



## NCAA revises Policy on Campus Sexual Violence

May 6, 2020

On May 1, 2020, the National Collegiate Athletic Association (NCAA) Board of Governors [revised its 2017 Policy on Campus Sexual Violence](#). The policy expands disclosure requirements for athletes whose conduct has resulted in an investigation, discipline or criminal conviction for sexual, interpersonal or other acts of violence.

Since 2018, each university chancellor/president, director of athletics and campus Title IX coordinator has been required to sign an attestation annually that confirms:

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 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.

The [revised policy language](#) adds three new provisions to the annual attestation requirement, which will be first required in the attestations to be presented at the end of the 2021-2022 academic year.

1. All prospective, continuing and transfer student-athletes have completed a disclosure form annually related to their conduct that resulted in an investigation, discipline through a Title IX proceeding or in a criminal conviction for sexual,

interpersonal or other acts of violence.

2. Institutions have taken reasonable steps to confirm whether prospective, continuing and transfer student-athletes have been under investigation, subject to discipline through a Title IX proceeding or criminally convicted of sexual, interpersonal or other acts of violence.
3. An institution choosing to recruit a prospective student-athlete or accept a transfer student-athlete must have a written policy that directs its staff to gather information that reasonably yields information from the former institution(s) to put the recruiting institutional leadership on notice that the prospect has been under investigation or disciplined through a Title IX proceeding or a criminal conviction for sexual, interpersonal or other acts of violence.

The language in the revised policy is unclear in several respects. First, it is unclear whether all sexual misconduct must be reported or whether disclosure only applies to conduct that involves an element of violence. Second, it is unclear whether the policy requires disclosure of informal resolutions of claims involving sexual, interpersonal or other acts of violence. Third, it is not clear whether the new provisions would require institutions to conduct criminal background checks of student-athletes and, if so, how often.

Institutions should consider modifying their policies and annual notification under the Family Educational Rights and Privacy Act (FERPA) to inform students of additional disclosures between institutions upon transfer. Institutions should also consider whether to modify explanations of privacy in their sexual misconduct policies to provide additional transparency to student-athletes.

As institutions begin to consider establishing internal communications procedures and creating disclosure forms for student-athletes, they should also watch for further clarifications from the NCAA on how best to implement the new policy across institutions.

# Authors

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