



**REPORT OF THE
NCAA DIVISION I BOARD OF DIRECTORS
INFRACTIONS PROCESS COMMITTEE
DECEMBER 13, 2021, VIDEOCONFERENCE**

1. **Review of Recommendations to the NCAA Division I Board of Directors.** The NCAA Division I Board of Directors Infractions Process Committee revisited and reaffirmed its support for the following recommendations developed during the committee's November 11 videoconference for the Board of Directors to consider in January:
 - a. **Temporary Suspension of Referrals to the Independent Accountability Resolution Process (IARP).** The Infractions Process Committee, with support from the Independent Accountability Oversight Committee, recommends that the Division I Board of Directors enact emergency legislation to immediately suspend the referral of cases into the Independent Accountability Resolution Process until August 31, 2022, for the following reasons:
 - 1) A temporary suspension is appropriate due to the current restructuring of the NCAA and the work of the NCAA Division I Transformation Committee. The Transformation Committee will be reviewing all aspects of Division I, including the infractions program. The review of the infractions program will include a critical examination of the IARP, with a focus on whether the IARP should continue in its present form, be revised or discontinued. As a result of this review, the Infractions Process Committee believes it prudent to temporarily suspend further referral of cases to the IARP until the Transformation Committee completes its review of the infractions program and decides the future of the IARP.
 - 2) Due to the extensive time it has taken to resolve the six cases currently in the IARP, specifically the cases that were thoroughly investigated by the enforcement staff, concerns have been raised about the efficacy of the IARP. Membership confidence in the IARP is low as cases remain unresolved. Accordingly, the Infractions Process Committee does not believe adding new cases to the process at this time would be in the best interests of the infractions program, the IARP or the Association. Rather, the committee believes the best way to support the IARP and enhance the credibility of that process is to promptly resolve the six cases currently in that process. Adding more cases to the IARP would have the opposite effect.
 - 3) The six cases currently in the IARP have significantly taxed the structure, as well as the staff supporting the IARP. When the IARP was authorized, the general belief was that one to two cases would be processed through the independent structure. The number of firms in the external investigators and external advocates pool, as well as the number of Independent Resolution Panel (IRP) members, was established based on the expectation of processing one or two cases in the IARP a year. Surprisingly, the actual number of cases is six, which the current structure was not designed to

handle. Adding more cases to a structure that is already operating beyond its capacity would only further tax the IARP and lead to additional delays in resolving the cases currently in the pipeline.

For these reasons, the Infractions Process Committee believes a temporary suspension of further case referrals to the IARP is not only appropriate but necessary. This temporary suspension will provide sufficient time to review the IARP and its outcomes without further burdening the structure with new cases.

A temporary suspension will not affect the six cases that are currently in the IARP, as those cases will continue to be processed until they are adjudicated. The temporary suspension will only prohibit the submission of requests to accept cases into the IARP after the date the temporary suspension is imposed. All infractions cases would remain in the peer-review model and be adjudicated by the NCAA Division I Committee on Infractions until the Transformation Committee completes its review of the infractions program and decides the future of the IARP.

Due to the high-profile nature of the six cases in the IARP, the Infractions Process Committee recognizes the need to develop appropriate messaging about the temporary suspension to the membership, media and other third parties should it be approved by the Board of Directors in January. Accordingly, the committee has instructed the NCAA's hearing operations and governance staffs to engage with the NCAA's external engagement staff in advance to prioritize the development of appropriate messaging concerning the temporary suspension.

- b. Levels II and III Processing Discretion.** The Infractions Process Committee recommends for the following reasons that the Division I Board of Directors allow the NCAA enforcement staff to use its discretion to process cases as Level III that might arguably satisfy the technical definition of Level II:
- 1) Doing so ensures that the infractions process serves its intended role in promoting compliance with established rules and focusing on violations that most undermine the collegiate model.
 - 2) While current legislation already implies that discretion be used when determining how to process most rules violations, this recommendation will provide additional support for a strategic focus on resolving all infractions matters more efficiently. Specifically, it will allow all components of the infractions process to dedicate appropriate attention and resources to the behaviors of most significance to the division. It will also allow faster

outcomes to be reached in cases that do not necessarily require full, formal adjudication. (Cases resolved as Level III can be processed more efficiently because there will be no charging documents, briefing materials or committee hearings.)

- 3) The recommendation does not undermine or lessen the accountability for any violation processed in this manner; rather, it allows for the expeditious application of impactful penalties directly related to the conduct/individuals at issue.
- 4) The recommendation intentionally does not prescribe bylaws or violations that would fit expressly into this category; rather, it directs the enforcement staff to use its discretion on a case-by-case basis.

2. **Interaction with the Transformation Committee.** The Infractions Process Committee began discussing how best to interact with and inform the newly appointed Transformation Committee, noting the insights members have developed regarding how to potentially refine and improve the infractions process in Division I. In particular, and in anticipation of a new constitution, the committee discussed the resulting flexibility that could be afforded to each division and how that could affect the management of the infractions and enforcement processes in each.

While the Infractions Process Committee did not determine specific recommendations at this time, members agreed that the management of enforcement per division is an item that merits the Transformation Committee's attention and should continue being contemplated during future Infractions Process Committee meetings as well.

3. **Infraction Process Committee roster.** The Infractions Process Committee noted that Karen Paisley has accepted a new permanent role on campus at the University of Utah and will no longer be able to serve as the FAR, or as a member of this committee beyond today's call. NCAA staff will solicit nominations for another faculty athletics representative to join the committee in the new year.
4. **Review of Previous Report.** The Infractions Process Committee approved the report from its November 11 videoconference as presented.
5. **Future Videoconferences.**
 - 1:30 to 3 p.m. Eastern time, Wednesday, January 26, 2022.

Infractions Process Committee chair: Jim Harris, University of San Diego
Staff Liaisons: Emily Capehart, Academic and Membership Affairs
Jenn Fraser, Law, Policy and Governance
Alexandra Ingram, Law Policy and Governance
Kevin Lennon, Law, Policy and Governance
Marnae Mawdsley, Office of the Committees on Infractions

Division I Board of Directors Infractions Process Committee December 13, 2021, Videoconference
Attendees:
Ronnie Green, University of Nebraska, Lincoln.
Jim Harris, University of San Diego.
Geoff Mearns, Ball State University.
Karen Paisley, University of Utah.
Greg Sankey, Southeastern Conference.
William Smith, Bryant University.
Absentees:
Adela de la Torre, San Diego State University.
Natalie Robinson, University of Washington.
Harlan Sands, Cleveland State University.
Guests in Attendance:
None.
NCAA Staff Liaisons in Attendance:
Emily Capehart, Jenn Fraser, Alexandra Ingram, Kevin Lennon and Marnae Mawdsley.
Other NCAA Staff Members in Attendance:
Brynna Barnhart, Gary Brown, Derrick Crawford, Jon Duncan, Meghan Durham, Saquandra Heath, Scott McDonald, Matt Mikrut, Bridget Rigney, Jared Tidemann, Wendy Walters and Laura Wurtz.