day NCAA compliance responsibilities, and its supporters.
- b. The university president or chancellor, athletics director(s), head coaches and faculty athletics representative make clear, by words and actions, that those personnel who willfully violate NCAA rules, or who are grossly negligent in applying those rules, will be disciplined and made subject to termination.
- c. The university and athletics department foster a culture that encourages (1) the reporting of any perceived violations or misconduct without fear of retaliation, and (2) the regular questioning of compliance officials in cases of doubt.
- d. Compliance expectations are communicated both verbally and in writing on a regular basis and incorporated into the hiring and performance evaluation processes for all coaches, athletics staff, and university staff with day-to-day NCAA compliance responsibilities.

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- e. Head coaches create, foster, and maintain an atmosphere for compliance within their respective sport programs and adequately communicate, monitor, and document such efforts demonstrating head coach control.
- f. A senior compliance administrator is identified and has clearly defined responsibilities and authority for developing and implementing an effective compliance program.
- g. The institution and its staff members have a history of self-detecting, self-investigating, and self-reporting any violations.

2. Standards and Procedures

Establish standards and procedures to monitor, detect, and prevent inappropriate conduct.

This is achieved through the following measures:

- a. Policies and procedures exist and are in place to deter and detect violations.
- b. The policies and procedures should be clearly written and regularly communicated, relevant to day-to-day responsibilities, readily available, monitored and enforced, and re-evaluated on a regular basis.
- c. Standards of conduct and NCAA rules are readily available and disseminated or distributed to all athletics department staff and university staff with athletics compliance responsibilities on a regular basis.

3. Oversight

The governing authority must be knowledgeable about the content and operation of the program and exercise oversight with respect to its development, implementation, and effectiveness.

This is achieved through the following measures:

- a. The university president or chancellor has ultimate responsibility, final authority, and – working in conjunction with the athletics director(s) and faculty athletics representative – oversight responsibility for the conduct of the athletics program.
- b. The athletics director and senior compliance administrator, working in conjunction with the faculty athletics representative, make regular reports to other designated university management, senior athletics department management, and other governing or advisory entities (e.g., general counsel, Athletics Council or Board) to ensure they have a strong knowledge of the content and operation of the compliance program.

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- c. The senior compliance administrator has direct access to the university president or chancellor, the faculty athletics representative, all senior athletics department management, and university counsel.
- d. Athletic staff (including head coaches and those external to athletics with athletics responsibilities) are responsible to ensure that their staffs are operating in accordance with applicable NCAA rules.
- e. Job responsibilities, including compliance obligations, of all athletics staff are clearly defined and performance regularly evaluated.

4. Due Diligence in Delegating Authority

Avoid placing substantial authority with those in the organization who are known to have engaged in conduct inconsistent with an effective compliance and ethics program.

This is achieved through the following measure:

- a. The president or chancellor and athletics director and faculty athletics representative exercise due diligence to ensure, as much as reasonably possible, that individuals with compliance responsibilities (e.g., athletics director, compliance staff, faculty athletics representative, head coaches, etc.) have not engaged in illegal activities or in conduct inconsistent with an effective compliance and ethics program.

5. Education and Training

Take reasonable steps to provide regular and effective rules education by communicating standards and procedures and other aspects of the program throughout the organization, and ensure that compliance staff are appropriately educated and trained to perform the function at a high level of understanding and can provide appropriate rules education in a meaningful manner.

This is achieved through the following measures:

- a. The university president or chancellor, athletics director(s), and faculty athletics representative and make clear the importance of rules education and training and regularly communicate their expectation that participation in rules education and training activities provided by the compliance program is a required job responsibility for all athletics staff and an important obligation of student-athletes.
- b. All new athletics staff receives comprehensive rules compliance training.

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- c. The university conducts regular compliance training for its student-athletes, athletics department staff, university staff with day-to-day NCAA compliance responsibilities, and its supporters pertinent to their roles.
- d. The university evaluates the content of its training and education program periodically to determine whether the subject content is appropriate and sufficient to cover the range of compliance issues confronting its student-athletes, athletics department staff, university staff with day-to-day NCAA compliance responsibilities, and its supporters.
- e. The university supports training and development for its compliance staff to ensure staff is knowledgeable and current with the rules and regulations required to monitor, educate, investigate and detect violations, and enforce the rules.

6. Auditing and Monitoring

An important control exists if an independent university or outside entity undertakes regular audits of the athletics program to detect possible unreported violations of NCAA rules and to recommend changes in operating policies, methods, and procedures when such steps could help guard against future violations.

This is achieved through the following measures:

- a. The university or university system has a specified department that regularly audits or monitors operations throughout the athletics department and other departments of the university.
- b. There is periodic (internal and external) auditing or review of compliance processes and procedures to assure that existing processes and procedures are appropriate, adequate, engaged, and functioning as intended or necessary.
- c. There is periodic (internal and external) auditing or review of systems and forms for compliance monitoring to ensure NCAA rules are followed, are consistent with or exceed nationally recognized reasonable standards, and are made readily available and accessible to all staff.
- d. Reviews of problem areas identified through internal or external audits or reviews are conducted periodically to verify that any corrective actions were implemented.

7. Enforcement and Discipline

Reference: Federal Sentencing Guidelines Manual, Ch.8 Sentencing of Organizations, Part B2 Effective Compliance and Ethics Program (2010) and 1996-97 NCAA Guide to Rules Compliance Principles of Institutional Control

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Promote and enforce the program consistently throughout the organization.

This is achieved through the following measures:

- a. The institution has procedures in place that require timely communication among appropriate university offices in situations in which NCAA rules may have been violated or appropriate compliance with NCAA rules could be compromised.
- b. The institution has a written enforcement policy that defines the process for the review and reporting of suspected NCAA rules violations and identifies the roles of responsible officials for the appropriate conducting of any investigation.
- c. The institution regularly educates its staff and student-athletes that any individual involved in its intercollegiate athletics program has a duty to report any perceived or possible violations of NCAA rules or misconduct and can do so without fear of reprisals of any kind.
- d. The athletics department educates its staff regularly on the process for reporting potential violations and obtaining rule interpretations, and is regularly informed as to the identity of the person or office to whom to report suspected violations (e.g., athletics compliance office, faculty athletics representative).
- e. Reported compliance issues are investigated thoroughly and promptly consistent with the institution's written enforcement policy.
- f. Investigations are conducted and documented in accordance with the institution's written enforcement policy and procedures to ensure procedural consistency and integrity.
- g. Investigations of potential violations, corrective actions taken and the reporting of violations are communicated to the individuals charged with oversight for the athletics program (e.g., president or chancellor, athletics director, faculty athletics representative, general counsel, etc.).

8. Response and Prevention

Respond appropriately to inappropriate conduct and implement measures to prevent or deter further similar inappropriate conduct.

This is achieved through the following measures:

- a. The university has and publicizes a system, which may include mechanisms that allow for anonymity or confidentiality, so athletics staff, student-athletes, and other constituencies may report or seek guidance regarding potential compliance issues.
- b. Following any violation or instance of inappropriate conduct, preventative measures are implemented (e.g., education, enhancement of policies and procedures) to remediate, prevent, or deter future occurrences.

Reference: Federal Sentencing Guidelines Manual, Ch.8 Sentencing of Organizations, Part B2 Effective Compliance and Ethics Program (2010) and 1996-97 NCAA Guide to Rules Compliance Principles of Institutional Control

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9. Risk Assessment

Take steps to design, implement, or modify each requirement above to reduce the risk of any identified inappropriate conduct.

This element is achieved through the following measures:

- a. The university establishes a system and periodically conducts an assessment to determine its risks relating to NCAA compliance matters.
- b. The university implements controls to mitigate any identified risks.

10. Require the organization to assess its compliance program and modify it as appropriate to make the program more effective.

This is achieved through the following measures:

- a. The university conducts periodic assessments to ensure that the compliance program is reasonably designed, implemented, and enforced so that the program is generally effective in preventing and detecting rules violations and inappropriate conduct. Failure to have prevented or promptly detected a particular violation does not necessarily mean that the program is not generally effective.
- b. Assessments may vary from institution to institution. Higher standards or levels of monitoring may be appropriate in a particular area based on unique risk factors such as repeat issues, high profile issues, etc.

NOTE: The National Association for Athletics Compliance (NAAC) Reasonable Standards will be referenced when the general standards for effective compliance and risk management programs require more specificity in defining a minimum standard.

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VIOLATIONS THAT DO NOT RESULT FROM A LACK OF INSTITUTIONAL CONTROL.

An institution cannot be expected to control the actions of every individual who is in some way connected with its athletics program. The deliberate or inadvertent violation of a rule by an individual who is not in charge of compliance with rules that are violated will not be considered to be due to a lack of institutional control if:

- adequate compliance measures exist;
- they are appropriately conveyed to those who need to be aware of them;
- they are monitored to ensure that such measures are being followed; and
- upon learning that a violation has occurred, the institution takes timely and appropriate action to investigate, report the violation, and resolve the issue.

EXAMPLES OF ACTS THAT ARE LIKELY TO DEMONSTRATE A LACK OF INSTITUTIONAL CONTROL.

The following examples of a lack of institutional control are not exclusive, but they should provide important guidance to institutions as to the proper control of their NCAA compliance affairs.

- 1. A person with compliance responsibilities fails to establish a proper system for compliance or fails to monitor the operations of a compliance system appropriately.**
When an individual is responsible for ensuring that a particular rule or set of rules is not violated, that person will be considered to be exercising institutional control. That individual must not only ensure that the rules are known by all who need to know them but must also make proper checks to ensure that the rules are being followed.

It is important for institutions to understand that the mere compilation and distribution of rules and regulations, along with written compliance procedures, is not sufficient if no one regularly checks on the actual operations of the system.

- 2. A person with compliance responsibilities does not take steps to alter the system of compliance when there are indications the system is not working.**
If a system of control is in place, a single deviation by a member of the athletics staff or a representative of the institution's athletics interests will not be considered a lack of institutional control. However, if there are a number of violations, even if they all are minor, indicating that the compliance system is not operating effectively, the person(s) responsible cannot ignore the situation, but must take steps to correct the compliance system.

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- 3. A supervisor with overall responsibility for compliance, in assigning duties to subordinates, so divides responsibilities that, as a practical matter, no one is, or appears to be, directly in charge.**

The failure to designate who is responsible for ensuring compliance with NCAA rules is a serious breach of the obligations of an institution and a university athletics administrator. Individuals are unable to operate appropriately if they are uncertain of their duties and obligations. Moreover, those subordinates who are not in charge must know who is. They need to know the person or persons to whom they can turn for advice before taking an action that may be questionable. They also need to know to whom and how to report violations that come to their attention.

- 4. Compliance duties are assigned to a subordinate who lacks sufficient authority to have the confidence or respect of others.**

A supervisor may be acting in good faith when assigning responsibility for compliance to a subordinate. Nevertheless, that very action may make it appear that the institution is not serious about compliance. If coaches, alumni, supporters, and others thereafter ignore that individual, any violations that occur may then be considered the result of a lack of institutional control.

- 5. The institution fails to make clear, by its words and its actions, that those personnel who willfully violate NCAA rules, or who are grossly negligent in applying those rules, will be disciplined and made subject to discharge.**

Any operating compliance system may be thwarted by an individual who acts secretly in violation of the rules or who fails to ascertain whether a questionable action is or is not permissible. If an institution does not make clear that an individual's violations of NCAA rules will result in disciplinary action against the involved individual, and if it does not actually discipline those who are found to have violated such rules, it has opened the door to permitting further violations. In such a case, future violations of an individual nature will constitute failures of institutional control.

- 6. The institution fails to make clear that any individual involved in its intercollegiate athletics program has a duty to report any perceived violations of NCAA rules and can do so without fear of reprisals of any kind.**

Compliance is everyone's obligation. Loyalty to one's coworkers, student-athletes, or athletics supporters cannot take precedence over loyalty to the institution and its commitment to comply with NCAA rules. There is a lack of institutional control if individuals are afraid to report violations because they have reason to fear that if they make such a report there will be negative consequences.

Reference: Federal Sentencing Guidelines Manual, Ch.8 Sentencing of Organizations, Part B2 Effective Compliance and Ethics Program (2010) and 1996-97 NCAA Guide to Rules Compliance Principles of Institutional Control

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7. A director of athletics or any other individual with compliance responsibilities fails to investigate or direct an investigation of a possible significant violation of NCAA rules or fails to report a violation properly.

When a director of athletics or any other individual with compliance responsibilities has been informed of, or learns that there exists a possible significant violation of NCAA rules, and then fails to ensure that the matter is properly investigated, there is a lack of institutional control. Similarly, if an actual violation of NCAA rules comes to the attention of the director of athletics or a person with compliance responsibilities and there is a failure to report the violation through appropriate institutional channels to a conference to which the institution belongs and to the NCAA, such failure constitutes a lack of institutional control.

8. A head coach fails to create and maintain an atmosphere for compliance within the program the coach supervises or the head coach fails to monitor the activities of those who report, directly or indirectly, to the head coach.

A head coach has special obligation to establish a spirit of compliance among the entire team, including assistant coaches, other staff and student-athletes that report directly or indirectly to him or her. The head coach must generally observe the activities of his or her staff to determine if they are acting in compliance with NCAA rules. Too often, when staff is involved in a web of serious violations, head coaches profess ignorance, saying that they were too busy to know what was occurring and that they trusted their assistants. Given 2013 changes to the NCAA rules, head coaches are now presumed to have such knowledge. Such a failure by head coaches to control their teams, alone or with the assistance of a staff member with compliance responsibilities, is a lack of institutional control.

This is not to imply that every violation by an assistant coach involves a lack of institutional control. If the head coach sets a proper tone, verbally and through action, of compliance and monitors the activities of all assistant coaches in the sport, the head coach cannot be charged with the secretive activities of an assistant bent on violating NCAA rules.

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Background on the Division 1A Athletic Directors Association Compliance and Enforcement Task Force

Over seven years ago, the Division 1A Athletic Directors Association created a Task Force to study the issues and problems pertaining to “institutional control” as established in the NCAA enforcement procedure. The Task Force formally adopted a scope of work, mission, vision, and purpose to guide their work. The Task Force was advised by a Federal Court Judge, who was the architect for the Federal Sentencing Guidelines, and they sought the feedback from thought leaders and experts in this area. Specifically the Task Force embarked on this study with the mission of a governance, compliance, and enforcement model that is “Relevant, Responsive, Responsible, and Realistic”. A vision to create a national compliance and enforcement model that respects and cultivates the integrity of intercollegiate athletics, and contributes to the overall well-being of student-athletes. The intent was to establish a system that effectively and efficiently holds all members accountable to clear, concise, and reasonable standards. During the seven year study, the Task Force maintained communication with the NCAA to advise them of the progress.

Last April, the NCAA asked for a formal recommendation from the Task Force for a new model for institutional control. The Task Force responded back to the NCAA in July, by providing a document recommending guidelines for reasonable standards to establish effective compliance programs with emphasis on the preservation of institutional control. The NCAA accepted the document and did two things. First, the Enforcement Staff reviewed the Task Force document, and actually applied the elements of the recommendations to recent cases involving institutional control. They found that in each case, the Task Force recommendations provided clarity to the consideration of institutional control concerns. Second, the Committee on Infractions (COI) also reviewed the document and applied the recommendations to the institutional control issues in their current cases. The COI responded by saying the Task Force recommendations should be distributed to every institution as a guideline for the establishment of an effective compliance program, and in particular, the COI is now using the document as a guide in situations where the enforcement staff brings a charge of institutional control. Further, the COI has requested the creation of a working group to include members of the Task Force, members of the COI, and members of the NCAA enforcement staff to continue discussion on the topic of institutional control and specifically this document.

The Task Force was comprised of the following Athletics Directors and leaders from NAAC (National Association of Athletic Compliance):

DeLoss Dodds, co-Chair
Chris Plonsky, co-Chair
Eric Hyman
Kevin White
Dan Guerrero
Gene Smith
Dave Brandon
Joe Castiglione

Amy Folan
Julie Cromer
Kate Hickey
Judy Van Horn
Joey D’Antonio
Tony Hernandez

Reference: Federal Sentencing Guidelines Manual, Ch.8 Sentencing of Organizations, Part B2 Effective Compliance and Ethics Program (2010) and 1996-97 NCAA Guide to Rules Compliance Principles of Institutional Control