



UNIVERSITY OF ARIZONA
PUBLIC INFRACTIONS DECISION
January 30, 2019

I. INTRODUCTION

The NCAA Division I Committee on Infractions (COI) is an independent administrative body of the NCAA comprised of individuals from the Division I membership and the public. The COI is charged with deciding infractions cases involving member institutions and their staffs.¹ This case involved the women's swimming and diving program at the University of Arizona.² It centered primarily on a diving coach's recruiting violations related to an international prospective student-athlete who lived in the vicinity of Arizona's campus prior to enrollment. The recruiting violations also supported a head coach responsibility violation for the head swimming and diving coach. A panel of the COI considered this case through the cooperative summary disposition process in which all parties agreed to the primary facts and violations as fully set forth in the summary disposition report (SDR). Arizona self-imposed corrective actions and penalties, which the panel adopted. The panel also proposed further penalties to Arizona and the diving coach. The parties agreed to the additional penalties; therefore, there is no opportunity to appeal.

The violations in this case began in January 2017 when the prospect arrived in Tucson, Arizona, several months prior to her planned fall 2017 enrollment. The prospect, an international women's diving student-athlete, did not meet the requirements to be an academic qualifier. Thus, the prospect moved to Tucson with plans to study English at the institution's Center for English as a Second Language (CESL), improve her test scores and attain eligibility to enroll at Arizona that fall. The prospect made these plans in consultation with the institution's diving coach, who had known the prospect and her family for many years and had previously coached the prospect in their shared home country. The prospect's presence in the institution's locale prior to enrollment led to recruiting violations falling into two categories: impermissible inducements and impermissible tryouts. The diving coach was at the center of most of these violations, which spanned from January to September 2017.

With respect to impermissible inducements, the parties agreed that the diving coach arranged for the prospect to live with representatives of the institution's athletics interests (boosters) for a period of eight months. The boosters did not require her to pay rent. The diving coach and the

¹ Infractions cases are decided by hearing panels comprised of COI members. Panels issue decisions on behalf of the COI.

² A member of the Pac-12 Conference, Arizona has a total enrollment of approximately 45,000 students. It sponsors 12 women's sports and nine men's sports. This is Arizona's sixth major, Level I or Level II infractions case. The institution had previous cases in 2010 (men's basketball), 1984 (men's basketball), 1983 (football), 1974 (men's track and field) and 1961 (football).

boosters also provided the prospect with transportation to and from a local sports club where the diving coach trained the prospect. In addition, the diving coach permitted the prospect to attend an out-of-town NCAA diving meet, where she received free lodging and the diving coach provided her with transportation during the meet. As it relates to the second category of recruiting violations, the parties agreed that impermissible tryouts occurred when the diving coach trained the prospect at the local sports club and when he coached her in dryland exercises during the out-of-town diving meet. The inducement and tryout violations are Level II.

The parties agreed that the head coach did not rebut the presumption of responsibility for these violations. The head coach was aware that the diving coach trained the prospect and that the prospect was living with boosters. However, he failed to look into the situation or consult the compliance office. Furthermore, the head coach entrusted oversight of the diving program to another staff member, but he did not expressly communicate that expectation to her. As the leader of the swimming and diving program, the head coach had a responsibility to promote an atmosphere of compliance and to monitor all staff members who reported to him, including the diving coach. The parties agreed that the head coach failed to meet these responsibilities from January 2017 until his retirement in July 2017. This is a Level II violation of head coach responsibility legislation.

The panel accepts the parties' factual agreements and concludes that Level II violations occurred. After considering applicable aggravating and mitigating factors, the panel classifies this case as Level II-Standard for Arizona and for the violations of the head coach and the diving coach. Utilizing the current penalty guidelines and NCAA bylaws authorizing additional penalties, the panel adopts and prescribes the following penalties: two years of probation, a \$5,000 fine, a scholarship reduction, recruiting restrictions and a one-year show-cause order for the diving coach. Based on the penalty ranges available for Level II-Standard violations, the panel prescribes no penalty for the head coach.

II. CASE HISTORY

The violations in this case came to light in March 2017, when the director of swimming operations (director of operations) informed the compliance staff that she was concerned about the presence of a women's diving prospective student-athlete (prospect) in the institution's locale prior to enrollment. Specifically, she reported that the prospect was training with the institution's then head men's and women's diving coach (diving coach) and living with a local family.³ Around this same time, the institution received an anonymous letter expressing concern about the same prospect's presence at an NCAA diving meet. Arizona investigated and self-reported the violations to the NCAA enforcement staff in November 2017. The enforcement staff issued a verbal notice of inquiry on December 6, 2017.

On September 6, 2018, the enforcement staff provided a draft notice of allegations to Arizona, the diving coach and the former head men's and women's swimming and diving coach (head

³ In October 2017, Arizona relieved the diving coach of all coaching duties and did not renew his contract.

coach).⁴ Soon thereafter, the parties agreed to process the case through summary disposition. The parties submitted the SDR to the COI on December 7, 2018. A panel of the COI reviewed the SDR on December 18, 2018.⁵ The panel accepted the facts and violations as set forth in the SDR but proposed additional penalties to Arizona and the diving coach. Specifically, the panel proposed two years of probation and a scholarship reduction to Arizona and a one-year show-cause order for the diving coach. Both the institution and the diving coach accepted the additional penalties.

III. PARTIES' AGREEMENTS

A. PARTIES' AGREED-UPON FACTUAL BASIS, VIOLATIONS OF NCAA LEGISLATION AND VIOLATION LEVELS

The parties jointly submitted an SDR that identified an agreed-upon factual basis, violations of NCAA legislation, aggravating and mitigating factors, and violation levels.⁶ The SDR identified:

1. [NCAA Division I Manual Bylaws 13.2.1, 13.2.1.1-(h), 13.11.1 and 13.11.2.4 (2016-17 and 2017-18)] (Level II)

Arizona, the diving coach and the enforcement staff agree that from January through September 2017, the diving coach provided impermissible inducements to and conducted impermissible tryouts with the prospect.⁷ The diving coach also arranged for the prospect to reside with boosters, which resulted in the prospect receiving impermissible inducements. The total value of these impermissible inducements was approximately \$5,346. Specifically:

- a. Between January and September 2017, the diving coach arranged for the prospect to live in Tucson, Arizona, with the boosters. As a result, the prospect received free housing and one meal per week for approximately eight months, which resulted in an impermissible inducement of approximately \$4,720. [Bylaws 13.2.1 and 13.2.1.1-(h) (2016-17 and 2017-18)]

⁴ The head coach retired from the institution in July 2017.

⁵ Pursuant to COI Internal Operating Procedure (IOP) 4-9-2-1, panels in future cases may view this decision as less instructive than a decision reached after a contested hearing because violations established through the summary disposition process constitute the parties' agreements.

⁶ This decision provides the agreed-upon factual basis, violations and violation levels exactly as stated in the SDR, except for shortening references to the parties.

⁷ The diving coach held the position of head men's and women's diving coach; however, he was not the head coach for the entire swimming and diving program.

- b. Between January and September 2017, the diving coach conducted approximately 192 impermissible tryouts of the prospect over the course of 120 days. Specifically, the prospect participated as a member of a local sports club coached by the diving coach. Because the prospect was not a legal resident living within a 50-mile radius of the sports club nor did she meet any of the exceptions to the applicable legislation, the prospect's participation resulted in the diving coach conducting impermissible tryouts. [Bylaws 13.11.1 and 13.11.2.4 (2016-17 and 2017-18)]
- c. Between January and September 2017, the diving coach and/or the boosters provided the prospect with transportation to or from practice at the local diving club coached by the diving coach on approximately 80 occasions. The total value of the impermissible transportation was approximately \$200. [Bylaw 13.2.1 (2016-17 and 2017-18)]
- d. Between March 3 and 9, 2017, the diving coach conducted impermissible tryouts with and provided impermissible inducements to the prospect in conjunction with the 2017 NCAA Division I Zone Diving Championship Meet (Zone Diving Meet) in Flagstaff, Arizona. Specifically, the diving coach permitted the prospect to attend the meet, where he coached her in dryland exercises on approximately three occasions in violation of tryout legislation. He also provided the prospect roundtrip transportation from Flagstaff to Sedona, Arizona, so she could participate in a team activity. Finally, the prospect received six nights of lodging expenses while at the meet. The total value of the impermissible inducements was approximately \$426. [Bylaws 13.2.1, 13.2.1.1-(h) and 13.11.1 (2017-18)]

2. [NCAA Division I Manual Bylaw 11.1.1.1 (2016-17)] (Level II)

Arizona, the head coach, and the enforcement staff agree that between January and July 2017, the head coach is presumed responsible for the violations detailed in Violation No. 1 and did not rebut the presumption of responsibility. Specifically, the head coach did not demonstrate that he promoted an atmosphere of compliance or monitored his staff within the men's and women's swimming and diving program. The head coach knew the diving coach trained the prospect and that the prospect lived at the home of the boosters. However, the head coach failed to notify the institution and/or seek guidance from compliance regarding the diving coach's training of the prospect and the prospect's living arrangements. Further, the head coach failed to actively look for and evaluate red flags, ask pointed questions or regularly solicit feedback to determine if monitoring systems were functioning properly related to the diving coach's activities. [Bylaw 11.1.1.1 (2016-17)]

B. PARTIES' AGREED-UPON AGGRAVATING AND MITIGATING FACTORS

Pursuant to Bylaw 19.6.2-(g), the parties agreed to the following aggravating and mitigating factors:

Arizona:

1. Aggravating factor. [Bylaw 19.9.3]

Multiple Level II violations by the institution. [Bylaw 19.9.3-(g)]

2. Mitigating factors. [Bylaw 19.9.4]

- a. Prompt acknowledgement of the violations, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties. [Bylaw 19.9.4-(b)]
- b. Affirmative steps to expedite final resolution of the matter. [Bylaw 19.9.4-(c)]
- c. An established history of self-reporting Level III or secondary violations.⁸ [Bylaw 19.9.4-(d)]

Head Coach:

1. Aggravating Factor [Bylaw 19.9.3]

One or more of the violations caused significant ineligibility or other substantial harm to a student-athlete or prospective student-athlete. [Bylaw 19.9.3-(i)]

2. Mitigating Factor [Bylaw 19.9.3]

The absence of prior conclusions of Level I, Level II or major violations committed by the involved individual. [Bylaw 19.9.3-(h)]

Diving Coach:

1. Aggravating Factors [Bylaw 19.9.3]

- a. Multiple Level II violations by the involved individual. [Bylaw 19.9.3-(g)]
- b. One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospective student-athlete. [Bylaw 19.9.3-(i)]

2. Mitigating Factors [Bylaw 19.9.4]

- a. Prompt acknowledgement of the violation and acceptance of responsibility. [Bylaw 19.9.4-(b)]

⁸ Arizona reported approximately 70 Level III violations from 2014 to 2018.

- b. The absence of prior conclusions of Level I, Level II or major violations committed by the involved individual. [Bylaw 19.9.3-(h)]

IV. REVIEW OF CASE

The SDR fully detailed the parties' positions in this case and included the agreed-upon primary facts, violations, violation levels, and aggravating and mitigating factors. After reviewing the parties' principal factual agreements and respective explanations surrounding those agreements, the panel accepts the parties' SDR and concludes that Level II violations occurred.

This case arose from a scenario the COI has repeatedly warned can lead to violations: a prospect's presence in the vicinity of campus prior to enrollment. Here, an international prospect moved to the institution's locale several months before enrolling in order to study and attain academic eligibility. From January to September 2017, the prospect's proximity to campus led to the diving coach and the boosters arranging or providing her with impermissible recruiting inducements, including housing, meals and transportation. Additionally, the diving coach—who had a previous coaching relationship with the prospect—conducted impermissible tryouts with the prospect when he trained her during this pre-enrollment period. The head coach could not rebut the presumption of responsibility for these recruiting violations because he failed to demonstrate that he promoted an atmosphere of compliance in the swimming and diving program and monitored the diving coach.

Recruiting Violations

The recruiting violations in this case began in January 2017, when the prospect moved to the institution's locale several months prior to enrollment. Her proximity to campus led to six principle recruiting violations: (1) arrangement of housing by the diving coach; (2) the provision of cost-free housing by the boosters; (3) occasional free meals provided by the boosters; (4) free transportation provided by the diving coach and the boosters; (5) free lodging during an out-of-town NCAA diving meet; and (6) impermissible tryouts stemming from the diving coach training the prospect at a local diving club and during the NCAA diving meet. These impermissible inducements and tryouts violated recruiting legislation under Bylaw 13.⁹

Recruiting offers and inducements are generally prohibited pursuant to Bylaw 13.2.1. Bylaw 13.2.1.1 identifies specific examples of prohibited inducements, including free or reduced-cost housing (Bylaw 13.2.1.1-(h)). As it relates to tryouts, Bylaw 13.11.1 prohibits institutions from conducting any physical activity at which a prospect demonstrates his or her athletic ability, except as otherwise permitted by the bylaws. One such exception is set forth in Bylaw 13.11.2.4, which allows coaches to work with prospects at local sports clubs without violating the tryout rule, provided the prospects are legal residents of the area living within a 50-mile radius of the institution.

⁹ The full text of all bylaws violated in this case is at Appendix Two.

The prospect's arrival in Tucson in January 2017 set the stage for multiple violations of Bylaw 13. Most of these violations resulted from the diving coach's efforts to help the prospect get settled in the area and to continue her training while she worked to attain academic eligibility. The diving coach had known the prospect and her family since she was eight years old, and had coached her in their shared home country for two years while she trained with that country's national team and he was the team's assistant coach.¹⁰ The diving coach kept in regular contact with the prospect and her family after he left the national team for his position at Arizona in December 2011. He began recruiting the prospect in 2016.

The diving coach soon learned, however, that the prospect did not meet the requirements needed to be an academic qualifier. Specifically, she had a low score on the Test of English as a Foreign Language (TOEFL) and needed to take the Scholastic Aptitude Test (SAT). The compliance staff recommended that the prospect enroll in the institution's Center for English as a Second Language (CESL).¹¹ Pursuant to the institution's policy, the prospect's successful completion of the CESL program would waive the TOEFL requirement. The prospect would still be required to pass the SAT, however. The diving coach discussed this information with the prospect's family, and together they decided that the prospect would register and pay for CESL and the SAT when she finished school in September 2016, sign a National Letter of Intent (NLI) with Arizona in November and arrive in Tucson in January.¹² The goal was for the prospect to meet all eligibility requirements in time to enroll for the fall 2017 semester.¹³

The prospect's arrival in Tucson precipitated the first recruiting violation—the diving coach's arrangement of housing—and follow-on violations stemming from that arrangement. Prior to the prospect's arrival, the diving coach met with the boosters, who offered to house the prospect while she studied in the CESL program. When the prospect arrived in January, the diving coach drove the prospect and her father to the boosters' home to discuss housing and departed soon after the introductions. After the diving coach left, the prospect's father offered to pay rent for his daughter, but the boosters declined, stating they had an available room and it would cost them nothing extra to house the prospect. The prospect moved into the boosters' home that day and lived there rent-free until September 2017. The diving coach stated that he specifically did not ask the prospect whether she was paying rent because "as the coach, it's better sometimes not to ask." He also acknowledged that he did not notify the compliance staff of the housing arrangement. During the eight months the prospect lived with the boosters, they provided her with a free meal approximately once per week. The value of the free housing and meals totaled approximately \$4,720. The diving coach's arrangement of housing for the prospect constituted an impermissible recruiting inducement in violation of Bylaw 13.2.1. The boosters' provision of free housing and meals likewise violated Bylaws 13.2.1-(h) and 13.2.1, respectively.

¹⁰ Because the prospect lived away from home during the time she trained with the national team, her family granted the diving coach power of attorney, and he transported the prospect to school, practice and competitions.

¹¹ Arizona does not consider CESL enrollment to be full-time enrollment at the institution.

¹² The prospect signed an NLI with Arizona on November 15, 2016.

¹³ Ultimately, the prospect never enrolled or competed at Arizona.

The violations continued when the prospect registered with the local diving club in order to train with the diving coach, who served as head coach of the club team. Between January and September 2017, the diving coach trained the prospect on approximately 192 occasions. Because the prospect was not a legal resident living within a 50-mile radius of the diving club and did not meet any other exceptions to the tryout rule, each of these training sessions constituted an impermissible tryout in violation of Bylaws 13.11.1 and 13.11.2.4. Additionally, the diving coach and the boosters provided the prospect with transportation to and from diving club practices several times per week. The free transportation was an impermissible inducement in violation of Bylaw 13.2.1.

Another series of recruiting violations occurred in March 2017, when the prospect attended the NCAA Zone Diving Meet in Flagstaff, Arizona.¹⁴ Her attendance at the meet resulted in impermissible transportation, lodging and tryouts. First, although the prospect provided and paid for her own transportation to and from the meet, the diving coach provided her with free transportation during the meet. Specifically, he permitted her to travel with the team approximately 25 miles to the city of Sedona as part of a team activity. Second, the prospect received free lodging during the meet, although conflicting information in the record makes it unclear who ultimately paid. The parties agreed, however, that the prospect stayed six nights in a hotel room reserved and paid for by either the institution, the diving coach or some other individual. The free lodging and transportation, which had a value of approximately \$426, violated Bylaws 13.2.1-(h) and 13.2.1, respectively. Finally, the diving coach engaged in further impermissible tryouts with the prospect when he organized, observed and instructed her in at least three individual workouts during the meet. The workouts involved dryland exercises, which included strength and conditioning. When the diving coach observed and instructed the prospect during these workouts, he converted them into impermissible tryouts in violation of Bylaw 13.11.1.

The COI has previously concluded that Bylaw 13 violations occur when prospects receive inducements such as free housing, meals and transportation, and when prospects participate in impermissible tryouts. *See St. John's University* (2018) (concluding Level II violations of Bylaw 13 occurred when the head women's volleyball coach arranged or provided for housing, transportation, and free academic assistance for a prospect and observed the prospect during open gym activities); *The Ohio State University* (2017) (concluding Level II violations of Bylaw 13 occurred when members of the men's swimming program arranged housing for a prospect and provided him with free meals and locker room access, and when the head coach observed the prospect demonstrating a swimming technique); and *Sam Houston State University* (2017) (concluding Level II violations of Bylaw 13 occurred when the head women's tennis coach provided a prospect with new tennis rackets, paid her summer tournament entry fees and arranged free transportation to and from the tournament). Notably, as in this case, each of these cases involved international prospects living in the institution's locale prior to enrollment.

Pursuant to Bylaw 19.1.2, and consistent with *St. John's*, *Ohio State* and *Sam Houston*, the panel concludes that the recruiting inducements and impermissible tryouts in this case are Level II.

¹⁴ Zone diving meets are qualifying events for the NCAA National Championships.

These violations provided the institution with more than a minimal but less than a substantial recruiting advantage. Furthermore, they were not isolated or limited in nature as they occurred repeatedly over the course of an eight-month period.

Head Coach Responsibility

The recruiting violations in this case support the parties' agreed-upon head coach responsibility violation. The head coach was aware that the prospect was living in Tucson and training with the diving coach, but he did not alert the compliance office and did not ensure that the prospect's living arrangements and activities complied with NCAA legislation. He also trusted oversight of the diving program to another staff member and admitted that he was more focused on the swimming side of things. The panel concludes that from January 2017 to his retirement in July 2017, the head coach's conduct was inconsistent with his responsibilities under Bylaw 11 to promote an atmosphere of compliance within his program and monitor his staff.¹⁵

Bylaw 11 governs the conduct and ethics of athletics personnel. Bylaw 11.1.1.1 establishes two affirmative duties for head coaches: (1) to promote an atmosphere of compliance within their program and (2) to monitor those individuals in their program who report to them. With respect to the latter, the bylaw presumes head coaches are responsible for the actions of their staff members. Head coaches may rebut this presumption by demonstrating that they promoted an atmosphere of compliance and monitored their staff.

The head coach could not demonstrate that he fulfilled either of these duties and therefore did not rebut the presumption of responsibility for the recruiting violations. First, the head coach's knowledge of the circumstances surrounding the prospect and his failure to act on that information demonstrated that he did not promote an atmosphere of compliance within his program. The head coach knew that the prospect had academic deficiencies that could prevent her enrollment at the institution, but he admitted that he was not paying close attention to her situation. He also knew that the prospect was living in Tucson and training with the diving coach. Specifically, the diving coach told him that the prospect struggled financially but needed to be at the institution to improve her TOEFL score, so the diving coach planned to house the prospect with other divers. The head coach acknowledged this information but never followed up with the diving coach or the compliance office regarding the arrangements. At some point, the head coach learned that the prospect was living rent-free with the boosters. Again, the head coach did not notify the compliance staff of this arrangement or act to put an end to it.

As it relates to monitoring, the head coach failed to demonstrate that he monitored the diving coach, who directly reported to him. The head coach admitted that he was more focused on the swimming side of things and on his impending retirement from the institution. He acknowledged that the diving coach was not always on his radar because diving practices

¹⁵ Although the diving coach's official title is "head men's and women's diving coach," he was not at-risk for a Bylaw 11 head coach responsibility violation due to the reporting structure of the swimming and diving program. The SDR explained that the diving coach reported to the head coach, who had oversight responsibility for all of men's and women's swimming and diving. Thus, the diving coach was effectively a "head coach" in name only.

occurred at different times than swimming practices and the two men were not often in the office at the same time. The head coach did not regularly attend diving practices, and he attended diving meets only if the swimming team was also competing at the same time and location. He trusted the director of operations—who had previously served as diving coach for 15 seasons—to oversee the diving coach. However, he acknowledged that he did not expressly communicate this expectation to the director of operations, nor did he check in with her to identify potential red flags or areas of follow-up.

The COI has previously concluded that coaches do not meet their Bylaw 11 responsibilities when they have knowledge of circumstances that could give rise to violations but fail to act and when they rely too heavily on staff members to monitor their programs. *See Ohio State* (concluding that the head swimming coach did not promote an atmosphere of compliance when he knew a prospect was living in the institution's locale prior to enrollment but failed to consult with compliance or take action to ensure the prospect's living arrangements and on-campus activities were permissible); *Southern Illinois University at Carbondale* (2018) (concluding that the head swimming and diving coach did not promote an atmosphere of compliance when he knew that his diving coach was providing "fee-for-lesson" diving instruction at the on-campus recreational facility but did not consult compliance to determine whether the lessons were permissible); and *University of Oregon* (2018) (concluding that the head men's basketball coach failed to monitor when he over-relied on a trusted staff member and did not ask questions and identify red flags surrounding the staff member's interactions with student-athletes). Consistent with these cases, the panel concludes that the head coach failed to promote an atmosphere of compliance and monitor his program when he did not act on his knowledge of the prospect's circumstances and entrusted oversight of the diving program to another staff member without identifying red flags and conducting follow-up.

Pursuant to Bylaw 19.1.2 and consistent with previous cases, the head coach responsibility violation is Level II because it resulted from underlying Level II violations. *See Oregon* (concluding the head men's basketball coach committed a Level II head coach responsibility violation where his staff engaged in underlying impermissible coaching activity violations that were also Level II) and *Ohio State* (concluding the head swimming coach committed a Level II head coach responsibility violation where the underlying recruiting inducement and tryout violations were Level II). Thus, as the impermissible recruiting inducements and tryouts in this case are Level II, the head coach's Bylaw 11.1.1.1 violation is likewise Level II.

V. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the panel accepts the parties' agreed-upon factual basis and violations and concludes that this case involved Level II violations of NCAA legislation. Level II violations are significant breaches of conduct that provide or are intended to provide more than a minimal but less than a substantial or extensive recruiting, competitive or other advantage. This includes violations that involve more than a minimal but less than a substantial or extensive impermissible benefit.

In considering penalties, the panel first reviewed aggravating and mitigating factors pursuant to Bylaws 19.9.2, 19.9.3 and 19.9.4 to determine the appropriate classifications for the parties. The panel then used the current penalty guidelines (Figure 19-1) and Bylaws 19.9.5 and 19.9.7 to prescribe penalties.

Arizona agreed to one aggravating factor and four mitigating factors. The panel determines that all five factors apply. Arizona also partially agreed to three aggravating factors and the panel determines that all three apply. First, Arizona partially agreed to Bylaw 19.9.3-(b), *A history of Level I, Level II or major violations*. The institution acknowledged its past infractions cases in 2010, 1984, 1983, 1974 and 1961, but noted that its most recent case occurred over eight years ago and involved separate issues in the men's basketball program. The panel determines the factor applies but bases this determination primarily on Arizona's most recent case in 2010. Although arising in a different context, that case also involved impermissible recruiting inducements and impermissible tryouts. *See University of Mississippi* (2017) (determining that the factor applied when the institution's previous cases were in 1986 and 1994 but featured violations of a similar nature).

Second, Arizona agreed in part to Bylaw 19.9.3-(h), *Persons of authority condoned, participated in or negligently disregarded the violation(s)*. Arizona acknowledged that the head coach and the diving coach are persons of authority who either took part in or failed to take action with respect to the violations. The institution noted, however, that the diving coach failed to disclose relevant facts to the compliance staff or anyone with supervisory authority that would have permitted the institution to act sooner to prevent the violations. The COI has previously explained that Bylaw 19.9.3-(h) uses the disjunctive "or," which means a party's agreement to any part of the bylaw is enough for the aggravating factor to apply. *See Ohio State* (determining the factor applied where the head swimming coach agreed that he disregarded the potential for violations but did not agree that he participated in or condoned the violations). Because Arizona agreed that persons of authority either participated in or disregarded the violations, the panel determines the factor applies.

Finally, Arizona partially agreed to Bylaw 19.9.3-(i), *One or more violations caused significant ineligibility or substantial harm to a student-athlete or prospect*. The institution agreed that the violations would have created significant ineligibility for the prospect but pointed out that she ultimately did not enroll at the institution. But the prospect's decision not to enroll does not negate that the conduct at issue in this case caused her significant ineligibility. Indeed, both the diving coach and the head coach agreed that this factor should apply to their individual conduct. The panel determines that the factor applies to the institution, as well.

The panel also considered an additional mitigating factor proposed by Arizona—Bylaw 19.9.4-(i), *Other facts warranting a lower penalty range*—on which the enforcement staff took no position. The panel determines the factor does not apply. In proposing this factor, Arizona identified the enhancements it has made to the institution's compliance systems to prevent future violations of this nature (e.g., increasing the size of the compliance staff, restructuring the compliance office, enhancing rules education and encouraging more in-person interaction with coaching staff). But the COI has rarely applied this mitigating factor, generally reserving it for

circumstances where an institution has taken steps above and beyond what is expected or where the unique circumstances of the case warrant it. *See Oregon* (determining the factor applied because the institution's robust monitoring detected an impermissible grade change and the institution acted quickly to prevent ineligible competition, including pulling the student-athlete from competition moments before she was scheduled to compete at regionals) and *San Jose State University* (2016) (determining the factor applied where the institution self-reported the violations and took meaningful corrective action, but the enforcement staff did not act on the information for over 16 months). Arizona's efforts to enhance its compliance systems, while commendable, are the type of steps the panel would expect an institution to take in the wake of violations. The panel determines the factor does not apply.

The head coach agreed to one aggravating factor and one mitigating factor. The panel determines that both factors apply. The head coach also partially agreed to an additional aggravating factor: Bylaw 19.9.3-(h), *Persons of authority condoned, participated in or negligently disregarded the violation(s)*. The head coach agreed that he should have reported the conduct to compliance once he learned of it, but he contended that he did not intentionally participate in or allow the violations to occur. Thus, he appears to agree that he disregarded the violations. As explained above with respect to the institution, agreement to disregarding the violations is enough for the factor to apply, and the panel determines that it does.

Finally, the diving coach agreed to two aggravating factors and two mitigating factors. The panel determines that all four factors apply. Like the institution and the head coach, the diving coach also partially agreed to Bylaw 19.9.3-(h). He acknowledged that he participated in the violations but disagreed that he disregarded the violations or related wrongful conduct. Again, the panel determines that his participation in the violations is enough for the factor to apply.

The panel also considered an additional mitigating factor proposed by the diving coach: Bylaw 19.9.4-(i), *Other facts warranting a lower penalty range*. The enforcement staff took no position on this factor and the panel determines it does not apply. In proposing this factor, the diving coach identified his history of compliance as a fact warranting a lower penalty range. However, the panel has acknowledged this history in its acceptance of Bylaw 19.9.4-(b), *Absence of prior Level I, Level II or major violations*, as a mitigating factor. Accordingly, the panel determines the proposed additional factor does not apply. *See University of Utah* (2018) (determining Bylaw 19.9.4-(i) did not apply where the panel had already acknowledged the coach's history of compliance in its acceptance of Bylaw 19.9.4-(b)).

The panel assessed the aggravating and mitigating factors by weight and number. Based on its assessment, the panel classifies this case as Level II-Standard for Arizona, and for the violations of the head coach and the diving coach.¹⁶

¹⁶ Consistent with the penalty ranges available for Level II-Standard violations, the panel declines to prescribe a penalty for the head coach. *See University of San Francisco* (2018) (declining to prescribe penalties for the Level II-Standard violations of two head coaches).

Because Arizona, the head coach and the diving coach agreed to the facts, violations and, where applicable, the proposed penalties, they will have no opportunity to appeal. All penalties prescribed in this case are independent and supplemental to any action that has been or may be taken by the NCAA Division I Committee on Academics through its assessment of postseason ineligibility, historical penalties or other penalties. In prescribing penalties, the panel considered Arizona's cooperation in all parts of this case and determines it was consistent with the institution's obligation under Bylaw 19.2.3. The panel also considered Arizona's corrective actions, which are set forth in Appendix One. After considering all information relevant to this case, the panel prescribes the following penalties (self-imposed penalties are so noted):

Core Penalties for Level II-Standard Violations (Bylaw 19.9.5)

1. Probation: Two years of probation from January 30, 2019, through January 29, 2021.
2. Financial penalty: Arizona shall pay a \$5,000 fine to the NCAA. (Self-imposed.)
3. Scholarship reductions: During the 2020-21 academic year, Arizona shall reduce the number of equivalencies in women's swimming and diving by one from the average number awarded during the past four academic years.
4. Recruiting restrictions:
 - a. Arizona suspended off-campus recruiting in the swimming and diving program for a three-week period beginning on December 10, 2018. (Self-imposed.)
 - b. Arizona implemented a three-week ban on unofficial visits and complimentary admissions in the swimming and diving program beginning on December 10, 2018. (Self-imposed.)
 - c. For the 2018-19 academic year, Arizona reduced the number of official visits in the swimming and diving program by five, which represented a 10.8% reduction in visits based on the average provided over a four-year period. (Self-imposed.)
5. Show-cause order: The diving coach admitted that he participated in recruiting violations when he provided or arranged for impermissible recruiting inducements for a women's diving prospect and conducted impermissible tryouts with her. Therefore, the diving coach shall be subject to a one-year show-cause order from January 30, 2019, to January 29, 2020. Pursuant to COI IOP 5-15-1-1, if the diving coach seeks employment or affiliation with any athletically related position at an NCAA member institution during the one-year show-cause period, any employing institution shall be required to contact the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why restrictions on athletically related activity should not apply.

Additional Penalties for Level II-Standard Violations (Bylaw 19.9.7)

6. Public reprimand and censure through the release of the public infractions decision.¹⁷
7. During this period of probation, Arizona shall:
 - a. Continue to develop and implement a comprehensive compliance and educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for NCAA recruiting and certification legislation;
 - b. Submit a preliminary report to the Office of the Committees on Infractions (OCOI) by March 15, 2019, setting forth a schedule for establishing this compliance and educational program;
 - c. File with the OCOI annual compliance reports indicating the progress made with this program by December 15 during each year of probation. Particular emphasis shall be placed on Arizona's rules education related to Bylaw 13 recruiting inducement and tryout legislation;
 - d. Inform swimming and diving prospects in writing that Arizona is on probation for two years and detail the violations committed. If a prospect takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospect signs an NLI; and
 - e. Publicize specific and understandable information concerning the nature of the violations by providing, at a minimum, a statement to include the types of violations and the affected sports program and a direct, conspicuous link to the public infractions decision located on the athletic department's main webpage "landing page" and in the media guides for the affected sports program. Arizona's statement must: (i) clearly describe the violations; (ii) include the length of the probationary period associated with the case; and (iii) give members of the general public a clear indication of what happened in the case to allow the public (particularly prospects and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.
8. Following the receipt of the final compliance report and prior to the conclusion of probation, Arizona's president shall provide a letter to the COI affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

¹⁷ Arizona proposed the penalty of public reprimand and censure, which is imposed through the release of the public infractions decision.

The COI advises Arizona that it should take every precaution to ensure that the terms of the penalties are observed. The COI will monitor the penalties during their effective periods. Any action by Arizona contrary to the terms of any of the penalties or any additional violations may be considered grounds for prescribing more severe penalties or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Michael Adams

Norman Bay

Bobby Cremins

Joel Maturi

Gary L. Miller, chief hearing officer

Larry Parkinson

Roderick Perry

APPENDIX ONE

**ARIZONA'S CORRECTIVE ACTIONS AS IDENTIFIED IN THE
DECEMBER 7, 2018, SUMMARY DISPOSITION REPORT**

1. Arizona relieved the diving coach from all coaching duties and did not renew his contract in October 2017.
2. The swimming and diving program will not allow prospective student-athletes to utilize the institution's Center for English as a Second Language (CESL) program for initial entry into the institution for an indefinite period, but no less than two years from the date of the decision. Notice of this determination will be provided to all coaches and athletics staff.
3. Arizona has expanded the athletics compliance staff from three compliance administrators to six.
4. Arizona has instituted a rules education plan that includes documented required monthly meetings with coaches and staff and regular educational messaging through electronic correspondence.
5. Arizona has strengthened department-wide monitoring systems with two staff members and two externs having the majority of their responsibilities associated with monitoring.
6. Arizona has provided additional education to the involved host family and further strengthened education targeted to representatives of the institution's athletics interests (boosters).
7. The new swimming and diving staff is required to attend additional rules education, beyond the institution's requirement for all staff. The athletics compliance staff will continue to regularly engage in monitoring of practice activities, and further enhance its monitoring efforts and education related to the sport club activities that occur on its campus.

APPENDIX TWO

Constitution and Bylaw Citations

Division I 2016-17 Manual

11.1.1.1 Responsibility of Head Coach. An institution's head coach is presumed to be responsible for the actions of all institutional staff members who report, directly or indirectly, to the head coach. An institution's head coach shall promote an atmosphere of compliance within his or her program and shall monitor the activities of all institutional staff members involved with the program who report, directly or indirectly, to the coach.

13.2.1 General Regulation. An institution's staff member or any representative of its athletics interests shall not be involved, directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to a prospective student-athlete or his or her relatives or friends, other than expressly permitted by NCAA regulations. Receipt of a benefit by a prospective student-athlete or his or her relatives or friends is not a violation of NCAA legislation if it is determined that the same benefit is generally available to the institution's prospective students or their relatives or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability.

13.2.1.1 Specific Prohibitions. Specifically prohibited financial aid, benefits and arrangements include, but are not limited to, the following:

- (h) Free or reduced-cost housing;

13.11.1 Prohibited Activities. A member institution, on its campus or elsewhere, shall not conduct (or have conducted on its behalf) any physical activity (e.g., practice session or test/tryout) at which one or more prospective student-athletes (as defined in Bylaws 13.11.1.1 and 13.11.1.2) reveal, demonstrate or display their athletics abilities in any sport except as provided in Bylaws 13.11.2 and 13.11.3.

13.11.2.4 Local Sports Clubs. In sports other than basketball, an institution's coach may be involved in any capacity (e.g., as a participant, administrator or in instructional or coaching activities) in the same sport for a local sports club or organization located in the institution's home community, provided all prospective student-athletes participating in said activities are legal residents of the area (within a 50-mile radius of the institution). In all sports, an institution's coach may be involved in any capacity (e.g., as a participant, administrator or in instructional or coaching activities) in a sport other than the coach's sport for a local sports club or organization located in the institution's home community, provided all prospective student-athletes participating in said activities are legal residents of the area (within a 50-mile radius of the institution). Further, in clubs or organizations involving multiple teams or multiple sports, the 50-mile radius is applicable only to the team with which the institution's coach is involved; however, it is not permissible for the coach to assign a prospective student-athlete who lives

outside the 50-mile area to another coach of the club. A coach also may be involved in activities with individuals who are not of a prospective student-athlete age, regardless of where such individuals reside. (In women's volleyball and women's beach volleyball, see Bylaws 13.1.7.10 and 13.1.7.11, respectively, for regulations relating to a coach's involvement with a local sports club and the permissible number of evaluation days.)

Division I 2017-18 Manual

13.2.1 General Regulation. An institution's staff member or any representative of its athletics interests shall not be involved, directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to a prospective student-athlete or his or her relatives or friends, other than expressly permitted by NCAA regulations. Receipt of a benefit by a prospective student-athlete or his or her relatives or friends is not a violation of NCAA legislation if it is determined that the same benefit is generally available to the institution's prospective students or their relatives or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability.

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and 13.1.7.11, respectively, for regulations relating to a coach's involvement with a local sports club and the permissible number of evaluation days.)