

**University of Nebraska
Department of Athletics
Student-Athlete Conduct Policy**

Introduction

The student-athlete conduct policy specifies the higher standard of conduct expected and required of student-athletes as well as the procedure to be used by the University of Nebraska Department of Athletics (“Athletics Department”) to respond to allegations, arrests for, or charges of non-academic misconduct by student-athletes.

Why have a department Conduct Policy for student-athletes

- The privilege provided to student-athletes to voluntarily participate in intercollegiate athletics at the University of Nebraska creates special obligations and responsibilities as a representative of the University of Nebraska. All student-athletes are required to avoid conduct detrimental to the integrity of and public confidence in the University.
- All student-athletes are subject to the general University codes of conduct and disciplinary rules applicable to all other students. All student-athletes are also subject to team rules developed by the head coach of each sport and approved by the Director of Athletics. The head coach of each sport has the authority to discipline, suspend and/or dismiss any student-athlete on his/her team in consultation with the head coach’s sport administrator for violation of team rules separate and apart from proceeding under this Student-Athlete Conduct Policy.
- A separate, department conduct policy, in addition to University and team rules, is necessary because allegations of student-athlete misconduct generally receive more scrutiny and public attention. Failure to handle these matters appropriately may undermine the public trust in the University and therein impair its ability to carry out its mission of teaching, research, and public service.

The Purposes of the Conduct Policy

- To clarify and reinforce the standards of required behavior expected of student-athletes.
- To provide procedures that will demonstrate that the University will take allegations of misconduct seriously and not condone misconduct.

- To treat student-athletes fairly and provide procedures that will develop the facts to the point that actions taken under this policy are based on sufficiently credible information.
- To assure confidence in the integrity of the process by minimizing the potential for conflict of interest on the part of administrators, coaches and student-athletes.

When the Conduct Policy Applies

- This policy applies when a student-athlete has been alleged to, charged with, or arrested for serious nonacademic misconduct involving but not limited to the following:
 - Causing physical injury to another person
 - Creating danger to the personal safety of another person
 - Making a credible threat of physical injury to another person
 - Causing damage to property
 - Delivering or possessing with intent to deliver illegal drug or substance
 - Driving under the influence
 - Theft
 - Possession of a gun or other weapons, which is illegal or contrary to applicable University policies
 - Obstruction or resisting arrest
 - Conduct that undermines or puts at risk the integrity and reputation of the University
 - Repeated acts of misconduct that raise the concerns addressed by this policy

Treatment of Allegations of Sexual Misconduct

Allegations of “sexual misconduct,” which includes dating violence, domestic assault, domestic violence, rape, sexual assault, sexual harassment, and stalking, fall under the jurisdiction of the University of Nebraska’s Division of Student Affairs. The Athletics Department shall report allegations of sexual misconduct immediately to the Title IX Coordinator or the Vice Chancellor for Student Affairs. The Conduct Policy neither substitutes nor preempts the University’s Title IX procedures.

The University of Nebraska Response to Allegations of Student Sexual Misconduct provides the applicable policies. <http://stuafs.unl.edu/DeanofStudents/IX-A-3%202014%200530%20revised%20no%20line%20nbr%20final%20RP%205%203%203%20Student%20Sexual%20Misconduct%20Procedures.pdf>

The Division of Student Affairs will lead the University’s internal investigation and disciplinary process. The Athletics Department will not independently investigate any allegations of sexual misconduct.

Student-athletes are subject to the same disciplinary process and sanctions as all University students. Based on information obtained during the University's investigation, the Athletics Department may impose additional disciplinary measures on student-athletes, including suspending a student-athlete from competition and/or removing a student-athlete from the athletics team.

Deciding Whether the Conduct Policy Applies

- Except in situations involving alleged sexual misconduct (which are the jurisdiction of the Division of Student Affairs), the Director of Athletics (Shawn Eichorst), Faculty Athletics Representative (Jo Potuto), Senior Associate Athletics Director/Senior Woman's Administrator (Pat Logsdon), and Senior Associate Athletics Director (Steve Waterfield), or any successor to those positions and/or persons, (hereinafter referred to as the "Conduct Panel") shall, in good faith and using reasonable judgment, decide whether the policy applies, which decision shall be final.

If the Conduct Policy Applies: Immediate Suspension Pending Factual Inquiry

- If the policy applies, the student-athlete shall be suspended immediately from competition and practice with his or her team, however, until the matter is resolved
 - any financial aid will remain in place;
 - the student-athlete's name will remain on the squad list; and
 - the student-athlete may have access to academic support services, weight training, training table and sports medicine facilities to be determined on a case by case basis.
- The head coach for the student-athlete does not make the suspension decision.
- The suspension shall be followed immediately by a prompt factual inquiry.

A Prompt Factual Inquiry Will Be Conducted

- A prompt inquiry will be conducted to develop the facts and information, so that actions taken under this policy are based on sufficiently credible information.
- At the direction of the Director of Athletics, Associate Athletics Director for Compliance Jamie Vaughn or his designee shall promptly manage and inquire into the facts, including, but not limited to the following:
 - what facts and information support or refute the misconduct allegation, arrest, and/or charges;

- what the student-athlete and other witnesses say the facts are;
 - what any available police report says the facts are; and
 - when applicable, any information from police or prosecutors concerning the likely disposition of the case.
- In some cases, relevant information may not be available for a considerable period of time, including instances involving arrests because police reports are not accessible and a criminal complaint has not been filed. In cases where information is not available due to circumstance outside the control of the University and the Athletics Department, the Conduct Panel may:
 - based on the available facts, refer the case for decision under the Decision about Discipline and Disposition section of this policy, or
 - reinstate the student-athlete until sufficiently credible facts and information are available.
 - If two (2) weeks have elapsed since the date of the suspension, and the student-athlete has not been reinstated or the case has not been referred for decision under the Decision about Discipline and Disposition section of this policy, the student-athlete may request that a decision be made within three (3) business days.

Student-Athlete Participation in the Factual Inquiry

- The student-athlete shall be given the opportunity to provide information and to respond to allegations and facts offered by others. However, the student is permitted to and may decide, due to the circumstances, such as the potential pendency of criminal prosecution, not to fully participate in the disclosure of information. In such cases, the disposition of the matter shall continue based upon the information reasonably available to the Athletics Department and the University.

Decision about Discipline and Disposition

- When the factual inquiry has been completed, the information will be provided to the Conduct Panel and it shall collectively decide whether the allegations of misconduct are supported by facts sufficiently credible to support disciplinary action under this policy.

The following range of dispositional measures shall be considered:

- Reprimand
- Withholding from practices and contests
- Imposition of terms and conditions to remain a member of the athletic program
- Restitution

- Participation in a relevant educational program
- Community service
- Apology
- Continued suspension
- Dismissal from the athletic program
- Reinstatement

The student-athlete's desire to obtain counseling and/or participate in a relevant program to address concerns such as anger management, drug/alcohol abuse, or other similar health care measures may be incorporated as part of a comprehensive plan to achieve appropriate student-athlete behavior and lifestyle.

The Student-Athlete Has the Right to Appeal the Discipline and Disposition

- The student-athlete may appeal the disposition of the matter by requesting an appeal to the Chancellor or the Chancellor's designee.
- The student-athlete shall submit a written appeal with facts and justification to the Chancellor with copy to the Director of Athletics within five (5) days of the Conduct Panel's disposition decision. The Chancellor or the Chancellor's designee will normally provide a response within five (5) business days of an appeal being submitted.
- The student-athlete may seek the assistance of an advisor and/or legal counsel in the preparation of the written appeal.
- The sole issue that shall be determined upon appeal is whether the disciplinary measure is reasonable for the misconduct, and not a new or independent review and assessment of the facts.
- If the Chancellor or the Chancellor's designee modifies the original decision, any of the dispositional measures set forth in the Decision about Disposition and Discipline section of this policy are available, except dismissal of the student-athlete from the athletic program or increasing the length of the suspension.

New Information

- Should the Conduct Panel be made aware of new information not considered in the original decision, the Conduct Panel may, in its discretion, re-open the process, investigate the new information and may issue a revised decision, which shall be subject to appeal in the same manner as the original decision.

Comments

The Conduct Policy is drafted in plain English to reflect the fact that its many audiences – student-athletes, department staff, university staff, fans and supporters of Nebraska athletics, alumni, and the press – are generally not lawyers. The policy will serve most effectively if it is well understood by all its audiences. The additional commentary provided here is intended to: 1)

explain the purpose and rationale for the policy and 2) emphasize the important considerations that influenced the approach taken.

The policy gives much emphasis on the responsibility to find out what actually happened when student-athletes have been accused of serious misconduct. Under the policy, the Director of Athletics, Faculty Athletics Representative, Senior Associate Athletics Director/Senior Woman's Administrator, and Senior Associate Athletics Director ("Conduct Panel") are responsible for determining the Athletics department's review and discipline of student-athletes for misconduct. The integrity of these people is such that the public, student-athletes, and all those concerned about these decisions should have trust that these people will always try to do what is right. This trust is especially important, since in most cases, the information and disposition of these matters, is protected by state and federal law from disclosure, except to those within the university community who have a "legitimate educational interest" in the information as that term is defined by the Family Educational Rights and Privacy Act of 1974 (FERPA). The coaches, mainly based on conflict of interest grounds, shall not be involved in the inquiry or decision making relative to these matters and this policy. Finally, the policy explains in clear terms why it is important to have a separate Conduct policy for student-athletes.

Why Have a Department Conduct Policy for Student-Athletes

The public nature of athletics at this institution carries with it special expectations and responsibilities. The increased public attention that tends to focus on allegations of misconduct by student-athletes requires a process that will be fair to the student-athlete and responsive to legitimate public concerns. Additionally, student-athletes remain subject to team rules and to all other University policies and procedures regarding student misconduct.

The Purposes of the Policy

Student-athletes are held to higher standards and expectations of appropriate conduct. The University takes allegations of misconduct very seriously. It also emphasizes the importance of treating student-athletes fairly; a purpose which is best advanced when there are appropriate procedures to develop the facts that are the basis for disciplinary action.

When the Conduct Policy Applies

The policy applies to allegations of serious nonacademic misconduct that come to the attention of the Athletics Department through a number of sources, including but not limited to facts supporting arrests and charges. That said, any action taken pursuant to this policy is based upon facts, not arrests in and of themselves, as those facts are determined by the Conduct Panel.

Treatment of Allegations of Sexual Misconduct

The Conduct Policy does not replace the University's Title IX procedures. The Division of Student Affairs has jurisdiction over allegations of sexual misconduct and the Athletics

Department is obligated to notify immediately the University's Title IX Coordinator or the Vice Chancellor for Student Affairs of allegations of sexual misconduct.

Separate from the disciplinary process and conduct sanctions provided in the University of Nebraska Response to Allegations of Student Sexual Misconduct policies, the Athletics Department may suspend student-athletes alleged to have engaged in sexual misconduct from athletics competition and/or remove the student-athletes from the athletics team during the University's internal investigation.

Deciding Whether the Conduct Policy Applies

If there is a question about whether this policy applies to a student-athlete's alleged behavior, then the Conduct Panel shall make a good faith, reasonable decision about that question, and the decision shall be final. It is not subject to appeal.

Immediate Suspension Pending Factual Inquiry

This section affirms the policy of immediately suspending from competition and practices any student-athlete when there is a reasonable basis for credible allegations of misconduct. This section also reaffirms the purpose of not having the student-athlete's coach make the suspension decision.

Prompt Factual Inquiry

This section reflects the conclusion that it is important to try to determine the facts as soon as possible in the process. It is designed to give guidance to the effort to gather the relevant facts and to make clear that in some cases all the relevant facts are not readily available and may not be promptly available. A person who has not been detained but who is subject to this policy may discover that weeks may pass before the prosecutor makes a decision whether to charge and what to charge. These understandable practices will sometimes complicate the gathering of the necessary information for decisions under this policy. This section indicates how cases should be treated where factual information cannot be gathered with reasonable promptness.

Student-Athlete Participation in the Factual Inquiry

This section affirms the importance of involving the student-athlete in the process, while recognizing that there may be constraints on the student-athlete's ability to participate. The student-athlete should be given the opportunity to participate as fully as he or she wishes, subject to any constraints that may result from, for example, legal advice.

Decision about Discipline and Disposition

This section provides that the Conduct Panel shall make the decision about discipline and disposition. This section specifies what the factual basis for the decision should be and the range

of dispositional measures available. The options are not listed in order of severity and are not intended to exclude other reasonable measures. The specifics of the disciplinary response will be based on the nature of the incident, the actual or threatened risk to the participant and others, any prior or additional misconduct and other relevant factors.

The Student-Athlete Has the Right to Appeal the Discipline and Disposition

This section gives the student-athlete the right to appeal the decision and outlines the procedure for the appeal. The written appeal is a review of the reasonableness of the discipline decision, not a new review and determination of the facts (i.e., de novo review). The student-athlete may have an advisor and/or attorney. The proper role of the advisor and/or attorney is to assist with the drafting of the written communication of the student-athlete's position, not to develop new findings of fact. The Chancellor or the Chancellor's designee will review and decide the appeal in a reasonable amount of time.

New Information

If the Conduct Panel learns of new information after it has already made a final decision, the Conduct Panel has the discretion to re-open the matter and consider the new information.

Effective Date: January 30, 2015