









## Conflicts of Interest, Bias, and Prejudice

- Follow your conflict of interest policy consistently
- Identify conflicts early
- Training



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## Scenario re: Conflicts of Interest Policy

- **Policy Language:** The Title IX Coordinator, investigator, hearing officer, administrative officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these institution officials has a material conflict of interest or material bias must raise the concern promptly so that the institution may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal or otherwise.

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## Scenario re: Conflicts of Interest Policy

- Female Diving Team Member accuses Male Swimming Team Member of non-consensual sexual intercourse.
- You are the assigned investigator and you identify as female.

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## Maintaining Confidentiality

- Communicating on issues outside of your office on as needed basis
- Importance of updating the parties
  - Confidentiality v. Anonymity
- Anti-retaliation policy



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## Investigations Involving Student Athletes – Issues to Consider and Best



## **Williams v. Board of Regents of University System of Georgia (11<sup>th</sup> Cir. 2007)**

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- Findings:
  - Investigation and immediate response were not improper
  - Waiting nearly a year after assault and approximately 8 months after completion of initial investigation was deliberately indifferent
  - Rejected arguments that the University's own hearing process was delayed pending the outcome of criminal proceedings against the student athletes

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## **Best Practices for Investigations**

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- Preparation
- Building rapport
- Listen to verbal and non-verbal cues

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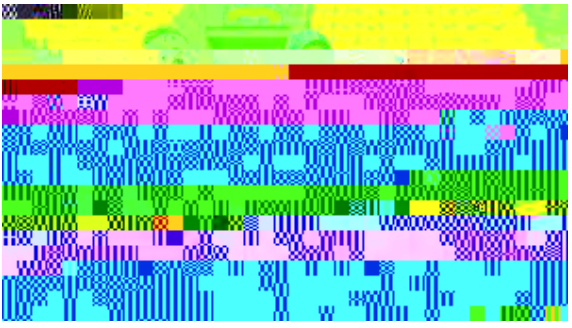
# Student Athlete-Coach Investigations

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## Unique Factors

- Power dynamic between coaches and players
- Reluctant reporters
- Cooperation issues
- Team dynamics



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## **DeCecco v. University of South Carolina (D.S.C. 2013)**

- Plaintiff sued the University and the coaches for Title IX violations and violations of her Constitutional rights, among other things
- Court found actual report to athletic department administrators did not indicate allegations of sexual misconduct

The athletic department made itself available to discuss any of Plaintiff's concerns through various meetings, but Plaintiff never reported sexual misconduct, only communication issues

- Individual coaches' knowledge of allegations could not be imputed upon the University

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## **Kesterson v. Kent State University (6th Cir. 2020)**

- Plaintiff was a female athlete who reported to her coach that the coach's son, a male athlete at the University, had raped her
- Plaintiff's coach tried to keep the situation between themselves and discouraged Plaintiff reporting the incident

Plaintiff's coach did not report the incident despite being a mandatory report under University policy

The coach then began to treat Plaintiff less favorably than other players

- Plaintiff later told other University personnel of the rape, but nobody formally reported the incident
- Plaintiff later contacted the University's Title IX office herself and reported the rape as well as her coach's failure to report

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## Kesterson v. Kent State University (6th Cir. 2020)

- Plaintiff sued alleging violations of her Constitutional rights and for Title IX violations
- Court found that it was clearly established law that a coach cannot retaliate against a player for reporting sexual misconduct
- Court found that Plaintiff's coach, and other University personnel, should have reported allegations to the University's Title IX office

However, none of the University personnel that Plaintiff reported to were "appropriate persons" such as to establish actual notice necessary to invoke Title IX liability

Failure to follow institutional mandatory reporting policy did not amount to deliberate indifference for purposes of Title IX liability

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## Best Practices for Investigations

- Maintain confidentiality to establish and retain trust between athletes and coaches
- Clearly explain anti-retaliation policies to all parties and witnesses in an investigation
- Reinforce reporting obligations to all athletics staff and coaches

Discourage coaches handling situations "in-house"

- When meeting with athletes, be thorough and exhaust scope of reports
- Be aware of concerns regarding balance of power



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# NCAA Investigations

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## Overview

- Types of NCAA inquiries that may involve student-athletes.
- Student-athlete requirements pursuant to NCAA rules.
- NCAA interview notice form.
- Case precedent.
- Limited Immunity.
- Other Considerations.

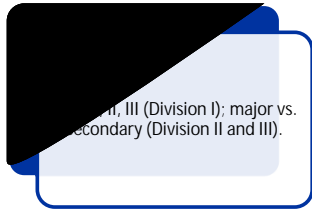


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# Types of NCAA Inquiries



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## Student-Athlete Requirements

- Bylaw 10.1 Unethical Conduct (Division I, II, III)
  - Applies to Prospects and enrolled student-athletes.
  - Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or individual's institution;
  - Knowingly furnishing or influencing others to furnish false or misleading information concerning involvement or knowledge relevant to possible violation of an NCAA regulation;
  - Competing under an assumed name;
  - Failure to provide complete and accurate information to the NCAA, NCAA Eligibility Center or institution regarding amateur status.

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## Student-Athlete Requirements

- Bylaw 10.3 Prohibition Against Sports Wagering Activities.
- Violation of Bylaw 10 can significantly affect student-athlete's eligibility.
- NCAA Student-Athlete Reinstatement Guidelines (Separate process managed by another department at the NCAA, not under purview of enforcement) – lose a season, sit a season to permanent ineligibility.

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## NCAA Interview Notice Form

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Division I, II and III.

“You are about to be interviewed by a representative of the NCAA enforcement staff. You may be represented by personal legal counsel during this interview. Information obtained during this interview may be shared with NCAA Eligibility Center. Prior to this interview, the NCAA would like to notify you. LLP/All

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## NCAA Case Precedent

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**NCAA News Release**

**Division I Committee On Student-Athlete Reinstatement Upholds Staff Decision For Dez Bryant**

**For Immediate Release**  
Wednesday, November 5, 2009


**Contact(s)**  
Stacey Osburn  
Associate Director of Public  
and Media Relations  
317/917-6117

The Division I Committee on Student-Athlete Reinstatement, an independent membership committee, has upheld the NCAA staff decision regarding Oklahoma State University football student-athlete Desmond Bryant. With this decision, Mr. Bryant will be required to sit out a season while being charged a season of eligibility as a condition for his reinstatement. The student-athlete was declared ineligible by the university for violations of the NCAA ethical conduct and preferential treatment rules.

The Division I Committee on Student-Athlete Reinstatement is comprised of commissioners, athletic directors and faculty athletics representatives from NCAA member colleges, universities and conferences. The committee has the final authority for all reinstatement decisions.

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## NCAA Case Precedent

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- **Dez Bryant Case (2009)** – interviewed by NCAA investigators about meeting with Deion Sanders because of concern about connection with a professional agent. Asked if he worked out with Sanders, visited Sanders’ home and met with agent. Bryant denied ever meeting with Sanders when he had in fact met with Sanders. Question whether there was an underlying violation but nevertheless suspended the remainder of the 2009 season.
- **James Wiseman Case (2019)** - NCAA notified that Wiseman likely ineligible and he played, sought TRO, received and played 2 games, eventually suspended 12 games, dropped suite and left institution. University of Memphis addressing through NCAA infractions process.
- **Student-Athlete Reinstatement cases** are not publicly available, membership access through a system called RSRO, student-athlete’s names and institution redacted.

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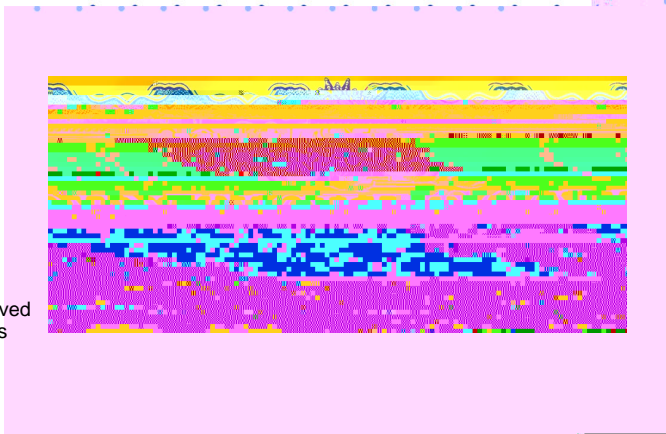
## NCAA Limited Immunity

Authorized by Bylaws 19.3.7-(c) and 19.3.7-(d) (Division I) and Bylaw 32.3.8 (Division II and III).

Institution or Attorney can make request of NCAA enforcement staff, decided by chair of NCAA COI upon recommendation.

Most often with former student-athletes who received impermissible benefit or other violation at previous institution.

Limited, because protects individual from consequences from NCAA legislation, not from actions that could be taken by individual's institution or future violations.



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## Other Considerations



Statute of Limitations.



Academic violations used to be included in Bylaw 10, now Bylaw 14 (student student vs. institutional or other assistance).



Follow institutional policy for all students with respect to academics – Involvement of others.

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