

December 21, 2016

VIA ELECTRONIC MAIL

Mr. Greg Sankey
Chair, NCAA Division I Committee on Infractions
c/o Mr. Joel McGormley
P.O. Box 6222
Indianapolis, IN 46206-6222

Dear Chairman Sankey:

I am writing on behalf of the University of North Carolina at Chapel Hill to address certain issues raised in the November 28, 2016, letter from the Committee on Infractions Hearing Panel that has now led to the issuance of a third Notice of Allegations. One issue of particular concern arising out of the letter and the third set of allegations it prompted is how the Enforcement Staff's May 20, 2015 Notice of Allegations ("NOA") was reshaped into the April 25, 2016 Amended Notice of Allegations ("ANOA").

Your November 28 letter indicated that the Panel "is concerned about the parties' expressed rationale for removing former Allegation No. 1." In preparing for the October 28, 2016 procedural and jurisdictional hearing, the University anticipated that the Panel might wish to understand the process of how the NOA became the ANOA, including the removal of former Allegation No. 1. In an effort to inform the Panel about the reasons for the change, on October 14, 2016, the University submitted for inclusion in the hearing record two significant letters relating to this issue: a December 16, 2015 letter from Tom Hosty to me and my reply dated January 7, 2016. Those letters were a key part of the dialogue between the University and Enforcement Staff that the University understands led to the change in allegations. The University also submitted additional documents to the Panel with that October 14 letter that it believed provided important context for the procedural issues before the Panel.

The purpose of that submission was to provide important context on how the NOA became the ANOA. Tom Hosty's letter to me set forth the Enforcement Staff's view of the case, and my response explained the University's perspective that the allegations in the NOA did not square with the evidence in the case, the bylaws and secondary and major case precedent. Thereafter, the University and NCAA enforcement staff worked over several weeks to align the allegations with the facts found during the investigation, the bylaws and precedent. That collaborative process led to the issuance of the ANOA.

On October 17, 2016, Joel McGormley wrote me a letter stating that you, in your role as Chairman of the Panel, would not allow the University's submission of this important

evidence. That notification effectively informed the University that this issue was not one that would be addressed by the Panel during the October 28 procedural and jurisdictional hearing, and that it should not be a focus of the University's hearing preparation or presentation. When the Panel raised this issue at the hearing, the incomplete record prevented the University from exercising its right to address an issue that apparently became critical to the Panel's decision to direct the staff to issue a third Notice of Allegations.

Fundamentally, the Panel, after rejecting the University's proffer of evidence that would have informed the Panel's understanding of the basis for the Enforcement Staff's removal of former Allegation No. 1, used the very absence of this evidence to take the unprecedented step of directing the issuance of a third Notice of Allegations with respect to matters that were appropriately addressed in the investigation and were the subject of extended dialogue between the University and the Enforcement Staff. The result is the issuance of a third Notice of Allegations without the Panel having allowed submission of evidence that would have informed the Panel on how the NOA became the ANOA. The University does not believe it to be consistent with the NCAA's rules and bylaws for the Panel to make critical decisions in the absence of evidence that was proffered and rejected and that would have allowed the Panel to make a more informed decision. The Panel's decision in that regard evidences a lack of appreciation and respect for the parties' collaborative efforts that aligned the allegations with the facts, the bylaws and applicable precedent. Other parties were allowed to supplement the record prior to the October 28 hearing, but the University was denied this right in its very first appearance before the Panel.

A lack of fair and consistent treatment erodes trust in a process in which the University has acted forthrightly and collaboratively and worked diligently to provide information. Indeed, the University is not aware of any University that has made more information available to the enforcement staff and to the public generally than has been made available in this matter and is not aware of any University that has been more public in stating the many reforms it has made to address any issue that has arisen through this long process.

Simply stated, it is not "the fundamental fairness contemplated by the NCAA constitution and bylaws" for the Panel to deny the University the ability to place evidence before it and to pick and choose what it considers to be an appropriate part of the record without even allowing the University an opportunity to explain why that evidence matters. The University should never be placed in a position in this proceeding where it is denied its ability to make an appropriate evidentiary record and then has the absence of the evidence it proffered, but that the Panel rejected, held against it. The University has consistently taken responsibility for the matters that are at issue before the Panel, and it has worked diligently and effectively to correct these matters. The faithful application of NCAA Rules and bylaws requires that the University be allowed to build a record that addresses the relevant issues in this case and be given fair notice of the factual allegations it is expected to defend. This should be a goal shared by all participants in the process.

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As an initial matter, the two letters between Tom Hosty and me referenced above must be made part of the record. The Panel should review these letters thoroughly and carefully given its focus on how the NOA became the ANOA.

The University wants to move this matter forward, but now faces a third Notice of Allegations in a process that increasingly lacks clarity on what the University is expected to defend. Further, the Panel's November 28 letter raises issues concerning how information gathered outside the normal NCAA investigation process may be used to support allegations against it. As a result, the University is examining the existing evidence to determine whether additional investigation may be needed. The University will not be in a position to forecast its needs in that regard by the January 3, 2017 date set forth in your letter, but is working diligently to be able to do so as soon as possible. I will contact you in the near future when that assessment has been completed.

The University looks forward to the opportunity to present a more complete record of these issues before the Panel and is committed to bringing this matter to a timely resolution. On behalf of the University, I thank you for your consideration of these important issues.

Sincerely,

BOND, SCHOENECK & KING, PLLC

A handwritten signature in blue ink that reads "Richard J. Evrard / gm". The signature is written in a cursive, flowing style.

Richard J. Evrard

RJE/gm

cc: Chancellor Folt
Ms. Lissa Broome
Mr. Bubba Cunningham
Mr. John Duncan
Mr. Tom Hosty
Mr. Bob Kirchner
Mr. Scott Lassar
Mr. Joel McGormley
Mr. Mark Merritt
Ms. Kathy Sulentic