



**UNIVERSITY OF NOTRE DAME**  
**PUBLIC INFRACTIONS DECISION**  
**NOVEMBER 22, 2016**

## **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 committee decides infractions cases involving member institutions and their staffs.<sup>1</sup> This case involved academic violations in the football program at the University of Notre Dame.<sup>2</sup> A panel of the committee 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). The panel proposed further penalties to the institution, including vacation of team records. The institution challenged the appropriateness of the proposed vacation of team records at an expedited penalty hearing. The institution has the opportunity to appeal that penalty.

The agreed-upon violations in this case centered on multiple years of academic violations by a former student athletic trainer and football student-athletes. Regarding the former student athletic trainer, she completed academic course work for two football student-athletes over a three-year period. Specifically, the former student athletic trainer and two football student-athletes committed academic misconduct during the 2011-12 through 2012-13 academic years. The academic misconduct violated NCAA legislation because the institution's academic honesty and integrity policies were violated which led the institution to erroneously certify the eligibility of the two football student-athletes. She also provided six other football student-athletes with impermissible academic extra benefits across eighteen academic courses. These violations also occurred over two academic years. Specifically, the former student athletic trainer partially or wholly completed numerous academic assignments for football student-athletes in numerous courses. Two of these student-athletes were still enrolled at the institution when the violations were discovered and the institution subsequently sought reinstatement of the student-athletes' athletics eligibility through the NCAA Student-Athlete Reinstatement process. The other four student-athletes were no longer enrolled at the institution when the violations were discovered and were not subject to the institution's academic honesty and integrity policies. Because the student

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<sup>1</sup> Infractions cases are decided by hearing panels comprised of NCAA Division I COI members. Decisions issued by hearing panels are made on behalf of the COI.

<sup>2</sup> A Division I FBS football independent, the University of Notre Dame has an enrollment of 8,551 undergraduate students. It sponsors 13 women's and 13 men's sports. This was the institution's fourth major, Level I or Level II infractions case with the institution most recently appearing before the committee in 1999 for a case also involving its football program. The institution also had previous infractions cases in 1971 (football) and 1954 (men's basketball and football).

athletic trainer knew or should have known that her conduct violated NCAA legislation, her conduct was unethical. The parties agreed the violations are Level II. The panel concurs.

Further, another football student-athlete committed academic misconduct over two academic years without the involvement of an institutional staff member. The parties agreed, and the panel concludes that these violations are Level II.

The panel accepts the parties' factual agreements and that violations occurred in this case. After considering the aggravating and mitigating factors, the panel classifies this case as Level II – Mitigated for the institution and Level II – Standard for the former student athletic trainer. Because the violations predominated after October 30, 2012, the effective date of the current NCAA Bylaw 19, the new penalty guidelines apply. After considering the aggravating and mitigating factors, the panel prescribes the following principal penalties: one year of probation; \$5,000 financial penalty; two-year show-cause order for the former student athletic trainer; vacation of team and individual records; and disassociation of the former student athletic trainer.

## **II. CASE HISTORY**

In July 2014, the institution's academic services staff contacted the institution's faculty athletics representative and the athletics department's compliance staff with concerns about a football student-athlete potentially receiving inappropriate academic assistance. The institution commenced an investigation of potential NCAA violations, which ultimately led to the institution initiating and following its undergraduate academic code of honor process. On August 15, 2014, the institution notified the NCAA enforcement staff of potential NCAA violations and its ongoing investigation. As part of the institution's investigation, its outside counsel interviewed the former student athletic trainer on August 18, 2014. That fall, the institution withheld five football student-athletes from competition. On February 12, 2015, representatives from the institution met in person with the enforcement staff to provide an update on the status of the investigation. On February 23, 2015, the enforcement staff submitted a records request to the institution. The enforcement staff provided a written notice of inquiry to the institution on May 29, 2015.

The parties submitted the SDR on March 17, 2016. The panel initially reviewed the SDR on April 14, 2016. On April 18, 2016, the panel sent a letter to the parties requesting clarifying information pursuant to NCAA Bylaw 19.6.4.2 and Division I COI Internal Operating Procedures (IOP). The parties submitted their response on April 26, 2016, which included an errata memorandum that identified and corrected a factual error in the SDR. On May 12, 2016, the panel reviewed the parties' responses, and based upon those responses, the panel identified additional issues that needed clarification. On May 20, 2016, the panel requested additional clarification from the parties on the applicability of NCAA academic misconduct legislation to the status of the former student athletic trainer. On May 27, 2016, the parties submitted their responses to the panel's second request for information. On June 14, 2016, the panel reviewed the parties' responses to its second request and accepted the SDR.

On July 5, 2016, the panel proposed additional penalties to the institution and the former student athletic trainer. The additional penalties included one year of probation; vacation of team and individual records; a \$5,000 financial penalty; public reprimand and censure; show-cause requirement; disassociation of the former student athletic trainer; and publicizing the infractions decision on the institution's athletics website. On July 15, 2016, the institution requested an expedited penalty hearing. On July 25, 2016, the institution clarified that it was only contesting the vacation of institutional and head coaching records at the expedited hearing. The former student athletic trainer did not respond to the additional penalty letter and therefore did not challenge her additional penalty by requesting an expedited hearing. The panel held an expedited penalty hearing on September 23, 2016.

### **III. PARTIES' AGREEMENT**

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

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

- 1. [NCAA Division I Manual Bylaws 10.01.1, 10.1, 10.1-(b), 14.4.3.1-(b), 14.4.3.1.6<sup>3</sup> and 14.4.3.3 (2011-12 through 2013-14); 16.8.1.2 (2012-13); and 16.8.1 (2013-14)] (Level II)**

The NCAA enforcement staff, the institution and a then student athletic trainer (former student athletic trainer)<sup>4</sup>, agree that during the 2011-12 through 2012-13 academic years, the former student athletic trainer committed academic misconduct with two football student-athletes. Additionally, the two student-athletes committed academic misconduct without the involvement of institutional personnel. As a result of the academic misconduct, the football student-athletes competed while academically ineligible during the 2012-13 or 2013-14 academic years. Specifically:

- a. Then football student-athlete (student-athlete 1)<sup>5</sup> committed academic misconduct in one course in the 2012 fall semester and one course in the

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<sup>3</sup> NCAA Bylaw 14.4.3.1.6 (additional requirements – football) was editorially revised as of May 28, 2013, (ER-2013-7). The revision clarified that a football student-athlete who does not complete at least nine semester hours or eight quarter hours of academic credit during the fall term or does not earn the NCAA Division I Academic Progress Rate eligibility point for the fall term, shall not be eligible to compete in the first four contests against outside competition in the following playing season.

<sup>4</sup> The former student athletic trainer was employed within the institution's athletics department from fall 2009 through the spring of 2013.

<sup>5</sup> Student-athlete 1 elected not to return to intercollegiate athletics. The institution determined that he would have been deemed permanently ineligible by the NCAA under the Student-athlete Reinstatement Guidelines.

2013 spring semester. Student-athlete 1 acted without the involvement of institutional personnel when he violated institutional academic honesty and integrity policies in the 2012 fall semester course. Further, student-athlete 1 violated institutional academic honesty and integrity policies with the assistance of the former student athletic trainer for the 2013 spring semester course (THEO 10001). The institution subsequently reduced student-athlete 1's grades for the two courses and as a result, he completed only 16 credit hours during the 2012-13 regular academic year. Consequently, the institution's declaration of student-athlete 1's academic eligibility was retroactively rendered erroneous, and he competed in 12 contests and a postseason bowl contest during the 2013-14 academic year. [NCAA Bylaws 10.01.1, 10.1, 10.1-(b) and 14.4.3.1-(b) (2012-13 and 2013-14); and 16.8.1 (2013-14)]

- b. Football student-athlete (student-athlete 2)<sup>6</sup> committed academic misconduct in a total of eight courses: one course in the 2011 spring semester, one course in the 2011 summer term, two courses in the 2011 fall semester, three courses in the 2012 spring semester and one course in 2012 fall semester. Student-athlete 2 acted without the involvement of institutional personnel when he violated institutional academic honesty and integrity policies in five courses during the 2011 spring, summer and fall and 2012 spring semesters. Further, student-athlete 2 violated institutional academic honesty and integrity policies with the assistance of the former student athletic trainer in three courses (CSEM 23102, IIPS 30101, PHIL 20401) during the 2012 spring and fall semesters. The institution subsequently reduced student-athlete 2's grades for the eight courses and as a result, he: (1) did not have the required cumulative minimum grade-point average prior to the 2012 fall semester, (2) completed only 15 credit hours during the 2011 fall and 2012 spring and fall semesters; and (3) completed only six credit hours during the 2011 fall semester. Consequently, the institution's declaration of student-athlete 2's academic eligibility was retroactively rendered erroneous, and he competed in 12 contests and the postseason bowl contest during the 2012-13 academic year. [NCAA Bylaws 10.01.1, 10.1, 10.1-(b), 14.4.3.1-(b), 14.4.3.1.6 and 14.4.3.3 (2011-12 and 2012-13); and 16.8.1.2 and 14.11.1 (2012-13)]

**2. [NCAA Bylaws 16.8.1.2 and 16.11.2.1 (2011-12 and 2012-13) and 16.8.1 (2013-14)] (Level II)**

The NCAA enforcement staff, institution and the former student athletic trainer, agree that during the 2011-12 and 2012-13 academic years, the former student

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<sup>6</sup> Student-athlete 2 was deemed permanently ineligible by the NCAA and did not compete in the 2014 season (due to temporary dismissal) or the 2015 season (due to NCAA reinstatement penalty).

athletic trainer provided academic extra benefits to six football student-athletes. All six student-athletes subsequently competed after receiving the benefits. Specifically:

- a. Two football student-athletes violated institutional academic honesty and integrity policies and received academic extra benefits from the former student athletic trainer.

- (1) Then football student-athlete (student-athlete 3)<sup>7</sup> violated institutional academic honesty and integrity policies regarding one course (ANTH 30592) during the 2012 fall semester when he received an academic extra benefit from the former student athletic trainer.<sup>8</sup> [NCAA Bylaws 16.8.1.2 and 16.11.2.1 (2012-13)]

- (2) Football student-athlete (student-athlete 4)<sup>9</sup> violated institutional academic honesty and integrity policies regarding one course (HIST 13184) during the 2013 spring semester when he received an academic extra benefit from the former student athletic trainer.<sup>10</sup> [NCAA Bylaws 16.8.1.2 and 16.11.2.1 (2012-13)]

- b. Four football student-athletes received academic extra benefits from the former student athletic trainer while enrolled but were not subject to institutional academic honesty and integrity policies.<sup>11</sup>

- (1) Then football student-athlete (student-athlete 5) received an academic extra benefit from the former student athletic trainer in one course (ANTH 45871) during the 2012 fall semester. [NCAA Bylaws 16.8.1.2 and 16.11.2.1 (2012-13)]

- (2) Then football student-athlete (student-athlete 6) received an academic extra benefit from the former student athletic trainer in two courses (FTT 30461, FTT 30465) during the 2012 fall semester. [NCAA Bylaws 16.8.1.2 and 16.11.2.1 (2012-13)]

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<sup>7</sup> Student-athlete 3 was suspended for the first eight games of the 2014 season until reinstated by the NCAA on November 7, 2014.

<sup>8</sup> The institution's changes to student-athlete 3's grades had no effect on his eligibility.

<sup>9</sup> Student-athlete 4 was unable to compete in the 2014 season due to his temporary dismissal from the institution. He was reinstated for the 2015 season but lost his ability to compete in the 2016 season due to NCAA Student-Athlete Reinstatement Guidelines.

<sup>10</sup> The institution's changes to student-athlete 4's grades had no effect on his eligibility.

<sup>11</sup> The institution's policies related to academic honesty and integrity do not apply to former students who are no longer enrolled when the institution discovers potential academic improprieties.

- (3) Then football student-athlete (student-athlete 7) received academic extra benefits from the former student athletic trainer in one course (FTT 40496) during the 2012 spring semester and in three courses (CAPP 40150, POLS 30042, THEO 20606) during the 2012 fall semester. [NCAA Bylaws 16.8.1.2 and 16.11.2.1 (2011-12 and 2012-13)]
- (4) Then football student-athlete (student-athlete 8) received academic extra benefits from the former student athletic trainer in a total of nine courses: three courses (CAPP 30510, FTT 30465, PHIL 20201) during the 2011 fall semester; two courses (FTT 30461, FTT 30463) during the 2012 spring semester; one course (ENGL 20323) during the 2012 summer term; one course (HIST 30050) during the 2012 fall semester; and two courses (FTT 40101, FTT 40495) during the 2013 spring semester. [NCAA Bylaws 16.11.2.1 (2011-12 and 2012-13) and 16.8.1 (2013-14)]

**3. [NCAA Bylaws 10.01.1, 10.1, 10.1-(b), 14.1.9, 14.4.3.1-(c), 14.4.3.1.6 and 16.8.1 (2013-14)] (Level II)**

The enforcement staff and the institution agree that during the 2012-13 and 2013-14 academic years, then football student-athlete (student-athlete 9)<sup>12</sup> committed academic misconduct in two courses in the 2012 fall semester and three courses in the 2013 fall semester. Student-athlete 9 acted without the involvement of institutional personnel when he violated institutional academic honesty and integrity policies. The institution subsequently reduced student-athlete 9's grades for the five courses, and as a result he completed only six credit hours during the 2012 fall semester and only three credit hours during the 2013 fall semester. The institution's declaration of student-athlete 9's academic eligibility was retroactively rendered erroneous, and he competed in the first four contests of the 2013 football season and the postseason bowl contest during the 2013-14 academic year.

**B. PARTIES' AGREED-UPON AGGRAVATING AND MITIGATING FACTORS**

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

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<sup>12</sup> Student-athlete 9 exhausted his NCAA eligibility during his three-semester suspension from the institution.

Agreed-upon aggravating and mitigating factors. [NCAA Bylaws 19.9.3 and 19.9.4]

a. Aggravating factors. [NCAA Bylaw 19.9.3]

(1) A history of Level I, Level II or major violations by the institution, sport program(s) or involved individual. [NCAA Bylaw 19.9.3-(b)]

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

Mitigating factors. [NCAA Bylaw 19.9.4]<sup>13</sup>

(1) Prompt self-disclosure of the violation(s). [NCAA Bylaw 19.9.4-(a)]

(2) Affirmative steps to expedite final resolution of the matter. [NCAA Bylaw 19.9.4-(c)]

(3) An established history of self-reporting Level III or secondary violations. [NCAA Bylaw 19.9.4-(d)]<sup>14</sup>

Pursuant to NCAA Bylaw 19.6.2-(g), the parties have agreed to the following aggravating and mitigating factors for the former student athletic trainer:

Agreed-upon aggravating and mitigating factors. [NCAA Bylaws 19.9.3 and 19.9.4]

b. Aggravating factors. [NCAA Bylaw 19.9.3]<sup>15</sup>

None.

c. Mitigating factors. [NCAA Bylaw 19.9.4]<sup>16</sup>

None.

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<sup>13</sup> The institution proposed three additional mitigating factors, none of which were adopted by the hearing panel. *See* Penalties, Section V.

<sup>14</sup> The institution reported 23 football and 76 total violations in the past five years.

<sup>15</sup> The enforcement staff proposed two aggravating factors for the former student athletic trainer which were not agreed upon by the parties, both of which were adopted by the hearing panel. *See* Penalties, Section V.

<sup>16</sup> The former student athletic trainer proposed one mitigating factor which was not agreed upon by the parties, and it was not adopted by the hearing panel. *See* Penalties, Section V.

#### **IV. REVIEW OF CASE**

##### **A. Agreed-upon violations**

The SDR fully detailed the parties' positions in the infractions 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 the facts constitute four categories of Level II violations: (1) academic misconduct and unethical conduct by the former student athletic trainer and two football student-athletes; (2) academic misconduct by a football student-athlete without the involvement of an institutional staff member; (3) impermissible participation after the institution erroneously certified student-athletes as academically eligible; and (4) impermissible academic extra benefits provided to six football student-athletes. The conduct violated NCAA Bylaws 10, 14 and 16.

With respect to the first two categories of violations, the former student athletic trainer and two football student-athletes engaged in academic misconduct when the former student athletic trainer completed academic course work for the student-athletes over two academic years. Further, another football student-athlete committed academic misconduct without the involvement of an institutional staff member. The conduct constituted academic misconduct pursuant to NCAA Bylaw 10.

NCAA Bylaw 10 governs ethical conduct in athletics. NCAA Bylaw 10.01.1 generally requires enrolled student-athletes and any institutional staff member to act with honesty and sportsmanship at all times and represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports. The term "institutional staff member" includes student workers who work in any capacity on behalf of the institution, whether as a regular employee or in a volunteer capacity.<sup>17</sup> NCAA Bylaw 10.1 and 10.1-(b) provide that an institutional staff member or an enrolled student-athlete commits unethical conduct by engaging in knowing involvement in arranging for fraudulent academic credit or false transcripts for a prospective or an enrolled student-athlete.

The former student athletic trainer completed academic coursework for student-athletes 1 and 2 during the 2011-12 through 2012-13 academic years in violation of the institution's policies and NCAA Bylaw 10. Specifically, the former student athletic trainer completed academic coursework in one class for student-athlete 1 and three different classes for student-athlete 2. When the former student athletic trainer completed academic coursework for student-athletes 1 and 2 while she was a student athletic trainer, she was acting as an institutional staff member. Under NCAA legislation, if an institutional staff member or enrolled student-athlete violates the institution's academic integrity policies and leads to an erroneous declaration of eligibility, then the institution must report such conduct to the NCAA as a potential violation of Bylaw 10.

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<sup>17</sup> See April 16, 2014, NCAA Educational Column, "*Academic Misconduct—Reporting a Misconduct Violation*," Question No. 5.

During the spring 2013 semester, student-athlete 1 violated the institution's academic honesty and integrity policies in one course with the assistance of the former student athletic trainer. Student-athlete 1 also violated the institution's academic honesty and integrity policies in another course that same semester without the assistance of institutional personnel. As a result of the misconduct, the institution's declaration of student-athlete 1's eligibility was retroactively rendered erroneous and he competed while ineligible in twelve contests and a postseason bowl during the 2013-14 academic year.

Similarly, during the fall and spring 2012 semesters, student-athlete 2 violated the institution's academic honesty and integrity policies in eight total courses spanning five different semesters. The former student athletic trainer committed academic misconduct with student-athlete 2 in three of those courses during the 2012 spring and fall semesters. Consequently, the institution's declaration of student-athlete 2's eligibility was retroactively rendered erroneous and he competed in twelve contests and a postseason bowl during the 2012-13 academic year. When the former student athletic trainer engaged in academic misconduct with student-athletes 1 and 2, she and the student-athletes acted unethically, and therefore violated NCAA Bylaws 10.01.1, 10.1 and 10.1-(b). Those violations are Level II.

For the second category of academic misconduct violations, a football student-athlete violated the institution's academic integrity policies by committing academic misconduct without the assistance of institutional staff and he also violated NCAA Bylaw 10. Specifically, student-athlete 9 committed academic misconduct in two courses in the fall 2012 semester and three courses in the fall 2013 semester in which he received fraudulent academic credit. The institution lowered student-athlete 9's grades in all five courses and because of those grade reductions, he only completed six credit hours during the fall 2012 semester and only three credit hours during the fall 2013 semester. Consequently, the institution's declaration of student-athlete 9's eligibility was retroactively rendered erroneous and he competed while ineligible in the first four contests of the 2013 season and a postseason bowl during the 2013-14 academic year. When student-athlete 9 committed academic misconduct in five courses, he violated NCAA Bylaws 10.01.1, 10.1, and 10.1-(b). Those violations are Level II.

With regard to the third category of violations that involved participation after an erroneous certification of academic eligibility, it flows from the academic misconduct established in the first two categories. The academic misconduct led to the institution erroneously declaring student-athletes academically eligible. Those student-athletes competed for the institution while ineligible in violation of NCAA Bylaw 14.

NCAA Bylaw 14 governs eligibility and the academic and general requirements for eligibility. NCAA Bylaw 14.1.9 governs a change in a student-athlete's eligibility status. NCAA Bylaw 14.4.3.1-(b) and 14.4.3.1-(c) detail fulfillment of credit-hour requirements for competition eligibility be based on satisfactory completion of certain semester-hours or quarter-hours in a certain period of time. NCAA Bylaw 14.4.3.1.6 outlines additional requirements for Division I football student-athletes, including that a football student-athlete who does not complete at least nine semester-hours or eight quarter-hours of academic credit during the fall term shall not be

eligible to compete in the first four contests against outside competition in the following playing season. NCAA Bylaw 14.4.3.3 requires student-athletes to maintain a minimum cumulative grade-point average required for eligibility based on an increasing graduated scale depending on the student-athlete's year of enrollment. Generally, the minimum cumulative grade-point average must equal at least 90 percent of the institution's overall cumulative grade-point average required for graduation based on a maximum 4.000 scale.

Three football student-athletes competed while erroneously certified as academically eligible. When student-athletes 1, 2 and 9 committed academic misconduct and subsequently competed for the institution while ineligible the institution violated NCAA Bylaws 14.4.3.1-(b) and (c), 14.4.3.1.6, 14.4.3.3. Those violations are Level II.

Finally, the fourth category of violations related to impermissible academic assistance. The former student athletic trainer provided impermissible academic extra benefits to several football student-athletes over a period of two academic years in violation of NCAA Bylaw 16.

NCAA Bylaw 16 governs awards, benefits, and expenses for enrolled student-athletes. NCAA Bylaw 16.8.1.2 (2012-13) and 16.8.1 (2013-14) provide that an institution may provide actual and necessary expenses to a student-athlete to represent the institution in practice and competition as long as the student-athlete is eligible for competition. NCAA Bylaw 16.11.2.1 establishes the general rule that student-athletes shall not receive any extra benefit. Extra benefit refers to any special arrangement by an institutional employee or representative of the institution's athletics interests to provide the student-athlete or his or her family members or friends with a benefit not expressly authorized by NCAA legislation.

When the former student athletic trainer completed coursework for six football student-athletes in eighteen courses during the 2011-12 and 2012-13 academic years she provided academic benefits that are not expressly authorized by NCAA legislation.

Specifically, the former student athletic trainer continued to provide impermissible academic benefits to football student-athletes for a full year after she graduated from the institution and was in her first year of law school at another member institution. The former student athletic trainer's impermissible academic assistance extended to six other football student-athletes in eighteen academic courses.<sup>18</sup> Student-athletes 3 and 4 violated the institution's academic honesty and integrity policies and received impermissible academic extra benefits. Student-athletes 5, 6, 7 and 8 received the impermissible academic extra benefits while enrolled but were not subject to the institution's academic honesty and integrity policies because by the time the violations were discovered they were no longer enrolled at the institution and thus not subject to the institution's policies. All six of these football student-athletes subsequently competed for the institution.

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<sup>18</sup> Specifically, the former student athletic trainer provided impermissible academic extra benefits to student-athlete 3 in one course; student-athlete 4 in one course; student-athlete 5 in one course; student-athlete 6 in two courses; student-athlete 7 in four courses; and student-athlete 8 in nine courses.

When the former student athletic trainer provided six football student-athletes impermissible academic extra benefits, both she and the institution violated NCAA Bylaws 16.8.1.2, 16.11.2.1 (2011-12 and 2012-13) and 16.8.1 (2013-14). Those violations are Level II.

In sum, the former student athletic trainer agreed that the findings of fact in this case are substantially correct and that NCAA violations occurred. The former student athletic trainer signed institutional educational documents clearly stating that, "you may NOT type papers, reports, letters, or other academic work for a student-athlete." (Emphasis in original). However, she did just that. The guidelines also provided that should she "have questions related to NCAA rules and regulations and the above guidelines, please contact a member of the Athletics Compliance staff." However, the student athletic trainer did not ask questions of the institution's compliance staff prior to providing student-athletes with impermissible academic extra benefits. The guidelines admonished all signees to "ask a question before engaging in behavior that may jeopardize the welfare of the University, the eligibility of student-athletes, and your employment status." That, she also never did. Had she simply asked a few questions of the athletics compliance staff related to her conduct in this case, she would have likely learned in no uncertain terms that her proposed line of conduct was impermissible under NCAA legislation. Institutional staff, student employees included, should never involve themselves in completing, in whole or in part, the academic coursework of student-athletes. The former student athletic trainer asserted that her intention was only to "help" student-athletes in the institution's academic environment. The best help she could have given the student-athletes and herself was to ask a question of the athletics compliance staff *before* engaging in behavior that would jeopardize the welfare of the institution and the eligibility of student-athletes.

### **B. Contested Penalty: Vacation of Team and Head Coach Records**

After accepting the facts and violations in the SDR, the panel proposed additional penalties to the institution. The institution contested the penalty of vacation of team and head coach records.<sup>19</sup> In its September 16, 2016, written submission, and at the expedited penalty hearing, the institution advanced four principal reasons for why the penalty was inappropriate in this case: (1) institutional autonomy; (2) the discretionary nature of the vacation of team records; (3) past COI cases; and (4) policy considerations. Each argument will alternately be addressed. Unpersuaded by the institution's arguments, the panel concludes that vacation of certain team records remains appropriate.

The first argument advanced by the institution is that application of the penalty intrudes into or constrains the institution's autonomy over student academic misconduct. Essentially the argument is that purely academic decisions should not be affected by athletics considerations. The institution advances the argument that purely academic decisions by an institution could be affected or influenced with the incentive to consider potential NCAA infractions ramifications as it shapes its

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<sup>19</sup> Although the institution contested the vacation of team and head coach records, it acknowledged a willingness to vacate the individual records, performances and the return of individual awards of three football student-athletes who competed while ineligible as a result of the academic misconduct in this case.

honor code. The institution also argued that it could have just permanently expelled the involved student-athletes to avoid any retroactive effect on their grades and derivatively, their eligibility. Instead the institution temporarily dismissed the students and "changed their grades and credits to ensure they could not graduate from Notre Dame or any other institution without demonstrating a certain level of academic proficiencies." In the institution's view, attaching the vacation of team records penalty to its decision to retroactively declare the involved student-athletes ineligible "sends a disturbing message to the membership."

In this case, no one disputes that academic misconduct occurred. The membership, through its bylaws, expects that member institutions will apply an academic integrity policy fairly to all students, including student-athletes. Bylaw 10 also requires a member institution to report instances of academic misconduct to the NCAA, which happened in this case. The institution's obligation to report such instances exists regardless of any potential penalty consequences. Moreover, the panel, on behalf of the membership, is mindful that institutions should do the right thing regardless of whatever potential NCAA infractions penalties or consequences may result due to any purported academic misconduct. That academic misconduct may implicate potential NCAA violations or penalties does not mean that the NCAA somehow encroaches on purely academic determinations made by a member institution.

Here, it is uncontested that the former student athletic trainer was employed by the institution's athletics department and her activities were subject to NCAA legislation in effect at the time of the violations. The institution conceded at the expedited hearing that the former student athletic trainer was an institutional staff member under the bylaws in effect at that time. The former student athletic trainer was therefore governed by NCAA rules and acted with disregard to the training she received. She had special access to student-athletes by the very nature of her employment in the athletics department, although she had no responsibilities in academics or academic support. It is uncontested that she assisted members of the football team in a way that elevated their academic performance, which was then deemed eventually to invalidate their academic performance, which had retroactive eligibility implications.

The institution's second argument was that the vacation penalty is discretionary and should not be applied in this case. While the institution is correct that vacation of team and individual records is not a mandatory core penalty under the current Bylaw 19, it is an additional penalty that the membership has recognized as appropriate for the panel to prescribe. Prescribing vacation as a penalty in cases involving academic misconduct is historically consistent with the membership's bylaws. Previously, NCAA Bylaw 19.5.2 identified vacation was appropriate when there was ineligible competition arising from academic violations. Although the current bylaw does not particularly identify academic violations as an express example, that does not mean the consideration is now inappropriate. In fact, Division I COI IOP 4-16-4 provides in pertinent part: "Vacation of wins is more appropriate when a case involves any of the following: *academic violations*, serious intentional violations, direct involvement of a coach or high ranking administrator, a large number of violations, the institution had a recent history of Level I, Level II or major violations or when the panel concludes that a failure to monitor or lack of institutional control existed." (Emphasis supplied). Merely because a penalty is not mandatory does not mean

the panel cannot exercise its discretion to apply it. This case involved undisputed ineligible competition after academic misconduct.

The institution's third argument was that prior academic misconduct cases do not support a vacation penalty in this case because those cases mostly involved serious institutional misconduct, which they assert is not present in this case. The COI has consistently applied vacation of team and head coaching records in numerous cases that involved academic fraud or misconduct, impermissible academic extra benefits and student-athletes competing while ineligible under both the current and former NCAA Bylaw 19.<sup>20</sup> See e.g., *University of Louisiana, Lafayette* (2016) (prescribing vacation of team and head coach records when former assistant football coach committed academic fraud); *Southern Methodist University* (2015) (prescribing vacation of team and head coach records affirmed on appeal when former men's basketball administrative assistant committed academic fraud); *Syracuse University* (2015) (prescribing vacation of team and head coach records affirmed on appeal when men's basketball support services student tutor provided impermissible academic extra benefits); *University of North Carolina* (2012) (adopting the institution's self-imposed vacation of football wins in two seasons and prescribing vacation of postseason contests when former student academic support tutor committed academic fraud and provided impermissible extra benefits to several football student-athletes); and *East Carolina University* (2011) (prescribing vacation of team, head coach and individual records in an SDR when one student-athlete hired by the athletic department as an academic tutor committed academic fraud with four other student-athletes and all subsequently competed while ineligible as a result of the academic fraud).

At the expedited hearing, the institution conceded that the *East Carolina* case was "probably the closest to our case." The *East Carolina* case was also a summary disposition case. In that case, the committee prescribed vacation of team and head coach records when a peer student-athlete employed by the athletics department as an academic tutor committed academic fraud with four other student-athletes. The institution attempts to distinguish the case because the peer student in that case was employed as an academic tutor by the athletics department whereas the student in this case was employed in the athletics department as a student trainer. However, neither the applicable bylaws nor official interpretations or educational columns make such a distinction. The panel agrees with the institution that the *East Carolina* case is analogous to this case, but is unpersuaded that a different result should obtain merely because one student was an academic tutor and the other was an athletic trainer. Both were institutional staff members at the time they committed their violations.

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<sup>20</sup> Consistent with COI IOP 4-16-4 and the COI's past practices of prescribing vacation when student-athletes compete while ineligible under NCAA Bylaw 10 or Bylaw 16, the panel would ordinarily prescribe vacation of team records in this case for the violations outlined in Violation No. 2. However, there was an omission in the COI's additional penalty letter to the institution that inadvertently left out a proposed penalty of vacation for the provision of impermissible extra benefits as outlined in Violation No. 2 of the SDR. The panel chooses not to prescribe vacation of team records for the games in which student-athletes competed while ineligible as a result of receiving impermissible extra benefits. The panel is mindful that this case was delivered to the COI as an SDR and desires to expedite a fair and timely resolution of this case without further delay. The COI reserves and retains the discretion to prescribe vacation regardless of whether an omission occurs or not depending on the unique facts and circumstances of each case. Therefore, member institutions should not view the result reached in this case as controlling for any future case.

Finally, the institution argued that policy considerations weigh in favor of not prescribing vacation of team records. In the institution's view, prescribing vacation of team records disincentivize institutions "from proactively and firmly addressing academic misconduct involving student-athletes and might lead to athletically-driven changes to academic policy." The panel is mindful that under the NCAA Constitution and Bylaws, member institutions have an obligation to faithfully apply and enforce NCAA legislation. It is the panel's expectation that member institutions develop, implement and apply academic policies to their students, including student-athletes, in a fair and equitable manner and take the appropriate actions needed for the students and the institution, regardless of whatever penalties may result from instances of academic misconduct.

In sum, the vacation of team records penalty is appropriate due to the seriousness of the agreed-upon violations and because it is consistent with past cases involving academic misconduct and student-athletes competing while ineligible. Through the SDR, the institution agreed that the case involved significant breaches of conduct committed by a student athletic trainer employed by the athletics department. The institution further agreed the violations compromised the NCAA Collegiate Model and resulted in academic misconduct and impermissible academic benefits. Further, as a result of the violations involving her conduct, two football student-athletes competed while ineligible. Specifically, student-athletes 1 and 9 competed while ineligible during the 2013-14 academic year, and student-athlete 2 competed while ineligible in the 2012-13 academic year.

## **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. The panel then determined the applicable penalty classification. Level II violations are significant breaches of conduct as the violations in this case involved conduct that compromised the integrity of the NCAA Collegiate Model.

The parties agreed that two aggravating factors and three mitigating factors were present in this case for the institution. The panel adopts only one of these aggravators, Multiple Level II violations and all of the agreed-upon mitigators. NCAA Bylaw 19.9.3-(b) identifies an institution's Level I, Level II or major infractions history as an aggravating factor; however, pursuant to NCAA Bylaw 19.9.3-(b)(1), because some 17 years have elapsed since the institution's last major infractions case, the panel determines it was not an aggravator in this case. Additionally, the institution proposed three more mitigating factors that the enforcement staff did not agree with: (1) Implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches' control standards, NCAA Bylaw 19.9.4-(e); (2) Exemplary cooperation, NCAA Bylaw 19.9.4-(f); and (3) other facts warranting lower penalty, NCAA Bylaw 19.9.4-(h). The panel determines that none of the institution's proposed mitigating factors apply.

Regarding the first proposed mitigator, the violations in this case were significant and involved numerous football student-athletes, an institutional staff member and occurred over a long period

of time without detection. Exemplary cooperation is typically reserved for institutional assistance above and beyond the requirements of an institution under NCAA Bylaw 19.2.3. By all accounts, the institution appropriately satisfied its obligation to cooperate but did not meet the very high bar for exemplary cooperation. Lastly, regarding other facts warranting a lower penalty, the institution advanced three reasons why the mitigator applied: (1) lack of institutional staff involvement; (2) the current NCAA landscape on academic misconduct; and (3) the institution's proactive removal of all involved student-athletes from competition and subsequent serious sanctions under a modified honor code process. The panel determines none of the arguments for the mitigator are persuasive and therefore declines to adopt the mitigator. The former student athletic trainer was an institutional staff member under the bylaw in effect at the time of the conduct and the panel must apply that legislation. For the same reasons, the second argument is unpersuasive. While the panel commends the institution for acting swiftly and decisively after discovering the academic fraud in this case, removing student-athletes from competition is required conduct for member institutions and consistent with institutional obligations to ensure only eligible student-athletes compete. The institution's provision of serious sanctions for the involved individuals in this case through a modified process was consistent with its affirmative efforts to expedite resolution of this case to which it has already received appropriate credit for as a separate mitigator. Thus, after determining the appropriate aggravating and mitigating factors, the panel classifies this case as Level II - Mitigated for the institution.

Regarding the former student athletic trainer, the enforcement staff proposed two aggravators: unethical conduct and multiple Level II violations by an involved individual. The former student athletic trainer opposed both of the proposed aggravators. The panel adopts both of the enforcement staff's proposed aggravators because the former student athletic trainer failed in her responsibilities and obligations to act ethically under NCAA legislation resulting in serial academic misconduct violations and several football student-athletes being ruled ineligible.

The former student athletic trainer proposed one mitigator in this case: exemplary cooperation. The enforcement staff opposed the proposed mitigator. Similar to the institution, the former student athletic trainer fulfilled her ordinary obligations to cooperate and maintain confidentiality under NCAA Bylaw 19. However, her cooperation did not rise to the level of exemplary. The panel determines that the proposed mitigator does not apply. Thus, after determining the appropriate aggravating and mitigating factors, the panel classifies this case as Level II - Standard for the former student athletic trainer.

Because the violations in this case occurred both before and after October 30, 2012, the panel assessed whether the violations predominated before or after the effective date of current NCAA Bylaw 19. The panel determined the violations predominated after the effective date. Therefore, the panel prescribed penalties pursuant to the new penalty structure under present NCAA Bylaw 19.9. These penalties are independent of and supplemental to any action that has been or may be taken by the Committee on Academic Performance through its assessment of contemporaneous, historical or other penalties.

The institution's corrective actions are contained in the Appendix. The panel adopts the institution's self-imposed penalties, which are identified below, and prescribes the following additional penalties pursuant to NCAA Figure 19-1:

**Core Penalties for Level II – Mitigated violations by the institution (NCAA Bylaw 19.9.5)**

1. Probation: One year of probation from November 22, 2016, through November 21, 2017, or completion of the final penalty, whichever is later.<sup>21</sup>

Pursuant to NCAA Bylaw 19.9.6, the panel prescribes one year of probation beyond the guideline maximum of zero years for a Level II-Mitigated case. The panel believes that the nature and scope of the violations in this case involved significant academic misconduct by an institutional staff member and that a year of probation will sufficiently hold accountable the institution for the violations and promote enhanced institutional monitoring of staff and student-athletes. Although the academic misconduct in this case was committed by a former student athletic trainer who later continued her misconduct after graduating from the institution, the panel was concerned about the numerous instances of academic misconduct she committed. The panel determines the foregoing extenuating circumstances warrant a departure from the penalty guidelines contained in NCAA Bylaw 19-1. Because of these factors, the panel determines the institution needs the additional time for oversight and monitoring by the Association.

2. Financial penalty: The institution shall pay a \$5,000 fine.

**Core Penalties for Level II – Standard violations by the former student athletic trainer (NCAA Bylaw 19.9.5)**

3. This case reflected and the former student-athletic trainer admitted to committing significant violations of NCAA legislation involving academic misconduct. Therefore, she will be informed in writing by the NCAA that should she be employed or affiliated in an athletically related position at another NCAA member institution during a two-year period from November 22, 2016, through November 21, 2018, within 30 days of her hiring or affiliation, that employing institution shall ask for a date to appear before a hearing panel of the COI to show cause why restrictions on all athletically related duties should not apply.

**Additional Penalties for Level II – Mitigated violations by the institution (NCAA Bylaw 19.9.7)**

4. Public reprimand and censure;

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<sup>21</sup> Probationary period always commences with the release of the infractions decision. Pursuant to NCAA Bylaws 19.3.6-(e), 19.9.5.7 and Internal Operating Procedure 2-1-1, the committee tethers probationary periods to the prescribed penalties.

5. The institution shall show cause why it should not be penalized further if it fails to disassociate the former student athletic trainer from the institution's athletics program for a period of two years, commencing with the release of the decision, based on her involvement in the violations in the football program as set forth in this decision. These include:
  - a. Not accepting any assistance from the former student athletic trainer that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes;
  - b. Not accepting financial assistance for the institution's athletics program from the former student athletic trainer;
  - c. Ensuring that no athletics benefit or privilege is provided to the former student athletic trainer that is not generally available to the public at-large; and
  - d. Taking such actions against the individual that the institution determines to be within its authority to eliminate the involvement of the former student athletic trainer in the institution's athletics program.
  
6. The institution acknowledged that the student-athletes referenced in Violations No. 1 and No. 3 competed while ineligible and would be subject to NCAA Bylaw 19.9.7-(g) (vacation of records). Therefore, pursuant to NCAA Bylaws 19.9.7-(g) and 31.2.2.3, the institution shall vacate all regular season and postseason records and participation, including bowl contests, from the time football student-athletes became ineligible through the time they were reinstated as eligible for competition during the 2012-13 and 2013-14 football seasons. The individual records of the ineligible student-athletes shall also be vacated. However, the individual finishes and any awards for all eligible student-athletes will be retained. Further, the institution's records regarding its athletics programs, as well as the records of its head coach, will reflect the vacated records and will be recorded in all publications in which such records are reported, including, but not limited to, institutional media guides, recruiting material, electronic and digital media plus institutional, conference and NCAA archives. Any institution that may subsequently hire the affected head coach shall similarly reflect the vacated wins in his career records documented in media guides and other publications cited above. Head coaches with vacated wins on their records may not count the vacated wins toward specific honors or victory "milestones" such as 100<sup>th</sup>, 200<sup>th</sup> or 500<sup>th</sup> career victories. Any public reference to the vacated contests shall be removed from the athletics department stationary, banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in the sport of football shall be returned to the Association.

Finally, to ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected in official NCAA publications and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA Media Coordination and Statistics office and appropriate conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the NCAA Media Coordination and Statistics office with a written report,

detailing those discussions. This document will be maintained in the permanent files of the NCAA Media Coordination and Statistics office. This written report must be delivered to the office no later than 45 days following the release of this decision. The sports information director (or designee) must also inform the Office of the Committees on Infractions of this submission to the NCAA Media Coordination and Statistics office.

7. During this period of probation, the institution shall:
  - a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institution staff members with responsibility for ensuring compliance with NCAA academic misconduct and extra benefits legislation;
  - b. Submit a preliminary report to the Office of the Committees on Infractions by January 15, 2017, setting forth a schedule for establishing this compliance and educational program;
  - c. File with the Office of the Committees on Infractions annual compliance reports indicating the progress made with this program by September 15 of each year during the probationary period. Particular emphasis should be placed on NCAA academic misconduct and extra benefits legislations. The reports must also include documentation of the institution's compliance with the penalties adopted and prescribed by the committee;
  - d. Inform prospective student-athletes in the football program that the institution is on probation for one year and detail the violations committed. If a prospective student-athlete 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 prospective student-athlete signs a National Letter of Intent; and
  - e. Publicize specific and understandable information concerning the nature of the infractions by providing, at a minimum, a statement to include the types of violations and the affected sport program and a direct, conspicuous link to the public infractions report located on the athletic department's main or "landing" webpage and in the media guides for the involved sports. The information shall also be included in institutional media guides and in an alumni publication. The institution's statement must: (1) clearly describe the infractions; (2) include the length of the probationary period associated with the Level II infractions case; and (3) give members of the general public a clear indication of what happened in the Level II infractions case to allow the public (particularly, prospective student-athletes and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.
8. In accordance with NCAA Bylaw 19.9.10, the NCAA president may forward a copy of the public infractions report to the appropriate regional accrediting agency.

9. Following the receipt of the final compliance report and prior to the conclusion of probation, the institution's president shall provide a letter to the committee affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.
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The COI advises the institution that it should take every precaution to ensure that it observes the terms of the penalties. The committee will monitor the penalties during their effective periods. Any action by the institution contrary to the terms of any of the penalties or any additional violations shall be considered grounds for prescribing more severe penalties or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Greg Christopher

Thomas Hill

Larry Parkinson

Gregory Sankey, Chief Hearing Officer

Sankar Suryanarayan

## APPENDIX

### **THE INSTITUTION'S CORRECTIVE AND OTHER REMEDIAL ACTIONS AS IDENTIFIED IN THE MARCH 17, 2016, SUMMARY DISPOSITION REPORT.**

1. The institution's president personally conducted an evaluation of the academic culture in the Notre Dame football program, which included interviews independent of the director of athletics and the head football coach with nondirect reports responsible for athletic and academic affairs.
  - a. One of the outcomes of the president's review was a charge to the provost and the faculty athletics representative (FAR) to examine how the university could improve its efforts to ensure the academic success of Notre Dame student-athletes. The provost and FAR interviewed several faculty and academic and athletic staff members who work closely with student-athletes, including those who might be considered at-risk. This review produced several recommendations concerning communication and collaboration between athletic and academic personnel, recruiting and admissions, assessment of admitted students, and curricular issues. The university has implemented or is in the process of implementing these recommendations.
  - b. Notre Dame conducted an Administrative Unit Review of its Academic Services for Student-Athletes (ASSA) division, including participation of a four-person evaluation team from peer institutions, to ensure adoption of best practices regarding academic support.
2. Notre Dame Athletics Compliance Office hired two new full-time staff members; as a direct result of the issues raised in this case, Notre Dame now has an assistant athletics director for compliance dedicated to academic matters who works closely with the FAR, ASSA, the colleges, registrar's office, institutional honor code committees, and other academic and administrative units.
3. The university's Audit and Advisory Services division launched a comprehensive audit of initial and continuing eligibility in January 2016.
4. In March 2014, the Faculty Board on Athletics and the Department of Athletics created a working group called the Student-Athlete Task Force, the purpose of which was "*To produce recommendations for specific actions and programs that can help Notre Dame more effectively meet its commitment to the academic success of its student-athletes, especially those student-athletes who might be considered most at-risk.*" The Student-Athlete Task Force submitted its recommendations in July 2014. Although the task force report was submitted just prior to the discovery of the academic misconduct at issue in this current case, the situation has informed implementation of the recommendations and strengthened the institution's approach to academic integrity.

5. The University of Notre Dame has established a committee to conduct a comprehensive review of its Academic Code of Honor for undergraduate students. Although the present case is just one of many factors leading to the comprehensive review, the institution will carefully consider the appropriate level of personal responsibility of all students – including student-athletes – to uphold the moral standards of our community and the appropriate consequences when students fall short of the expectations. Such review will occur in the context of the new academic misconduct legislation expected to be adopted in April 2016 to ensure consistency with NCAA regulations.

Pursuant to the institution's own policies and procedures, it took the following remedial actions:

- The institution promptly suspended four football student-athletes from all team activities effective August 15, 2014
- The institution suspended a fifth football student-athlete from all team activities on August 28, 2014
- Pursuant to the institution's honor code process several football student-athletes were dismissed and received retroactive grade changes to their academic records, including:
  - Student-athlete 1 was dismissed for two semesters and had retroactive grade changes to his academic record. Student-athlete 1 did not return to the institution.
  - Student-athlete 9 was dismissed for three semesters and had retroactive grade changes made to his academic record. Student-athlete 9 did not return to the institution.
  - Student-athlete 4 was dismissed for two semesters and had retroactive grade changes to his academic record. Student-athlete 4 reenrolled at the institution in summer 2015.
  - Student-athlete 2 was dismissed from the institution for two semesters and had retroactive grade changes to his academic record. Student-athlete 2 reenrolled at the institution in summer 2015.
  - Student-athlete 3 had retroactive grade changes made to his academic record.