

Can the University Undertake Certain Actions to Decrease the Length of a NCAA Inquiry?

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During his State of the Association speech, NCAA President Myles Brand indicated that the association's investigations "must be timely, so as to minimize adverse consequences to the entire university and they must be sound." He indicated that the number of cases has increased modestly over the past decade. It also has been reported that the length of time for NCAA inquiries has increased slightly over the past few years.

As the major case coordinator for the NCAA Enforcement Staff during much of the 1990s, I was concerned with the timeliness of investigations and the potential impact that it could have upon an institution. Since starting The Compliance Group, I remain concerned about the length of investigations and the potential negative impact that it can have. In his annual speech, Brand indicated that the enforcement staff will hire additional investigators and it will also review its internal procedures in order to be more "efficient and timely." Those efforts are focused on the national office and should be applauded. Nevertheless, an institution can undertake efforts with the NCAA Enforcement Staff and Committee on Infractions to quicken the inquiry if the university is involved with this investigative process.

A brief overview of the various stages in the process is helpful to understand the possible actions that can be undertaken. The enforcement staff will initiate an inquiry when reasonable information is provided in order to determine whether a possible violation occurred and whether a Notice of Inquiry is sent to the institution. This notice is sent if the enforcement staff has developed "reasonably reliable information indicating that an institution has been in violation of the association's governing legislation." After the enforcement staff has finished its inquiry, assuming that the enforcement staff believes a violation occurred, it will send a Notice of Allegations. The university will respond and a hearing is held before the Committee on Infractions.

What can a university do to decrease the time for the enforcement staff's inquiry? Overall, the institution should be engaged in communication with the enforcement staff regardless of the current stage of the case. Such communication provides the university:

- (i) more knowledge of the current status of the case;
- (ii) the opportunity to ask the enforcement staff to assist it in its investigative efforts in order to reduce investigative time; and
- (iii) the opportunity to make the enforcement staff more conscious of the timeliness of the investigative process by asking about a timeline for the completion of the inquiry.

More specifically, prior to or after the notice of inquiry, the institution should offer to assist the enforcement staff in conducting certain interviews. While the enforcement staff may be reluctant to allow the institution by itself to conduct interviews with the major principals in the case, interviews with secondary "sources" could be undertaken by the institution. The university also should ask to accompany the staff on "major" interviews, if possible, in order to possibly decrease the necessity for another interview at a later time.

In any infractions case, there are at least three involved parties: the enforcement staff, the university, and the Committee on Infractions. Other involved parties could be coaching staff members and student-athletes. The more separated these individuals are from the institution, the greater the probability for delays in the processing of a case. While it is difficult to have a good relationship with a coaching staff member who is being released for his or her involvement in possible violations, the institution should be cognizant of opportunities to lessen the likelihood of delays in the inquiry. For example, instead of the enforcement staff negotiating with the then former coach and the coach's legal counsel about an interview, a stipulation in the resignation agreement would be that the coach interviews with the NCAA Staff and institution in a timely manner.

Concerning the Committee on Infractions, while the enforcement staff and the institution can undertake efforts during the inquiry to reduce the length of the investigation, the case could be bogged down due to the scheduling of cases before the Committee on Infractions. Similar to communication with the enforcement staff, the institution could begin to communicate, in cooperation with the enforcement staff, with the committee through the committee's staff administrator, no later than immediately after a Notice of Allegations is forwarded to the university. While the Committee has to "juggle" the interests of the institution versus other institutions who may be in a similar position, it is beneficial for the staff administrator to understand the university's willingness to conclude the issue.

Finally, one of the most effective ways to speed up the processing of a case is to change the classification of the case from major to secondary. Over the past few years, I believe the threshold for a major case has been lowered. Although the enforcement staff initially makes the determination on the processing of a case as secondary or major, the committee ultimately determines the case's severity. As a result, the committee can reduce or raise that threshold, if desired. The institution should present its argument that the case is secondary, if appropriate, to the staff prior to or after reviewing a Notice of Allegations. An article in a future newsletter will discuss the classification of secondary and major violations.