



Preparing for the New Attestation Requirements under the NCAA Policy on Campus Sexual Violence

April 5, 2022

On April 27, 2021, the NCAA Board of Governors revised the organization's [Policy on Campus Sexual Violence](#) (the "Policy") to reflect an emphasis on individual accountability. Beginning in the 2022-2023 academic year, school officials will need to annually attest to compliance with three new requirements in addition to the three requirements already being attested to. These new requirements center around all student-athletes annually disclosing any conduct that resulted in discipline through a Title IX investigation or criminal convictions for sexual, interpersonal, or other acts of violence, and transfer student-athletes disclosing any pending Title IX investigations at the school they are leaving.

Although institutions will not have to submit an attestation addressing the new requirements until between March 1 and May 15, 2023, at that time institutions will be attesting that the requirements were met during the 2022-2023 academic year and therefore need to have the requisite policies and forms in place prior to the Fall 2022 semester.

Attestation Requirements

Currently, each college or university Chancellor/President, Director of Athletics, and campus Title IX Coordinator is required to annually attest that:

1. The athletics department is informed on, integrated in, and compliant with institutional policies and processes regarding sexual violence prevention and proper adjudication and resolution of acts of sexual violence.
2. The institutional policies and processes regarding sexual violence prevention and adjudication, and the name and contact information for the campus Title IX coordinator, are readily available within the department of athletics, and are provided to student-athletes.
3. All student-athletes, coaches and staff have been educated each year on sexual violence prevention, intervention and response, to the extent allowable by state law and collective bargaining agreements.

Beginning in the 2022-2023 academic year, in addition to attesting to the three requirements above, each college or university Chancellor/President, Director of Athletics, and campus Title IX Coordinator must also attest that:

(1) All student-athletes, either incoming, continuing, or transfer students, have completed an annual disclosure of the student-athlete's conduct that resulted in either (a) discipline as a result of a Title IX proceeding; or (b) a criminal conviction for sexual, interpersonal, or other acts of violence such as murder, manslaughter, and aggravated assault. Additionally, transfer students are required to disclose whether any Title IX proceedings were incomplete at the time of transfer.

(2) The institution has taken reasonable steps to confirm whether incoming, continuing and transfer student-athletes have been disciplined through a Title IX proceeding or criminally convicted of sexual, interpersonal or other acts of violence. Additionally, if a student-athlete attempts to enroll in a new NCAA member institution, all NCAA member institutions must share the transferring student's relevant disciplinary information and incomplete Title IX proceedings as a result of transfer with the prospective school in a manner consistent with federal and state law.

(3) If the institution chooses to recruit an incoming student-athlete or accept a transfer student-athlete, it must have a written procedure instructing staff to gather information that reasonably yields information from the former institution(s) to put the recruiting institutional leadership on notice that the student left the institution with an incomplete Title IX proceeding, was disciplined through a Title IX proceeding, or has a criminal conviction for sexual, interpersonal or other acts of violence.

Additionally, each school's athletic department is required to cooperate with institutional investigations into sexual and interpersonal violence regarding student-athletes and athletics department staff in a manner compliant with institutional policies for all students.

As noted above, this attestation must be provided to the NCAA between March 1 and May 15, 2023. However, institutions should begin reviewing their policies now to ensure compliance with the new requirements during the 2022-2023 academic year.

Disclosure Requirements

Per the [Student-Athlete FAQs](#) provided by the NCAA, student-athletes are not required to disclose if they were a victim in any of the above proceedings, nor are student-athletes required to disclose the existence of a proceeding if they were found innocent or not responsible. However, informal resolutions under Title IX proceedings that are the result of a final finding of responsibility for sexual violence, interpersonal violence, or other acts of violence as defined in the Policy should be disclosed.

Further, the [Administrator FAQs](#) clarify that there is not a designated timeframe on how far back a school should look into a student-athlete's conduct. However, acts committed in high school and college should be included in the student-athlete's disclosure.

If a student-athlete discloses a Title IX proceeding or criminal conviction, it is the school's responsibility to determine the student-athlete's eligibility for competition based on its campus and conference policies.

Failure to Comply

Student-athletes who fail to accurately and fully disclose the required information may face penalties as determined by the institution. These may include a loss of athletics eligibility.

The failure of a college or university to complete the annual attestation requirements will prevent the school from hosting any NCAA championship competitions in the next applicable academic year. Additionally, the school will be listed on [ncaa.org](https://www.ncaa.org). There is currently no NCAA waiver process for failure to meet all policy requirements.

Additional Resources and Considerations

The Policy is accompanied by an NCAA Sexual Violence Prevention [Tool Kit](#), a Task Force Recommended [Timeline](#) and [Checklist](#), an [Administrator FAQ](#), and a [Student-Athlete FAQ](#) along with sample policies and procedures available on [ncaa.org](https://www.ncaa.org).

While drafting their policies to ensure compliance with the Policy, it is important for institutions to ensure they are in compliance with the Family Educational Rights and Privacy Act (FERPA), state laws discussing student privacy, and their own institutional policies and admissions practices.

If you have questions about any implications the revised requirement has for your higher education institution, feel free to contact James G. Ryan at (516) 357-3750 or jryan@cullenllp.com, Dina L. Vespia at (516) 357-3726 or dvespia@cullenllp.com, Jennifer A. McLaughlin at (516) 357-3889 or jmclaughlin@cullenllp.com, and Jennifer E. Seeba at (516) 296-9173 or jseeba@cullenllp.com.

Thank you to Samantha Schneider for her assistance with this client alert.

Please note that this is a general overview of the law and no content within this excerpt constitutes legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Practices

- Higher Education

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