

CCES Submission to 2021 Code Review Third Consultation Phase

In response to WADA's request for comments as part of Phase 3 of the 2021 World Anti-Doping Code consultation process, the CCES submitted the following comments.

Article 2.11 Acts by an Athlete/Other Person to Discourage/Retaliate Against Reporting

In Article 2.11.3, CCES does not understand how retaliation, threats and intimidation can ever have a "good faith basis." We suggest removing that phrasing and rewording the article as follows: "For purposes of Article 2.11, retaliation, threatening and intimidation include an act taken against such Person without just cause or in a disproportionate fashion."

Article 10.4 Aggravating Circumstances

CCES is concerned that the reference to "not knowingly commit" an anti-doping rule violation may be confused with a determination regarding a lack of intent in 10.2. Is the intention that Aggravating Circumstances cannot be applied if there is a proven lack of intent to commit the anti-doping rule violation? That seems to be the case. There could be any number of Aggravating Circumstances present and applicable even when a person had no intention to dope. The wording should ensure that Aggravating Circumstances can apply when the sanction is otherwise at 2 years or less involving specified substances. For example: failing to respect a Provisional Suspension, being engaged in deceptive conduct to avoid detection or adjudication of the anti-doping rule violation, tampering during the Results Management or the hearing process.

Article 10.8.2 Case Resolution Agreement

CCES finds Article 10.8.2 is unclear regarding how the reductions can be applied. If CCES and WADA agree to acceptable consequences, resulting in a reduction in the standard sanction, is there a further and additional reduction in sanction possible, down to a minimum of one half (as outlined in point "a")? Despite multiple readings, we are still not sure, and the Code must be crystal clear.

Do the ADO and WADA need to first determine the sanction length (the "acceptable consequence") after which point "a" comes into effect? For example, the athlete commits an anti-doping rule violation which carries a two year sanction, but the ADO and WADA agree to an 18-month sanction (as the "acceptable consequence"). Does point "a" then in addition get applied to the sanction length, where the "one half" reduction is applied to the 18-month sanction (and 18 months becomes 9 months)? Or does the one half reduction apply to the original, maximum sanction, whereby two years becomes one year instead of 18 months? Or in considering and agreeing on an 18 month sanction, are CCES and WADA limited to not going below one-half of the maximum possible sanction?

Basically, we would like clarity as to whether it is possible to get a double reduction to the sanction, whereby i) the typical sanction is 2 years; ii) the NADO and WADA agree to a reduction; and iii) the one half reduction referenced is applied to that already-reduced sanction.

Article 10.9.3 Additional Rules for Certain Potential Multiple Violations

In Article 10.9.3.2, CCES believes the “and” between point “i” and point “ii” should be an “or.” It would read: “...then the period of Ineligibility for the additional violation shall be the longer of: (i) the period of Ineligibility calculated under Article 10.9.3.1, or (ii) the period of Ineligibility...”

Article 13.2 Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, Provisional Suspensions, Implementation of Decisions and Jurisdiction

In Article 13.2, CCES notes that an appeal involves a “fair, impartial and independent hearing panel” but a hearing, as described in Article 8.1, only involves a “fair and impartial hearing panel,” with no mention of an independent hearing panel. Interestingly, in the draft Result Management Standard there is the requirement for “operational independence” during the first instance hearing – how is this different from requiring expressly an independent first instance hearing? Is this intentional, highlighting the need for final decisions through an appeal to be fully separate from the ADO?

Other Suggestions

In Article 15.3, CCES is troubled by the phrase “purports to be” and suggests rewording the sentence as follows: “...if the Signatory finds that the decision is within the authority of that body and the anti-doping rules of that body are otherwise consistent with the principles contained in the Code.”

The Comment to Article 10.13.2.1 is missing capitalization for the term “Aggravating Circumstances.”

