



[January 28, 2016, Erratum: Section V, Penalty No. 8-(a) (preliminary compliance report) of this decision contained a typographical error. Penalty No. 8 incorrectly included drug testing and student hosting activities. This case did not involve drug testing or student hosting violations. That penalty now addresses the recruiting violations that occurred in this case.]

[This decision reflects penalty changes resulting from the decision of the NCAA Division I Infractions Appeals Committee (IAC) to remand the case to the panel regarding several institutional penalties. On remand, the panel changed Penalty No. 1 from three years probation to two years, Penalty No. 2 from one-year postseason ban to none, and Penalty No. 4 from two grant reductions in the men's basketball program in each of two years to one reduction for two years.]

REMANDED
INFRACTIONS DECISION NO. 428
University of Hawaii at Manoa
Case No. 00202
March 3, 2017

I. INTRODUCTION

The NCAA Division I Committee on Infractions 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.¹ This case involved the men's basketball program at the University of Hawaii at Manoa.² It centered on the former head men's basketball coach permitting and instructing his director of operations to participate in coaching activities, failing to report a possible extra benefit violation, and providing false or misleading information in his statements during the investigation. The case also involved unethical conduct by a former assistant men's basketball coach. The former assistant men's basketball coach altered a financial responsibility document in an attempt to facilitate the admission of a student-athlete to the institution. He provided an iPad to another student-athlete and provided false information during the investigation regarding the device.

The former head men's basketball coach committed Level II violations of NCAA legislation when he permitted and instructed his director of operations to engage in

¹ Infractions cases are decided by hearing panels comprised of NCAA Division I Committee on Infractions members. Decisions issued by hearing panels are made on behalf of the Committee on Infractions.

² A member of the Mountain West and Big West Conferences, the institution has an enrollment of approximately 20,000 students. It sponsors 13 women's, seven men's and one co-educational sports. The institution had previous infractions cases in 1977 (football and men's basketball) and 1976 (men's basketball).

coaching activities, provided false or misleading information about those activities and failed to report a possible NCAA rules violation to the administration. The former assistant men's basketball coach committed Level II violations when he provided an extra benefit to a student-athlete, provided false information about the benefit and altered a financial responsibility form on behalf of another student-athlete.

This case also provides a cautionary tale regarding the interaction between coaching staffs and institutional compliance offices. The relationship between the former head men's basketball coach and the director of compliance at this institution was tense to the point of being nearly dysfunctional. Communication between the two was poor and overshadowed by an ongoing personality conflict. Had they worked more collaboratively in their dealings, at least some of the violations in this case would likely not have occurred.

The institution agreed with all of its violations. The former assistant men's basketball coach agreed with all the violations concerning him. With regard to the former head men's basketball coach, he disagreed with the facts and that violations occurred. He took no position regarding level. The institution and enforcement staff agreed that Violation IV.C involved Level I violations. Although violations occurred, the panel concludes they are all Level II.

The panel initially classified this case as Level II – Aggravated for the institution, the former head men's basketball coach and former assistant men's basketball coach. Based on the panel's conclusions, the violations in this case predominantly occurred after the implementation of the new penalty structure. Therefore, utilizing Figure 19-1, the panel prescribes the following penalties: three years of probation, a one-year postseason ban for the men's basketball program, vacation of certain contests, show-cause provisions and a financial penalty. The penalty section of this decision describes other penalties.

II. CASE HISTORY

On January 29, 2014, the institution reported to the NCAA enforcement staff that a former assistant men's basketball coach (former assistant coach 1) had earlier that month altered and submitted a fraudulent financial document on behalf of a men's basketball prospective student-athlete (student-athlete 1). The enforcement staff issued a verbal notice of inquiry on March 10, 2014, and an update to that notice on August 28, 2014, as the investigation progressed. The staff issued a notice of allegations to the institution, former assistant coach 1 and the former head men's basketball coach (former head coach) on January 30, 2015.

On May 15, 2015, the institution and the former head coach submitted responses to the notice of allegations, with the former head coach adding a supplemental response on June 1, 2015. The enforcement staff conducted prehearing conferences with the institution

and the former head coach in early June, and the former head coach and institution submitted further supplemental responses on June 16, 2015. The enforcement staff submitted its reply on June 23, 2015.

The enforcement staff presented proposed amendments to the notice of allegations to the panel on June 18, 2015. The former head coach objected to the amendments on the grounds that they materially altered the original allegations. The chief hearing officer conducted a teleconference regarding the amendments on June 25, 2015, and, the following day, issued a written determination that the changes were material to the allegations. As a result, the enforcement staff filed an amended notice of allegations on July 2, 2015.

On October 2, 2015, the enforcement staff submitted its written reply and the former head coach and institution submitted responses to the amended notice of allegations. The panel conducted a hearing on October 15, 2015. Representatives of the institution, the former head coach and his counsel, and former assistant coach 1 along with his counsel all participated in the hearing.

Following the release of the decision on December 22, 2015, the institution appealed three penalties: (1) the postseason ban; (2) the scholarship reductions; and (3) the financial penalty. The NCAA Division I Infractions Appeals Committee (IAC) considered the appeal on written submissions. In an October 28, 2016, decision, the IAC remanded the case back to the panel to conduct a leniency test pursuant to NCAA Bylaw 19.9.1 (See Section VII, Penalties).³

III. FINDINGS OF FACT

Background

The former head coach, former assistant coach 1 and the men's basketball director of basketball operation

The institution hired the former head coach as head men's basketball coach in March 2011. He served in that position until October 28, 2014, when the institution terminated his employment. The former head coach worked as a basketball coach for over 20 years and came from a coaching family.

Former assistant coach 1 coached men's basketball at the NCAA Division I and II levels for nearly 15 years. He spent four of those seasons as an assistant men's basketball coach at the institution. The institution terminated his employment on October 28, 2014.

³ The former head coach appealed his violations in a separate matter before the IAC. The IAC affirmed his violations and penalties.

The individual who served as the men's basketball director of operations during the 2011-12 academic year (DOBO 1) and the former head coach had a long history. Older than the former head coach, DOBO 1 was a successful and long-time high school coach in the former head coach's home state. The former head coach admired him while growing up. Eventually, DOBO 1 became a coach at a major collegiate program in their home state. The former head coach stayed in contact with DOBO 1 and worked at the basketball camps of that institution when DOBO 1 was coaching there.

At approximately the same time the former head coach became the head coach at the University of Hawaii, DOBO 1 was released from his position as head coach at another institution within the same conference. When DOBO 1 was fired from his head coaching position, the former head coach reached out to him and asked him to come to Hawaii as director of operations. The former head coach felt that DOBO 1 could serve as a mentor to the young coaching staff the former head coach had assembled. DOBO 1 also mentored a couple of members of the team in their academic matters and how to conduct themselves off the court. He served at this institution from approximately mid-October 2011 to mid-May 2012.

The former head coach's relationship with the director of compliance

The relationship between the former head coach and the institution's director of athletics compliance (director of compliance) was tense to the point of being nearly dysfunctional. The former head coach and director of compliance rarely spoke to each other and conducted most of their business by email or through assistant coaches. During one team meeting, the former head coach told the student-athletes that the director of compliance was an enemy who could not be trusted.

The problems began early in the former head coach's tenure. He gave inaccurate information to a prospective student-athlete based on what he believed to be incorrect information provided by the director of compliance. He described this incident as a "sore spot" that damaged his reputation. He and the director of compliance also clashed regarding arrival times for prospective student-athletes making the long trip from the mainland to Hawaii for official paid visits. During a heated meeting on the issue, in which a supervisor of the director of compliance told her that her position on the issue was incorrect, the director of compliance threw papers containing the itinerary for a visit by a prospective student-athlete. The former head coach, described by a former assistant men's basketball coach (former assistant coach 2) as "blunt," told the director of compliance whenever he felt her decisions were wrong.

Due to her strained relationship with the former head coach, the director of compliance at times distanced herself from the men's basketball program. During the 2010-11 and 2011-12 seasons she did not conduct any "spot checks" of practices, she never checked on activities of prospective student-athletes during their official paid visits, and she admitted to being "a little lax" on documenting on-campus evaluations of prospective

student-athletes. In the same way that the former head coach exhibited animus toward her, she was at times openly hostile toward him. She once told former assistant coach 2 that she would "not lift a finger" to help the former head coach. She reported an NCAA rules violation regarding the men's basketball program to the conference office without informing any member of the men's basketball staff. During the investigation into this case, she had phone contact with two former men's basketball directors of operations (DOBOs 2 and 3, respectively) shortly before they changed their previous stories and implicated the former head coach in NCAA rules violations. Further, immediately before a men's basketball student-athlete (student-athlete 2) was interviewed by the NCAA regarding this case, the director of compliance told him that she could "take away [his] senior year." She told student-athlete 2 that she possessed a photograph of him, along with another student-athlete (student-athlete 3), in an automobile belonging to a representative of the institution's athletics interests (the representative). She did not produce the alleged photo.

The director of athletics at the institution who assumed his position at the beginning of 2013 (former director of athletics 1) learned of the bad relationship between the director of compliance and the former head coach and noted their tense relationship. He spoke to each of them individually and tried to get them to "keep this professional." He did not otherwise take any steps to improve communication or collaboration between these two important athletics staff members.

DOBO 1's activities in 2011-12 and the former head coach's statements about those activities

DOBO 1 began his employment at the institution at the time formal practice was beginning for the 2011-12 season. As a long-time coach, DOBO 1, struggled adjusting to an operations role. The former head coach knew it was impermissible for a DOBO to engage in coaching activities. However, the former head coach acknowledged at the hearing that he monitored DOBO 1 "with my heart, not my head," due to DOBO 1's status as an "elder" and long-time head coach. DOBO 1 would at times rebound for the post players prior to practice, "jump in" to offer them footwork tips during practice and help the scout team players simulate plays run by upcoming opponents. The former head coach sometimes personally witnessed DOBO 1 engaging in these activities. While the former head coach eventually made comments to DOBO 1 that he should not coach, he permitted DOBO 1 to step out on the practice floor to offer directions to student-athletes. At the hearing, the former head coach acknowledged that he should have more forcefully insisted that DOBO 1 stay completely removed from any coaching activities.

After the season began, the compliance office informed the basketball staff that the duties of an operations director do not include on-court activities.⁴ DOBO 1 curtailed his

⁴ The director of compliance sent an email on the topic to DOBO 1, copying the former head coach, on December 3, 2011. The director of compliance had sent a similar email to the former head coach the previous May.

coaching activities at that time and eventually "grew into" his operations role. From that point through the remainder of the season, even though the former head coach told him not to coach, DOBO 1 stepped out onto the practice floor on an infrequent basis and assisted student-athletes.

DOBO 1 was also involved in scouting opponents. As part of his duties as director of basketball operations, he broke down film and helped gather information to compile reports on upcoming opponents. He also attended many of the scouting sessions the coaches conducted with team members. At the first three or four such meetings of the season, the former head coach directed DOBO 1 to orally present information from the scouting reports to the team. Typically, the former head coach would start the session, then ask DOBO 1 for his input. DOBO 1's presentations included information on opponents' player personnel as well as the offensive and defensive plays they ran. At approximately the same time the compliance office informed the men's basketball staff that DOBO 1 should not be coaching, it also informed the staff that he should not be making presentations in scouting sessions. DOBO 1 said that, from that point through the rest of the 2011-12 season, he added comments "very infrequently" and only when asked by a coach to clarify something DOBO 1 had included in a scouting report.

Statements During the Investigation

As part of the investigation into this case, the enforcement staff and institution interviewed the former head coach on October 17, 2014. One of the topics covered in the interview was DOBO 1's coaching activities. Later during the investigation, on December 10, 2014, the former head coach provided a written supplementary statement to the NCAA investigators. He touched on DOBO 1's coaching activities in the written statement.

The following short exchange regarding DOBO 1's activities occurred between the NCAA investigator and the former head coach during the October 17, 2014, interview:

NCAA investigator: Coach I'm going to stick with this topic but move to the subsequent year – the 2011-12 academic year. And I had been provided with information that throughout that year that at your instruction [DOBO 1] engaged in on court coaching of the student-athletes during practice, that that occurred throughout the season. I want to get your response to that information.

Former head coach: I mean I don't recall [DOBO 1] ever being involved in practice in any way other than in the DOBO situation.

In December 2014, after reviewing his files and giving further thought to the topics that had been discussed in his interview, the former head coach submitted an 11-page

supplemental statement to the staff. It contained the following paragraph regarding DOBO 1's activities:

Outside of the scouts a few occasions come to mind when I had to talk with [DOBO 1] about his role on the floor as a DOBO. In my practices I liked my players to warm up on their own. Usually the first 10-15 minutes of practice the guys would come in and stretch and shoot around on their own to get ready. I didn't like to be in the gym at this time as I liked the practice to be all business. I did feel this was an important time for the team and wanted my staff to be there; managers rebounding and assistants helping with the guys or reviewing the scout with the scout team. On a few occasions early in the year I do recall coming into the gym and [DOBO 1] would be rebounding for a player. At the time I didn't think to report this but I did tell [DOBO 1] he needed to resist the temptation to coach. He understood and told me how hard it was on him, that player development was "his thing" and how he got into college coaching by working out [a former professional player] and the players from [an institution where he formerly coached]. These incidents did happen early in the year and [DOBO 1] to his credit did adapt to his role as DOBO and only offered up encouragement and support from the sidelines. I don't recall any incidents of this sort later in the season.

At the hearing, the former head coach acknowledged that DOBO 1 "would jump in" on drills and give pointers to the team early in his time as DOBO. Even though he knew DOBO 1 should not be involved in such activities, the former head coach stated that he "kind of let him get away" with performing the coaching functions as a way to help DOBO 1 feel comfortable.

The representative's provision of a vehicle to student-athlete 3 and the former head coach's response

In April 2012, at approximately the end of the former head coach's first year at the institution, the representative, a local real estate agent, purchased two tickets valued at \$100 each to a men's basketball banquet. In May 2012, the representative made a small donation to the men's basketball support group. At some point, a former men's basketball student-athlete at the institution, who was acquainted with the representative, introduced the representative to student-athlete 3.

Sometime in the fall of 2012, student-athlete 3 used the representative's Porsche sports utility vehicle for two days while the representative was out of town. Student-athlete 3, the representative and the representative's girlfriend travelled together in the vehicle to the airport and dropped off the representative. Either the representative or the representative's girlfriend then allowed student-athlete 3 to take the vehicle. The cost to rent such a vehicle for two days in the locality would have been approximately \$560.

The same weekend that student-athlete 3 was using the vehicle, the men's basketball team gathered at the former head coach's house for a team event. The former head coach became aware that student-athlete 3 possessed the vehicle around that time. He pulled student-athlete 3 aside, asked for an explanation and told student-athlete 3 to cease driving the vehicle. Within the next day or two, the former head coach spoke to the coaching staff about the matter, mentioned that he was going to discuss the situation with a previous director of athletics at the institution (former director of athletics 2) and addressed the team.⁵ He lectured the team about making good decisions and warned them about 40-year old men trying to be their friends. He pointed out that the coaches could lose their jobs over such situations. The former head coach did not report the matter to the director of athletics, the compliance office, any other athletics administrator or person of authority at the institution.

At some point during his conversation with the team, the former head coach made a comment to the effect that the student-athletes should forget the incident had occurred and keep the matter "in house." It was a term he had used previously when addressing conflicts within the team, but he had never used it when discussing a potential NCAA rules violation. In his interview, student-athlete 2 indicated that he did not interpret the phrase as a directive to keep the matter a secret or lie to the compliance office. He interpreted the directive as an exhortation to the team to stay "tight as a family" and not gossip with people outside the program.

Three other men's basketball student-athletes (student-athletes 4, 5 and 6, respectively) stated in their interviews that they took the former head coach's comments the same way. Student-athlete 4 stated that the former head coach did not tell the team to keep the incident a secret or cover it up. His impression was that the "in-house" comment reflected the former head coach's concern about others harassing student-athlete 3. Similarly, student-athlete 5 remembered the "in-house" comment but did not get the feeling that the former head coach was asking the team to cover up the incident. Student-athlete 6 confirmed that the former head coach "got really mad" at student-athlete 3 and that other members of the team made fun of student-athlete 3. He recalled the former head coach admonishing the team members to not accept anything from anyone and to "forget it [the incident] happened."

In their interviews, the memories of three other men's basketball student-athletes (student-athletes 7, 8 and 9, respectively) were less clear. Student-athlete 7 was "pretty sure" but "not 100 percent" that the former head coach might have directed the team to not talk about the incident. Student-athlete 8 remembered the former head coach saying, "you can't [accept things from other people]" but did not recall him saying to keep the matter "in-house" or to not talk about it. Finally, student-athlete 9 stated that the former head coach warned the team not to accept anything from anyone. He had no recollection

⁵ At the time, former director of athletics 2 was still employed at the institution. But he was working outside of athletics and did not exercise any authority over the former head coach or any other athletics personnel.

of a comment to keep the matter "in-house" or the former head coach directing the team not to tell anyone about the matter.

The former head coach spoke to the representative and told him to stay away from the members of the men's basketball team. He also had a short conversation about the matter with former director of athletics 2, a person he trusted.⁶ However, their recollections of the encounter differed. In his interview, the former head coach said that former director of athletics 2 was not familiar with the representative and did not recognize his name as that of a season ticket holder. Former director of athletics 2 recalled at his interview that the former head coach posed a "hypothetical" situation of a player whose girlfriend allowed him to use her car. Regardless, the former head coach did not report the matter to the compliance office or any member of the athletics administration.⁷ Instead, he concluded on his own that the matter did not involve any NCAA rules violations. Student-athlete 3 subsequently competed for the institution during the 2012-13 and 2013-14 academic years.

Official paid visit activities

Prospects participating in scrimmages during visits to the institution

From the time he began working at the institution, the former head coach found there to be unique challenges in recruiting to Hawaii. A trip from the west coast of the continental United States to Hawaii includes a 3,000 mile flight that can cost up to \$1,000, particularly if booked on short notice. The former head coach found that it was easy to get prospects to visit the area but that those same prospects did not necessarily enroll. Therefore, the former head coach only provided official paid visits to prospects who had already committed (orally or in writing) to attend the institution. On a number of occasions, the prospects participated in scrimmages or other activities with enrolled men's basketball student-athletes.

From April 30 through May 1, 2011, two prospective student-athletes (prospects 1 and 2, respectively) made official paid visits to the institution. While there, prospects 1 and 2 participated in an "open gym" scrimmage with approximately eight members of the institution's men's basketball team. For an undetermined portion of the scrimmage, members of the men's basketball coaching staff were in the gym while the enrolled student-athletes and prospects 1 and 2 played basketball. Prospect 2 recalled that former assistant coach 2, another assistant coach whose name he did not know and an academic

⁶ In his interview, former assistant coach 2 stated that the former head coach contacted former director of athletics 2 because the former head coach did not have a good relationship with the compliance office.

⁷ Student-athlete 3 reported in his interview that he stopped in the compliance office prior to using the vehicle to ask if, in the future, it would be allowable for him to use a vehicle of a friend who was not a "booster" to move some items. Student-athlete 3 purportedly spoke with a compliance assistant. He did not reference the representative by name but simply said that the person did not donate money to the institution. He reported that the compliance assistant told him he could use the vehicle. The compliance assistant did not recall speaking with student-athlete 3 and stated at his interview that he would have remembered if the conversation had occurred.

counselor were present during the open gym (he did not say for how long) and that the former head coach was there "at the beginning." At the hearing, the former head coach acknowledged that he stayed in the gym subsequent to introducing the prospects to the members of the team. None of the members of the staff offered any instruction to any of the participants in the scrimmage.

A prospective men's basketball student-athlete (prospect 3) made his official paid visit to the institution from May 5-7, 2011. Similar to prospects 1 and 2, prospect 3 participated in an open gym scrimmage with what he estimated were 12-14 enrolled men's basketball student-athletes. He recalled that a noncoaching member of the men's basketball staff, whom he described as the "film person," (and later recalled was DOBO 3) was present during the majority of the scrimmage. He said that the former head coach and other members of the coaching staff probably looked in once or twice but were not present in the gym.

Two prospective student-athletes (prospects 4 and 5, respectively) made their official paid visits to the institution on November 4-5, 2011. When interviewed, prospect 5 stated that he did not work out for the coaches or play "pick-up" with members of the team during the visit, but only "shot around" with prospect 4. Prospect 4, who gave short answers to questions the enforcement staff provided him via email, indicated that he and prospect 5 went through an approximate 30 minute workout with members of the men's basketball coaching staff (he could not recall who) that included "shooting and 2-on-2." According to prospect 4, prospect 5 also participated in the workout. DOBO 1, on instructions from the former head coach, worked out the two prospects before they played 3-on-3 with members of the men's basketball team.⁸ He recalled that, at some point, all members of the coaching staff were in the gym during the time the two prospects played 3-on-3. The panel finds that prospects 4 and 5 were worked out by DOBO 1, played basketball with enrolled student-athletes and that members of the coaching staff were present in the gym during at least some of the time the prospects and enrolled student-athletes played.

Prospects' use of hotel concierge lounge

To take advantage of Hawaii's natural beauty during official paid visits, the men's basketball program housed prospective student-athletes at a local beach-side high-rise hotel. The top floor of the hotel included a concierge's lounge with an expansive view of the beach and ocean. The use of the lounge was not available to hotel guests unless they paid a fee in addition to their room charge. On three occasions during 2013, prospective student-athletes had access to the concierge's lounge during their official paid visits to the institution.

⁸ When interviewed, DOBO 1 stated that he was not evaluating the prospects, but warming them up to get them ready to play. Prospects 4 and 5 were both international prospects who had traveled a great distance for their visits. The coaches did not want them to play without warming up first.

The former head coach instructed former assistant coach 1 to arrange for lounge access on the prospects' reservations as a cost-saving measure. With access to the lounge, the prospects would be able to eat a complimentary breakfast, thereby saving the cost of a meal every day.⁹

A prospective student-athlete (prospect 6) made his official paid visit to the institution on August 28-31, 2013. Former assistant coach 1 arranged for prospect 6 to have access to the lounge when former assistant coach 1 made prospect 6's reservation. Prospect 6 and his mother ate the free buffet both mornings of the visit, once with the former head coach. Similarly, a prospective student-athlete (prospect 7) made his official paid visit to the institution from October 3-6, 2013. Once again, former assistant coach 1 arranged for them to have access to the lounge. Prospect 7, his mother, the former head coach and former assistant coach 1 enjoyed the free breakfast buffet together on one morning during the visit. Finally, during his official paid visit from December 17-19, 2013, student-athlete 1 visited the lounge with an enrolled student-athlete (student-athlete 10) after former assistant coach 1 arranged access. While student-athlete 1 did not have a meal in the lounge during his visit, student-athlete 10 ate from the buffet while in the lounge.

Former Assistant Coach 1's Activities and Statements During the Investigation

Providing an iPad to prospect 5

Prospect 5 initially enrolled at the institution as a men's basketball student-athlete for the 2012-13 academic year. Former assistant coach 1 was his primary recruiter. In December 2012, former assistant coach 1's wife purchased an iPad valued at approximately \$400 for their nine-year-old son. The son attended team practices and other team functions and played games with members of the team on their electronic devices. At the hearing, former assistant coach 1 stated that his wife provided the iPad to prospect 5 so that he could install some games on it for the son. His wife then decided to just give it to prospect 5 to keep. Former assistant coach 1 went on to say that when he found out within "a couple of days" that she had given prospect 5 the device, former assistant coach 1 "didn't have the heart to ask for it back." He allowed prospect 5 to keep the iPad. Prospect 5 subsequently participated in the remainder of the 2012-13 season and the 2013-14 season.

Altering a financial document

In the fall of 2013, the men's basketball coaching staff was recruiting student-athlete 1, an international student-athlete, as a potential transfer student-athlete to the institution. Former assistant coach 1 informed the Office of Student Affairs that student-athlete 1 would be on athletics scholarship.

⁹ Even though guests normally have to pay extra for access to the lounge, the institution was apparently able to upgrade the reservations without charge due to the volume of business it conducts with the hotel.

As part of his application process, the institution required student-athlete 1 to complete a Supplemental Information Form for Undergraduate International Applicants (form). Among other things, the form is used by the institution to ascertain whether applicants have the financial means to support themselves if they are admitted. The institution required that applicants attending on a full scholarship demonstrate that their families had at least \$5,000 of financial support available.

In early January 2014, as student-athlete 1's application process was proceeding, personnel from the Office of Student Affairs informed former assistant coach 1 that the amount of familial support listed on the form, a little over \$2,000, was insufficient to allow student-athlete 1 to obtain a visa. Even after an uncle of student-athlete 1 submitted a second form on January 9 pledging \$1,000 in support, the two combined amounts did not total the minimum \$5,000 amount necessary to process student-athlete 1's visa. At about the same time, the Office of Student Affairs informed former assistant coach 1 that the institution had not received scholarship paperwork for student-athlete 1. Consequently, student-athlete 1's family would have to demonstrate financial support sufficient to cover the full cost of attendance at the institution.¹⁰

On January 10, 2014, after former assistant coach 1 was aware that the form would have to show financial support of over \$42,000, a faxed copy of the form, showing \$41,000 in support, arrived at the Office of Student Affairs. Personnel there noticed that the form appeared to be the same form previously submitted by the uncle, with a "4" placed in front of the "1" of the \$1,000 amount. The Office of Student Affairs also noticed that the fax had been sent from a hotel in the same city in California where the men's basketball team was scheduled to play the previous evening.

When the Office of Student Affairs informed him that the form appeared to be altered, former assistant coach 1 insisted that the uncle had been the person who faxed the form. The institution eventually admitted student-athlete 1 "provisionally." In an interview with the enforcement staff and institution on April 1, 2014, in a written statement he provided to the panel immediately prior to the hearing, and at the hearing, former assistant coach 1 acknowledged altering the form and providing it to the Office of Student Affairs. His stated motivation in doing so was to allow student-athlete 1 more time to gather further monetary support.

Statement during the investigation

The institution and enforcement staff interviewed former assistant coach 1 about the form and iPad during the investigation. In a June 6, 2014, interview, former assistant coach 1 not only denied providing an iPad to prospect 5, he denied any knowledge of how prospect 5 may have come to possess an iPad. During a subsequent interview on August

¹⁰ As it turned out, the men's basketball program did not have a scholarship to provide student-athlete 1. Therefore, the institution required student-athlete 1 to demonstrate the ability to bear the full cost of his educational and living expenses for a year's attendance at the institution. That amount was approximately \$42,000.

7, 2014, former assistant coach 1 stated that he gave his then nine-year-old son an iPad for Christmas in 2012. By February 2014 the device was broken, so former assistant coach 1 brought it to his office with the intent to dispose of it. He stated that prospect 5 came into former assistant coach 1's office, saw the iPad in the trashcan, said he'd try to fix it, and took it with him. At the hearing, former assistant coach 1 admitted that he was aware his wife gave the iPad to prospect 5 and that he allowed prospect 5 to keep it.

IV. ANALYSIS

The violations in this case all occurred in the men's basketball program. They fall into four areas: (1) DOBO 1 engaging in coaching activities; (2) the representative providing an extra benefit to student-athlete 3, who subsequently competed while ineligible; (3) the former head coach engaging in unethical conduct for failing to report the extra benefit violation to the administration, permitting and instructing DOBO 1 to coach, and providing false or misleading information regarding DOBO 1's coaching activities; and (4) former assistant coach 1 engaging in unethical conduct by falsifying admissions paperwork for student-athlete 1, providing a free Apple iPad device to prospect 5, and providing false or misleading information regarding the provision of the iPad. As will be set forth in Section V below, the men's basketball program also committed Level III violations when they observed prospects scrimmaging with enrolled student-athletes and arranged for prospects to have access to a concierge's lounge on their official paid visits.

A. IMPERMISSIBLE COACHING ACTIVITIES AND EXCEEDING COACHING LIMITATIONS [NCAA Bylaws 11.7.1.1.1.1 and 11.7.4 (2011-12 Division I Manual)]

During the 2011-12 academic year, DOBO 1 engaged in scouting, instructional and on-court activities with student-athletes. As a result, the institution exceeded the number of allowable men's basketball coaches. The institution and enforcement staff substantially agreed on the facts and that a Level II violation occurred. The panel concludes that a cumulative Level II violation occurred.

1. NCAA legislation relating to impermissible coaching activities.

11.7.1.1.1.1 Exception—Noncoaching Staff Member with Sport-Specific Responsibilities. A noncoaching staff member with sport-specific responsibilities (e.g., director of operations, administrative assistant) may participate in organized activities involving only the coaching staff or may perform administrative duties (e.g., attend meetings involving coaching activities, analyze video of the institution's or an opponent's team, track statistics during practice or competition). However, such an individual is prohibited from participating in

While each individual instance of DOBO 1's presenting during scout sessions and coaching may have been a Level III violation, the cumulative effect of the violations rises to Level II. DOBO 1 was a long-time, experienced NCAA Division I coach. By imparting his expertise during scout sessions and giving skill instruction to student-athletes on the floor at practice, DOBO 1 gave this institution the advantage of a fifth member of the coaching staff. This was more than a minimal advantage over institutions who complied with the rules regarding coaching staff limits.

B. EXTRA BENEFITS AND INELIGIBLE PARTICIPATION [NCAA Bylaws 14.11.1, 16.11.2.1, 16.11.2.3-(c) (2012-13 Division I Manual) and 14.10.1 (2013-14 Division I Manual)]

During the fall of 2012, the representative provided an impermissible benefit to student-athlete 3, which resulted in the student-athlete competing while ineligible during the 2012-13 and 2013-14 academic years. The institution and enforcement staff substantially agreed to the facts and that a Level II violation occurred. The panel concludes that a Level II violation occurred.

1. NCAA legislation relating to extra benefits and ineligible participation.

14.11.1 Obligation of Member Institution to Withhold Student-Athlete from Competition. If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Committee on Student Athlete Reinstatement for restoration of the student-athlete's eligibility as provided in Bylaw 14.12 if it concludes that the circumstances warrant restoration.

16.11.2 Nonpermissible.

16.11.2.1 General Rule. The student-athlete shall not receive any extra benefit. The term "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 relatives or friends with a benefit not expressly authorized by NCAA legislation.

16.11.2.3 Other Prohibited Benefits. An institutional employee or representative of the institution's athletics interests may not provide a student-athlete with extra benefits or services, including, but not limited to:

(c) An automobile or the use of an automobile.

14.10.1 Obligation of Member Institution to Withhold Student-Athlete From Competition. If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Committee on Student-

Athlete Reinstatement for restoration of the student-athlete's eligibility as provided in Bylaw 14.11 if it concludes that the circumstances warrant restoration.

2. **In the fall of 2012, the representative provided an automobile to student-athlete 3 to use for two days. The value of the benefit was approximately \$560. Subsequently, student-athlete 3 competed while ineligible for two academic years.**

The representative became a representative of the institution's athletics interests in the spring of 2012 when he purchased tickets to a men's basketball banquet and made a donation to the men's basketball program. Subsequently, he violated NCAA legislation when he allowed student-athlete 3 to use his Porsche sports utility vehicle for two days in the fall of 2012. The panel concludes that the representative provided an impermissible benefit to student-athlete 3 in violation of NCAA Bylaw 16.

NCAA Bylaws 16.11.2.1 and 16.11.2.3-(c) prohibit representatives of an institution's athletics interests from providing any benefit not expressly authorized by NCAA legislation to a student-athlete. NCAA Bylaw 16.11.2.3-(c) specifically excludes the use of automobiles from the types of benefits a student-athlete can receive. NCAA Bylaws 14.10.1 (2013-14) and 14.11.1 (2012-13) obligate member institutions to withhold ineligible student-athletes from competition.¹¹

When the representative allowed student-athlete 3 to use his vehicle, he violated NCAA Bylaws 16.11.2.1 and 16.11.2.3-(c). Student-athlete 3 was rendered ineligible from the time he took possession of and used the representative's car. His eligibility was not restored prior to him competing in the 2012-13 and 2013-14 academic years. Therefore, he competed during those two seasons while ineligible, in violation of NCAA Bylaws 14.10.1 (2013-14) and 14.11.1 (2012-13).

¹¹ The language of the two bylaws is identical. This provision was moved in the manual between the 2012-13 and 2013-14 academic years.

C. THE FORMER HEAD COACH'S UNETHICAL CONDUCT AND FAILURE TO PROMOTE AN ATMOSPHERE FOR COMPLIANCE [NCAA Bylaws 10.1 (2011-12, 2012-13 and 2014-15 Division I Manuals); 11.1.2.1 (2011-12 and 2012-13 Division I Manuals); and 10.1-(d) (2014-15 Division I Manual)]

The former head coach acted in an unethical manner and did not promote an atmosphere for rules compliance when he: (1) permitted and instructed DOBO 1 to participate in coaching activities, knowing it was impermissible; and (2) failed to report his knowledge of student-athlete 3 using the representative's vehicle to the athletics administration and influenced members of the men's basketball team not to report the violation. The former head coach also acted unethically when he provided false or misleading information regarding DOBO 1's activities in his statements during the investigation. The enforcement staff and institution substantially agreed on the facts and that a Level I violation occurred. The former head coach did not agree to the facts or that a violation occurred. The panel concludes that the violation occurred and it is Level II.

1. NCAA legislation relating to unethical conduct and failure to promote an atmosphere for compliance.

10.1 Unethical Conduct. Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member, which includes any individual who performs work for the institution or the athletics department even if he or she does not receive compensation for such work, may include, but is not limited to, the following:

(d) Knowingly furnishing or knowingly influencing others to furnish the NCAA or the individual's institution false or misleading information concerning an individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation.

11.1.2.1 Responsibility of Head Coach. It shall be the responsibility of an institution's head coach to promote an atmosphere for compliance within the program supervised by the coach and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach.

2. The former head coach engaged in unethical conduct and failed to promote an atmosphere for rules compliance when he permitted and instructed DOBO 1 to engage in coaching activities, failed to report student-athlete 3's use of the representative's vehicle and influenced members of the men's basketball team to keep the matter "in house." He also engaged in unethical conduct when he failed to divulge the

extent of DOBO 1's coaching activities in his statements during the investigation.

The former head coach violated NCAA ethical conduct and head coach responsibility legislation when he: (a) instructed DOBO 1 to make presentations in scout sessions and permitted him to engage in on-court coaching activities during the 2011-12 season; and (b) failed to report his knowledge of student-athlete 3 using the representative's vehicle and influenced members of the men's basketball team not to report the violation. The former head coach also acted unethically when he provided false information about DOBO 1's activities during the investigation. The panel concludes that the former head coach violated NCAA ethical conduct and head coach responsibility legislation. NCAA Bylaw 10.1 requires institutional staff members to act in an ethical manner at all times. NCAA Bylaw 11.1.2.1 requires head coaches to establish the proper atmosphere for rules compliance in their programs.¹²

The former head coach was aware that directors of operations are not allowed to perform coaching functions. Nonetheless, he instructed DOBO 1 to make presentations during scout sessions and allowed him to coach on the court. In doing so, the former head coach acted in violation of NCAA Bylaw 10.1. His actions also demonstrated that rules compliance was not of utmost importance in the administration of his program, in violation of NCAA Bylaw 11.1.2.1.

The former head coach failed to report student-athlete 3's use of the representative's vehicle and commented to his team members that they should keep the matter "in house." The former head coach's initial response when he learned that student-athlete 3 was driving the representative's Porsche was appropriate – he would not let student-athlete 3 continue to drive the car, and he chastised student-athlete 3 and, later, the representative. These actions by the former head coach demonstrate his awareness that there was at least a potential problem with student-athlete 3 driving the vehicle. However, instead of reporting the matter to the athletics administration, the former head coach made his own determination that a rules violation had not occurred. Further, he instructed his team to keep the matter "in house," among themselves. While members of the team stated in their interviews that they did not take this to mean that they should hide the matter from the compliance office, the failure of the former head coach to report the matter to his administration, coupled with his admonishment regarding keeping the

¹² The head coach responsibility bylaw is now found at NCAA Bylaw 11.1.1.1.

matter "in house," was unethical in violation of NCAA Bylaw 10.1. His actions also established that strict adherence to full rules compliance was not a high priority in his program, in violation of NCAA Bylaw 11.1.2.1.

Finally, during his October 17, 2014, interview with the institution and enforcement staff, the former head coach failed to divulge that DOBO 1 engaged in on-court instruction with student-athletes throughout the 2011-12 academic year. Similarly, while the former head coach acknowledged in his December 10, 2014, written statement that DOBO 1 engaged in coaching activities on "a few occasions early in the year," he did not provide full and truthful information regarding the extent of the activities and his role in permitting and directing them. Pursuant to NCAA Bylaw 10.1-(d), his failure to be fully forthcoming constituted unethical conduct. Many of the violations in this case could have been avoided had the former head coach and director of compliance maintained a professional relationship. Had their strained relationship not resulted in the director of compliance conducting men's basketball business by email, not attending practice for two years or being "lax" in other duties, she may well have been able to prevent DOBO 1 from engaging in any coaching activities in the time before she made the potential issue known to the coaching staff. Conversely, if the former head coach had informed the compliance office of student-athlete 3's use of the representative's vehicle, rather than talking to a *former* director of athletics, the compliance office could have gathered the appropriate information and conducted a proper investigation of the incident long before student-athlete 3 competed while ineligible for two academic years. In significant part because the former head coach relied on his own conclusion and/or a short conversation student-athlete 3 may have had with the compliance office, this case now involves student-athlete 3 competing for two seasons while ineligible.¹³

The committee consistently requires head coaches to affirmatively address potential rules issues within their programs. *University of Connecticut* (2011) (concluding that NCAA Bylaw 11.1.2.1 requires coaches to recognize potential problems, address them and report them to the athletics administration); *University of Miami* (2013) (concluding that NCAA Bylaw 11.1.2.1 requires coaches to seek information related to potential violations). This case bears many similarities to *The Ohio State University* (2011). In that case, a head football coach received information regarding possible NCAA rules violations by members of his

¹³ Even if student-athlete 3 had the conversation, he did not provide enough information to allow the compliance office to properly investigate (See Footnote 4). Conversely, if the conversation occurred as student-athlete 3 described, the compliance office did not ask enough questions to allow it to move forward to investigate student-athlete 3's use of the vehicle. This situation is a perfect illustration of why the men's basketball staff and compliance office should have been working together and why the former head coach himself should have brought the matter to the administration, not the student-athlete.

team. The head football coach recognized that the situation presented potential NCAA rules issues. However, rather than reporting the situation to his compliance office or other administrators, he chastised the involved student-athletes and took no further action. The student-athletes subsequently competed while ineligible. When the athletics administration eventually learned of the rules violations, the head football coach lost his job and the institution vacated a number of victories by a successful football program.

While the former head coach's position is that he looked into student-athlete 3's use of the representative's vehicle, concluded that the representative was not a "booster" and, therefore, no NCAA violations occurred, his actions did not go far enough. He confronted student-athlete 3 and the representative. He lectured his team on the pitfalls of accepting favors from outsiders and even mentioned that coaches can lose their jobs over such incidents. However, he then urged the members of the team to keep the matter among themselves. His next step should have been to take the matter to the compliance office so that the athletics administration could have investigated the situation. His failure to do so, and director of compliance's failure to be fully engaged with the men's basketball program, were significant factors in the violations.

D. FORMER ASSISTANT COACH 1'S UNETHICAL CONDUCT [NCAA Bylaws 10.1-(c) and 16.11.2.1 (2012-13 Division I Manual); 10.1 (2012-13 through 2014-15 Division I Manual); and 10.1-(d) (2013-14 and 2014-15 Division I Manual)]

Former assistant coach 1 engaged in unethical conduct when he allowed prospect 5 to retain an iPad and failed to divulge the circumstances of the situation in two interviews. Additionally, former assistant coach 1 engaged in unethical conduct when he altered student-athlete 1's Supplemental Information admissions form. Former assistant coach 1, the institution and enforcement staff substantially agreed to the facts and that a violation occurred. The panel concludes that a Level II violation occurred.

1. NCAA legislation relating to unethical conduct.

10.1 Unethical Conduct. Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member, which includes any individual who performs work for the institution or the athletics department even if he or she does not receive compensation for such work, may include, but is not limited to, the following:

(c) Knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid.

(d) Knowingly furnishing or knowingly influencing others to furnish to the NCAA or the individual's institution false or misleading information concerning an individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation.

16.11.2 Nonpermissible.

16.11.2.1 General Rule. The student-athlete shall not receive any extra benefit. The term "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 relatives or friends with a benefit not expressly authorized by NCAA legislation.

- 2. Former assistant coach 1 engaged in unethical conduct when he knowingly allowed prospect 5 to retain the iPad and provided false or misleading information about the matter during the investigation. He engaged in further unethical conduct when he knowingly altered an admissions form on behalf of student-athlete 1 in an attempt to facilitate the student-athlete's admission to the institution.**

Former assistant coach 1 violated NCAA extra benefit and ethical conduct legislation when he knowingly allowed prospect 5 to retain the iPad prospect 5 received from former assistant coach 1's wife. He further violated ethical conduct legislation when he failed to divulge the details surrounding prospect 5's receipt of the iPad in two interviews with the institution and enforcement staff. Finally, former assistant coach 1 violated NCAA ethical conduct legislation when he altered student-athlete 1's Supplemental Information form. Former assistant coach 1's actions violated NCAA Bylaws 16 and 10.

NCAA Bylaw 16.11.2.1 precludes institutional staff members from providing benefits to student-athletes not expressly authorized by NCAA legislation, while NCAA Bylaw 10.1-(c) includes the knowing provision of impermissible benefits to student-athletes in the definition of unethical conduct. As NCAA legislation does not allow coaches to give free electronic devices to student-athletes, the former assistant coach violated NCAA Bylaw 16.11.2.1 when he allowed prospect 5 to keep the iPad. When he failed to truthfully divulge his knowledge of how prospect 5 came to possess the iPad, he violated NCAA Bylaw 10.1-(c).

Finally, former assistant coach 1 engaged in unethical conduct when he altered the Supplemental Information Form for Undergraduate International Applicants on behalf of student-athlete 1 to make it appear that the student-athlete had the requisite financial resources to be admitted into the institution. NCAA Bylaw 10.1 precludes institutional staff members from acting in an unethical manner. While the bylaw sets forth 10 specific means of committing unethical conduct, those examples are not exclusive of all other possible actions. When former assistant coach 1 altered student-athlete 1's financial form in an attempt to facilitate student-athlete 1's admission to the institution, he acted in an unethical manner.

V. LEVEL III VIOLATIONS

IMPERMISSIBLE TRYOUTS [NCAA Division I Bylaws 13.11.1 and 13.11.2.2-(a) (2010-11)] Between April 30 and May 1, 2011, one or more member of the men's basketball coaching staff was present in the gym for a period of time while prospects 1 and 2 participated in a scrimmage with enrolled student-athletes. The presence of the coaching staff members constituted an impermissible tryout of the prospects.

IMPERMISSIBLE TRYOUT [NCAA Division I Bylaws 13.11.1 and 13.11.2.2-(a) (2010-11)] Between May 5 and May 7, 2011, one or more member of the men's basketball coaching staff observed for a period of time while prospect 3 participated in a scrimmage with enrolled student-athletes. The observations by the coaching staff members constituted an impermissible tryout of the prospective student-athlete.

IMPERMISSIBLE TRYOUTS [NCAA Division I Bylaws 13.11.1 and 13.11.2.3 (2011-12)] Between November 4 and 5, 2011, one or more member of the men's basketball coaching staff conducted impermissible tryouts of prospects 4 and 5 by putting them through individual workout drills and observing them in a basketball scrimmage.

IMPERMISSIBLE INDUCEMENTS AND BENEFIT [NCAA Division I Bylaws 13.2.1, 13.6.6 and 16.11.2.1 (2013-14)] On three instances from August 28 to December 19, 2013, the men's basketball coaching staff arranged for prospects 6 and 7 and student-athlete 1 (while still a prospect) to have access to a hotel concierge lounge on their official paid visits. The lounge was not generally available to all hotel guests. Prospects 6 and 7, along with a parent, ate two or fewer complimentary meals in the lounge. On the third occasion, student-athlete 10, who accompanied student-athlete 1 to the lounge, ate a complimentary meal.

VI. VIOLATIONS NOT DEMONSTRATED

The enforcement staff alleged that DOBO 2, who served in that position during the 2010-11 academic year, engaged in impermissible on-court coaching and scouting similar to DOBO 1 in 2011-12. The panel does not conclude that a violation occurred based on the limited and conflicting information. In his first interview with the enforcement staff, DOBO 2 stated that the only knowledge he had of any NCAA rules violations was "probably" exceeding countable activity limits on "a couple of days." It was only in a second interview, after he had been released from the staff by the former head coach, that DOBO 2 stated he had engaged in impermissible coaching activities. A student-athlete who was captain of the team in 2010-11 (student-athlete 11), and played the position DOBO 2 supposedly coached, stated in his interview that DOBO 2 neither led scouting sessions nor coached him or any other student-athletes. Student-athlete 3, who also played the position supposedly coached by DOBO 2, said in his interview that DOBO 2 did not coach in 2010-11. Former assistant coach 2 confirmed that DOBO 2 did not coach or conduct scouting sessions in 2010-11, while another member of the coaching staff that year had no recollection of DOBO 2 doing any coaching. Two members of the media who attended practice regularly in 2010-11 never saw DOBO 2 engage in any coaching activities. Finally, a 2010-11 team manager who attended every practice that year reported that DOBO 2 did not coach in 2010-11. Therefore, the panel concludes the violation was not demonstrated.

The enforcement staff also alleged that the former head coach made open gym sessions mandatory for enrolled student-athletes, thereby converting those voluntary pick-up games into countable athletically related activities that had to be recorded and counted against daily and weekly individual and team limits. The panel does not conclude that a violation occurred, based on the limited and conflicting information. Student-athletes 4, 5 and 11, another student-athlete (student-athlete 12) and former assistant coach 2 all reported during their interviews that open gyms were voluntary. Student-athlete 11 explained that it was himself, as team captain, and seniors on the team who held everyone accountable and made sure they participated in open gym. Former assistant coach 2 stated that enrolled student-athletes were not required to play in open gyms and the coaches did not know which student-athletes attended. DOBO 3 said that enrolled student-athletes were "expected" to be at open gyms and that the expectation "came from" the former head coach, but he provided little to no detail of how and under what circumstances any such expectation may have been communicated to the student-athletes. He could not recall any student-athletes being punished for missing open gym sessions. None of the student-athletes who spoke to the subject reported that there were any consequences for any student-athletes who did not attend open gym. The panel concludes that the violations were not demonstrated.

Finally, the enforcement staff alleged that the men's basketball coaching staff conducted an impermissible on-campus evaluation of a prospective student-athlete (prospect 8) in September 2012 by observing prospect 8 in a scrimmage before he had exhausted his

high school eligibility. However, prospect 8 was hurt on his visit and did not work out. During his interview, DOBO 3 recalled prospect 8, clad in sandals, shorts and a t-shirt, simply shooting a shot to start a fast break drill for the members of the team. No statement from prospect 8 regarding his visit activities appeared in the record of the case. Based on the information, the panel concludes that the violation was not demonstrated.

VII. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the panel concludes this case involved Level II violations of NCAA legislation. Pursuant to NCAA Bylaw 19.9.1, the panel finds that the violations commenced before October 30, 2012, and continued after that date. The panel finds that the conduct constituting the violations occurred predominantly subsequent to October 30, 2012. Because of the remand and the passage of time to bring this case to conclusion, the panel reweighs the aggravating and mitigating factors in the case on remand. The panel determined upon reassessing aggravating and mitigating factors that an additional mitigating factor exists, which changed the level classification in the case. It further determined that the penalties should still be prescribed pursuant to the current NCAA Bylaw 19 penalty guidelines because they were more lenient.¹⁴

Specifically, on remand, the case remains Level II, as it involves significant breaches of conduct. The panel concludes that the case involved Level II violations consisting of an extra countable coach for the institution and student-athletes 3 and 5 participating while ineligible. In this case, former assistant coach 1 falsified an admissions document and provided an iPad to a student-athlete. The former head coach allowed his DOBO to coach, failed to report his knowledge of impermissible benefits and provided false or misleading information.¹⁵ All of former assistant coach 1's conduct, and some of the

¹⁴ Based on past precedent, the panel determined that it would have prescribed a postseason ban under former Bylaw 19.5.2-(g). Using this analysis, current Bylaw 19 is more lenient. See *Boise State University* (2011) (concluding that a one-year postseason ban for the women's tennis program was appropriate when the program had inadequate policies for housing and transportation and the institution failed to report the ineligible participation of a student-athlete); *Texas A&M – Corpus Christi* (2009) (concluding that a one-year postseason ban for the women's volleyball program was appropriate when the institution allowed a student-athlete to participate while ineligible, even though the institution's lack of control was not specific to women's volleyball); *Texas Southern University* (2008) (concluding that a one-year postseason ban was appropriate when the institution allowed a nonqualifier softball student-athlete to practice and compete, even though this violation was not part of the institution's lack of control of its athletics program); *Temple University* (2007) (concluding that a one-year postseason ban was appropriate when the head men's tennis coach allowed an ineligible student-athlete to compete under a false name, even though the case did not include a lack of institutional control and the failure to monitor violation did not apply to the men's tennis program).

¹⁵ In its remand decision, the IAC acknowledged that former assistant coach 1 and the former head coach committed unethical conduct while in those positions. However, in its analysis, the IAC focused on the activity that occurred after the individuals had separated. The infractions process is predicated on institutional accountability for the conduct of its staff. Here, there is no dispute that some of the individuals' unethical conduct occurred while on the institution's staff. When analyzing the scope of an infractions case, the Committee on Infractions (COI) will consider all of the case's violations.

former head coach's conduct, occurred while the individuals were employed at the institution. Some of the former head coach's unethical conduct occurred after he had separated from the institution. In light of how the violations straddle in this case and the Infractions Appeals Committee's remand, the panel conducts a leniency analysis.

To determine the appropriate classification of this Level II case as either mitigated, standard or aggravated, the panel considered aggravating and mitigating factors pursuant to NCAA Bylaws 19.9.3 and 19.9.4. When applying the penalty guidelines, the panel also assessed aggravating and mitigating factors by weight as well as number. 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 Bylaw 19.9.3-(b)-(1), because almost 40 years have elapsed since the institution's last major infractions case, the panel did not determine it was an aggravating factor in this case. NCAA Bylaw 19.9.4-(i) allows the panel to identify other factors beyond those specifically enumerated as mitigating if those factors warrant a lower penalty range. Upon remand, the panel noted that over a full year elapsed from the time the institution filed its appeal to the time that the IAC issued its final directive to the panel. Throughout that time, the institution has been awaiting final resolution of its case. The panel considers this passage of time as an additional mitigating factor for the institution in this case.

The panel initially determined that the case was Level II – Aggravated for the institution, former head coach and former assistant coach 1. The violations remain Level II – Aggravated for the former head coach and former assistant coach 1. However, after reweighing the aggravated and mitigated factors for the institution, the panel classifies the violations as Level II – Standard for the institution. The panel determined that the following factors applied:

Aggravating Factors for the Institution¹⁶

19.9.3-(g): Multiple Level II violations;

19.9.3-(h): Persons of authority condoned, participated in or negligently disregarded the violations or related wrongful misconduct;

19.9.3-(i): One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospective student-athlete;

19.9.3-(j): Conduct or circumstances demonstrating an abuse of a position of trust; and

19.9.3-(k): A pattern of noncompliance within the sports program involved.

¹⁶ Consistent with our decisions in *Coastal Carolina University* (2015) and *California State University, Sacramento* (2015), the panel determines that aggravating factors 19.9.3-(h) and (j) also apply to the institution, which is ultimately responsible for the actions of its coaches. The institution bears further responsibility due to the negative relationship between the director of compliance and the former head coach.

Mitigating Factors for the Institution

19.9.4-(b): Prompt acknowledgement and acceptance of responsibility and imposition of meaningful corrective measures and/or penalties;

19.9.4-(c): Affirmative steps to expedite final resolution of the matter; and

19.9.4-(d): Established history of self-reporting Level III or secondary violations.

19.9.4-(i): Other factors warranting a lower penalty range.

Aggravating Factors for the Former Head Coach

19.9.3-(d): Obstructing an investigation or attempting to conceal the violation;

19.9.3-(e): Unethical conduct, compromising the integrity of an investigation, failing to cooperate during an investigation or refusing to provide all relevant or requested information;

19.9.3-(g): Multiple Level II violations;

19.9.3-(h): Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct;

19.9.3-(i): One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospective student-athlete;

19.9.3-(j): Conduct or circumstances demonstrating an abuse of a position of trust;

19.9.3-(k): A pattern of noncompliance in the sport program involved; and

19.9.3-(m): Intentional, willful or blatant disregard for the NCAA constitution or bylaws.

Mitigating Factors for the Former Head Coach

The panel identified no mitigating factors for the former head coach.

Aggravating Factors for Former Assistant Coach 1

19.9.3-(d): Obstructing an investigation or attempting to conceal the violation;

19.9.3-(e): Unethical conduct, compromising the integrity of an investigation, failing to cooperate during an investigation or refusing to provide all relevant or requested information;

19.9.3-(g): Multiple Level II violations;

19.9.3-(i): One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospective student-athlete;

19.9.3-(j): Conduct or circumstances demonstrating an abuse of a position of trust;

19.9.3-(k): A pattern of noncompliance in the sport program involved; and

19.9.3-(m): Intentional, willful or blatant disregard for the NCAA constitution or bylaws.

Mitigating Factors for Former Assistant Coach 1

The panel identified no mitigating factors for former assistant coach 1. Although he appeared at the hearing and took responsibility for his actions, that fact did not warrant a lower penalty range.

All of the penalties prescribed in this case are independent of and supplemental to any action the Committee on Academics has taken or may take through its assessment of postseason ineligibility, historical penalties or other penalties. The institution's corrective actions are contained in the Appendix. After considering all information relevant to the case, the panel determines that the weight of the mitigating factors warrant penalties toward the lower end of the Figure 19-1 penalty matrix for the institution. The panel prescribes the following:

Core Penalties for Level II – (Standard) Violations (NCAA Bylaw 19.9.5)

1. Probation: Two-year probationary period from December 22, 2015, through December 21, 2017, (the institution proposed a one-year period of probation. The panel initially prescribed a three-year term of probation).¹⁷
2. Competition Penalties: None. (the panel initially prescribed a one-year postseason ban for the men's basketball team);
3. Financial Penalties: The institution shall pay a one-time fine of \$10,000 (institution imposed). The institution shall also pay an amount equal to one

¹⁷ Because of the unique posture of this case, and after conducting the leniency test on remand that resulted in the case being reclassified as Level II – Standard, the panel reduced the term of probation to two years. Two years is the maximum term of probation for institutions in Level – II Standard cases.

percent of the average total budget for the men's basketball program for the three years prior to the original release of this decision;¹⁸

4. Scholarship Reductions: The men's basketball program shall reduce the number of grants-in-aid awarded in the sport of men's basketball by one for each of the 2015-16 and 2016-17 academic years (institution imposed one grant cut each for the 2015-16 and 2016-17 academic years. The institution may credit its 2015-16 and 2016-17 cuts to this penalty);¹⁹

Show-Cause Orders

5. The former head coach allowed and instructed DOBO 1 to engage in impermissible coaching activities. Further, he failed to report a potential violation of NCAA legislation, resulting in student-athlete 3 competing while ineligible. Finally, the former head coach encouraged members of the men's basketball team to not report a potential violation of NCAA rules to the institutional administration. By his actions, the former head coach engaged in unethical conduct and failed in his duty to promote an atmosphere of compliance in the men's basketball program. He was ultimately responsible for the actions of his staff. Therefore, the former head coach will be informed in writing by the NCAA that the panel prescribes a three-year show-cause order pursuant to NCAA Bylaw 19.9.5.5. The show-cause period shall run from December 22, 2015, through December 21, 2018. The terms of the show cause are as follows:
 - a. Each year he is employed by an NCAA member institution during the period of the show cause, the former head coach shall attend an NCAA Regional Rules Seminar;
 - b. During the first year that the show cause is in effect, or the first year that the former head coach is employed by a member institution during the show-cause period, the former head coach shall be suspended from all coaching duties for the first 30 percent of the season, not counting exhibition games. Any institution that employs the former head coach during the term of the show cause shall adhere to this penalty. If the

¹⁸ The fine must be calculated in accordance with Division I COI Internal Operating Procedures 4-16-2 and 4-16-2-1. Because the maximum Level II – Standard financial penalty is \$5,000 plus up to one percent of the budget of the affected sport, the institution may subtract \$5,000 from the one percent of the men's basketball budget it remits to the Association.

¹⁹ The panel initially added one grant to each year of the self-imposed grant reductions, prescribing a total of two grants cuts for each of two consecutive years. On remand, and because of the unique posture of this case, the panel adopts the institution's self-imposed cuts of one grant for each of two years. The maximum percentage of reductions allowed in Level II – Standard cases is 12.5.

employing institution does not agree to these restrictions, it shall appear before a panel and show cause why the restrictions should not apply.

The provisions of this suspension require that the former head coach not be present in the arena where the games are played and shall not have any contact or communication with members of the men's basketball coaching staff and student-athletes during the suspension period. The prohibition includes all coaching activities for the period of time which begins at 12:01 a.m. the day of the first regular season game and ends at 11:59 p.m. on the day of the game that constitutes the end of suspension period. During that period, the former head coach may not participate in any activities including, but not limited to, team travel, practice, video study and team meetings. The results of those contests from which the former head coach is suspended shall not count in the former head coach's career coaching record.

6. Former assistant coach 1 knowingly provided an impermissible benefit to prospect 5. Further, former assistant coach 1 falsified an admissions document for student-athlete 1 in an attempt to facilitate the student-athlete's admission into the institution. Finally, former assistant coach 1 provided false information regarding the provision of the impermissible benefit to prospect 5. By his actions, former assistant coach 1 engaged in unethical conduct. However, former assistant coach 1 appeared at the infractions hearing and gave a truthful account of his actions. Therefore, former assistant coach 1 will be informed in writing by the NCAA that the panel prescribes a two-year show-cause order pursuant to NCAA Bylaw 19.9.5.4. The show-cause period shall run from December 22, 2015, through December 21, 2017. If former assistant coach 1 is employed by an NCAA member institution during the term of the show cause, he and the member institution shall schedule an appearance before a panel of the committee to determine whether he should be subject to the show-cause provisions of NCAA Bylaw 19.9.5.4.
7. Recruiting Restrictions: The institution shall prohibit members of the men's basketball coaching staff from conducting on-campus evaluation of prospective student-athletes for the first five official visits of the 2015-16 academic year in which an on-campus evaluation would otherwise be permissible (institution imposed);
8. During the period of probation, the institution shall:
 - a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct the coaches, the faculty athletics representative, all athletics department personnel and all institution staff members with responsibility for the certification of student-athletes for admission, retention, financial aid or competition;

- b. Submit a preliminary report to the Office of the Committees on Infractions by February 28, 2016, setting forth a schedule for establishing this compliance and educational program;
- c. File with the Office of the Committees on Infractions an annual compliance reports indicating the progress made with this program by November 15 of each year during the period of probation. Particular emphasis shall be placed on monitoring visits to campus by prospective student-athletes, education of student-athletes regarding benefits, education of representatives of the institution's athletics interest and professional interaction among all members of the athletics department. The report must also include documentation of the institution's compliance with the penalties adopted and prescribed by the panel and imposed by the institution;
- d. Inform prospective student-athletes in men's basketball that the institution is on probation for three years 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 programs and a direct, conspicuous link to the public infractions report located on the athletic department's main webpage and in the media guides for the involved sports. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the major infractions case; and (iii) give members of the general public a clear indication of what happened in the major 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.

Additional Penalties for Level II – (Standard) Violations (NCAA Bylaw 19.9.7)

- 9. Public reprimand and censure;
- 10. Vacation of records: Student-athlete 3 received an impermissible benefit when he used the representative's vehicle in the fall of 2012. Former assistant coach 1 provided an impermissible benefit to prospect 5 when he allowed prospect 5 to retain an iPad free of charge. The receipt of the benefits rendered student-athlete 3 and prospect 5 ineligible for competition. Therefore, pursuant to NCAA

Bylaws 19.9.7-(g) and 31.2.2.3, the institution shall vacate all regular season and conference tournament wins in which student-athlete 3 and prospect 5 competed from the time they became ineligible through the time they were reinstated as eligible for competition. Further, if either of the student-athletes competed in the NCAA Division I Men's Basketball Championships at any time they were ineligible, the institution's participation in the championship shall be vacated. The individual records of the student-athletes shall also be vacated. Further, the institution's records regarding men's basketball, as well as the record of the former head coach, will reflect the vacated records and will be recorded in all publications in which men's basketball 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 which may subsequently hire the former 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 to attain specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to these vacated contests shall be removed from athletics department stationery, banners displayed in public areas and any other forum in which they may appear.

To ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected in official NCAA publication and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA media coordination and statistics staff 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 staff a written report detailing those discussions. This document will be maintained in the permanent files of the NCAA media coordination and statistics department. This written report must be delivered to the NCAA media coordination and statistics staff no later than 45 days following the initial infractions decision release or, if the vacation penalty is appealed, at the conclusion of the appeals process. A copy of the written report shall also be delivered to the Office of the Committees on Infractions at the same time.

11. The institution shall reduce the maximum number of countable athletically related activity (CARA) hours by one hour per week during the 2015-16 men's basketball season. The reduction will total 19 hours, which the institution estimated is double the amount of hours it exceeded CARA limits during the 2010-11 and 2011-12 academic years (institution imposed).
12. 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.

The Committee on Infractions 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 extending the institution's probationary period, prescribing more severe penalties or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Michael Adams
Britton Banowsky
Carol Cartwright
Greg Christopher, Chief Hearing Officer
Bobby Cremins
Joel Maturi
Jill Pilgrim

APPENDIX

CORRECTIVE ACTIONS AS IDENTIFIED IN THE INSTITUTION'S MAY 15, 2015, RESPONSE TO THE NOTICE OF ALLEGATIONS.

1. As a result of the violations regarding the directors of operations, the university will restrict the director of basketball operations for the men's basketball program from being present during the team's practices for the 2015-16 season.
2. As a result of the violations regarding the directors of operations and the impermissible tryouts, the university has devoted additional resources to monitoring practice and CARA of its men's basketball program. A member of the compliance staff is present at random practices for all sports for at least part of each practice, generally at least 30 minutes, to observe, with an emphasis on:
 - a. Ensuring that the staff complies with NCAA legislation prohibiting non-coaching staff members from engaging in coaching activities; and
 - b. Ensuring that the program complies with NCAA legislation regarding which activities constitute CARA, requiring that CARA be logged accurately, and limiting of the number of student-athletes that may train at the same time during the off-season while a staff member is present.
3. As a result of the violations regarding impermissible tryouts, the university's compliance staff will be available and present during any open gyms or tryouts involving men's or women's basketball prospects during their official visits. The compliance staff has instructed the coaching staffs for both sports to list all open gym, tryouts or other evaluation activities on official visit itineraries submitted to the compliance office prior to official visits.
4. The university has modified its policy regarding lodging documentation required during official visits for all sports. A hotel chain has served as a sponsor of the university in the past, and as part of the sponsorship, has provided rooms to the university at no charge. The hotel also, on occasion, provided access to its concierge level dining facility at no charge during official visits; normal guests are required to pay for this access. When a prospect on an official visit stayed in one of these no-charge rooms in the past, no documentation or folio was generated when the prospect checked out of the hotel at the end of the visit. The university and enforcement staff encountered difficulty during the investigation obtaining documentation for such visits. As a result, the university now requires a receipt or folio showing for each such visit, including all incidental charges or other amenities made available to the prospect during his stay at the hotel, to ensure compliance with NCAA legislation regarding official visits. University coaches and non-coaching staff were educated on these changes at a rules education presentation on May 14, 2014.

5. The university's compliance staff held an International Admissions Workshop since the investigation began. The workshop was mandatory for all coaches and included rules education on the admissions process for international prospects, including NCAA legislation that governs these prospects. The workshop presenters included university employees from the compliance, admissions, and international student services offices.
6. During the 2014-15 men's basketball season, an athletics administrator and a member of the compliance staff accompanied the men's basketball team to all neutral and away competitions.
7. As a result of the violation regarding student-athlete 3, the university's compliance staff has continued its attendance at local booster club meetings and increased its communications with these groups. A compliance staff member has spoken at these events and provided general rules education to those in attendance. The compliance staff also plans to work with the club to distribute rules education materials electronically or by mail, with an emphasis on extra benefit legislation in light of the violation in Allegation 3 discovered during this investigation.
8. In its rules education presentation to incoming student-athletes, the university's compliance staff has added a discussion of the ethical conduct obligation of all student-athletes and the ramifications of unethical conduct.
9. The university compliance staff will conduct rules education sessions with all returning student-athletes near the end of the 2014-15 academic year, with an emphasis on extra benefits and preferential treatment legislation.
10. The university will meet with the representative to review the reasons for the violation regarding student-athlete 3 as well as pertinent NCAA legislation regarding recruiting, extra benefits and preferential treatment. Following this meeting, the university will determine whether any additional steps should be taken related to its relationship with the representative.