



THE UNIVERSITY
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at CHAPEL HILL

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May 16, 2017

VIA ELECTRONIC MAIL

Mr. Joel McGormley
Managing Director of the Committees on Infractions
National Collegiate Athletic Association
P.O. Box 6222
Indianapolis, IN 46206-6222

RE: *University of North Carolina, Chapel Hill – Case No. 00231*

Dear Mr. McGormley:

This is in response to Mr. Jonathan Duncan's December 16, 2016, letter and Second Amended Notice of Allegations regarding the *University of North Carolina, Chapel Hill – Case No. 00231*

Electronically attached is a copy of the University's Response to the Notice of Allegations. Also, the University's Response and Exhibits have been uploaded to the NCAA enforcement staff's attention at 00231-NorthCarolina_NOA Response Upload Portal, using the following naming convention:

NOAResponse_051617_NorthCarolina_00231

We look forward to the hearing panel's consideration of this case.

Sincerely,

Carol Folt
Chancellor

RJE/gm

cc: Ms. Lissa Broome
Mr. Bubba Cunningham
Mr. Rick Evrard
Mr. Vince Ille
Mr. Steve Keadey
Mr. Bob Kirchner
Mr. Scott Lassar
Mr. Mark Merritt
Mr. John Swofford

UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

RESPONSE

TO

NCAA SECOND AMENDED NOTICE OF ALLEGATIONS

MAY 16, 2017

**Submitted by Rick Evrard &
Bob Kirchner of Bond, Schoeneck & King, PLLC**

I. INTRODUCTION

The question before the Panel is whether the record in this proceeding establishes violations of the member-adopted constitution and bylaws as alleged by the Enforcement Staff in the Second Amended Notice of Allegations (the “Second ANOA”). The public narrative for the last six years, popularized by media accounts, is that the Department of Athletics at the University of North Carolina at Chapel Hill (the “University”) took advantage of “fake classes” in the Department of African and African-American Studies (the “Department”) to keep student-athletes eligible. That narrative is wrong and contradicted by the facts in the record.

The record before the Panel will show the following:

1. The courses in issue (the “Courses”) were available to all students in the same manner. No special arrangements were made for student-athletes in violation of NCAA extra-benefit legislation. Student-athletes made up 29.4 percent of the enrollments in the Courses. See discussion at pages 6-9, 37-38 and 75-77.
2. Student-athletes were not treated differently than other students who took the Courses. All students who took the Courses were required to write one or more research papers. The record shows that each student who took a Course turned in work that was evaluated and given a grade for credit. See discussion at pages 5-6, 32, 34-35, 39-40, 42, 44 and 50.
3. The Courses originated in the Department and not the Department of Athletics. The origin of these Courses was not to benefit student-athletes but arose out of a desire of Department Chair and Professor Julius Nyang’oro and the Department’s Student Services Manager and Secretary Deborah Crowder to appropriately assist students with a wide variety of challenges and interests. See discussion at pages 5-6.
4. That no one in the Department of Athletics took improper advantage of the Courses. There is no allegation that any coach or employee of the Department of Athletics violated a bylaw or directed a student-athlete to take one of these courses. See discussion at pp. 9-11, 13 and 17-19.
5. That the issues before this Panel were academic in nature and the result of inadequate academic oversight unrelated to the Department of Athletics. The academic nature of the issues is shown by the fact that those issues have been addressed by the Southern Association of Colleges and Schools Committee on Colleges (“SACSCOC”), the University’s academic accreditor.¹ The University has implemented over 70 reforms and initiatives to make certain that the academic irregularities that occurred will not take place again. See discussion at pp. 11-12, 35-36 and 76.

¹ SACSCOC is the regional accrediting body for degree-granting higher education institutions in the southern states. Its mission is “to assure the educational quality and improve the effectiveness of its member institutions.” As the University explained in its Response to the Amended Notice of Allegations, SACSCOC—not the NCAA—is the proper body to address the issues that arose in the Department.

A challenge for this Panel will be to make a decision on the record and to avoid being influenced by media reports, commentary from various sources (including Mark Emmert, the President of the NCAA)² and the investigative reports that reviewed these matters from perspectives unrelated to whether there have been NCAA rules violations. The record establishes that there is no bylaw violation by the University as alleged in allegations 1 and 5.

II. SUMMARY OF CONCLUSIONS

A. Allegation 1

Because the issue of the Courses is an academic issue, the University denies that there were NCAA violations. The alleged conduct does not constitute a violation of the ethical-conduct or extra-benefits rules because the record establishes that: (a) the Courses were generally available to all students, the student-athletes who took the Courses performed and submitted academic work, and they were treated no better than the non-athlete students who took the Courses, which makes the conduct alleged in Allegation 1(a) permissible under Bylaw 16.11.1.1; (b) the conduct of the unnamed “athletics personnel” alleged in Allegation 1(b) was permissible academic support under Bylaw 16.3.1.1 and moreover the facts do not support the Staff’s characterizations of the conduct; (c) none of the individuals identified by the Staff “administer, conduct or coach intercollegiate athletics” and accordingly Bylaw 10.01.1 is inapplicable; and (d) because there were no other violations of any NCAA legislation and no intentional or knowing violations, there were no ethical-conduct violations under Bylaw 10.1, except for a failure to cooperate by Nyang’oro. Moreover, the overwhelming majority of the conduct alleged is beyond the statute of limitations.

B. Allegation 2

The University agrees that some of the sub-allegations against Professor Jan Boxill support an allegation of extra benefits but contends that others do not. All of the allegations that have merit occurred prior to the four-year statute of limitations and, therefore, are time barred for the purposes of both Allegations 2 and 5(b).³

C. Allegations 3 and 4

The University agrees that Professor Nyang’oro failed to cooperate with the investigation. The University takes no position on whether Crowder has failed to cooperate in light of her submission of a Response to the Second Amended Notice of Allegations and her May 10, 2017 interview with the enforcement staff and other actively involved parties.

² On October 29, 2014, President Emmert was quoted as stating “When you look at what we all know today, the Wainstein report, and just based upon that you look at the, I look at these facts, like everyone, and I find them shocking.” and “Universities are supposed to take absolutely most seriously the education of their students, right? I mean that’s why they exist, that’s their function in life. If the Wainstein report is accurate, then there was severe, severe compromising of all those issues, so it’s deeply troubling. ... It’s absolutely disturbing that we find ourselves here right now.” (See **Exhibit IN-1**.) These statements were made, and made publicly, while the Enforcement Staff and University were conducting a joint investigation under NCAA bylaws; before the factual record in this case was complete; and before the University had an opportunity to be heard in the infractions process. This type of pre-judging of the matter based on outside sources and not the factual record developed under the NCAA bylaws is of grave concern to the University.

³ Even if the Panel finds that the one timely assertion – Allegation 2(r) – was a violation, it would not provide a basis for the Panel to address the conduct that occurred prior to the four-year statute of limitations period since none of the exceptions to the four-year limitations period that are contained in Bylaw 19.5.11 apply.

D. Allegation 5

Because there was no underlying violation as alleged in Allegation 1, there cannot be a failure to monitor or lack of institutional control violation. In any event, the University did not fail to properly monitor or control the ASPSA program.

The conduct alleged in Allegation 2 regarding Professor Boxill does not establish a lack of institutional control. The University agrees that it insufficiently monitored Professor Boxill.

RESPONSES TO SPECIFIC ALLEGATIONS

ALLEGATION 1

1. [NCAA Division I Manual Bylaws 10.01.1, 10.1 and 16.11.2.1 (2002-03 through 2010-11)]

It is alleged that beginning in the 2002 fall semester and continuing through the 2011 summer semester, Deborah Crowder (Crowder), then student services manager in the African and Afro-American Studies (AFRI/AFAM) department, and Dr. Julius Nyang'oro (Nyang'oro), then professor and chair of the AFRI/AFAM department, violated the principles of ethical conduct and extra-benefit legislation in connection with certain anomalous AFRI/AFAM courses. The institution and its athletics department leveraged the relationship with Crowder and Nyang'oro to obtain special arrangements for student-athletes in violation of extra-benefit legislation. Specifically:

- a. Crowder and Nyang'oro maintained and administered anomalous courses in the AFRI/AFAM department and delegated to athletics personnel the authority to manage material aspects of these courses for student-athletes in violation of ethical-conduct and extra-benefit legislation. The anomalous courses were publicized as traditional lecture courses but were administered as independent studies requiring little, if any, attendance and minimal to no interaction with the faculty. Additionally, these courses included lax paper writing standards and awarded artificially high final grades to students enrolled in these courses. Although general students also took the anomalous courses, Crowder and Nyang'oro worked closely and directly with athletics. As a result, student-athletes were afforded greater access to the anomalous courses and enrolled in these courses at a disproportionately higher rate than students who were not athletes. Many at-risk student-athletes, particularly in the sports of football and men's basketball, used these courses for purposes of ensuring their continuing NCAA academic eligibility. [NCAA Bylaws 10.01.1, 10.1 and 16.11.2.1 (2002-03 through 2010-11)]
- b. The institution and its athletics department leveraged the relationship with Crowder and Nyang'oro to obtain and/or provide special arrangements to student-athletes in violation of extra-benefit legislation. While general students had to work directly with Crowder or Nyang'oro to access and complete the anomalous courses, the institution and its athletics department provided student-athletes with special arrangements that were not generally available to the student body. These special arrangements were characterized by athletics personnel contacting individuals within the AFRI/AFAM department to register

student-athletes in courses even after the deadline to enroll had passed; obtaining assignments for courses taught in the AFRI/AFAM department on behalf of student-athletes; suggesting assignments to the AFRI/AFAM department for student-athletes to complete; submitting papers on behalf of student-athletes; and, on occasion, requesting certain course offerings within the AFRI/AFAM department on behalf of student-athletes and recommending course grades for student-athletes. This involvement by athletics in the management of anomalous courses on behalf of student-athletes led student-athletes to avail themselves of the courses at a rate disproportionately higher than the general student body. Additionally, the excessive involvement by athletics in student-athletes' access to and completion of these courses was a benefit not generally available to other students and relieved student-athletes of the academic responsibilities of a general student. In some cases, these courses influenced the student-athletes' NCAA academic eligibility. [NCAA Bylaw 16.11.2.1 (2002-03 through 2010-11)]

This allegation serves as part of the basis for the lack of institutional control allegation in Allegation No. 5.

Level of Allegation No. 1:

The NCAA enforcement staff believes a hearing panel of the NCAA Division I Committee on Infractions could determine that Allegation No. 1 is a severe breach of conduct (Level I) because the unethical conduct and the impermissible extra benefits provided over a nine-year timespan seriously undermined or threatened the integrity of the NCAA Collegiate Model, in particular, as articulated in NCAA Constitution 2.5. The provision of impermissible benefits in an academic context undermines the importance of a student-athlete's participation in his or her own education. The conduct also provided, or was intended to provide, a substantial or extensive impermissible benefit and competitive or other advantage. [NCAA Bylaw 19.1.1 (2016-17)]

Involved Individuals:

The enforcement staff believes a hearing panel could enter a show-cause order pursuant to Bylaw 19.9.5.4 regarding the following individuals' involvement in Allegation No. 1: Crowder and Nyang'oro.

Factual information on which the enforcement staff relies for Allegation No. 1:

The attached exhibit details the factual information on which the enforcement staff relies for Allegation No. 1. The enforcement staff incorporates the factual information referenced throughout this document, its exhibits and all other documents posted on the secure website.

I. Factual Background for Allegation 1

There has been extensive public discussion about the Courses, and many have prejudged this case regarding NCAA rules violations, based on limited information that has often misstated or mischaracterized the facts. Because the Panel must decide this case on the record before it, and not on unreliable public reports or impressions gleaned from them, it is important to state the facts relevant to Allegation 1 accurately.

1. The Courses Arose out of the Academic Side of the University, Involved Serious Academic Failings, but were not Created nor Intended to Help only Student-Athletes

Ms. Crowder was a student services manager and undergraduate secretary in the Department. She was responsible for facilitating development of the Department's course offerings and teaching assignments for those courses; assisting academic advisors, academic counselors,⁴ and students with adding and dropping courses; and collecting and entering grades. Professor Nyang'oro was the Chair of that Department and often the professor of record for the Courses. Over a period of years, the Department offered customized classes where students received credit and grades for writing research papers. Some of the Courses were listed as independent study courses while others were listed as lecture courses.

Ms. Crowder was Professor Nyang'oro's administrative assistant and "jack-of-all-trades" in the department. Because Professor Nyang'oro traveled extensively, he delegated significant authority to Ms. Crowder in administering the Courses, including instructing her on how she should grade the papers when he was unavailable. (See **Exhibit 1-1** Crowder transcript, FI-127.)⁵ However, Professor Nyang'oro played an important role in the Courses when he was on campus. Contrary to the public narrative that Professor Nyang'oro played a limited role in the Courses, there are numerous documents, confirmed by Crowder's testimony, that indicate that on many occasions, Professor Nyang'oro: (1) approved the enrollment of students, (2) provided assignments directly to students or through Ms. Crowder (on some occasions, Ms. Crowder obtained the assignments from other instructors when she could not reach Professor Nyang'oro), (3) reviewed and approved paper topics, (4) reviewed and commented on students' abstracts, (5) met with students to discuss their papers and provided advice and research help, (6) approved extensions of time to submit papers, (7) received papers from students, and (8) graded papers when his schedule permitted. (See FIs-58 and 127; and **Exhibit 1-1**.) All topics were provided by Professor Nyang'oro and were designed so that they would meet the requirements of "Perspective Classes," which all students had to take in order to graduate.

⁴ The University employed full-time academic advisors and part-time faculty academic advisors who worked with all students. It also employed academic counselors who worked exclusively with student-athletes as permitted by NCAA Bylaw 16.3.

⁵ Debby Crowder was interviewed for more than five hours on May 10, 2017, six days prior to the deadline for submission of the University's Response to the Second ANOA. The official transcript of her interview (the NCAA Enforcement Staff's document) was not available to the parties until after the deadline of the submission of the Responses. The University intends to prepare a Supplemental Response to include more specific references to Ms. Crowder's testimony. The staff has advised the University that it intends to include Ms. Crowder's official transcript as FI-127 for the record. The University has also produced a transcript of Ms. Crowder's interview and it is included in this Response as **Exhibit 1-1**. Specific page references to Ms. Crowder's testimony could not be included in this Response, but will be further identified in its Supplemental Response.

(See FI-127 and **Exhibit 1-1**). Thus, although he delegated too much authority to Ms. Crowder, Professor Nyang'oro was more involved in the Courses than many public reports describe.

The origin of the Courses was not to benefit the Department of Athletics or student-athletes, but instead originated from Professor Nyang'oro's and Ms. Crowder's desire to assist students of all kinds with a wide variety of challenges and interests. (See FI-127 and **Exhibit 1-1**; Crowder Affidavit Par. 3; Abrams 3/9/17 letter, pp. 2, 4.) Ms. Crowder, an English major and graduate of the University, had empathy for students who had challenges and was known as a resource for students in need of support. Ms. Crowder's own words from a 2004 email showed her motivation was to help all students:

“[W]e try to accommodate [student-athletes'] schedules just as we do the single moms, or the students who have to work two jobs to stay in school. We work with them all, on an individual basis, and that is my only point. Some of our athletes are good students, some not, but that goes for the general student population.”
(See FI-61.)

Ms. Crowder's testimony during her May, 10, 2017, interview and her March 9, 2017, submission emphasizes that her motivation was to educate and assist all students who had personal issues or were facing bureaucratic problems by creating educational opportunities.⁶ (See FI-127 and **Exhibit 1-1**; Crowder Aff. Par. 3, 12; Abrams 3/9/17 letter, pp. 1-2, 4-6.)

2. The Courses Were Available to All Students

The Courses were available to all students and were not a special arrangement available only to student-athletes. (See FI-127 and **Exhibit 1-1**; Crowder Affidavit Par. 4, 12; Abrams 3/9/17 letter, pp. 1, 2, 4-6.) Under NCAA Bylaws 16.02.3 and 16.11.1.1, if a benefit is “generally available” to all students, there can be no violation for extra benefits. Of the total number of students who took the course, 73% were not student-athletes.

If you focus on percentages of enrollments in the Courses accounted for by active student-athletes, active student-athletes accounted for 37.2% of the enrollments. We define an “active student-athlete” as one who was participating in intercollegiate athletics and governed by NCAA rules at the time they took one of the Courses. Thus, if a student participated on an athletics team as a freshman, did not participate on an athletics team thereafter and took one of the

⁶ Ms. Crowder reported that many times her efforts and Nyang'oro's efforts were to assist students with satisfying the many course perspectives. She reported that often when sections of courses would close or when seats in courses were limited they would allow the students to enroll in the class by special arrangement.

Courses, that individual would not count as an “active student-athlete” who took a Course because they were not subject to NCAA rules. This is different from the approach taken in the Cadwalader, Wickersham and Taft (CWT or the “CWT Report”), which uses a “once an athlete always an athlete approach.” The differing definition led CWT to count as student-athletes 171 individuals who were not student-athletes when they took a Course. Active student-athletes accounted for 17.7% of the enrollments in the Courses that were taught as independent studies. The combined percentage of the active student-athletes that took the Courses was 29.4%. Whether counted by numbers of students or enrollments, over 70% of enrollments in the Courses were not by student-athletes.

The CWT Report supports that the Courses were generally available and states that the availability of the Courses was widely known across campus to all students through various means. “First, there was the general word-of-mouth network on campus. With up to 400 enrollments in some semesters, their existence was hardly a secret. As with any course that offers an easy path to a high grade, word of these classes got around.” (See FI-32, p. 51.) Second, the full-time advisors in the Steele Building, some faculty academic advisors, and the advisors for some scholarship programs knew about the Courses being available, and they arranged for non-athlete students to take them to provide easier courses to balance their schedules and provide higher grades to raise their GPAs. Third, the fraternities were aware of the Courses through their own word-of-mouth network. (See FI-32, pp. 51-52, 68, 81, n. 162, 107, 116-117.; and FI-104.) Crowder’s testimony supported this observation.

The NCAA investigative record in this matter supports the general availability of the Courses. For example, there are several emails where Betsy Taylor, Alice Dawson, the Senior Assistant Dean of the Academic Advising Program on main campus, and other campus academic advisors contacted Ms. Crowder or Professor Nyang’oro seeking these types of arrangements for non-athlete students. (See FI-101; **Exhibit 1-3**.) Moreover, during interviews conducted pursuant to NCAA rules as part of the joint investigation, Dawson, Gore, and several ASPSA academic counselors stated that academic advisors frequently contacted Ms. Crowder and Gore to enroll non-athlete students in the Courses. (See FI-41 at pp. 49-50; FI-42 at p. 68; FI-85 at p. 42; FI-92 at pp. 19, 23-25.) Further, Ms. Crowder’s testimony states that she was contacted by academic advisors on campus. (See **Exhibit 1-1**; Crowder Aff. Par. 4; Abrams 3/9/17 letter, pp. 2-4.)

3. All Students Who Took the Courses Were Treated in the Same Manner

All students performed academic work in the Courses and were required to write one or more research papers. According to Ms. Crowder, only students who turned in papers that met the requirements of the Course (the paper covered a topic assigned by Professor Nyang'oro, or in his absence, another faculty member; included appropriate citations and a proper bibliography, met the page-length requirements, and contained a signed Honor Code pledge) were awarded a grade. (See Exhibit 1-1; Crowder Aff. Par. 8; Abrams 3/9/17 letter, pp. 2-4.)

The record contains significant evidence of work done by student-athletes in the Courses. Their ASPSA academic counselors, who assisted with that work during the semester, reported that the student-athletes who took the Courses typically prepared an abstract and outline, performed research and, over the course of weeks of work, drafted a 20- to 25-page paper with citations and quotations to scholarly sources and containing a works cited page. (FI-87 at p. 32.) The amount of time that the student-athletes spent working on their papers in study halls and with tutors was equivalent to the time that they would have spent on a lecture class. (See FI-39 at pp. 35-36; FI-87 at p. 41.) Academic counselors and tutors worked daily with student-athletes, on these assignments and others, to build skills in how to outline, research, cite authorities, and write a research paper. (See FI-39 at p. 30.) Both Ms. Crowder's submission and the documentary evidence discussed below demonstrate that student-athletes performed significant work for the Courses. (See Exhibit 1-1; Crowder Aff. Par. 10; Abrams 3/9/17 letter, pp. 2-4.)

ASPSA academic counselors informed student-athletes about the Courses and helped them enroll in the Courses. The Staff cites this evidence as some form of special treatment. The record, however, shows that ASPSA academic counselors were not alone. Academic advisors in the College of Arts & Sciences, who worked with non-athlete students, also recommended the Courses and arranged for them to take the Courses to balance their schedules and earn higher grades. So did advisors for some scholarship programs. (See FI-32 at pp. 51-52, 68, 81, n. 162, 107, 116-117; FI-41 at pp. 49-50; FI-42 at p. 68; FI-92 at pp. 19, 23-25 and **Exhibit 1-3**.) Travis Gore, who worked in the Department office alongside Ms. Crowder from 2001 to 2009 and assumed some of her responsibilities after her retirement in 2009, stated that the number of times that academic advisors sent over non-athlete students and the number of times that ASPSA academic counselors sent over student-athletes were "pretty even." (See FI-85 at p. 42.)

One of the academic advisors who sent non-athlete students to Ms. Crowder was Alice Dawson, the Senior Assistant Dean of the Academic Advising Program for the University's College of Arts & Sciences. In 2006, Dawson wrote to Ms. Crowder:

I try to use your help judiciously, but knowing you are there when a kid is in a bind is wonderful. You are an absolute Godsend for so many students, Debbie. THANK YOU THANK YOU THANK YOU!!!! (See FI-101.)

Betsy Taylor, the Graduation Coordinator for the College of Arts and Sciences and an academic advisor also sent non-athlete students to Ms. Crowder. (See FI-92 at pp. 1, 5.) When Taylor had a student who needed a class, she would call the undergraduate secretary for a department for help. Taylor said that Ms. Crowder was "always very helpful to students." (See FI-92 at pp. 18-19.) When "desperate" students came to see her, Taylor would:

[O]ften call Debbie and ask her if she could please help this young woman or this young man, you know, who had made a mistake or who was just absolutely desperate. They needed to be a full-time student, and they were in a class that was way over their head, you know, that there was no way they were gonna pass or whatever. And she would set it up. Oh, I would call her and she would say send them over. And mostly students that I sent to Debbie were not athletes. They were not athletes. (See FI-92 at p. 19.)

One non-athlete student who took one of the Courses wrote to Ms. Crowder:

I have not met many people that take such a genuine interest in all people they come in contact with. You are truly a special woman with a selfless attitude and an enormous heart. Thank you for being you and allowing me to share my life with you. I don't know where I'd be without you. (emphasis in original). (See FI-32 at p. 43 n.80.)

Ms. Crowder's March 9, 2017, submission and her statements in her May 10, 2017 interview reinforce that she regularly worked with both non-athlete academic advisors and ASPSA academic counselors in the same manner to make the Courses available to all students and that there was no special treatment of student-athletes. (See **Exhibit 1-1**; Crowder Aff. Par. 4, 11; Abrams 3/9/17 letter, pp. 2-4.)

4. ASPSA Personnel Interacted Appropriately with Professor Nyang'oro and Ms. Crowder

The Staff asserts that the ASPSA academic counselors "leveraged" their relationship with Ms. Crowder and Professor Nyang'oro to provide extra benefits to student-athletes. The record does not support this assertion.

ASPSA academic counselors, as employees of the College of Arts & Sciences, developed relationships with other academic departments on campus. For example, one ASPSA academic counselor tried to visit an academic department every week, including Romance Languages, Drama and Psychology. (See FI-87 at pp. 37, 61.) These relationships benefitted the student-athletes by making the academic counselors aware of what courses were available and appropriate. They were not unlike the connections that academic advisors outside ASPSA developed with academic departments. Nor did Ms. Crowder ever delegate any authority to the ASPSA academic counselors. (See FI-127 and **Exhibit 1-1.**)

The record shows that ASPSA academic counselors thought that there was nothing wrong with providing support in the nature of registering students for available classes, obtaining assignments, turning in papers, or inquiring as to what courses would be offered. They had good reason for this conclusion. As is discussed below, there is no authority that any of this conduct is improper under any NCAA bylaws or precedent. The Atlantic Coast Conference (ACC) has issued interpretations that Bylaw 16.3 permits this type of academic support. (See **Exhibit 1-4.**)

ASPSA academic counselors also believed that the faculty had reviewed and approved of the Courses even though some of them were listed as lecture classes but taught in an independent study format. (See FI-39 at pp. 61-62; FI-40 at pp. 47-50; FI-83 at pp. 93-94; FI-87 at pp. 30-31, 43-46.) ASPSA academic counselors were told that during a 2006 meeting of the Faculty Athletics Committee (FAC), FAC members stated that instructors had wide latitude in course content and structure that would allow them to teach a course that was listed as a lecture course in an independent study manner. (See FI-32 at p. 67; FI-40 at pp. 47-50; FI-87 at pp. 30-31, 43-46.)⁷ In addition, Associate Dean Roberta Owen of the College of Arts & Sciences made a similar statement to ASPSA. (See FI-32 at p. 108.) Further, ASPSA academic counselors were aware that the Courses were open to all students. (See FI-39 at pp. 61-62; FI-40 at pp. 45-47; FI-82 at p. 38.) As a result, ASPSA academic counselors thought of the Courses as alternative, valuable teaching tools. (See FI-39 at p. 61; FI-87 at p. 30.)

Crowder stated that she never interacted with coaches regarding the Courses. (See FI-127 and **Exhibit 1-1.**)

⁷ Although the recollections of the attendees differ on what exactly was said at the FAC meeting, there is no dispute that the ASPSA academic counselors were told that the above statement was made by FAC members.

II. UNIVERSITY'S CONCLUSIONS FOR ALLEGATION 1

A. The Issues Concerning the Courses are Academic in Nature and Beyond the Reach of the Bylaws.

The issues concerning the Courses are academic in nature, concern academic administration and lie beyond the reach of the bylaws belatedly invoked by the Staff. The Staff recognized beginning in August 2011 and continuing through September 26, 2013, that the issues raised by the Courses did not support bylaw violations. Their conclusions were consistent with similar situations at Auburn University and the University of Michigan regarding classes remarkably like the ones at the University. Accordingly, the Staff correctly did not seek to amend the 2011 Notice of Allegations prior to the October 28, 2011, hearing before the Committee on Infractions or the issuance of the March 12, 2012, Public Infractions Report. Nor did the Staff elect to issue a new Notice of Allegations in 2012 or 2013 after the University provided the Staff with additional information concerning the Courses, including student-athlete participation in them. In addition, AMA correctly determined on March 5, 2013, that there was no violation of NCAA bylaws relating to the Courses because they presented academic issues rather than athletics issues. Further, AMA accurately stated that there was no proof in the record of “a systematic effort within the [academic department] motivated by the desire to assist student-athletes with maintaining their eligibility, either in how the courses were created, taught and/or how the grades awarded.” (See **Exhibit 1-5**.) AMA was correct in its assessment of the record and in its conclusion that there was no violation.

The NCAA's constitution and bylaws apply to basic athletics issues. (See NCAA Constitution 1.3.2.) NCAA legislation does not extend to matters related to academic structure, content, and processes on a member institution's campus. Those issues fall within the province of the University and its accreditor, a limitation the Staff acknowledged before this Panel.

As the institution has discussed and argued in its response, the NCAA's Constitution and Bylaws do not extend to matters related to academic structure, content and process on a member institution's campus. The Staff agrees, and we have no desire to question the operation of an academic department.

(10/28/16 Transcript, pp. 43-44, see also p. 47).

The NCAA has taken the same position in court. In litigation over the Courses, the NCAA rejected the idea that it regulates the content of college courses or that it has any duty concerning the quality of a student-athlete's education. (See **Exhibit 1-6** at pp. 5, 11, 15.) As such, the Panel cannot find violations based upon the structure, content, and administration of

the Courses for which the required work was done, grades and credit were given, and those grades count. Indeed, such a position would contradict the position that won the NCAA a dismissal in the McCants lawsuit. (See **Exhibit 1-6**, pp. 3-4.)

The academic nature of the Courses is shown by the fact that issues related to the Courses have been addressed by the University's accreditor. When the Courses were discovered, the University promptly investigated them and brought them to the attention of SACSCOC.⁸ SACSCOC required the University to address compliance with 18 accreditation standards that were implicated by the Courses. The University made lengthy submissions to SACSCOC, and the first of two separate Special SACSCOC Committees visited the University in April 2013. In January 2015, the University submitted a 200-page report to SACSCOC demonstrating its compliance with the applicable standards and reviewing the more than 70 reforms and initiatives undertaken since its discovery of the Courses. (See **Exhibit 1-7**.) In June 2015, the SACSCOC Board imposed a one-year period of probation to allow the University to demonstrate the effectiveness of specific new reforms and initiatives it had implemented since 2014.⁹ After extensive review of the applicable accreditation standards, and a second Special SACSCOC Committee visit in April 2016, the SACSCOC Board of Trustees in June 2016 removed the University from probation and determined that the University would maintain its accreditation. These facts show that the issues before this Panel were academic in nature and the result of inadequate academic oversight. SACSCOC, as the University's academic accreditor, has appropriately addressed the academic issues relating to the Courses.

B. The Record Does Not Support the Existence of Extra-Benefits Violations or Unethical Conduct.

There are factual barriers to the Staff's attempt to recast these academic issues as extra-benefit violations or unethical conduct. First, the Staff cites to the nature of the Courses and the student-athletes' use of them to maintain their eligibility. The Courses, however, were open to all students and there was nothing about their structure, content and administration that was unique to student-athletes. If student-athletes took advantage of the Courses to balance their schedules or to raise their GPAs, they were no different from the other students. The Staff

⁸ The Courses have been the subject of multiple investigations by different entities since August 2011 when they first came to light. See **Exhibit 1-54** which provides a timeline of the investigations undertaken or commissioned by the University, the NCAA and University's joint investigative efforts, as well as the extensive reviews performed by SACSCOC.

⁹ Probation is one of the strongest sanctions an accrediting body can levy on a University. The existence of the probation placed the University's ability to secure federal research funds, which total in the hundreds of millions annually, in jeopardy. Probation was also a detriment to the University's reputation.

stated the issue succinctly on the record during a 2011 interview of an ASPSA academic counselor:

(See Exhibit 1-8 at p. 44). In this situation, because the facts show that these classes were “generally available” to the University’s students, there is no violation of the extra-benefit legislation.¹⁰ The Staff’s effort to re-write Bylaw 16.11.1.1 to require that the courses must be “proportionally used by the institution’s student-athletes” is unsupported by any precedent or authority.

Second, this allegation relies upon six types of alleged conduct by ASPSA academic counselors that the Staff strains to characterize as extra benefits. The facts, however, do not support a finding of an extra benefit based on the conduct of the ASPSA academic counselors under the applicable bylaws. The Staff’s effort to portray ASPSA academic counselors as part of the Department of Athletics is incorrect – they were employed by and reported to the University’s College of Arts & Sciences. Moreover, their conduct was permissible academic counseling and support services authorized under Bylaw 16.3.1.1. As such, it cannot be an extra benefit under Bylaw 16.11.2.1, which excludes benefits permitted by other NCAA legislation. In its interpretations, the ACC recognized the basic fact that conduct permitted by Bylaw 16.3.1.1 cannot be an extra benefit. (See Exhibit 1-4.) Any theory that the permissible academic counseling or academic support services somehow becomes impermissible if done enough times or in combination with other permissible conduct does not have support in the bylaws, case precedent, interpretations, official rules education, other authority or logic. Further, as is detailed in Section V(B), the facts do not support the Staff’s allegations that conduct was prevalent or its associated theories that the ASPSA academic counselors managed material aspects of the Courses, improperly leveraged their relationships with Professor Nyang’oro or Ms. Crowder, or undermined the importance of unnamed student-athletes’ participation in their education through their actions.

Third, Bylaw 10.01.1 does not apply to the conduct of Professor Nyang’oro, Ms. Crowder, or the ASPSA academic counselors because they do not “administer, conduct or coach intercollegiate athletics.” Bylaw 10.1 is inapplicable since there are no underlying bylaw violations, no failure to report violations, and no conduct that qualifies as unethical conduct as defined in that bylaw. Further, after years of investigation, the Staff has alleged for the first time in the Second ANOA

¹⁰ In addition, as is discussed below, the evidence establishes that student-athletes spent significant time and effort researching and preparing academic papers for the Courses.

that the conduct related to the Courses was unethical under Bylaw 10 even though no new facts were learned between the October 28, 2016 procedural and jurisdictional hearing and the issuance of the Second ANOA on December 13, 2016. Over the past two years the Staff has repeatedly changed its theory of how the conduct violated the extra-benefit legislation. If the Staff has had this much difficulty articulating the nature of the violation, certainly the individuals engaging in the conduct cannot be found to have knowingly provided an extra benefit or otherwise engaged in unethical conduct.

Even if the Panel were to find that the Courses themselves constituted extra benefits in violation of Bylaw 16.11.2.1, only three of the Courses are within the statute of limitations. Bylaw 19.5.11 provides for a four-year statute of limitations that runs from the date of the Notice of Inquiry. In this case, the Notice of Inquiry was provided orally on June 30, 2014, which means that any conduct occurring prior to June 30, 2010, is time barred. Only three Courses occurred after June 30, 2010. (See FI-32 at p. 36; FI 33 at **Exhibits 11 and 12.**) Any argument that one of the exceptions contained in Bylaw 19.5.11 subsections (b) or (c) permits a finding of violations for conduct prior to June 30, 2010 lacks merit. Bylaw 19.5.11-(b) requires “a pattern of willful violations” that continued into the limitations period, and 19.5.11-(c) requires a “blatant disregard” of fundamental extra-benefit bylaws. In light of the Staff’s and AMA’s repeated conclusions between 2011 and 2013 that the Courses did not constitute extra benefits, the Staff’s inability from 2015 to the present to articulate a consistent theory as to how the Courses constitute extra benefits, and the failure of the Staff to allege extra-benefit violations in 2006 against the University of Auburn or in 2008 against the University of Michigan for similar conduct, there is no basis for a finding that the University engaged in “willful violations” or a “blatant disregard” of the extra-benefit bylaws.

III. THE SUBSTANCE OF THIS ALLEGATION WAS PREVIOUSLY KNOWN AND PROPERLY DETERMINED NOT TO BE AN NCAA VIOLATION

Allegation 1 is barred by principles of finality and fairness set forth in NCAA Constitution 2.8.2 and Bylaws 19.01.1 and 19.8.3. Although the University raised the concepts of finality and fairness in its August 1, 2016, Response to the ANOA in connection with what is now Allegation 5 and the Panel addressed those arguments following the procedural and jurisdictional hearing (See COI November 28, 2016, letter at pp. 4-6), current Allegation 1 was not contained in the ANOA. As a result, finality and fairness issues raised by this Allegation have not been considered.

In the University's January 7, 2016 letter to the Staff (See Exhibit 1-9) and in its October 19, 2016 letter to the Panel (See Exhibit 1-10), the University demonstrated through specific citations to transcripts and documents that between August 2011 and 2013, the NCAA had and reviewed information indicating that: (a) Professor Nyang'oro and Ms. Crowder offered the Courses, which were taught as independent studies and generally required only one paper; (b) there were no class meetings and limited interaction with Professor Nyang'oro; (c) there was no syllabus and the students would sometimes receive the assignment and paper requirements on a piece of paper from an ASPSA employee, who had obtained the assignment from Ms. Crowder;¹¹ (d) student-athletes sometimes worked on their papers exclusively with ASPSA academic counselors – not with Professor Nyang'oro, Ms. Crowder, or any other faculty; (e) on occasion ASPSA academic counselors would turn in the papers; (f) there was evidence that Ms. Crowder was grading papers; (g) the student-athletes were receiving high grades in the Courses, which raised their GPAs; (h) the student-athletes constituted a significant segment of the students who enrolled in the Courses (the Staff was aware of one course in which all 19 students were current or former student-athletes); (i) ASPSA academic counselors contacted Ms. Crowder and later Professor Nyang'oro to see what courses were available and to enroll student-athletes in classes, including the Courses; (j) on several occasions academic counselors asked Ms. Crowder if student-athletes could write their papers on a specific topic; and (k) on one occasion (the source of Allegation 2[r]), an ASPSA academic counselor commented on the grade that she thought a paper should receive to Travis Gore, a Department administrative employee who did not grade papers. As noted by Jack Evans, former Dean of the University's Kenan-Flagler Business School, a long-time faculty athletics representative, and a member of the University's team who worked jointly with the Staff in 2011, the issues that the Staff and the University evaluated in 2011 specifically included whether the student-athletes received access to the Courses or other items that were not available to non-athlete students – in short, extra benefits. (See FI-46 at pp. 27-29.)

The University's January 7, 2016, and October 19, 2016, letters to the Staff and to the Panel, respectively, further detailed how the information referenced in the prior paragraph was:

¹¹ Although it is clear that Crowder emailed the assignment parameters to students and ASPSA personnel, there are numerous documents supporting Crowder's testimony that she contacted Nyang'oro or other professors in the Department to obtain the assignments. (See Exhibit 1-1.) Crowder states that she did this in every instance. (See FI-127; Exhibit 1-1; and Abrams 3/9/17 letter, p. 5.)

- known by the Staff in September 2011 (and prior to the October 28, 2011 Committee on Infractions hearing) when it correctly determined that there were no violations of NCAA bylaws (which was consistent with its handling of similar situations at Auburn University [Auburn] in 2006 and the University of Michigan [Michigan] in 2008), and there was no need to serve an Amended Notice of Allegations pursuant to Bylaw 19.7.4;
- apparent in the investigative record that existed as of October 2011 and, therefore, the Panel could have exercised its authority under Bylaw 19.7.7.4 or made a suggestion before, during, or after the October 28, 2011, hearing on the merits of the June 21, 2011, Notice of Allegations that the Staff review whether additional potential allegations should be made;
- known by the NCAA when it approved an August 31, 2012, press release from the University stating, “the NCAA staff concluded there were no violations of current NCAA rules or student-athlete eligibility rules related to courses in Afro-American Studies.” (See **Exhibit 1-11**);
- known by the Staff and AMA on March 5, 2013, when it was decided, after reviewing the Martin Report, among other things, that no NCAA bylaw violations had occurred in connection with the Courses. (See **Exhibit 1-5**);
- known by the Staff on September 26, 2013, when it confirmed to the University that the investigation was complete and the Staff did not intend to allege any violations of NCAA bylaws in connection with the Courses. (See **Exhibit 1-12**); and
- known by the Staff on April 25, 2016, when it issued the ANOA and withdrew then Allegation 1.

To this day, the Staff has not identified any facts that, for purposes of the correct application of NCAA rules, that materially alter the information that was available at the time of these prior decisions. Instead, the Staff has made conclusory statements in its Reply to the ANOA and at the Hearing to the effect that the CWT Report provided new information. (See, e.g., 10/28/16 Hearing Transcript, pp. 113-115, Enforcement Staff Reply to ANOA, pp. 2, 4, 11, 12.) Principles of finality and fairness bar Allegation 1.

IV. **APPLICABLE BYLAWS AND RELEVANT PRECEDENT**

A. **The Unethical-Conduct Bylaws Cited in the Second ANOA Do Not Apply to the Facts in This Case**

- 1) **Bylaw 10.01.1, Which Applies Only to Individuals Who “Administer, Conduct or Coach” Athletics, Does Not Support the Finding of a Violation**

Bylaw 10.01.1 requires that institutional employees who “administer, conduct or coach intercollegiate athletics” must “act with honesty and sportsmanship at all times” so that they and their institutions “represent the honor and dignity of fair play . . . associated with wholesome

competitive sports.” The Second ANOA for the first time in this proceeding refers to the conduct of Professor Nyang’oro, Ms. Crowder and “athletics personnel.” The new reference to “athletics personnel” is inaccurate. In both the NOA and the ANOA, the Staff accurately described the group of individuals whose conduct the Staff is challenging as Professor Nyang’oro, Ms. Crowder and ASPSA personnel. ASPSA personnel were employed by and reported to the College of Arts & Sciences – not the Department of Athletics. More importantly, none of the individuals whose conduct is in question “administer, conduct or coach intercollegiate athletics” – the set of people to whom Bylaw 10.01.1 applies. The University has not located any precedent or authority that applies Bylaw 10.01.1 to the conduct of academic support or any other individuals, whether employed inside athletics or not, who do not “administer, conduct or coach intercollegiate athletics.” When the University’s counsel raised this lack of authority with the Staff, the Staff conceded during a February 2017 conversation that there is no authority to support the application of Bylaw 10.01.1 to the conduct of non-athletics personnel who do not “administer, conduct or coach intercollegiate athletics.” Thus, Bylaw 10.01.1 is inapplicable.

2) There is no Applicable Precedent for the Staff’s Reliance on Bylaw 10.1’s “Not Limited to” Language to These Circumstances

From fall 2002 to summer 2011, when the alleged conduct occurred, Bylaw 10.1 provided that unethical conduct by current or former institutional staff members includes, “but is not limited to,” 10 types of conduct that were enumerated in subsections (a)-(j).¹² The University asked the Staff to identify which of the type(s) of conduct listed in Bylaw 10.1 they are alleging. The Staff replied that they are relying upon the “but is not limited to” language and not any of the 10 subdivisions. The University is aware that the Committee has cited to Bylaw 10.1 in previous cases without including a subsection, but it has done so in the limited circumstances where there was either an intentional and knowing failure to report a violation of a bylaw or knowing and intentional conduct that fits within a subsection of Bylaw 10.1. None of those circumstances pertains here as shown in the relevant decisions over the last 10 years.

- In the 2015 Public Infractions Report involving the University of Hawaii, Manoa, the Committee found a general Bylaw 10.1 violation based on proof that the former assistant coach intentionally and knowingly altered a prospect’s financial aid form, which resulted in the prospect being provisionally admitted to the University when he

¹² Prior to 2007, nine types of conduct were listed. In 2007, subsection (j) was added.

otherwise would not have been admitted. (Public Infractions Report, pp. 11-12, 21-22). This conduct could have been charged as a violation of Bylaw 10.1(c).¹³

- In the 2011 Public Infractions Report involving The Ohio State University, the Committee found a general violation of Bylaw 10.1, because the former head coach intentionally and knowingly did not report information detailing extra-benefit violations for nine months in violation of Bylaw 19.2.3 and failed to disclose the violation in his annual certification in violation of Bylaw 18.4.2.1.1.4. (Public Infractions Report, pp. 6-9). Therefore, the 10.1 charge was a failure to report information concerning rules infractions in violation of Bylaws 18.4.2.1.1.4 and 19.2.3.
- In the 2011 Public Infractions Report involving Louisiana State University, a former assistant coach knowingly and intentionally (a) directed two students who were part-time athletics department employees to provide transportation in violation of Bylaws 13.5.1 and 13.5.3 and failed to report information detailing the violations as required by Bylaw 19.2.3, and (b) repeatedly lied during the investigation about a second cell phone that he had not disclosed to the institution and used to violate Bylaws 13.1.3.1.7, and 13.1.3.4.1. (Public Infractions Report, pp. 2-5, 8-13.) Although the Committee cited to Bylaw 10.1 in its decision, the former assistant coach's conduct could have been charged under Bylaws 10.1(c) and 10.1(d), respectively.
- Finally, in the 2009 Public Infractions Report involving Texas A&M University, Corpus Christi, the former director of athletics was found to have violated Bylaws 10.01.1 and 10.1 relating to his intentional and knowing failure to report information detailing ineligible competition violations of Bylaws 14.01.1, 14.2.1, and 14.2.1.1 and his direction to the compliance director to "move on" and "move forward" without reporting the violations. (Public Infractions Report, pp. 2-3, 7-12). In addition, the former director of compliance was found to have violated Bylaws 10.01.1 and 10.1 by requesting a financial benefit (a contract buy-out) for continuing not to report information concerning the violations and for not revealing the continuing cover-up of the violations. (Report, pp. 12, 14-16.) Thus, Bylaw 10.1 was not necessary since a failure to report information concerning rules infractions is a violation of Bylaw 19.2.3.

The common theme in these cases is there either was an intentional failure to report information concerning an underlying rules violation by athletics personnel, or intentional conduct that could have been charged under one of the subsections of Bylaw 10.1. Neither situation is present here. Further, the University has been unable to locate any decisions that have applied Bylaw 10.1 to unidentified individuals. Allegation 1 refers to nonspecific "athletics personnel." If the Staff believes that there were athletics personnel who engaged in unethical conduct, the Staff should have named those individuals and provided them an opportunity to defend their conduct.

¹³ The Committee also found a violation of Bylaw 10.1-(c), because a former assistant coach knowingly provided an extra benefit by letting a prospect keep the former assistant coach's wife's iPad and of Bylaw 10.1-(d) because the former assistant coach provided false facts during his two interviews about how the prospect obtained the iPad. (Public Infractions Report, pp. 12, 20-21).

B. Extra-Benefits Bylaws

The Second ANOA cites to Bylaw 16.11.2.1, which prohibits student-athletes from receiving an “extra benefit” or “special arrangement” from an institutional employee or representative that is not expressly authorized by NCAA legislation. The Second ANOA does not, however, cite to or address the four bylaws – 16.02.3, 16.11.1.1, 16.3.1.1, and 16.3.1.1.1 — that are the most relevant to the allegations. By ignoring these bylaws, the Staff has not addressed whether NCAA legislation otherwise authorized the conduct in issue. Specifically, benefits that are “generally available to the institution’s students” or that were offered “on a basis unrelated to athletics ability” are “expressly authorized” by Bylaws 16.02.3 and 16.11.1.1. Likewise, institutions are “expressly authorized” under Bylaw 16.3.1.1 to make available only to its student-athletes academic counseling, tutoring, and other support services that the institution determines in its discretion are appropriate. From fall 2002 to summer 2011, the University’s discretion was subject to certain enumerated limitations listed in Bylaw 16.3.1.1.1, none of which applies in this matter.

1) Bylaw 16.11.1.1 Does Not Require that Benefits Be Proportionally Used by all Students

Allegation 1(a) asserts that because of the close relationship between Professor Nyang’oro and Ms. Crowder and certain unnamed individuals, student-athletes “enrolled in these courses at a disproportionately higher rate than students who were not athletes.” Allegation 1(b) asserts that because of the six types of conduct by ASPSA personnel, “student-athletes “avail[ed] themselves of the courses at a rate disproportionately higher than the general student body.” However, a proportional use requirement simply does not exist in the applicable NCAA legislation. Bylaw 16.11.1.1 states “Receipt of a benefit (including otherwise prohibited extra benefits per Bylaw 16.11.2) by student-athletes . . . is not a violation of NCAA rules if it is demonstrated that the same benefit is generally available to the institution’s students.” (emphasis supplied). Thus, the relevant bylaw addresses availability – not usage.

The distinction is important. An institution can only control the availability of a benefit. It cannot control whether students or student-athletes choose to exercise their right to access the benefit. Many different reasons and motivations can affect why a benefit is or is not attractive to particular students, which is especially true with courses. As discussed below, factors such as race, major, time conflicts between course offering schedules and athletics commitments, whether friends are taking a course, and the availability of tutoring and writing assistance can

affect how attractive a course may be. Further, the availability need only be general – not proportional. The Second ANOA in effect requires a material alteration to the language of the bylaw – changing “generally available” to “proportionally used.” Neither the Staff nor the Panel has the authority to rewrite the bylaws. Moreover, even if the Panel had such authority, this type of material change would constitute a determination – not a confirmation – given that there is no prior authority for the change.¹⁴ As a result, the new requirement of proportionality could only be applied prospectively and not to conduct that occurred as far back as 2002.

a) Other Institutions Routinely Allow Student-Athletes to Exclusively Enroll in Certain Courses

Publically available information establishes that it is common for institutions to allow their student-athletes to take courses that are offered only to student-athletes. These courses award credits that count toward graduation; are used to meet NCAA academic eligibility requirements and are often repeated, graded, and taught by athletics personnel. As is discussed below, there are two categories – courses that award academic credit for participation in varsity sports and traditional academic courses that are limited to student-athletes.

For purposes unrelated to this proceeding, Professors Erianne A. Weight at the University and Matt R. Huml at Texas Tech University studied the prevalence and content of academic courses designed specifically for varsity athletes at all NCAA levels. (See **Exhibit 1-14**, p. 357.) Professors Weight and Huml surveyed a stratified, random sample of athletics academic advisors at institutions in all three NCAA divisions and received 240 responses. (See **Exhibit 1-14**, pp. 358-360.) The survey results indicated that 33.9 percent of the respondents worked at institutions that award academic credit for participating in a varsity sport. (See **Exhibit 1-14**, p. 361.)

In addition, the University reviewed publicly available information about courses offered by NCAA membership institutions in FBS Division I. Information at 28 institutions suggests that these schools have courses available only to student-athletes who receive academic credit that counts toward their NCAA eligibility requirements for participating in a varsity sport. (See **Exhibit 1-15**.) These varsity sport participation courses are available at institutions in the conferences noted below:

¹⁴ A confirmation occurs when the legislation or a prior official interpretation clearly addresses the conduct or situation in question. A determination takes place when the legislation and existing official interpretation has not previously addressed the conduct or situation in question. Actions that occur prior to a determination are not rules violations. (See **Exhibit 1-13**, pp. 13-14),

Conference	No. Schools
ACC	3
Big 12	5
Big Ten	4
Pac 12	3
SEC	2
AAC	1
C-USA	1
MAC	3
Mtn. West	4
Sunbelt	1
Indep.	1
Total	28

The study performed by Professors Weight and Huml found that 20.1 percent of the survey respondents worked at institutions that award academic credit for traditional academic courses that were designed specifically for student-athletes. (See **Exhibit 1-14**, p. 361.)¹⁵ For Division I institutions with football squads, in excess of 38 percent of the schools offered traditional academic courses that were designed solely for student-athletes. (See **Exhibit 1-14**, p. 362.) Based on its search of the Internet, the University located information indicating that 44 institutions have traditional academic courses that appear to be available only to student-athletes and award academic credit. (See **Exhibit 1-16**.) These courses are available at institutions in every conference as is noted below.

Conference	No. Schools
ACC	6
Big 12	6
Big Ten	7
Pac 12	8
SEC	6
AAC	2
C-USA	1
MAC	3
Mtn. West	3
Sunbelt	1
Indep.	2
Total	44

¹⁵ In some instances, the courses were limited solely to student-athletes while in other instances, there were separate sections of a course that were limited to student-athletes. (See **Exhibit 1-14**, p. 363.)

If NCAA bylaws require that courses have proportional enrollment of student-athletes and non-athlete students, schools that offer both of these types of courses would not comply with Bylaw 16.11.2.1. Moreover, the NCAA has been aware of these courses for many years and has never alleged they were violations of the extra-benefit rules. In a 2004 article in the Washington Post entitled “Varsity Athletes Get Course Credit,” the article discussed that a number of institutions awarded academic credit to meet graduation and NCAA eligibility requirements for playing varsity sports and that in some cases letter grades for those courses were awarded by the student-athletes’ coaches. Then NCAA President Myles Brand questioned whether institutions should offer such courses (See Exhibit 1-17), but more than a decade later, they not only continue, they are common.

b) Application of a Proportionality Requirement Would Be Impossible Absent Well Thought-Out Guidelines Adopted By the Membership

If 16.11.1.1 contains a proportional use requirement, it would apply to all “benefits” – not just courses that are perceived to be less rigorous or an “easy grade.” The concept of proportionality raises a myriad of questions that establish precisely why the concept is untenable, and why its unprecedented adoption here would stretch Bylaw 16.11.1.1 beyond the membership’s consideration and intent. When applied to courses alone, the following are some of the questions that would need to be answered.

- Does the enrollment of student-athletes need to be exactly proportional to the percentage of the student body of which they are comprised?
- If a proportionality test does not require the ratio to be exact, how much of a deviation is permitted – 2:1, 5:1, 10:1? Or can the percentage of student-athletes not exceed some random percentage of the class, such as 50 percent, as is done with student housing in Bylaw 16.5.1?
- Does a proportionality test account for the impact of preferential or priority registration for student-athletes, which is present at many institutions and permitted by the NCAA?
- If a proportionality threshold is reached, is an institution required to block further enrollment by student-athletes or risk being charged with an NCAA violation?
- Does a proportionality test need to be run on each and every course at an institution?
- Does a proportionality test need to be run on each section of a course?
- Is a proportionality test run for all student-athletes or on a sport-by-sport basis?

- What happens if student-athletes are blocked from taking degree-applicable courses by a proportionality rule and as a result cannot meet the progress-toward-degree rules?
- How does a proportionality rule account for situations where the proportional make-up of student-athletes in a major, department, or college is greater than their proportional make-up in the general student body?
- Can race be considered under a proportionality rule, particularly if a course may have more interest to one race than others?
- Does a proportionality rule factor in the scheduling limitations that student-athletes face due to blocks of time that are set aside for practice, competition, travel, or healthcare?
- Does a proportionality rule account for the fact that student-athletes, like other students, often like to take classes with their friends?

These questions show the intractable issues associated with a proportionality rule in connection with the Courses. Every benefit will have its own set of questions if the Panel creates a new proportional use requirement. Even more importantly, from fall 2002 to summer 2011, the University certainly had no notice that it could be punished if its student-athletes enrolled in courses that did not comport with an unstated proportionality rule. The only notice to the University was that NCAA legislation did not restrict disproportional enrollment of student-athletes.

c) The Two Prior Known Situations Where There Were Similar Disproportionate Enrollments Did Not Result in any Allegations, Much Less Findings, of Violations

Based on public reports, there have been two prior instances with very similar facts to the Courses at the University. The University relies on public reports as they are the best information on these two instances, and the University does so not to blame the universities mentioned, but to contrast how the NCAA enforcement staff apparently treated those schools in a manner different from how it has treated the University since 2014. In both instances, to the best of the University's knowledge, the Staff issued no Notice of Inquiry or Notice of Allegations. Certainly, there was no finding of any major infractions for violations of the extra-benefit and ethical-conduct rules in either matter. The NCAA's inaction is further evidence that the issues present in this case are not, and never have been, within the purview of the NCAA legislation or the basis for bylaw violations. Rather, the membership has chosen to leave sole and exclusive responsibility to evaluate and police such issues to member institutions and their accreditors.

(i) Auburn University Matter

On July 14, 2006, *The New York Times* ran an article entitled “Top Grades and No Class Times for Auburn Players.” (See **Exhibit 1-18.**) The highlights of that article include the following:

- According to the Director of the Sociology Department, “many Auburn Athletes were receiving high grades from the same professor for sociology and criminology courses that required little or no attendance.”
- “The offerings, known as directed-reading courses, resemble independent study and include core subjects like statistics, theory and methods, which normally require class instruction.”
- The professor taught 272 directed readings in 2004-05 in addition to his regular course load and his duties as interim department chairman.
- According to the Director of the Sociology Department, “more than one-quarter of the students in the professor’s classes were student-athletes” in 2004-05. (Although the University does not know the exact proportion of Auburn’s enrollment of 19,367 in 2006 [web.auburn.edu/ir/cds/2006/section.aspx] who were student-athletes, it certainly was much lower than 25 percent or 4,842).
- The professor who taught the classes reportedly indicated, “he did not meet with the students regularly, if at all.” Further, his department office assistant said that the instructor, “managed the work with students primarily through email messages.”
- The “directed reading classes, which non-athletes took as well, helped athletes in several sports improve their grade-point averages and preserve their athletic eligibility.”
- According to the Director of the Sociology Department, “18 football players received an average G.P.A. of 3.31” in the directed reading classes and an average G.P.A. of 2.14 in “all of their other credit hours at Auburn.”
- The Director of the Sociology Department reported that prior to being discovered, “the players received 81.1 percent A’s and 16.8 percent B’s in the directed-reading courses with the instructor.”
- One of the student-athletes stated that “the director of Student-Athlete Support Services at Auburn set up the courses.”
- A student-athlete indicated that he “went to his academic advisor in the athletic department” who “told him about a ‘one-assignment class’ that other players had taken and enjoyed.” The student-athlete had to read one book and write one paper. He received a “B” and was able to remain eligible and start in the Sugar Bowl.
- The Chairman-elect of the faculty senate was quoted as saying “from my point of view, that’s not much work for three credit hours. It’s an awful lot of credits for reading one book.” Another instructor stated that his directed readings classes required “reading five or six books and a written report on each.”

- Another student-athlete reported that in the ninth or 10th week of the 15-week semester, he had to drop a class, but needed a replacement class to stay eligible. The senior associate director of admissions and records said that adding a class that late in the semester is “very unusual” and that it “usually happened only once or twice a semester.”

The University understands that in response to the above reported facts, Auburn investigated the matter, that Auburn did not report and the NCAA did not allege extra-benefit or ethical-conduct violations relating to student-athletes disproportionately enrolling in hundreds of one-paper, independent study classes that were taught by a single instructor, required little work, and resulted in high grades, which allowed the student-athletes to boost their GPAs and retain their eligibility. Instead, Auburn and the NCAA focused their investigation and analysis on whether the instructor at issue had improperly provided student-athletes with grade changes. Ultimately, no violations were found relating to the student-athletes’ use of the independent study-type classes and only unrelated secondary violations were found. Faced with a similar situation in this matter, from 2011 to 2013 the Staff and AMA also saw no bylaw violation pertaining to the Courses and also focused on whether there were any improper grade changes (the Staff found no grade change improprieties). (See Exhibit 1-5 [indicating the only issue to be investigated related to grade changes for student-athletes].)

(ii) University of Michigan Matter

From March 16 to March 19, 2008, MLive.com ran a four-part series concerning academic issues among student-athletes at Michigan. One of the articles was entitled “University of Michigan athletes steered to professor.” (See Exhibit 1-19). According to this article:

- Over a three-year period from fall of 2004 to fall of 2007, a professor taught 294 independent studies classes and 85 percent (or 251) of them were for student-athletes. (Although the University does not know the proportion of student-athletes at Michigan in 2004-05, it certainly was less than 85 percent of the 24,828 undergraduate student enrollments.
- One former student-athlete, who also was a former employee in Michigan’s athletics academic support program, indicated that he had taken one of the independent studies courses between 1993 and 1996, so the courses had existed for many years.
- A review of the academic transcripts of 29 student-athletes revealed the student-athletes “averaged a grade of 3.62 in the professor’s courses [25 independent study classes and seven regular courses that he taught], compared to an overall grade-point average of 2.57 in the athletes’ other classes. No athlete received a grade worse than a B-minus from the instructor.”

- “Three former athletic department employees said [the] independent study courses are sometimes used by academic support staff to boost the grade point averages of athletes in danger of becoming academically ineligible to compete in sports.”
- One student-athlete said the football team’s academic counselor encouraged him to request an independent study over the summer term with the instructor and received an A in a four-credit course, which resulted in him remaining eligible to play football in the fall.
- “Michigan athletes described being steered to [the professor’s] courses by their athletic academic counselors.” In addition, two former employees reported that the co-directors of Michigan’s Academic Success Program for student-athletes “have relied on [the instructor’s] independent studies for years to keep athletes with low grades eligible, and they told other athletic counselors to do the same.”
- The student-athletes reported “in some cases, earning three or four credits for meeting with [the professor] for as little as 15 minutes every two weeks.”
- One former employee who worked with multiple student-athletes who took the independent study courses “said the required course work did not justify awarding three and four credits per class.”
- The article cited to a number of reports by student-athletes that they needed to perform a minimal amount of work and that the amount of work reportedly required in the courses was far below the standards for independent study courses in the department.
- The assignments given in many cases were reported to be related to study skills and time management for which three and four graded credits were issued even though other courses on similar topics typically resulted in two non-graded credits.
- One student-athlete described how he and another student-athlete would meet with an instructional aide, who gave them a packet with the assignments, which the student-athlete described as not being “too terribly challenging.” One assignment was to prepare a month long calendar of things to do. Another student-athlete prepared a poster that simply listed her high school and collegiate athletic statistics.
- Some student-athletes reported minimal interaction with the instructor or stating that the courses were primarily conducted by email.
- The report detailed instances of student-athletes dropping other courses and being allowed to sign up for the independent studies class long after the add deadline. An example was given of two student-athletes who were allowed to add an independent study with 4 ½ weeks left of a 15-week semester and to write a 15-page paper.

To the best of the University’s knowledge, whatever investigation took place was performed by the University of Michigan. The Staff never issued a Notice of Allegations. The Committee on Infractions never had a hearing nor rendered a Public Infractions Report. Consequently, there were no findings of extra-benefit, unethical-conduct, or other violations relating to student-

athletes disproportionately enrolling in hundreds of independent studies courses that were taught by a single instructor, required little work, and resulted in high grades that allowed student-athletes to boost their GPAs and retain their eligibility. As with the Auburn situation, the University was aware of the Michigan situation. (FI-110, FI-112.)

d) The Membership Has Considered and Adopted Percentage Restrictions on Benefits in Certain Limited Areas

The membership enacted Bylaws 16.5.1, 16.5.1.1, 16.5.1.2, and 16.5.1.3 in connection with housing that is provided to student-athletes. Under these bylaws, an extra benefit exists only when 50 percent or more of a dormitory, wing, floor, or other housing block is populated by student-athletes, unless the institution can demonstrate that the clustering occurred in accordance with the institution's normal housing policies. Thus, the membership knows how to impose percentage limitations and address issues of proportionality where it deems that they are appropriate. No such percentage limitation applies to benefits in general.

2) Bylaws 16.3.1.1 and 16.3.1.1.1 Permit the Conduct Alleged

Allegation 1(b) asserts that ASPSA employees engaged in six types of conduct on behalf of student-athletes that rise to the level of an extra benefit even though NCAA bylaws during the relevant period expressly authorized the activities that the Staff cites as evidence of violations. The Second ANOA does not cite Bylaw 16.3.1.1 (2002-11) and former Bylaw 16.3.1.1.1 (2002-11). From fall 2002 to summer 2011, the period covered by the Second ANOA, Bylaw 16.3.1.1 mandated that: (1) institutions provide academic counseling and tutoring support services to all student-athletes; and (2) expressly permit institutions to provide the academic counseling, tutoring, and other support services through the department of athletics, rather than as part of the institution's support services for its non-athlete students. In other words, Bylaw 16.3.1.1 expressly authorized the provision of academic counseling and tutoring support services that were available solely to student-athletes. Bylaw 16.3.1.1 further provided that institutions could "finance other academic and support services that the institution, at its discretion, determines to be appropriate and necessary for the academic success of its student-athletes." The only limitations placed on the institution's discretion were five items identified in former Bylaw 16.3.1.1.1, none of which applies to Allegation 1(b).

It is noteworthy that in 2013, the NCAA eliminated even the modest limitations on the discretion of institutions in this area. The Proposal of the Rules Working Group in support of this change

stated that the limitations in 16.3.1.1.1 were among a number of “unenforceable and inconsequential rules that fail to support the NCAA’s enduring values.” The Proposal of the Rules Working Group stated that the removal of the limitations will “provide institutions and conferences with the flexibility to provide student-athletes with services that support their success and will enhance the student-athlete experience;” and “allow institutions and conferences to further support the academic and personal success of student-athletes.” (See Exhibit 1-20.) Thus, the membership rejected even the modest limitations that existed from the fall of 2002 through the summer of 2011 in favor of greater freedom to offer the types of academic support that institutions decide to provide their student-athletes. The Staff’s position is contrary to this membership-approved approach.

3) Bylaws 16.3.1.1 and 16.11.2.1 do not Support the Staff’s Shifting Frequency and “Totality of the Circumstances” Extra-Benefit Theories

Over the past two years, the Staff has articulated shifting theories as to why the six types of conduct listed in Allegation 1(a) of the May 20, 2015, NOA and now listed in Allegation 1(b) constitute extra benefits. The Staff’s inability to articulate a consistent theory from 2015 through 2017 as to why the conduct constituted a violation, and its and AMA’s view between 2011 and 2013 that there was no violation, demonstrates the conduct is not barred by Bylaw 16.11.2.1. It also establishes that, in any event, the University and its employees could not possibly have had notice that the conduct was impermissible from fall 2002 to summer 2011, much less that engaging in it was unethical.

In the May 20, 2015, NOA, the Staff identified six types of conduct, each of which it alleged constituted an extra benefit. In response, the University noted that there is no relevant case precedent or authority that any of the conduct at issue was impermissible under Bylaw 16.3.1.1 or an extra benefit under Bylaw 16.11.2.1. Even though the Staff could not locate any authority for its position, the Staff initially insisted that the conduct was a violation of the extra-benefit legislation. In response, the University sought and obtained an interpretation from the ACC directed to these issues. On July 28, 2015, the ACC issued an interpretation finding that four of the six items cited in Allegation 1(b) are permissible conduct in which ASPSA academic counselors may engage. Those four items were: (1) to inquire as to course availability or to request that a course be offered; (2) to contact an academic department to register student-athletes in courses; (3) to contact an academic department to obtain an assignment to provide to student-athletes; and (4) to turn in student-athletes’ completed coursework to an academic

department. (See Exhibit 1-4.) As to the other two items, the ACC indicated that: (1) suggesting an assignment was not an academic counseling or support service, but that the specific facts would need to be examined to determine if there was an extra benefit, including the fact that “there may be some flexibility for an independent study course;” and (2) it is particularly difficult to answer whether recommending or suggesting a grade to an academic staff member is a violation “without additional context of the motivation of the interaction.” (See Exhibit 1-4.)

a) The Staff’s First Theory (Frequency of Conduct)

Faced with the ACC’s Interpretations cited above, the Staff did not withdraw the allegations, but asserted that the frequency of the otherwise permissible conduct over a period of years somehow rendered it impermissible. This frequency theory is illogical and finds no support in Bylaws 16.3.1.1, 16.3.1.1.1, or 16.11.2.1, case precedent or authority. Permissible conduct done once does not become impermissible if done multiple times, unless the legislation expressly so states. No such limitation exists in Bylaw 16.3.1.1 or 16.3.1.1.1 relating to academic support.¹⁶

b) The Staff’s Second Theory (Reduced Student-Athlete Time Commitment Under the “Totality of the Circumstances”)

Given the lack of support for its frequency theory, the Staff then gravitated to another theory. On August 5, 2015, the Staff informed University officials that when all six types of conduct occurred with a student-athlete for a Course, the collective amount of assistance became an extra benefit under the “totality of the circumstances” because it made the student-athlete’s time commitment for that Course less than those of other students. There is no “totality of the circumstance” or aggregate “time commitment” provision in the bylaws, precedent, rules interpretations, or official rules education. In its pursuit of the “totality of the circumstances theory,” the Staff charted the instances of each of the six types of conduct by student-athletes in an attempt to identify and charge violations for those student-athletes who received the benefit of all six types of conduct. The Staff indicated that for those identified individuals, under the “totality of the circumstances/reduced time commitment,” theory, an extra-benefit violation had

¹⁶ By contrast, the NCAA legislation is replete with examples of bylaws that place limits on the number of times or how often permissible conduct may be engaged in. For example, during the relevant timeframe, Bylaw 16.2.1 limited how many complimentary admissions could be provided. Bylaw 16.5.2(c) limited the number of training table meals to one per day. Bylaw 16.7.2 allowed an institution to rent one movie or take student-athletes to one movie before a contest, and Bylaw 16.11.1.5 permitted the provision of meals by institutional staff members and representatives, but only occasionally.

occurred and would be charged. On September 17, 2015, the Staff provided the chart to the University. It showed no individual student-athlete receiving four or more of the six items. Indeed, only 15 student-athletes received more than one of the six types of conduct, and only one student-athlete received three of the items for a Course. (See Exhibit 1-21.) In other words, even under the Staff's theory, no violations occurred.

- c) The Staff's Third Theory ("Essentially Removed from Full Academic Participation" in the Courses) and the Circumstances that Led to the Staff's Issuance of the ANOA Dropping then-Allegation 1(a)

Despite the failure of its "totality of the circumstances/reduced time commitment" test, the Staff continued to refuse to drop then-Allegation 1(a) from the NOA. As a result, the University sent an October 1, 2015, letter that insisted on an investigation of the facts and circumstances that were known and considered by the Staff from 2011 to 2013 and by AMA in 2013 concerning the conduct cited in Allegation 1(a) of the NOA. (See Exhibit 1-22.) In an October 23, 2015, letter to the University's counsel, the NCAA asserted that the bylaws did not support the University's request without citing any bylaw as authority for this assertion. (See Exhibit 1-23.) The University replied on November 9, 2015, citing the applicable legislative authority for its position. (See Exhibit 1-24.)

On December 16, 2015, the Staff sent a letter to the University that contended that by receiving any of the six items, some unspecified "student-athletes were essentially removed from full academic participation in their AFAM courses." (See Exhibit 1-25, p. 2.) The Staff's new theory, which required only that a student-athlete receive one of the six items, was a complete switch from its position just four months earlier that all six items were needed. Further, the Staff altered their theory from the purported benefit being a reduced time commitment to the student-athlete having been "essentially removed from full academic participation" in the Courses.

On January 7, 2016, the University sent a 23-page letter to the Staff that, among other things, reiterated how the facts did not support the Staff's novel theory that "student-athletes were essentially removed from full academic participation in their AFAM courses." (See Exhibit 1-9.)

On April 25, 2016, when the ANOA was issued, the Staff eliminated Allegation 1(a) and 1(b) of the original NOA. Allegation 1(a) rested on the same six types of conduct that now appear in Allegation 1(b) of the Second ANOA.

- d) The Issuance of the Second ANOA and the Staff's Fourth Theory (a New Delegation of Authority, Disproportional Enrollment, and "Totality of the Circumstances" Theory)

After the Panel asked the Staff in November 2016 to review whether the potential violations in this case had been appropriately alleged, the Staff revived its reliance on the six types of conduct initially included in the NOA but deleted from the ANOA by asserting yet another novel theory that is unsupported by any precedent or authority. Allegation 1(b) of the Second ANOA asserts that extra benefits were provided because Professor Nyang'oro and Ms. Crowder allegedly delegated management of material aspects of the Courses to ASPSA academic counselors in the form of the six types of conduct and that this alleged delegation resulted in student-athletes disproportionately enrolling in the Courses by "reliev[ing] student-athletes of the academic responsibilities of a general student." The University raised the lack of bylaw or other authority for this latest theory with the Staff. The Staff advised that the violation is a result of the "totality of the circumstances." This fourth overall theory and third version of the "totality of the circumstances" theory is also not supported by the extra-benefit bylaws or other authority for the same reasons detailed above, and is not supported by the facts for the reasons stated in Section V(B).

V. REVIEW OF THE EVIDENCE

A. Allegation 1(a)

Allegation 1(a) contains several different allegations that the University will address in the order that they are presented in the Second ANOA.

- 1) Crowder and Professor Nyang'oro Maintained and Administered Anomalous Courses

The Staff states that Professor Nyang'oro and Ms. Crowder maintained and administered anomalous courses, which the Staff defines as courses: (1) "publicized as traditional lecture courses but were administered as independent studies;" (2) "requiring little, if any, attendance;" (3) requiring "minimal to no interaction with the faculty;" (4) having "lax paper writing standards;" and (5) that "awarded artificially high final grades to students." The University reiterates that the same characteristics appear to have been present in both the Auburn and Michigan matters, but no violations were alleged there, much less found. Further, the Courses and their structure, content, and administration, including the five elements cited by the Staff, did not violate any then-existing University written policy. Finally, and most importantly, the Staff does not allege

that any of the five elements was different and more favorable for student-athletes than for non-athlete students or provided to student-athletes because of their athletic ability. Accordingly, the issues cited by the Staff are not bylaw violations.

(a) “Publicized as Traditional Lecture Courses But Taught as Independent Studies”

The University agrees that this phrase describes a portion of the Courses. However, the Courses also included courses that were listed as independent studies and were taught as independent studies, but were primarily managed by Ms. Crowder with limited faculty involvement. This distinction affects the proportionality analysis as is discussed below.

(b)&(c) “Requiring Little if any Attendance and Minimal to No Interaction With The Faculty”

The University agrees that little if any class attendance was required and that Professor Nyang’oro delegated too much responsibility for management of the Courses to Ms. Crowder. However, as previously noted, Professor Nyang’oro had more involvement with the Courses than the general public narrative indicates (See Exhibit 1-2.)

(d) Having “Lax Paper Writing Standards”

Where Professor Nyang’oro assigned grades in the Courses, the Staff appears to rely solely on the CWT Report and its characterization of his grading standards as being “lax.” (See FI-32, pp. 41, 58). The CWT Report’s conclusion that he had “lax grading standards” appears to be based upon (a) Professor Nyang’oro’s statements to the CWT attorneys but not available to the University or Staff, and (b) the analysis of 150 papers performed by three professors retained by CWT.

The Panel should not consider Professor Nyang’oro’s unrecorded statements made outside the enforcement process. The Panel’s decision that it will consider all information in the CWT Report (COI November 28, 2016, Letter, at p. 7) contradicts a foundational principle of the joint investigation: the Staff would not rely on the CWT Report’s recitation of what witnesses said, obtained using methods not consistent with the NCAA process, to support its allegations. The Staff’s previous statements and assurances in that regard correctly reflect the rules that govern the infractions process. (See Bylaws 19.5.4, 19.5.5.1, 19.5.5.2, 19.5.6.1, 19.5.7.)

In addition, the CWT Report was not commissioned for NCAA purposes. The University of North Carolina¹⁷ in conjunction with the University commissioned CWT to conduct those interviews, to investigate independently and to identify, to the extent possible, the full scale of the academic improprieties so that the University could address them appropriately. The contents of the CWT Report show that it was never intended to be used for NCAA purposes. It does not reference a single NCAA bylaw and does not address key issues such as whether the Courses, including any “lax paper writing standards,” were “generally available” to all students.

Further, CWT, the University and the Staff established a specific protocol to provide information for the NCAA’s consideration – and it was not the CWT Report itself. Under the protocol, Wainstein provided potentially relevant information directly to the University’s outside counsel and Staff for them to investigate using methods appropriate to an NCAA proceeding. “Once the information is provided to the NCAA Staff,” the protocol makes clear, the University and the Staff “will follow NCAA protocol and procedure to jointly review information and conduct interviews.” (See FI-33 at Exhibit 9.) Such a protocol would have been unnecessary if the CWT Report was intended by the University and Staff to have relevance in this infractions proceeding.¹⁸

The Panel should not conclude that NCAA rules governing the collection of evidence can be ignored any time a University conducts an external investigation. Such a ruling would render the joint NCAA investigation an expensive waste of time and resources. Further, it would result in this Panel relying on CWT’s *interpretation* of information, developed for a different purpose and without regard for potential NCAA violations, as opposed to documents and testimony that are original and unfiltered. For these reasons, the Panel should reverse its admission of the CWT Report.

The same reasons apply to the statements and findings of the three professors cited in the CWT Report. In addition, the professors made no attempt to identify and perform a separate analysis on the papers graded by Professor Nyang’oro. Further, the statements and conclusions by the three professors are based in significant part on their use of software that measures unoriginality, as is described below, as some indication of plagiarism. The University and its

¹⁷ The University of North Carolina-Chapel Hill, the institution currently before the Committee, is one of 16 constituent universities of The University of North Carolina.

¹⁸ In this regard, the Staff and University interviewed 37 witnesses for approximately 80 hours about potential NCAA violations, 25 of whom had already been interviewed by CWT. The University and the Staff agreed upon a procedure to review the documents that CWT collected that resulted in the University reviewing in excess of 100,000 documents and the Staff reviewing several thousand documents. If the CWT Report were conclusive, there would have been no need for this additional investigation.

faculty have affirmatively chosen not to use such software for a number of reasons, including that it may identify as plagiarism what is simply bad writing or sloppy citation practices, and therefore, results in many “false positives.”¹⁹

Most importantly, there is no evidence that any student-athlete received more favorable treatment than non-athlete students or that any particular student-athlete benefited from any purported lax grading standards.²⁰ Ms. Crowder indicates that when she graded papers for the Courses, she ensured that they met the assignment requirements and that the same requirements were applied to all students. (See Crowder Aff. Par. 8; Abrams 3/9/17 letter, pp. 2, 4-5.) There is no evidence that Professor Nyang'oro graded any of the papers differently. In addition, there is evidence, in terms of emails, spreadsheets, tutor and mentor feedback forms, and statements in interviews, that student-athletes spent many hours researching and writing their papers with the permissible assistance of ASPSA academic counselors and tutors. The student-athletes met with ASPSA academic counselors and tutors on a regularly scheduled basis so that the student-athletes' progress and work product could be assessed and suggestions for improvements provided. These extensive efforts are documented in **Exhibit 1-27**.

Although much has been said publicly about there being widespread plagiarism and submission of extensive “fluff” in the papers, those characterizations misrepresent the nature and scope of what the three professors stated in their report. The three professors made clear that their task was not to determine plagiarism but that they were “asked to determine whether and to what extent they [the papers reviewed] each appear to represent original undergraduate student work.” (See FI-33, Exhibit 35 at p. 3.) The professors used commercial software called IThenticate that calculated the amount of unoriginal text in a paper. (See FI-32, pp. 59-60 and FI-33 at Exhibit 35 at p. 3.) Unoriginal text included: (a) plagiarism/improper borrowing; (b) improper paraphrasing; and (c) substantial overuse of properly quoted material. (See FI-33 at Exhibit 35 at p. 3.) The professors made no distinction between these three items when they

¹⁹ In addition, it is important to note that the three professors who were retained by CWT: (a) only reviewed 150 papers out of the many thousands of papers submitted for the Courses; (b) were unaware of which of the 150 papers were submitted for a Course instead of a regular course; (c) could not determine if the papers they had were preliminary or final drafts; (d) did not know the assignment criteria given to the students for the papers; (e) did not know or distinguish between whether a paper was written by a student-athlete or a non-athlete student; (f) did not know what grade a paper that they had reviewed had received; and (g) noted that the quality of the papers varied with some papers being very well-written. (See FI-33 at Exhibit 35 at pp. 2-3.) The profound shortcomings of this analysis, offered without regard for its use in an NCAA matter, undermine its use as evidence in this proceeding.

²⁰ There was one situation where a student-athlete submitted a paper that contained plagiarized material and received a grade. (See FI-32, pp. 24, 57.) However, that grade was later changed by the University as part of an Honor Code proceeding.

provided statistics on the number of papers that failed a 25 percent unoriginal content test that the professors chose. Thus, a paper that contained extensive, *but properly cited quotations and was within the assignment guidelines*, would exceed the professors' arbitrary 25 percent unoriginal content test. The professors noted that "the team could not determine whether such unoriginal writing would be appropriate within the context of the given courses." (See FI-33, Exhibit 35 at p. 4.)

Perhaps most importantly, (a) the three professors did not opine on what grades the papers should have received and did not find that the student-athletes were treated any better in the grading process (see FI-33 at Exhibit 35); (b) the University did not alter the grades of any of the students based on the professors' analysis; and (c) it is beyond the NCAA's jurisdiction and competence to second guess whether a paper deserved a higher or lower grade and whether the grades for a course were too lax.

(e) "Awarded Artificially High Final Grades to Students"

The sole basis for this statement appears to be the characterization in the CWT Report that the grades in the Courses were "artificially high." (See FI-32, pp. 2, 9, 40.) In her interview, Ms. Crowder stated that she didn't want to grade papers but that when she did, she graded papers pursuant to and consistent with instructions provided by Professor Nyang'oro. (See FI-127 and **Exhibit 1-1.**)

There is no evidence in the record that any student-athlete received an "artificially high" grade or that student-athletes were treated any better than other students. In contrast, there is extensive evidence of the student-athletes working hard researching and writing their papers on their own and in conjunction with their ASPSA academic counselors and tutors. (See FI-127 and **Exhibit 1-1**, and **Exhibit 1-27**) Notably, the three professors did not attempt to assign grades to any of the 150 papers that they reviewed. (See FI-33 at Exhibit 35.) The University did not, nor would it, change the grades assigned to a student absent evidence of academic misconduct (as defined by the school – not by the NCAA), and there is no basis in the record for the NCAA to determine whether a paper received an "artificially high" grade, even if it was competent to make such a judgment, or that the student-athletes were treated better than other students.

The concept of "artificially high" grades in the CWT Report is based, in large part, on CWT's efforts to perform a statistical analysis of the average grades awarded in the Courses taught in an independent study format, although listed as lecture courses, and to compare them to

average grades in all courses at the University or all courses in particular departments. CWT's effort is flawed in several respects.

- It is impossible to determine from a statistical analysis whether grades are “artificially high.” All that can be determined is how the grade distributions compare to other courses.
- The CWT Report improperly compared the average grades in the Courses taught in an independent study format although listed as lecture courses (3.62) to the average grades in all University courses (3.24) and in all of the remaining courses in the Department (3.28). (FI-32, pp. 3, 19, 41.) It is axiomatic that when an average is used, some of the components will be above the average while others will be below the average. All the CWT Report established was that the Courses taught in an independent study format, although listed as lecture courses, received average grades that were roughly one-third of a letter grade above a composite average grade.
- The CWT Report also compared the average grade in the Courses taught in an independent study format, although listed as lecture courses (3.62) to the average composite grade in four other departments with reputedly easy courses (3.46). (FI-32, p. 41.) This comparison suffers from the same failing – using an average merely means that some courses were above the average while others were below it. In any event, the CWT Report merely showed that there was one-sixth of a letter grade difference without explaining the significance, if any, of the difference.
- A search of other courses reveals that there were 910 courses offered at the University that had 50 or more enrolled students and had an average GPA above a 3.50 GPA, including 660 such courses with an average GPA of 3.62 or higher. (See Exhibit 1-28.) Therefore, there were numerous other courses that offer similar or higher grades than the Courses, and there is no basis to characterize the grades in the Courses as being “artificially high,” as CWT did, simply because they had awarded above-average grades as compared to *all* courses.
- The CWT Report also referred to the average student-athlete grade in the Courses taught in a lecture format as compared to the average grade that the student-athletes received in all other courses. (FI-32, p. 41.) Once again, this type of comparison is meaningless. Student-athletes received many grades in courses that are not being questioned that were higher than their averages.

The foregoing is not meant to criticize the CWT Report, but rather to show the danger of trying to use portions of it for purposes that CWT did not intend. CWT quite simply was not tasked with determining whether student-athletes received a benefit not available to other students, which is the issue that is relevant here.

2) Professor Nyang'oro and Ms. Crowder "Delegated to Athletics Personnel the Authority to Manage Material Aspects of the Courses"

This portion of Allegation 1(a) appears to refer to the six types of conduct described in Allegation 1(b). There is no evidence in the record that Professor Nyang'oro or Ms. Crowder delegated to anyone the authority to manage material aspects of the Courses. Indeed, four of the six items have nothing to do with Professor Nyang'oro or Ms. Crowder delegating their management of the courses to ASPSA personnel: (1) asking Professor Nyang'oro or Ms. Crowder if students could register for the classes, (2) obtaining the assignment from Professor Nyang'oro or Ms. Crowder, (3) turning in papers to Professor Nyang'oro or Ms. Crowder, or (4) asking what courses were being offered by AFRI/AFAM. Moreover, none of the facts relating to any of the six items support a delegation of authority over the management of the Courses for the reasons set forth below in Section IV(B)(1)-(7). To the contrary, Ms. Crowder stated in her interview that she never delegated any authority to ASPSA personnel. (See FI-127 and **Exhibit 1-1.**)

3) "Student-Athletes Were Afforded Greater Access to the Anomalous Courses"

To the extent that this statement is a different way of stating that there was disproportionate enrollment, it is addressed in the next section. If it is intended to be another reference to the six types of conduct that are described in Allegation 1(b), it is covered in Section V(B).

4) Student-Athletes "Enrolled in These Courses at a Disproportionately Higher Rate Than Students Who Were not Athletes"

The Staff appears to have lifted the concept of disproportional enrollment straight from the CWT Report. (See FI-32, pp. 3, 44, 62.) As discussed above, no authority supports the position that disproportional use (enrollment) has any relevance to a violation of NCAA bylaws. Bylaws 16.02.3 and 16.11.1.1 provide that benefits that are "generally available" to non-athlete students cannot be an extra benefit. The evidence is undisputed that the Courses were "generally available" to non-athlete students.

In this regard, the CWT Report, upon which the Staff relies, indicates that 2,021 of the 2,707 enrollments (or 75 percent) in the Department's designated independent study classes were non-athlete students. The CWT Report then assumes "that over 50% of the total AFAM independent study enrollments were irregular" based on statements attributed to Professor Nyang'oro and Ms. Crowder that "most" of the Courses were irregular (See FI-32, pp. 33-34.)

Further, the CWT Report states that 2,054 of the enrollments in the Courses taught in a lecture format were non-athlete students. (See FI-32, pp. 34-35). Thus, according to the CWT Report, at least 3,065 non-athlete enrollments in the Courses were by non-athlete students.²¹ Those numbers alone establish that the Courses were generally available.

Disproportionality in enrollment of student-athletes in the Courses is irrelevant to any NCAA bylaw. The relevant fact is that the courses were “generally available.” If the Panel nevertheless determines that proportionality is relevant, the University notes that the CWT Report’s efforts to analyze the disproportionality are flawed in several respects.

- The CWT Report only included the lecture courses taught in an independent study format in their analysis even though “most” of the named independent studies courses were also subject to the same irregularities. (FI-32, pp. 33-34.) A significantly lower percentage of student-athletes enrolled in the independent studies courses (25.4 percent) than in the Courses that were listed as a lecture format but taught in an independent study format.
- The CWT Report did not consider a variety of factors other than someone’s status as a student-athlete that could have explained part of any disproportionality. These factors include the racial composition of the student-athlete population and racial composition of the general student body,²² the percentage of student-athletes who majored in the Department compared to the percentage of majors in the general student body,²³ the racial composition of the students who majored in AFRI/AFAM,²⁴ the flexibility that student-athletes occasionally need on their schedules due to their athletics commitments (see, e.g., **Exhibit 1-29**), and the much greater availability of writing and tutoring assistance to student-athletes.
- Some of the factors in the foregoing point cannot be directly measured, but their impact can be demonstrated indirectly by the fact that the clustering of student-athletes in the Courses taught in a lecture format is similar to the disproportionate enrollment of student-athletes that occurs in many other courses both inside and outside of the Department. Indeed, a significant majority of the classes in which

²¹ The CWT Report focused on enrollments in support of its finding that 47.4 percent of the enrollments were student-athletes. Because some students took multiple Courses, the number of enrollments does not reflect the number of students who took the Courses. Further, the CWT Report counted students who were not athletes at the time they took a Course if the student had ever been an athlete. There were 2,240 discrete non-athlete students and 799 discrete current student-athletes who took one of the Courses, under the CWT Report’s assumption that more than 50 percent of the independent study classes were irregular. (FI-32, pp. 33-34.) This means that prior to adjusting for race, major, and the other factors listed above, unique current student-athletes made up 26.3 percent of the students who took one or more of the Courses.

²² The percentage of African-American student-athletes on the football, men’s basketball, and women’s basketball squads was more than five times the percentage of African-Americans in the University’s student body.

²³ The University’s Faculty Athletics Committee noted that there were several majors that had higher concentrations of student-athletes in them, cultural and racial differences could be a factor in major choices by students, and in any event, all students could choose their major. (FI-107.) ASPSA management likewise noted that student-athletes had a right to choose a major and what courses to take as long as the majors and courses were available to all students. (FI-74.)

²⁴ The percentage of African-American students who majored in the Department was 7.34 times greater than the percentage of African-Americans in the University’s student body.

student-athletes are disproportionately enrolled are in other academic departments. The Martin Report Addendum detailed this fact, but the CWT Report did not address it. (See FI-31 at Addendum, pp. 2, 5-6.)

- It is noteworthy that the CWT Report identified 21 independent studies classes in the Department that were offered after Ms. Crowder's retirement that were not paper classes or otherwise irregular. Student-athletes made up 38.5 percent of the enrollment in these courses whose merit and use are not in question. (See FI-32, pp. 35-36; FI-33 at **Exhibit 10**.) Thus, any disproportional enrollment of student-athletes in the Courses cannot be attributed to the characteristics of the Courses or ASPSA's conduct as the Staff alleges since similar disproportionality occurred in other courses in the Department where these factors were not present.
- The CWT Report's purported statistical analysis included as student-athletes individuals who no longer participated on an intercollegiate athletics team at the time they took a Course. Regardless of whether this "once an athlete, always an athlete" approach made sense for the purposes of the CWT Report, it does not make sense for NCAA purposes in determining whether student-athletes were given extra benefits in connection with the Courses or whether they used these Courses to stay eligible. There were at least 171 students who were no longer student-athletes when they took lecture courses that were taught as independent studies yet CWT counted them as student-athletes.

5) "Many At-Risk Student-Athletes, Particularly in the Sports of Football and Men's Basketball, Used These Courses for Purposes of Ensuring Their Continuing NCAA Eligibility"

As with most of the prior items, the Staff appears to be relying primarily, if not exclusively, on the CWT Report for this portion of Allegation 1(a). (See FI-32 at pp. 61-62.)

The Staff's statement, even if true, does not support an NCAA bylaw violation. Student-athletes, like thousands of non-athlete students, took the Courses. Both student-athletes and non-athlete students often received high grades in the Courses. The same is true with many other "easy" classes at the University and most assuredly at other institutions across the country. For some student-athletes and some non-athlete students, a high grade in a course will mean the difference between remaining eligible, under institutional academic eligibility, scholarship eligibility or NCAA eligibility rules. There is nothing inherently wrong with a student enrolling in a reputedly "easy" course whether the purpose of taking the course is to balance the student's schedule, remain academically eligible to be a full-time student, meet academic scholarship requirements or to simply boost one's GPA. In this regard, the pressure of remaining eligible and not being dismissed from the University as a full-time student, of remaining on academic scholarship or of earning a sufficiently high GPA to be admitted to an advanced degree program is no different than the pressure on student-athletes to remain

eligible for athletics purposes. There is no bylaw that treats student-athletes differently than non-athlete students by preventing them from taking “easy” courses to balance their schedules, to boost their GPA’s or to remain eligible. Indeed, if there were such a rule, surely every institution in the NCAA would need to report violations. Perhaps this point is best brought home by the following statement by the Staff during the August 26, 2011, interview of ASPSA academic counselor

(See **Exhibit 1-8** at p. 44).²⁵

B. Allegation 1(b)

At no point has the Staff contended that the nature of the Courses was any different or better for student-athletes than it was for other students except for the six types of conduct alleged in Allegation 1(b). As stated above, the evidence is that the student-athletes received the same benefits from the Courses as the non-athlete students.

Moreover, the six types of conduct cited by the Staff were permissible under Bylaws 16.3.1.1 and 16.3.1.1.1; there is no authority for finding the conduct impermissible; and the ACC has opined that four of the types of conduct are permissible without qualification. The NCAA Staff does not cite a single instance in which each of the six types of conduct occurred for one student-athlete. Indeed, there are only a very few instances of more than one type of the conduct occurring with a student-athlete in connection with a Course. As noted above, taking into account all instances of the conduct among the 799 student-athletes who took the Courses over a 13-year period, the Staff has only identified 15 times that a student-athlete took a Course and more than one of the types of conduct arguably took place. (See **Exhibit 1-21**.) The evidence does not establish that: (a) any ASPSA or athletics personnel were involved “in the management” of the Courses; (b) any ASPSA or athletics personnel “relieved student-athletes of the academic responsibilities of a general student;” (c) the conduct of any ASPSA or athletics

²⁵ The Staff does not appear to directly rely on CWT’s analysis of the impact of the grades on whether student-athletes maintained or obtained a 2.00 GPA. In any event, CWT’s analysis has several flaws. First, it overstates the actual impact of the grades received in the Courses since as the CWT Report acknowledges it failed to consider what other course would have been taken if one of the Courses was not offered. (FI-32, p. 62.) As noted above, there were literally hundreds of other courses that had similar or higher average GPAs than the Courses. Second, CWT appears to have eliminated the grade but not the credit hours for the Courses, essentially assuming an “F” for the credit hours. Third, CWT counted as student-athletes 171 individuals who were not student-athletes when they took a Course. Fourth, CWT counted individuals whose GPA was well above a 2.00 when they took one of the Courses if during some later term the student’s GPA would have dropped below a 2.00 if the Course was eliminated. Of course, in those circumstances, it cannot be said that the Course was taken to maintain eligibility. If these flaws are eliminated, only a very small fraction, if any, of the 329 students (and 169 student-athletes) identified by CWT would qualify as using the Courses to obtain and maintain a 2.00 GPA.

personnel caused “student-athletes to avail themselves of the [Courses] at a rate disproportionately higher than the general student body;” or (d) that ASPSA or athletics personnel “leveraged” their relationship to provide student-athletes with a benefit not generally available to non-athlete students.

Finally, even if any of the conduct at issue could be characterized as an extra benefit, it neither qualifies as a Level I or Level II violation nor justifies the unethical-conduct allegations that were inexplicably added to the Second ANOA.

In the subsections that follow, the University reviews the facts that pertain to each of the six types of conduct that the Staff has alleged.

1) Contacting Individuals Within the Department to Register Student-Athletes in Courses

The facts do not support the allegation that ASPSA academic counselors inquiring about enrolling student-athletes in the Courses constituted impermissible extra benefits. The text of the Second ANOA does not identify a single instance where this type of conduct occurred. Based on the University’s review of the 126 items of factual information, there are two emails involving ASPSA academic counselors communicating with Ms. Crowder that might constitute a request that Ms. Crowder enroll student-athletes in one of the Courses. In the first, an ASPSA academic counselor advised Ms. Crowder in a _____ email that a student with a learning disability needed to pick up a class and asked what class she would recommend. This type of conduct is expected of academic counselors. In response, Ms. Crowder identified a class and on her own, stated that she would enroll the student in the class. (See FI-79.) In the other instance, Ms. Crowder sent an ASPSA academic counselor an email on _____ stating “no problem about trying to add your kids.” (See FI-123.) The initial communication from the ASPSA counselor does not exist, and there is no way of determining whether the classes being added were regular courses or the Courses at issue. These two emails are hardly proof that over a 10-year period ASPSA personnel were managing material aspects of the Courses or were leveraging their relationship with Professor Nyang’oro and Ms. Crowder to obtain special arrangements for student-athletes.

There are a limited number of additional emails in the investigative record that are not cited in the factual information chart that arguably pertain to this issue. If the Staff relies on emails it has not identified as required by Bylaw 19.7.1, the result will not change. A careful analysis of

other emails cited in the May 20, 2015, NOA reveals only limited, benign conduct by ASPSA counselors restricted to obtaining approval for student-athletes to register for limited enrollment classes and asking Department staff whether student-athletes could get into specific courses. Many of the Courses were limited enrollment, which meant that students could not enroll themselves in the Courses but could be registered only by the Department or by an academic advisor or counselor who had authority to enroll students in courses. (See FI-38 at pp. 23; FI-43 at pp. 100-102; FI-47 at pp. 15-16; FI-92 at pp. 11-12.) The evidence further demonstrates that student-athletes generally handled class registration paperwork themselves when they could, and ASPSA academic counselors often acted as proxies for student-athletes when travel or games conflicted with their assigned registration times or when the student-athletes otherwise did not have the ability to enroll themselves. (See FI-38 at p. 24; FI-39 at pp. 32-34, 64; FI-40 at pp. 42-43; FI-42 at p. 36; FI-82 at pp. 10-11, 15; FI-87 at pp. 24, 63-64; **Exhibit 1-30**.)

As noted above, the conduct of the ASPSA academic counselors described above is permitted, if not required, under Bylaw 16.3.1.1's mandate that member institutions provide academic support services for student-athletes. The ACC has issued an interpretation that this type of conduct is permissible under Bylaw 16.3. (See **Exhibit 1-4**.) Thus, the Panel should find that ASPSA academic counselors contacting academic departments to register student-athletes is permissible under Bylaw 16.3.1.1.

If the Panel somehow decides that Bylaw 16.3 does not permit the conduct at issue, then the Panel must analyze whether ASPSA academic counselors were providing a benefit that was not generally available when they contacted the Department about enrollment in the Courses. There are multiple emails and witness statements establishing numerous instances of: (a) ASPSA academic counselors contacting academic departments on behalf of student-athletes to register them in other "regular" courses; (b) academic advisors outside of ASPSA contacting the Department about registering non-athlete students in the Courses; and (c) academic advisors outside of ASPSA contacting various departments about registering non-athlete students in other "regular" courses. (See FI-32 at pp. 51-52, 68, 81, n. 162, 107, 116-117; FI-39 at p. 44; FI-41 at pp. 49-50; FI-42 at p. 68; FI-82 at p. 42; FI-85 at p. 42; FI-92 at pp. 19, 23-25; See **Exhibits 1-3 and 1-31**.) Ms. Crowder states that she worked with both academic advisors and ASPSA academic counselors to enroll students, athletes and non-athletes alike. (See **Exhibit 1-1**; Crowder Aff. Par. 4; Abrams 3/9/17 letter, pp. 2-4.) Therefore, the conduct of the ASPSA counselors was not unique to the Courses, was a benefit that was

generally available to other students, and could not be an extra benefit pursuant to Bylaw 16.11.1.1, even if it was not permissible under Bylaw 16.3.1.1.

In addition, principles of finality and fairness bar this allegation because the Staff reviewed the same conduct charged here in the summer of 2011 and did not conclude, or even suggest to the University, the conduct was impermissible.²⁶

a) The Newly Added Concept of Late Registration

For the first time in the Second ANOA, the Staff has added language concerning the enrollments occurring “even after the deadline to enroll had passed.” Despite extensive and numerous communications about the Staff’s assertions that ASPSA academic counselors provided extra benefits, this concept never once arose, and there was no investigation regarding it. The University finds it troubling that after many years of investigation and four different notices of allegations being served, the Staff would make a new allegation of an extra benefit without seeking facts to determine its validity. The record evidence does not support such an allegation.

From the fall of 2002 through the summer of 2011, the University’s policy provided that after the first five days of classes, students could add courses with the approval of the course instructor and the dean or the dean’s designee of the student’s school or college. (See **Exhibit 1-38**; FI-40 at pp. 56-58; FI-87 at p. 69; FI-92 at pp. 22-23.) No University policy provided a final date for adding a course.

The Staff has not identified any specific proof that relates to how the University’s policy was applied after the first five days of a term. The University found only one email in the factual information chart that pertains to this issue in connection with a student-athlete and one email relating to a non-athlete student. (See FIs 79 and 101.) In the email concerning the student-athlete, on _____ an ASPSA academic counselor contacted Ms. Crowder to

²⁶ Specifically, on August 29, 2011, the University provided the Staff with five emails showing communications between the Department and ASPSA academic counselors about enrolling student-athletes. (See **Exhibit 1-9**). Further, during their 2011 interviews, ASPSA academic counselors _____, a Department staff member, and two student-athletes

(See **Exhibit 1-32**, p. 33; **Exhibit 1-33**, p. 59; **Exhibit 1-8**, pp. 17-21, 23-28, 32, 34-45, 48-49; **Exhibit 1-34**], pp. 16-18, 24-27 **Exhibit 1-35**, pp. 52-53, 95-99, 111-112; **Exhibit 1-36**, p. 7; **Exhibit 1-37**, pp. 20-21). All seven witnesses

At no point did the Staff suggest that the conduct evidenced any rules violation (because it does not). Although the CWT Report made several references to this conduct occurring (see FI-32, pp. 16, 19, 39-40, 44, 48, 66), it did not change the nature of the conduct that the Staff already knew. Thus, there were no new, material facts.

indicate he had a learning-disabled student who needed to drop a class and add another class and asked for a recommendation, which Ms. Crowder provided. In the email regarding the non-athlete student, on _____ an academic advisor followed up on a call with Ms. Crowder from the prior day and said that she was sending “a sophomore transfer student [who] has had a bit of a bumpy ride” over with a form “signed with your initials” to add one of the Courses. Although the five-day deadline for students to add courses had passed in both cases, under the University’s policy, there was nothing that prevented the course from being added with proper approvals. There is no evidence that the proper approvals did not occur with either the student-athlete or the non-athlete student. Thus, the Second ANOA does not support this contention.

In addition, there are a number of emails in the investigative record that are not cited in the Staff’s factual information chart that indicate that non-athletes added the Courses well past the first five days. (See, e.g., **Exhibit 1-39**).²⁷ Thus, there is no proof that student-athletes were receiving any benefit that was not generally available.

2) Obtaining Assignments for the Courses on Behalf of Student-Athletes

The University disagrees that a rules infraction occurs when an ASPSA academic counselor receives a course assignment. In this context, the Staff has not distinguished between two types of situations that occurred: (1) ASPSA academic counselors obtaining copies of assignments already received by student-athletes; and (2) ASPSA academic counselors forwarding assignments from the Department to student-athletes. Neither constitutes a special arrangement under Bylaw 16.11.2.1, nor is there any authority that prohibits such conduct. To the contrary, the ACC issued an interpretation that this conduct is permissible under Bylaw 16.3. (See **Exhibit 1-4**.)

It would be unnecessarily difficult for an academic counselor to assist and advise a student-athlete, as mandated and permitted by NCAA Bylaw 16.3.1.1, if receiving the assignment from the academic department itself violated NCAA rules. This is especially so here, where the evidence shows student-athletes often had already received the assignments at issue directly from the Department, with ASPSA academic counselors merely receiving courtesy copies of those same assignment notices. (See **Exhibit 1-40**; FI-39 at p. 30; FI-40 at pp. 56-58; FI-48 at

²⁷ There are some limited, additional instances in the investigative record of student-athletes adding Courses after the first five days of classes, but the staff has chosen not to cite them in the factual information, as required by Bylaw 19.7.1, and moreover, they are consistent with the treatment of non-athlete students.

pp. 34; FI-85 at pp. 40-41; FI-87 at pp. 58-60.) Such a rigid interpretation of the extra-benefits legislation is particularly unsuitable where, as here, the academic support program for student-athletes is part of the same division as the academic departments. Prohibiting coworkers from communicating about such innocuous matters is not warranted by NCAA rules.

Similarly, prohibiting ASPSA academic counselors from forwarding assignments to student-athletes is a needless obstacle inconsistent with the language and purpose of the NCAA's rules. Some instances of this conduct that were uncovered during the investigative process involved student-athletes who were away from campus, had completed their eligibility or were playing professionally. (See, e.g., Exhibit 1-41). The University is unaware of any precedent extending extra-benefits legislation to former student-athletes no longer eligible to play at the college level. As a policy matter, it would seem desirable for a school to assist both current and former student-athletes to graduate by facilitating their receipt of assignments.

In any event, the text of the Second ANOA does not identify any specific instances where forwarding assignments occurred. Based on the University's review of the 126 items of the factual information chart, two emails pertain to this issue. One is a _____, email in which Ms. Crowder sent an assignment to ASPSA with no indication whether the student-athletes received the assignment from Ms. Crowder as well or from ASPSA. (See FI-120.) The second is a _____, email thread in which an ASPSA employee thanked Ms. Crowder for sending assignments but asked clarifying questions, and Ms. Crowder forwarded the questions to Professor Nyang'oro. (See FI-58.) These two emails do not support a violation for the reasons stated above. Although these two emails are the only ones that the Staff is entitled to rely upon under Bylaw 19.7.1, there are other emails in the investigative record, as well as interview statements indicating that these are not the only two instances of ASPSA academic counselors receiving assignments. However, the two emails referenced above are representative examples of the benign conduct that occurred.

Under these circumstances, even if Bylaw 16.3 did not permit the obtaining of the assignment, this conduct would not constitute an extra benefit and does not support an allegation that ASPSA personnel managed the Courses, leveraged their relationships with Professor Nyang'oro and Ms. Crowder, relieved student-athletes of their academic responsibilities or caused student-athletes to enroll in the Courses at a disproportionate rate.

In addition, as with the previous sub-allegation, principles of finality and fairness bar this allegation since the Staff reviewed the same conduct charged here in the summer of 2011 and did not conclude, or even suggest to the University, the conduct was impermissible.²⁸

3) Suggesting Assignments to the Department for Student-Athletes to Complete Was Not a Bylaw Violation

As part of Allegation 1(b), the Staff alleges that ASPSA academic counselors suggested assignments for student-athletes for some of the Courses. Although such conduct might violate the NCAA's rules against extra benefits in certain circumstances (as the ACC recognized in its interpretation [See **Exhibit 1-4**]), the facts here present no bylaw violation. None of the emails in the factual information chart show this type of conduct. This lack of evidence should end the matter given the Staff's failure to identify the facts on which this allegation rests. (See Bylaw 19.7.1).

Nonetheless, the University examined information cited in the May 20, 2015, NOA. It identified six potentially relevant emails.

- FI-22 to the NOA was a _____, email from Professor Boxill to Ms. Crowder asking if an assignment that Professor Regester had used previously could be reused for a former student-athlete who had _____ and never ended up registering for the course. Since the student's athletics eligibility was exhausted, this could not be an extra benefit.
- FI-24 to the NOA was a January 17, 2006, email from Professor Boxill to Ms. Crowder asking if a topic for a paper that some unknown person had sent to Professor Boxill "fit the bill" for the AFAM course. Thus, Professor Boxill simply appears to be asking if someone else's thoughts on a topic for an independent study paper were appropriate before the student-athletes commenced working on their papers.
- FI-143 to the NOA was a January 28, 2009, email from Cynthia Reynolds, an ASPSA academic counselor, asking if a topic that the Department had previously used could be reused that semester given that the semester was two weeks old, no assignment had been given, and the student-athletes wanted to start working on their papers. Reynolds was asked about this email and she indicated that at the time of the emails it was probably two weeks into the semester and the student-athlete still had not received an assignment. (See FI-83 at pp 80-81.)

²⁸ Specifically, in the summer of 2011, the University provided the Staff with emails evidencing this conduct, and during the Staff's interviews of seven student-athletes the Staff

(See **Exhibit 1-9**; **Exhibit 1-36**, p. 8; **Exhibit 1-37**, pp. 9-10, 15, 18, 28; **Exhibit 1-42**, pp. 10, 17-18; **Exhibit 1-43** pp. 10-11, 17-18, 23, 28; **Exhibit 1-44**, pp. 8-9, 15, 17; **Exhibit 1-45**, pp. 6-7, 12). At no point in 2011-2013 did the Staff suggest that the conduct evidenced any rules violation (because it does not). The CWT Report only makes two brief comments about this conduct occurring (See FI-32, pp. 17, 66), does not add any new material information to what was already known.

- FI-132 to the NOA was a June 22, 2009, email from Reynolds to Ms. Crowder and is the same type of email as the previous one – Reynolds asking if a previous assignment received from the Department could be reused given that the short summer session had already begun and no assignment had been provided. Reynolds was questioned about this email during her interview and stated that there was nothing wrong with her inquiry under the circumstances. (See FI-83 at pp. 90, 92.)
- FI-12 to the NOA was an August 1, 2009, email from Reynolds to Ms. Crowder and is the same as the prior two emails, except that the summer session was nearly complete with no assignment having been provided. In each of these three cases, there is no indication if the email resulted in a different topic being assigned or if the Department authorized the reuse of a topic that the Department had previously assigned.
- FI-40 to the NOA was a May 4, 2010, email from an ASPSA academic counselor to Professor Nyang'oro indicating she found an old topic that was assigned by the Department and stating "if this helps." During her interview, that ASPSA academic counselor stated that Professor Nyang'oro asked her to locate the topic. (See FI-87 at pp. 79-80.) It is unclear what, if anything, Professor Nyang'oro did with the topic that he or Ms. Crowder had previously provided.

The University submits that these emails do not constitute extra benefits or unethical conduct. Further, four or five instances involving student-athletes over a 10-year period that saw more than 1,000 of the Courses hardly supports allegations that ASPSA personnel managed the Courses, leveraged their relationships with Professor Nyang'oro and Ms. Crowder, relieved the student-athletes of their academic responsibilities, or caused student-athletes to enroll in the Courses in disproportionate numbers. In this regard, it is noteworthy that Ms. Crowder states although ASPSA personnel "occasionally suggested topics, Professor Nyang'oro determined each of the topics for the papers, except on a few limited occasions when he was unavailable and [she] obtained topics from another professor," and the documents support her statement. (See Abrams 3/9/17 letter, p. 5; **Exhibit 1-2**.)

Once again, principles of finality and fairness bar this allegation since the Staff reviewed the same conduct charged here in the summer of 2011 and did not conclude, or even suggest to the University, the conduct was impermissible.²⁹

²⁹ Specifically in the summer of 2011, the Staff had two emails from Professor Boxill to Gore in 2011 that related to this issue. (See **Exhibit 1-9**). The Staff was also aware, from _____ 2011 interview, that _____ (See **Exhibit 1-32**, pp. 33-34, 55-56.) The CWT Report makes no mention of this issue. The Supplement to the CWT Report only contained four emails on this point (NOA FIs 22, 24, 40 and 143), and as discussed above, given the circumstances surrounding each one, they were not violations. Thus the CWT Report adds no new material information on this issue.

4) Turning in Papers on Behalf of Student-Athletes Was Not a Bylaw Violation

The University acknowledges that on several occasions, ASPSA counselors sent copies of student-athletes' papers to the Department,³⁰ but disagrees this conduct violated any NCAA rule. Moreover, a review of these submissions establishes they often occurred when: (a) student-athletes were off-campus, or otherwise could not access email, at the time papers were due; (b) the Department had previously received a submission from the student-athlete and misplaced it; (c) ASPSA academic counselors were providing the Department with backup copies of papers; or (d) the submissions were on behalf of former student-athletes who had exhausted their eligibility. (See, e.g., Exhibit 1-46.) On the limited occasions that ASPSA academic counselors submitted papers for current student-athletes on campus, they did so to help accommodate student-athletes' busy schedules. The record is replete with examples of student-athletes turning in their papers with no involvement by ASPSA personnel. (See, e.g., Exhibit 1-47.) In any event, the occasional and timely submission of a student-athlete's work is a permissible academic support service under NCAA Bylaw 16.3.1.1, and this position is endorsed by the ACC. (See Exhibit 1-4.)

Even if Bylaw 16.3.1.1 did not permit the conduct, the conduct was, at most, an immaterial benefit that relieved the student-athlete of a ministerial task -- sending a cover email or dropping off a hard copy. It certainly does not support an allegation that ASPSA personnel managed the courses, leveraged their relationships with Professor Nyang'oro and Ms. Crowder, relieved student-athletes of their academic responsibilities or caused student-athletes to enroll in the Courses at a disproportionate rate.

The only prior indication that the submission of a paper on behalf of student-athletes might violate NCAA rules is a secondary infractions report where an institutional employee drove off-campus to submit student-athletes' papers. In that case, it was determined the student-athletes received an impermissible monetary benefit valued at \$1, which was the value of the gas used in driving. (See Exhibit 1-48.) That case is distinguishable from the conduct at issue here, however, as it can hardly be argued student-athletes received any monetary benefits from the sending of a cover email or walking to a campus building and dropping off a paper.

³⁰ The factual information chart to the Second ANOA includes three emails that pertain to this conduct. (See FIs 1, 122, 124.) In addition, there are several interview statements that this conduct occurred on occasion and, on other occasions, the student-athletes turned in their papers. (See FI-39 at pp. 34-35; FI-85 at pp. 14-15.)

In addition, principles of finality and fairness bar this allegation since the Staff reviewed the same conduct charged here in the summer of 2011 and did not conclude, or even suggest to the University, the conduct was impermissible.³¹

5) Requesting Certain Course Offerings Within the Department on Behalf of Student-Athletes Was Not a Bylaw Violation

At the outset, the Second ANOA does not identify any specific factual information in support of this allegation, and the University is unable to identify any emails in the factual information chart that address this issue. Thus, under Bylaw 19.7.1, the Staff has not provided factual information in support of this part of allegation as it is required to do so. (See Bylaw 19.7.1.)

Even if the larger investigative record is examined, the University disputes the Staff's allegation that ASPSA academic counselors and athletics personnel requested that the Department offer the Courses on behalf of student-athletes. A close review of the limited information that may pertain to this allegation reveals that University personnel never requested that the Department create or offer courses for student-athletes. Instead, ASPSA academic counselors merely inquired as to their availability. (See **Exhibit 1-49**; FI-38 at p. 28; FI-39 at pp. 39, 57-59; FI-40 at pp. 42-44, 47-48; FI-42 at p. 43; FI-47 at p. 47; FI-82 at p. 15; FI-83 at pp. 57, 69-70; FI-85 at pp. 39-40.) The Courses were primarily controlled enrollment courses requiring approval from the Department to enroll. (See **Exhibit 1-50**: FI-38 at p. 23; FI-43 at pp. 100-102; FI-47 at pp. 15-16; FI-92 at pp. 11-12.) Accordingly, it was entirely appropriate for academic counselors to contact Department personnel to determine what course options were available, particularly in the context of controlled enrollment classes. Helping student-athletes put together their schedules around practices, contests, and other team requirements can be a very complicated endeavor. To do their job properly, ASPSA academic counselors needed to be knowledgeable and informed about available courses. It is not surprising, therefore, that there are a number of emails where ASPSA personnel contacted departments other than the Department to see if courses were available. (See, e.g., **Exhibit 1-51**.)

Contacting a department to find out course availability is within both the University's obligation to provide "general academic counseling" and its discretionary authority to provide academic

³¹ Specifically, the Staff had five emails indicating that this conduct had occurred (See **Exhibit 1-9**), and the interview statements of four witnesses (See **Exhibit 1-32**, pp. 24-26; **Exhibit 1-35**, pp. 41-45; **Exhibit 1-36**, pp. 8-9; **Exhibit 1-37**, pp. 11, 18, 41-42). The CWT Report makes one passing reference to Jaimie Lee turning in papers. (See FI-32 at p. 23). (See **Exhibit 1-32**, pp. 24-26; **Exhibit 1-35**, pp. 41, 44-45; **Exhibit 1-36**, pp. 8-9; **Exhibit 1-37**, pp. 11, 18, 41-42). Thus, the CWT Report provides nothing new.

and support services under Bylaw 16.3.1.1. The University has found no authority placing the University on notice that this type of conduct is not permissible under Bylaw 16.3.1.1 or is an extra benefit under Bylaw 16.11.2.1. To the contrary, the ACC has informed inquiring about available courses is permissible academic and counseling support services under Bylaw 16.3. (See **Exhibit 1-4**.) The Staff has indicated that it does not have any authority in support of its position.

The record also indicates that similar inquiries about course offerings were made directly by student-athletes, as well as by campus academic advisors on behalf of non-athlete students. For example, during her interview, Betsy Taylor, a campus academic advisor, recalled contacting the Department on behalf of non-athlete students to see what courses were available and to ask Ms. Crowder to come up with courses that would help students. (See FI-92 at pp. 18-19, 24-25.) Further, there are a number of emails from academic advisors demonstrating this type of conduct occurred with non-athlete students. (See **Exhibit 1-3**.) In addition, Ms. Crowder indicated that campus academic advisors would contact her about the availability of the Courses for non-athlete students. (See FI-127; **Exhibit 1-1**; Crowder Aff. Par. 4, 11; Abrams 3/9/17 letter, pp. 2-4.) In these circumstances, there was no special arrangement or extra benefit for student-athletes even if the conduct were not permissible under Bylaw 16.3.

Moreover, the limited conduct described above in no way supports an allegation that ASPSA personnel managed the Courses, leveraged their relationships with Professor Nyang'oro and Ms. Crowder, relieved student-athletes of their academic responsibilities, or caused student-athletes to enroll in the Courses at a disproportionate rate.

In addition, principles of finality and fairness bar this allegation since the Staff reviewed the same conduct charged here in the summer of 2011 and did not conclude, or even suggest to the University, the conduct was impermissible.³²

6) Recommending Grades

As its final sub-allegation in Allegation 1(b), the Staff contends that ASPSA counselors recommended grades for student-athletes in the Courses. That allegation rests solely on two

³² In the summer of 2011, the University provided NCAA Staff several emails that pertain to this sub-allegation, and during her August 29, 2011 interview, and (See **Exhibit 1-9**; **Exhibit 1-33**, p. 44; **Exhibit 1-35**, pp. 87-92, 119-122; **Exhibit 1-52**, pp. 71-74). During her September 1, 2011 interview,

(See **Exhibit 1-31**, p. 56).

statements by Professor Boxill that the Staff cites that are not grade recommendations. Moreover, one of the statements is not even related to one of the Courses in question.

One instance, which is the subject matter of Allegation 2(p), related to a course in the Department of Exercise and Sports Science. Further, in that situation, on _____, the instructor sent an email to a student-athlete with a copy to Professor Boxill indicating that the student-athlete currently had earned a C- grade in the instructor's class and identified what additional work the student-athlete could turn in in order to earn a "strong 'C'". (See **Exhibit 1-53**.) After the student-athlete turned in the additional work, Professor Boxill wrote to the instructor and merely indicated that she hoped that the additional work was "sufficient for perhaps a C+" which was consistent with what the instructor had previously indicated. (See FI-14). This is not a grade recommendation. Moreover, given that the course discussed in this email was in a completely different department, it cannot support an allegation that ASPSA personnel managed the Courses, leveraged their relationships with Professor Nyang'oro and Ms. Crowder (who had retired the prior summer), relieved student-athletes of their academic responsibilities or caused student-athletes to enroll in the Courses at a disproportionate rate.

In the other instance, which is the subject matter of Allegation 2(r), Professor Boxill stated her views on what grade a student-athlete deserved on a paper to _____.

Thus, while Professor Boxill's conduct shows poor judgment, it does not constitute an impermissible extra benefit. Moreover, this one instance does not support an allegation that ASPSA personnel managed the Courses, leveraged their relationships with Professor Nyang'oro and Ms. Crowder (who had retired the prior summer), relieved student-athletes of their academic responsibilities or caused student-athletes to enroll in the Courses at a disproportionate rate.

7) The Staff's Current Totality of the Circumstances and Undermining the Importance of a Student-Athlete's Participation in His/Her Education Theories

The Staff has asserted that the conduct listed above, even if individually not a violation of any bylaw or affirmatively permitted by Bylaw 16.3, somehow is transformed into a violation when considered collectively. As stated above, there is absolutely no support for this theory.

Similarly, in the section entitled "Level of Allegation No. 1," the Staff asserts that the conduct of ASPSA's academic counselors "undermines the importance of a student-athlete's participation in his or her own education." This new and novel theory suffers from the same failings as the

totality of the circumstances theory – there is no bylaw or other authority for it, and it involved sporadic conduct over years involving many different student-athletes and many different courses. Further, the evidence shows that the student-athletes spent many hours writing lengthy papers for the Courses. Performing academic work is the essence of participating in one's own education. The fact that an ASPSA employee helped with registration, checked on course availability, obtained the assignment or turned in the paper in connection with an occasional course does not mean the student did not participate in his or her own education.

ALLEGATION 2

2. [NCAA Division Manual Bylaws 10.1, 10.1-(c) and 16.11.2.1 (2003-04 through 2010-11)]

It is alleged that from February 2003 to July 2010, Jan Boxill (Boxill), then philosophy instructor, director of the Parr Center for Ethics, women's basketball athletic academic counselor in the Academic Support Program for Student-Athletes and chair of the faculty, knowingly provided extra benefits in the form of impermissible academic assistance and special arrangements to women's basketball student-athletes. Specifically:

- a. On _____, Boxill provided the beginning of a paper in the form of an introduction and additional written content to a student-athlete to use in an unknown course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 (_____)]
- b. On _____ Boxill provided an annotated bibliography for a student-athlete to edit and use for an unknown course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 (_____)]
- c. On _____ Boxill provided the beginning of a paper in the form of an introduction for a student-athlete to use in her AFAM 71 course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 (_____)]
- d. On _____, Boxill provided the beginning of a paper in the form an introduction and additional content to a student-athlete to use in her AFAM 6 course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 (_____)]
- e. On _____ Boxill provided the beginning of a paper in the form of an introduction and additional content to a student-athlete to use in her AFAM 5 course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 (_____)]
- f. On _____, Boxill provided a completed quiz for a student-athlete to use in a PHIL 47 course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 (_____)]
- g. On _____, after reviewing a student-athlete's incomplete paper for the course AFAM 280, Boxill added content to the student-athlete's introduction and conclusion. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 (_____)]

- h. On _____, Boxill provided the beginning of a paper in the form of an introduction and additional content to a student-athlete to use in her AFAM course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1(_____)]
- i. On _____, after reviewing a student-athlete's incomplete paper for the course AFAM 280, Boxill added content to the paper in the form of a conclusion. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 (_____)]
- j. On _____, after reviewing a student-athlete's incomplete paper, Boxill added content in the form of several additional paragraphs to use in an unknown course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1(_____)]
- k. On _____ Boxill provided the beginning of a paper in the form of an introduction and additional content for a student-athlete to use in an unknown course. [NCAA Bylaw 10.1, 10.1-(c) and 16.11.2.1 _____]]
- l. On _____ after reviewing a student-athlete's journal entries, Boxill added additional content in the form of a conclusion to one of the journal entries for an unknown course. [NCAA Bylaw 10.1, 10.1-(c) and 16.11.2.1 (_____)]
- m. On _____, after reviewing a student-athlete's incomplete paper for the course AFAM 262, Boxill added content to the paper in the form of a conclusion. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 (_____)]
- n. On _____, after reviewing a student-athlete's incomplete paper for the course AFAM 428, Boxill added content to the paper in the form of a conclusion. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 (_____)]
- o. On _____, after reviewing a student-athlete's incomplete paper, Boxill added content to the paper by providing additional quotations to use in an unknown course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1(_____)]
- p. _____, Boxill wrote to an instructor in the exercise science department and asked that the instructor provide a specific grade to a student-athlete in the course. This occurred after the conclusion of the semester. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 (_____)]
- q. On _____, after reviewing a student-athlete's incomplete paper for a psychology course, Boxill added additional content at the end of the paper. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 (_____)]
- r. On _____, in an email communication with the African and Afro-American Studies department concerning a student-athlete's paper, Boxill requested a grade to the department for the submitted work. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1(_____)]

This serves as part of the basis for the lack of institutional control allegation in Allegation No. 5.

Level of Allegation No. 2:

The NCAA enforcement staff believes a hearing panel of the NCAA Division I Committee on Infractions could determine that Allegation No. 2 is a severe breach of conduct (Level 1) because the violations involve unethical conduct and, thus, seriously undermine or threaten the integrity of the NCAA Collegiate Model. The impermissible academic assistance along with the academic arrangements also provided or were intended to provide extensive or substantial impermissible benefits. [NCAA Constitution 2.2 and Bylaws 19.1.1 and 19.1.1-(d) (2016-17)]

Involved Individual:

The enforcement staff believes a hearing panel could enter a show-cause order pursuant to Bylaw 19.9.5.4 regarding Boxill's involvement in Allegation No. 2.

Factual information on which the enforcement staff relies for Allegation No. 2:

The attached exhibit details the factual information on which the enforcement staff relies for Allegation No. 2. The enforcement staff incorporates the factual information referenced throughout this document, its exhibits and all other documents posted on the secure website.

A. UNIVERSITY'S CONCLUSIONS

On October 28, 2016, all parties appeared before the Committee on Infractions for a hearing related to the processing of this case. On November 28, 2016, the parties received a letter from the Panel that: (a) rejected the University's position that the Staff could not allege a violation for the conduct described in Subparagraph r, and; (b) reserved judgment on the question of whether the remaining information alleged in Subparagraphs a-q is outside of the statute of limitations set forth in Bylaw 19.5.11. The University notes that its core argument concerning the Statute of Limitations is included in Section II of its Response to the ANOA and the University incorporates by reference that argument here.

NCAA Bylaw 19.5.11 (Statute of Limitations) establishes a four-year statute of limitations unless there is a) "a pattern of willful violations by the institution or individual involved, which began before but continued into the four-year period," or b) there was a "blatant disregard for the Association's fundamental... extra benefit, academic or ethical-conduct bylaws." Bylaw 19.5.11. These exceptions are for the most egregious types of behavior. There is no evidence in this case of any knowing violations of NCAA rules. No one affiliated with the Department of

Athletics thought there were rules violations. The allegations in this case are charges of negligence: a failure to monitor and a lack of control.

The application of the statute of limitations in this case means that the Panel may consider no allegations that occurred before June 30, 2010, which is four years before the date of the oral Notice of Inquiry. The only allegation within this period is 2(r) on . However, Professor Boxill's conduct referenced in Allegation 2(r) did not violate NCAA rules. Therefore, there are no violations of NCAA rules within the statute of limitations.

If Professor Boxill brings forward additional evidence, the University reserves its right to address it. The University will address the underlying merits of this allegation based on the record at this time.

1. Application of Bylaw 16.11.2.1 (Extra Benefits)

The University has concluded that the information alleged in Subparagraphs a, b, d-o, and q of Allegation 2 regarding Professor Boxill providing improper academic assistance to particular student-athletes in her role as an ASPSA academic counselor is substantially correct. Professor Boxill's activities as alleged in these subparagraphs did not constitute permissible tutoring or academic support under NCAA Bylaw 16.3.1.1, constituted "special arrangement[s] by an institutional employee" that provided student-athletes with extra "benefit[s] not expressly authorized by NCAA legislation," and therefore violated Bylaw 16.11.2.1 as that legislation was articulated, enforced, and penalized at the time of the violations. As is discussed below, based on NCAA educational materials and statements made by the Staff, the NCAA would not pursue these matters under the new academic misconduct legislation, adopted as NCAA Proposal 2015-66, effective August 1, 2016.

The University disagrees that the information alleged in Subparagraph c constitutes a violation of Bylaw 16.11.2.1. The evidence shows that Professor Boxill simply gave the student-athlete a sample topic and an example of how the first paragraph should be written for a paper, and they discussed several other topics. There is no evidence that the student-athlete wrote her paper on the initial topic or used the sample paragraph in Professor Boxill's email. Further, Professor Boxill's conduct was the type of tutoring and academic support service that Bylaw 16.3.1.1 expressly permits.

The University also disagrees with the Staff that the information alleged in Subparagraph p violates Bylaw 16.11.2.1. As discussed above, the email cited by the Staff was part of an ongoing conversation. An instructor had advised Professor Boxill that if a student-athlete turned in certain work, she could raise her grade from a “C-“ to a “strong C.” (See Exhibit 1-53.) In response, Professor Boxill noted that the student-athlete was in the process of turning in the work referenced by the instructor and stated that she hoped it was sufficient to raise her grade to a “C+.” (FI-14.) Given this context, the University concludes that there was no violation of the bylaw.

As is explained below, the University believes that the NCAA has previously and correctly determined that the information alleged in Subparagraph r was not a violation.

2. Application of Bylaws 10.1 and 10.1-(c) (Unethical Conduct)

Allegation 2 asserts that Professor Boxill violated Bylaws 10.1 and 10.1-(c) by knowingly providing student-athletes with extra benefits. The University expects that, based on her interview statements, Professor Boxill will assert

The University

anticipates that if the Panel disagrees and determines that she provided extra benefits, Professor Boxill will argue that she did not violate Bylaws 10.1 or 10.1-(c) because

Bylaw 10.1-(c) requires “knowing involvement” in providing extra benefits. The greater weight of the evidence is that Professor Boxill did not knowingly violate the extra benefit provisions. Although there is no question that she knowingly supplied the academic assistance, a finding of a Bylaw 10.1-(c) violation requires that Professor Boxill knew she was violating the extra benefit provisions. The University bases its conclusion on Professor Boxill’s statements and demeanor in her interviews.

As

such, Professor Boxill’s conduct did not violate Bylaw 10.1-(c).

B. REVIEW OF THE EVIDENCE

Professor Boxill played basketball at UCLA and obtained her B.A. in 1967. She later obtained her M.A. (1975) and Ph.D. (1981) in philosophy from UCLA. Professor Boxill taught at several institutions and worked as a coach and an athletics administrator before being hired by the University in 1985 as a visiting assistant philosophy professor. Other than one year at Elon College (1987-88), Professor Boxill remained on the staff as a lecturer and then a senior lecturer from 1988 until October 2014. In October 2014, the University informed Professor Boxill that her employment was terminated.

In addition to her teaching duties, Professor Boxill took on several other roles: through ASPSA, she served as the part-time academic counselor for women's basketball from 1991 to 2011 and was an academic counselor for several other sports for part of this time; she was a public address announcer and radio color commentator for women's basketball for much of her time at the University; she directed the University's ethics center from 2006 to 2014; and she chaired the University faculty from July 1, 2011 to June 30, 2014.³³

The University, through interviews and document review, examined Professor Boxill's past work with student-athletes to assess whether rules infractions occurred. In the summer and fall of 2015, the University worked with the Staff to review more than 1.7 million emails and documents that the University collected in support of the CWT investigation. As a result of that University-initiated effort, the University disclosed a number of new emails to the Staff. The NCAA and the University conducted an additional joint interview of Professor Boxill, and the Staff added 12 new emails to the ANOA relating to this subject that remain in the Second ANOA.

Most or all of the responses below to the Subparagraphs from Allegation 2 share common features.

- Each of the emails involved a then-member of the women's basketball team.
- Fifteen of the 18 subparagraphs do not involve papers from one of the Courses.
- Except for the student-athlete involved in Subparagraph c, none of the student-athletes has been interviewed.

³³ Allegation 1 mistakenly states that Professor Boxill directed the ethics center and chaired the University faculty throughout the period from February 2003 to July 2010.

- Except for Subparagraph f (which involved a course that Professor Boxill taught), none of the course instructors were interviewed about the assistance that Professor Boxill provided.
- The final versions of the assignments referenced in Subparagraphs a-o and q were not recoverable despite thorough efforts made by the University and CWT.
- Except in connection with Subparagraph o, Professor Boxill's email folders did not contain the emails she received from the student-athletes, and her replies did not include as attachments any documents that the student-athletes sent to her in the original emails. As a result, the base versions of any documents received by Professor Boxill from the student-athletes were not available for comparison.
- Finally, in many cases, the University has referenced emails other than those cited in Allegation 1 to provide context for the communications that are cited.

Subparagraph a

On the evening of _____, then-women's basketball student-athlete _____ emailed Professor Boxill regarding two assignments that were due in English _____ the next day and provided the instructions for them. (See **Exhibit 2-1**.) Several hours later, Professor Boxill emailed the student-athlete with a subject line "Paper 2" that included the instructions for the second assignment followed by three short paragraphs of text.³⁴ (See FI-15.) Professor Boxill was not asked about this specific email in either of her interviews.

(See FI-35, pages 28-32.)

Subparagraph b

On _____, Professor Boxill sent an email to _____ relating to English _____ with the subject line "Bibliography" and that stated "Here is a biblio edit for class. Be sure to look up how she wants it. I've also attached 2 of the essays." One of the attachments to the email was entitled _____ and it contained four annotated citations followed by the statement, "You can do the websites." (See FI-11.) The metadata for the bibliography indicates that it had been created at 12:41 p.m. on _____ edited, and saved two minutes before Professor Boxill's email. (See **Exhibit 2-2**.)

³⁴ Subparagraph a alleges "Boxill provided the beginning of a paper in the form of an introduction and additional written content to a student-athlete." The University does not know what "additional written content" the Staff references, so it cannot admit or deny this portion of Subparagraph a.

(See

FI-35, pages 33-34.)

Subparagraph c

On _____, Professor Boxill emailed to then-women’s basketball student-athlete _____ with a subject line “Afam _____ – paper intro sample.” The text of the email consisted of a paragraph about _____ and appears to be the introduction for a paper about _____. (See FI-13.) Later that day and the next, Professor Boxill exchanged emails with the student-athlete in which they discussed a variety of potential ideas for the paper such as _____.

_____. (See **Exhibit 2-3**.) There is no evidence that the student-athlete wrote a paper about _____ or _____ or that she used the paragraph referenced in this subparagraph.

(See FI-35, pages 58-60.) Further, the student-athlete stated that Professor Boxill “absolutely [did] not” write “any part” of that or any other paper for her.

Subparagraph d

On _____, Professor Boxill emailed then-student-athlete _____ regarding “Afam” stating, “Here is an idea for your paper” and attaching a document that consisted of a paragraph that appears to be an introduction to a paper followed by a brief, five point outline. (See FI-16.)

(See FI-35, pages 73-75.)

Subparagraph e

At 1:46 a.m. on _____, Professor Boxill emailed then student-athlete _____ about a paper for AFAM ³⁵ stating, “Here’s a start.” followed by instructions on how to write the rest of the paper. The attachment to the email contained three paragraphs of text. (See FI-17.) Later that day, Professor Boxill advised the student-athlete that she “should be able to fill out the paper,” and the student-athlete wrote back “Ok thanks for doing it for me though and helping me out.” (See Exhibit 2-4.) A few days later, Professor Boxill and the student-athlete exchanged a longer draft of the paper that included the above paragraphs. (See FI-17 and Exhibit 2-5.) Professor Boxill was not asked about these emails.

Subparagraph f

This is the only Subparagraph that pertains to a course (Philosophy _____) for which Professor Boxill was the instructor (although a teaching assistant graded the quizzes). On _____, _____ wrote to Professor Boxill stating “my quiz i need some help” and Professor Boxill replied, “I have looked at it and it needs some help. I’ll reread it and try to help make some changes.” (See Exhibit 2-7.) A few hours later, Professor Boxill wrote “Attached – change it or fill in as you wish” and sent a 1½ page, single spaced Quiz #4 response for the student-athlete. (See FI-18.) _____ (See FI-35, pages 78-79.) The University reviewed the emails and other available records and found a number of emails relating to other students submitting their quizzes to Professor Boxill, but it could not locate any other situations where Professor Boxill modified the content of a quiz answer before she forwarded it to the teaching assistant to grade.

Subparagraph g

On _____, Professor Boxill emailed then-student-athlete _____ and _____

_____ Attached to the email is a seven-page paper with a document name of _____ (See FI-5.) The _____ Professor Boxill added is not apparent on the face of the attachment.

_____ (See FI-35, pages 79-80; FI-43, pages 100-101.)

³⁵ The email attaches a document named “_____ Afam _____ .doc.” However, the student-athlete’s transcript indicates that the course she was taking at the time was AFAM _____ – and she had not taken a course identified as AFAM _____. (See Exhibit 2-6.)

Subparagraph h

On _____, Professor Boxill emailed then-student-athlete _____ at her Yahoo email address concerning her AFAM _____ paper. The body of the email consisted of a paragraph of text and four outline points. (See FI-19.) Shortly thereafter, the student-athlete emailed Professor Boxill from her University email address stating, “Jan, I did not get the part you wrote. Did you send it to this email or my yahoo mail.” At 11:23 p.m., Professor Boxill replied, “I sent it to your yahoo account” and a minute later she re-sent the same information to the student-athlete’s University email address. (See **Exhibit 2-8.**)

(See FI-35, pages 80-81.)

Subparagraph i

On _____, Professor Boxill sent _____ a version of a _____ paper for AFAM _____.³⁶ Professor Boxill’s email stated, “The paper is good. I added a brief conclusion.” The final paragraph of the attached 11-page paper was three sentences long. (See FI-4.)

(See FI-35, page 85.)

Subparagraph j

On _____, then-student-athlete _____ emailed Professor Boxill about a paper she had for Anthropology _____ and stated, “I need to add a little more...wanted to see what you thought.” Professor Boxill replied, “I’ve attached it with some edits -- you’ll see them in bold.” The attachment is five pages long and there are three paragraphs and one sentence in bold. (See FI-20.) Professor Boxill was not asked about these emails.

Subparagraph k

On _____, _____ wrote Professor Boxill about a two-question assignment for COMP _____ concerning a movie, stating, “I just need some ideas on how i could start this paper if you could help.” Professor Boxill responded by summarizing the first question and stating, “So here is a way to proceed” followed by: (a) a paragraph of text that appears to be an introduction; (b) the statement, “You likely have to give both sides again;” (c) a “Pro” paragraph; (d) a short

³⁶ The allegation states that the mid-June email related to AFAM _____ student-athlete took that course in the spring semester and was enrolled in AFAM _____ (See **Exhibit 2-9.**) Further, other emails concerning this paper indicate that it was for AFAM _____

_____ . However, the _____ in June.

“Con” paragraph; and (e) a paragraph on “Answering the Con.” (See FI-10.)

(See FI-35, page 92.) The University could not locate the paragraph on IMDb.com or other internet sites.

Subparagraphs l and m

On _____, _____ sent Professor Boxill journals for AFAM _____ and Professor Boxill responded, “I’ve made some grammatical changes and added an ending. You will need to format it.” There were four journals attached, and the changes were not evident except that the final paragraph to the fourth journal is in a different font. (See FI-21.)

(See FI-35, pages 92-93.)

On _____ the student-athlete appears to have sent a document to Professor Boxill, who then replied, “Is there a conclusion you wanted to add to this? If so, I’ve added a last paragraph. You can keep it or delete it.” The attached 10-page document is comprised of five journals for AFAM _____; the concluding paragraph is three sentences long. (See FI-2.) Within the hour, the student-athlete emailed Professor Boxill that she had “just sent the journals to” the course instructor. (See **Exhibit 2-10**.) Professor Boxill indicated that the student-athlete was ill so she was helping her out. (See FI-35, pages 93-95.) The student-athlete participated in a women’s basketball contest on _____

Subparagraph n

On _____ Professor Boxill sent _____ an email indicating that she had “edited the grammar” but “didn’t get to the conclusion” for a paper for AFAM _____. (See **Exhibit 2-11**.)

On _____ Professor Boxill emailed the student-athlete, “Here is the paper again. I’ve added a conclusion.” The attachment included eight sentences that were not in the _____ version and instructed the student-athlete how to finish the paper. (See FI-7.)

(See FI-43, pages 58-59.) The University could not locate any emails between Professor Boxill and the student-athlete to corroborate her statement.

Subparagraph o

On _____, _____ sent Professor Boxill a draft of a paper for AFAM _____. (See **Exhibit 2-12.**) Within the hour, Professor Boxill responded, “I’ve attached your paper, I made some grammatical changes, and added some quotes if you want to use them. Also, the conclusion was good – I edited it.” (See FI-6). The attached version made some grammatical changes, inserted three quotes, and reworded the two-sentence conclusion.

(See FI-43, pages 62-64.)

Subparagraph p

Then student-athlete _____ took EXSS _____ in the fall of _____ and the instructor allowed her to make up some work. As of _____ she had turned in some, but not all, of the late work. The instructor emailed her (with a copy to Professor Boxill) that she currently had earned a “C-” and listed what additional work she needed to submit to get “a strong ‘C’”. (See **Exhibit 1-53.**) On _____ Professor Boxill emailed the instructor, noted that the student-athlete had just turned in a paper and would be submitting other work that day, and added, “I am hoping that these are sufficient for perhaps a C+ and we can get the grade changed tomorrow.” (See FI-14.) The student-athlete’s grade eventually was changed to a “C+”.

(See FI-35, pages 64-66.)

Subparagraph q

On _____, then-student-athlete _____ asked for help in wrapping up a paper for PSYC _____. Professor Boxill responded, “I’ve reworded some of the stuff at the end” and noted that the paper needed to be formatted. The attachment was four pages long. The last 4½ paragraphs of the paper are in a different font. (See FI-22.)

(See FI-35, pages 99-100.)

Subparagraph r

As explained in Section II, page 15, of the University's Response to the Amended NOA, the NCAA learned about this email in 2011 and

The Staff has repeatedly determined from 2011-13 that this email did not violate NCAA bylaws. The University asserts that those decisions are final and correct. There are no major or secondary infractions case reports, rules interpretations, official rules education or other authority notifying member institutions that an academic counselor is prohibited from engaging in such conduct. Further, there is no evidence that Professor Boxill helped former student-athlete with her paper.

(See Exhibits 1-32, page 30; 1-35, pages 46-49; 1-52, page 104.) While Professor Boxill's comment certainly was ill - advised, it was not a violation of any NCAA bylaw.

C. LEVEL OF ALLEGATION 2

The Staff asserts that Allegation 2 was a severe breach of conduct/Level I violation, because there was unethical conduct on the part of an individual that seriously undermines or threatens the integrity of the NCAA Collegiate Model including conduct by providing substantial or extensive impermissible benefits. See Bylaws 19.1.1 and 19.1.1-(d). Although the University does not condone Professor Boxill's conduct relating to the 15 items it acknowledges are violations, these infractions should be properly treated, at most, as Level III violations.

1. Prior Case Precedent

The NCAA's approach to situations where some academic assistance has been provided has evolved over time, but the most relevant recent infractions authority is the Weber State University matter, decided on November 19, 2014. In that case, an instructor assisted a number of student-athletes on tests and quizzes in varying amounts that was categorized into three groups. For the first group, the instructor allegedly completed tests and quizzes with no student-athlete involvement. For the second group, the instructor provided substantial assistance, defined as more than 50 percent assistance on tests and quizzes. For the third group, the instructor provided substantially less than 50 percent assistance on tests and quizzes. The Staff's original Notice of Allegations alleged academic misconduct with respect to the first two groups but made no allegations related to the third group, which received less than 50 percent assistance. (See Exhibit 2-13, pages 2-3.)

The Staff delivered an Amended Notice of Allegations to Weber State after AMA issued its April 16, 2014 interpretation on academic misconduct. In the amended notice, only the first group of student-athletes – those for whom the instructor allegedly completed entire assignments – were the subject of Level I violations. The student-athletes in the second group, who received more than 50% help, were subsequently found in a separate proceeding to have received Level III extra benefits. No violations were alleged in connection with the student-athletes who received less than 50% assistance. (See **Exhibit 2-13**, page 3 and fn. 7.) The conduct occurred prior to the April 16, 2014 AMA interpretation, yet that interpretation was applied. The penalty was assessed before the adoption of the new academic misconduct legislation discussed below.

Based on the Weber State University precedent, allegations arising from Professor Boxill's activities should be considered Level III violations at most. Professor Boxill provided limited assistance that typically consisted of small additions or suggestions in connection with a lengthy paper. Specifically, she provided the following assistance:

- Subparagraph a - three short paragraphs of text.
- Subparagraph b - a four citation, annotated bibliography that the student had to edit to meet the instructor's requirements.
- Subparagraph c - the University believes there is no violation, but in any event, this involves only one paragraph.
- Subparagraph d - one paragraph of text and a brief four-point outline.
- Subparagraph e - three paragraphs of text.
- Subparagraph f - some editing of a quiz response.
- Subparagraph g - two sentences in a seven-page paper.
- Subparagraph h - one paragraph of text and four outline points.
- Subparagraph i - three-sentence concluding paragraph in an 11-page paper.
- Subparagraph j - three paragraphs and one sentence in a five-page paper.
- Subparagraph k - four paragraphs of text.
- Subparagraph l - one paragraph in a six-page document.
- Subparagraph m - one paragraph in a 10-page document.
- Subparagraph n - between one and eight sentences in a 10-page paper.

- Subparagraph o - three quotes and two reworded sentences in a five-page paper.
- Subparagraph p - the University believes this allegation does not involve a violation, but in any event, this involves no assistance.
- Subparagraph q - rewording at most four and a half paragraphs in a four-page paper.
- Subparagraph r - the University believes this allegation should not be considered and, in any event, does not involve a violation.

The Staff alleged that similar limited assistance at Weber State did not violate NCAA bylaws. In that case, academic help that comprised more than 50 percent of the content on a particular assignment – less help than Professor Boxill provided here – triggered only allegations of Level III violations. The same principles should apply here and the conduct here should be treated, at most, as a Level III violation.

2. The New Rules Concerning Academic Assistance

The new NCAA rules adopted as NCAA Proposal 2015-66, effective August 1, 2016, substantially changed the rules that pertain to academic assistance. Under these new rules, now Bylaw 14.9, the Staff likely would not pursue a violation on the allegations presented here. Under the new bylaw, impermissible academic assistance, that is not a violation of the University's Honor Code, by an institutional staff member may only be found where, among other things, the assistance is substantial and not generally available to the institution's students. The University understands that the new legislation does not govern whether Professor Boxill provided extra benefits. It believes, however, that how the membership currently regulates the type of conduct that Professor Boxill engaged in is relevant to whether that conduct undermines or threatens the integrity of the NCAA Collegiate Model and, therefore, should be treated as a Level I violation.

Recent statements by the Staff confirm the conclusion that the assistance provided by Professor Boxill would not rise to the level of impermissible academic assistance since the assistance would likely not be characterized as "substantial." A May 13, 2016, NCAA Educational Column and an October 13, 2015, Draft Questions and Answers and a Memorandum from the Vice President of Enforcement concerning NCAA Division I Proposal 2015-66 both stated, in part:

Some fear that the enforcement staff will overreach and allege violations when schools provide ordinary assistance to college athletes who need academic support. The enforcement staff is sensitive to this concern and has no interest in discouraging appropriate and generous academic support for college athletes.

To be very clear, the enforcement staff will not pursue allegations where appropriate personnel provide...edits to a research paper. These and other similar supports advance the collegiate model and the educational interests of college athletes. The enforcement staff will not bring allegations in these instances.

In contrast, writing a paper for a college athlete or sharing exam answers are not acceptable supports and are not permitted by Bylaw 16.3. These are substantial benefits not generally available to students and do not serve the interests of the college athlete. They are also unfair to eligible competitors who work hard to comply with applicable educational requirements. Accordingly, after working with the school and considering all relevant facts, the enforcement staff would consider bringing an allegation in this context. The enforcement staff would also look carefully at the individuals involved and the impact of the misconduct when weighing whether the violation might be Level I, II or III.

(See **Exhibit 2-14.**)

The chair of the Staff's academic integrity group also has addressed the scope of conduct covered by the new impermissible academic assistance legislation. She explained that only cases involving "substantial" assistance would be pursued as "impermissible academic assistance" under the proposed legislation, rather than as "extra benefits." When asked what "substantial" means, the chair of the Staff's academic integrity group replied:

That's sort of the million-dollar question. We're not looking for the close call. We're not looking for a paragraph added. We're not looking for heavy editing. We're looking for an entire paper has been done for someone. We're looking where someone got the answer key to an entire exam. We're looking at things that make a big difference for that class. (See **Exhibit 2-15** [emphasis added].)

The fact that Professor Boxill's conduct would not even constitute a violation today belies the Staff's position that Professor Boxill's conduct "seriously undermine[s] or threaten[s] the integrity of the NCAA Collegiate Model" and, therefore, constitutes a Level I violation under Bylaw 19.1.1. Allegation 2 comprises, at most, Level III violations.

ALLEGATION 3

3. [NCAA Division I Manual Bylaws 10.1, 10.1-(a) and 19.2.3 (2014-15)]

It is alleged that in 2014 and 2015, Deborah Crowder (Crowder), former student services manager in the African and Afro-American Studies department, violated the NCAA principles of ethical conduct when she failed to furnish information relevant to an investigation of possible violations of NCAA legislation when requested to do so by the NCAA enforcement staff and institution. Specifically, Crowder refused to participate in an interview with both the institution and enforcement staff despite at least three requests for her participation.

Level of Allegation No. 3:

The enforcement staff believes a hearing panel of the NCAA Division I Committee on Infractions could determine that Allegation No. 3 is a severe breach of conduct (Level I) because the violation involves individual unethical conduct and a failure to cooperate in an enforcement investigation. Participation in an enforcement investigation is critical to the common interests of the NCAA's membership. [NCAA Bylaws 19.1.1 and 19.1.1-(c) (2016-17)]

Involved Individual:

The enforcement staff believes a hearing panel could enter a show-cause order pursuant to Bylaw 19.9.5.4 regarding Crowder's involvement in Allegation No. 3.

Factual information on which the enforcement staff relies for Allegation No. 3:

The attached exhibit details the factual information on which the enforcement staff relies for Allegation No. 3. The enforcement staff incorporates the factual information referenced throughout this document, its exhibits and all other documents posted on the secure website.

A. UNIVERSITY'S CONCLUSION

The University agrees that Deborah Crowder initially declined to interview with the Staff and University counsel on several occasions and, thereby, failed to timely furnish information relevant to an investigation of possible violations of NCAA legislation. However, on March 9, 2017, Ms. Crowder submitted an affidavit and a letter from her attorney that may be considered her response to this Allegation and on May 10, 2017 she submitted to a more than five-hour interview with the Staff, University officials, and involved party's counsel. The University takes a neutral position on the charges against Ms. Crowder.

B. REVIEW OF THE EVIDENCE

Ms. Crowder retired from the University in September 2009, and she has not been under the University's control or direction since that time. However, the University encouraged Ms. Crowder (directly and through counsel) to consent to interviews in prior investigations of the Department, as well as the NCAA investigation. These efforts include a late summer 2011 visit to her home by the Staff and the then-University General Counsel to request an interview. In August 2013, Chancellor Carol Folt invited Ms. Crowder to meet with her or a representative of her office. Through her attorney at that time, Ms. Crowder declined that request. (See Exhibit 3-1.)

Ms. Crowder refused to cooperate in any review of the Department's affairs until February 2014. The University, in conjunction with the local District Attorney (who oversaw the criminal investigation of matters relating to the Department), arranged through Ms. Crowder's legal counsel her participation in the CWT investigation of anomalous courses.³⁷

Ms. Crowder was not an institutional staff member at the time of the Staff's 2014 or 2015 requests for an interview with her. (See FI-49-FI-51). Specifically, the Staff communicated with Ms. Crowder's attorney via phone and email on or about July 17, 2014, to request an interview. On July 22, 2014, Ms. Crowder's attorney indicated that Ms. Crowder had "no desire to be subjected to any further interviews." On April 20, 2015, the Staff sent a letter directly to Ms. Crowder, wherein the Staff again requested an interview and advised Ms. Crowder of the Staff's next steps should she decline to submit to an interview. Ms. Crowder did not respond.

As noted above, on March 9, 2017, Ms. Crowder, through counsel, submitted a letter and an affidavit to the Staff providing a number of facts related to Allegation 1 and indicating that Ms. Crowder was considering whether to further cooperate. On May 10, 2017, Ms. Crowder participated in a more than five-hour interview and answered questions from all involved parties, including extensive questioning by the Staff.

The University does not have any additional information pertinent to Ms. Crowder's failure to cooperate.

³⁷ As explained above, the University objects to the use of the statements attributed to and conclusions reached about Ms. Crowder in the CWT Report because they fail to meet the standard of credible information that is required by NCAA Bylaw 19.7.8.3 to find violations. In any event, her direct testimony on the record in this proceeding is the best evidence with respect to the subject matter of this proceeding.

C. LEVEL OF THE VIOLATION

The University acknowledges that former institutional staff members have an “affirmative obligation” to cooperate and assist the University and Staff in “furthering the objectives of the Association and its infractions program” (Bylaw 19.2.3) and, further, that a “failure to cooperate in an NCAA enforcement investigation” is specifically identified in Bylaw 19.1.1-(c) as a Level I, Severe Breach of Conduct. The University takes no position on whether there has been a violation of these bylaws in light of Ms. Crowder’s recent appearance and lengthy interview in this matter. Likewise, the University takes no position on the level of any violation, inasmuch as Ms. Crowder is no longer an institutional staff member, and the effect of her conduct is indeterminable. The University is confident that the hearing panel, in determining whether such conduct constitutes a Level I, Severe Breach of Conduct, violation, will appropriately weigh Ms. Crowder’s initial refusal to participate and her recent participation in the context of her position as a former institutional staff member.

ALLEGATION 4

4. [NCAA Division I Manual Bylaws 10.1, 10.1-(a) and 19.2.3 (2014-15)]

It is alleged that in 2014 and 2015, Dr. Julius Nyang'oro (Nyang'oro), former professor and chair of the African and Afro-American Studies department, violated the NCAA principles of ethical conduct when he failed to furnish information relevant to an investigation of possible violations of NCAA legislation when requested to do so, by the NCAA enforcement staff and institution. Specifically, Nyang'oro refused to participate in an interview with both the institution and enforcement staff despite at least five requests for his participation.

Level of Allegation No. 4:

The enforcement staff believes a hearing panel of the NCAA Division I Committee on Infractions could determine that Allegation No. 4 is a severe breach of conduct (Level 1) because the violation involves individual unethical conduct and a failure to cooperate in an enforcement investigation. Participation in an enforcement investigation is critical to the common interests of the NCAA's membership. [NCAA Bylaws 19.1.1 and 19.1.1-(c) (2016-17)]

Involved Individual:

The enforcement staff believes a hearing panel could enter a show-cause order pursuant to Bylaw 19.9.5.4 regarding Nyang'oro's involvement in Allegation No. 4.

Factual information on which the enforcement staff relies for Allegation No. 4:

The attached exhibit details the factual information on which the enforcement staff relies for Allegation No. 4. The enforcement staff incorporates the factual information referenced throughout this document, its exhibits and all other documents posted on the secure website.

A. UNIVERSITY'S CONCLUSION

The University agrees that the information contained in this allegation is substantially correct. The institution acknowledges that former professor and chair of the Department Dr. Julius Nyang'oro declined to interview with the Staff and the University and, thereby, failed to furnish information relevant to an investigation of possible violations of NCAA legislation.

B. REVIEW OF THE EVIDENCE

Professor Nyang'oro resigned his position as Chair of the Department on August 30, 2011, and retired from the University in the summer of 2012. He has not been under the University's control or direction since that time. However, the University encouraged Professor Nyang'oro (directly and through counsel) to cooperate and consent to interviews in prior investigations of the Department, as well as the current NCAA investigation. Though he participated in a wide-ranging interview in 2011 while still a University employee, Professor Nyang'oro refused to further cooperate after his departure until spring 2014. At that time, the University, in conjunction with the local District Attorney (who oversaw the criminal investigation of matters relating to the Department), arranged through Professor Nyang'oro's legal counsel his participation in the CWT investigation of the Courses.³⁸

Professor Nyang'oro was not an institutional staff member during the NCAA's and University's multiple attempts to interview him during the current investigation. (See FI-52-FI-55). Specifically, the Staff communicated with Professor Nyang'oro's attorney via email on July 23, 2014 and on July 25, 2014, to request an interview of Professor Nyang'oro. The attorney responded that Professor Nyang'oro would "not be available for further interviews." Between August 2014 and January 2015, outside counsel for the University attempted to contact

³⁸ As noted above, the University objects to the use of statements attributed to and conclusions reached about Professor Nyang'oro in the CWT Report because they fail to meet the standard of credible information required to make findings of violations per NCAA Bylaw 19.7.8.3.

Professor Nyang'oro's attorney on six occasions and left messages. Professor Nyang'oro's attorney never responded. On April 6, 2015, the Staff sent a letter to Professor Nyang'oro (via his attorney), wherein the Staff again requested an interview and advised him of the steps that the Staff would take if he declined to submit to an interview. Neither Professor Nyang'oro nor his attorney responded to the Staff's April 6, 2015 letter. The University does not have any additional information pertinent to Professor Nyang'oro's failure to cooperate.

C. LEVEL OF THE VIOLATION

The University acknowledges that former institutional staff members have an "affirmative obligation" to cooperate and assist the University and the Staff in "furthering the objectives of the Association and its infractions program" (Bylaw 19.2.3) and, further, that a "failure to cooperate in an NCAA enforcement investigation" is specifically identified in Bylaw 19.1.1-(c) as a Level I, Severe Breach of Conduct. The University takes no position on the level of this allegation inasmuch as Professor Nyang'oro is no longer an institutional staff member, and the effect of his conduct (refusing to interview) is indeterminable. The University is confident that the Panel, in determining whether such conduct constitutes a Level I, Severe Breach of Conduct, violation, will appropriately weigh Professor Nyang'oro's refusal to participate in the context of his position as a former institutional staff member.

ALLEGATION 5

5. [NCAA Division I Manual Constitution 2.1.1, 2.8.1 and 6.01.1 (2002-03 through 2010-11)]

It is alleged that the scope and nature of the violations set forth in Allegation Nos. 1 and 2 demonstrate that from the 2002 fall semester and continuing through the 2011 summer semester, the institution failed to exercise institutional control and failed to monitor the conduct and administration of its athletics programs. Specifically:

- a. Related to Allegation No. 1, the institution did not identify and investigate courses offered by the African and Afro-American Studies (AFRI/AFAM) department or athletics' use of those courses. When individuals brought concerns to the attention of the leaders on campus and within athletics, those leaders had multiple opportunities to investigate the maintenance and administration of AFRI/AFAM courses and student-athletes' use of the courses. The institution failed to exert control when it did not recognize and sufficiently investigate these practices. Both campus and athletics department administrators' reactions and responses to those opportunities were inadequate and ineffective, which allowed

the violations in Allegation No. 1 to occur and to continue unabated for multiple years.

Further, the institution did not demonstrate control when it failed to provide adequate guidance, rules education and supervision to institutional representatives employed with Academic Support Services for Student-Athletes (ASPSA). These failures allowed the violations in Allegation No. 1 involving ASPSA to occur and to go unchecked for multiple years. [NCAA Constitution 2.1.1, 2.8.1 and 6.01.1 (2002-03 through 2010-I I)]

- b. Related to Allegation No. 2, the institution failed to control and monitor the activities of Jan Boxill (Boxill), then philosophy instructor, director of the Parr Center for Ethics, women's basketball athletics academic counselor in ASPSA and chair of the faculty. Although employed by ASPSA, Boxill conducted her athletics academic advising activities largely in the philosophy department. Despite concerns expressed by some at the institution that Boxill's relationships with the women's basketball student-athletes may have been too close, the institution did not monitor Boxill or determine whether her conduct violated institutional rules or NCAA bylaws. As a result, Boxill provided extra benefits in the form of impermissible academic assistance to women's basketball student-athletes over multiple years. [NCAA Constitution 2.1.1, 2.8.1 and 6.01.1 (2002-03 through 2010-11)]

Level of Allegation No. 5:

The NCAA enforcement staff believes a hearing panel of the NCAA Division I Committee on Infractions could determine that Allegation No. 5 is a severe breach of conduct (Level I) because the violations seriously undermine or threaten the integrity of the NCAA Collegiate Model and because lack of institutional control violations are presumed to be Level L [NCAA Bylaws 19.9.1 and 19.1.1-(a) (2016-17)]

Involved Individual(s):

None.

Factual information on which the enforcement staff relies for Allegation No. 5:

The attached exhibit details the factual information on which the enforcement staff relies for Allegation No. 5. The enforcement staff incorporates the factual information referenced throughout this document, its exhibits and all other documents posted on the secure website.

Specific to Allegation Nos. 1 through 5:

- a. Please indicate whether the information contained within these allegations is substantially correct and whether the institution and involved individuals identified in these allegations believe violations of NCAA legislation occurred. Submit materials to support your response.

- b. If the institution and involved individuals believe NCAA violations occurred, please indicate whether there is substantial agreement on the level of the violation. Submit materials to support your response.
- c. Please indicate whether the factual information is substantially correct and whether the institution and involved individuals have additional pertinent information and/or facts. Submit facts in support of your response.

A. UNIVERSITY'S CONCLUSION

The University incorporates by reference all procedural and jurisdictional arguments it presented to the Panel in connection with the October 28, 2016, hearing.

This allegation asserts that the University failed to exercise institutional control and failed to monitor conduct in connection with Allegations 1 and 2 in three ways.

The Staff first alleges in subparagraph 5-a that the University's academic leaders did not timely identify and sufficiently investigate the "maintenance and administration" of the Courses, which allowed the Courses to be used by student-athletes for additional years. This aspect of the allegation lacks merit for several reasons. Initially, the NCAA membership has not adopted legislation that governs or regulates the performance of academic job responsibilities by academic leaders, faculty members or staff employed outside of the athletics department. Further, as is discussed earlier, NCAA legislation does not govern the structure, content, or administration of courses that academic departments offer a position that the NCAA itself took in court filings in the McCants lawsuit. (See **Exhibit 1-6**.) Finally, as discussed in detail earlier, the structure, content, and administration of the Courses was the same for all students.

As explained in Section II of the University's Response to the ANOA and in this response to Allegation 1, the academic irregularities relating to the Courses – significant as they were – presented failures of academic administration, not conduct that violates NCAA bylaws. As result, the maintenance and administration of the Courses and the duty to identify and investigate the Courses presented academic matters – not conduct that violates NCAA bylaws. Without an underlying bylaw violation, there can be no violation of NCAA Constitution 2.1.1 and 6.01.1, which require that institutions control their athletics programs' compliance with NCAA legislation, or of 2.8.1 of the Constitution, which requires that institutions monitor their athletics programs to ensure their compliance with NCAA legislation. The Staff's efforts to bring the conduct within the scope of these provisions by making a passing reference to leaders "within

athletics” not timely investigating the Courses is without merit. Athletics had no authority over the Courses.

The Staff next alleges in subparagraph 5-a that the University failed to properly provide guidance, education, and supervision to ASPSA personnel and that those failings caused the violations in Allegation 1 to go unchecked for multiple years. The allegation fails for several reasons, all of which arise out of the lack of any underlying violation.

- First, ASPSA had no authority over the way Nyang’oro and Ms. Crowder maintained and administered the Courses and no additional guidance, education, or supervision of ASPSA would have affected Professor Nyang’oro’s and Ms. Crowder’s conduct.
- Second, as is detailed earlier, the evidence does not support the Staff’s claim that ASPSA was managing material aspects of the Courses, so the guidance, education, or supervision of ASPSA is irrelevant to this issue.
- Third, as is detailed earlier, NCAA bylaws only required that the Courses be generally available to students, which they were. Additional guidance, education, or supervision of ASPSA would have only reinforced that student-athletes were free to take the Courses and that NCAA bylaws do not require proportional use.
- Fourth, as is detailed earlier, NCAA bylaws do not restrict student-athletes from taking courses that award generous grades in an effort to retain their eligibility if the courses are available to all students, which the Courses were. Additional guidance, education, or supervision of ASPSA would have reinforced the student-athletes’ ability to use the Courses for this purpose.
- Fifth, as is detailed earlier, most of the six types of conduct alleged in Allegation 1(b) are permissible under NCAA Bylaw 16.3.1.1 and the evidence does not support the Staff’s characterization of the remaining conduct. Therefore, additional guidance, education, and supervision of ASPSA would have reinforced -- not stopped -- the conduct.

Moreover, it is worth noting that the University followed the National Association of Academic Advisors (NAAC) best practices by having the ASPSA academic counselors report outside of athletics and receive regular rules education concerning their duties and responsibilities.

Finally, the Staff alleges in subparagraph 5-b that Professor Boxill was able to provide extra benefits in the form of impermissible academic assistance over a number of years due to a failure to monitor or control her activities. The University contends that the conduct alleged in Allegation 2 is untimely. As a result, the failure to monitor and lack of control over Professor Boxill’s conduct is likewise untimely. If the Panel disagrees, the University acknowledges that it failed to adequately monitor Professor Boxill, an ASPSA academic counselor, whose service as

a faculty member and in other roles on campus raised important compliance issues. This failure to monitor contributed to her providing extra benefits in the 15 instances the University agrees were violations. It does not, however, mean that the University lacked institutional control in connection with Professor Boxill's conduct. The University had processes and procedures in place that pertained to ASPSA personnel and to the amount of assistance that they could provide to student-athletes on academic work. The mere fact that Professor Boxill provided excessive assistance on multiple occasions does not establish a lack of institutional control.

B. REVIEW OF THE EVIDENCE

1. Academic Leaders Not Identifying and Investigating the Courses in a Timely Manner

The University has recognized and acknowledged that it failed to exercise proper academic oversight of the Department, which led to students (not just student-athletes) taking the Courses over many years.³⁹ The University has corrected these failings. They do not, however, present NCAA lack of institutional control or failure to monitor rules violations that are punishable under NCAA Constitution 2.1.1, 2.8.1 and 6.01.1. Rather, the issues pertaining to the oversight of the Department and the Courses are properly within the province of the University, subject to review by its accrediting agency, SACSCOC. The University made lengthy submissions to SACSCOC, underwent site visits and reviews by SACSCOC and was placed on probation by SACSCOC. (See **Exhibit 1-7.**) Following its review of the University's monitoring report and the report of the visiting team, in June 2016, the SACSCOC Board of Trustees removed the University from probation and determined that the University would maintain its accreditation.

³⁹ A confluence of factors led to the Courses not being discovered sooner. The Courses were isolated in a single academic department and offered by a single professor. At the time the Courses were offered, the Department was one of more than 40 academic departments in the College of Arts & Sciences, and the Department, for reasons that are now corrected, was not subject to the same reviews as other academic departments. At the time of the conduct, the University had a policy requiring an external review of each department's curriculum every five years, but that policy review only applied to departments that had a graduate program. The Department did not offer graduate courses. Thus, the Courses were not reviewed as they would have been had the Department offered graduate courses. In addition, the University tracked whether faculty members were teaching full course loads, but not whether they taught too many courses. If course loads beyond the minimum requirements had been tracked, the number of independent study courses in the Department would have surfaced as an issue. The five-year review that applies to faculty did not apply to department chairs during the time of the conduct in issue, which meant that Professor Nyang'oro's effectiveness as a faculty member and as Chair was not reviewed. It should also be noted that although the Courses seem to be great in number, they accounted for a miniscule fraction of the total enrollments. Between the fall 1989 and the summer 2011, there were 3.695 million course enrollments in the College of Arts & Sciences. The registration in the Courses denominated as lecture courses but taught as independent studies was 4105 and there were 2,702 enrollments in independent study courses in the Department, many of which were legitimate. Thus, the total possible enrollments in irregular class enrollments was 6,807, or 0.18 percent of all enrollments in the College of Arts & Sciences.

The structure, content, and administration of the Courses are core academic issues that are not regulated by NCAA legislation. From an NCAA perspective, all that is relevant to the underlying allegations is that the Courses were generally available, which they were. Likewise, NCAA legislation does not regulate the obligation of member institutions to assess or investigate the structure, content, or administration of their academic courses. As a consequence, the University's failure to timely identify and investigate issues relating to the content, structure, and administration of the Courses does not present issues regulated by NCAA bylaws.

2. The Alleged Failure to Provide Guidance, Rules Education and Supervision to ASPSA Counselors

The University acknowledges that many functions of academic support units like ASPSA are subject to University and NCAA oversight. ASPSA's alleged failures related to the Courses, however, are not among them.

The Staff alleges that the University failed to provide adequate guidance, rules education and supervision to ASPSA employees, and this failure led to the conduct identified in Allegation 1 continuing for multiple years. This contention lacks merit for a number of reasons.

At the outset, if an academic department's operations, course offerings, enrollment in, and work done are not matters regulated by the NCAA's constitution and bylaws – and they are not – then neither are the training and supervision of University employees with respect to those issues. Whether courses were sufficiently rigorous, whether classroom attendance was or should have been required, whether independent study courses are appropriate parts of a university curriculum—are core issues of academic judgment that are made by the University's faculty and administrative leadership. The ASPSA academic counselors reasonably believed that the Courses were faculty approved, had academic rigor, and were available to all students on campus.

Additionally, an academic support unit such as ASPSA does not have the authority to second-guess the academic judgments of University academic departments and faculty, regardless of their training and supervision. When a University academic department offers a particular course, academic counselors, academic advisors, and tutors properly may assume that the course is appropriate and suitable for students with whom they work. Where a course proves not to meet a university's standards, that academic irregularity does not reflect a failure under

NCAA legislation to monitor or control the institution's training of or supervision over academic counselors, academic advisors and tutors.

To the extent that the Staff is alleging that a lack of guidance, education, or supervision of ASPSA caused:

- (a) ASPSA academic counselors to manage material aspects of the Courses, the evidence does not support the claim that ASPSA academic counselors engaged in such conduct;
- (b) student-athletes to disproportionately enroll in the Courses, NCAA bylaws do not prohibit disproportional enrollment; or
- (c) student-athletes to take the Courses in an effort to improve their GPAs or retain their eligibility, NCAA bylaws do not prohibit student-athletes from engaging in such conduct.

Accordingly, any alleged lack of guidance, education or supervision of ASPSA academic counselors did not cause the underlying conduct. Similarly, to the extent the Staff is claiming that the alleged lack of guidance, education, or supervision caused ASPSA personnel to engage in the six types of conduct alleged in Allegation 1(b) over several years, as is described on pages 40 to 52, the conduct alleged by the Staff is permissible under Bylaw 16.3.1.1 or is not supported by the evidence. Thus, again, any alleged lack of guidance, education or supervision did not cause the underlying conduct to continue. That being the case, there can be no finding of a failure to monitor or a lack of institutional control.

3. Failure to Monitor Professor Boxill

The allegations related to Professor Boxill's conduct present issues different from those raised by the Courses. Of the 18 subparagraphs of Allegation 1, seven (Subparagraphs a, b, f, j, k, p, and q) relate to courses in other academic departments. Eight others (Subparagraphs d, e, g, h, l, m, o, and r) relate to courses that the Department offered that were not alleged to be improper. Only three (Subparagraphs c, i, and n) arise from work related to the Courses – and Professor Boxill's alleged assistance on those papers is unrelated to the nature of the Courses. Thus, the University's alleged failure to monitor or control Professor Boxill's conduct presents issues separate and distinct from any alleged failure of the University leadership to timely identify and investigate the Courses or to provide guidance, education, or supervision to ASPSA relating to the Courses.

The University acknowledges that Professor Boxill engaged in the conduct alleged in Allegation 2, subparagraphs a, b, d-o, and q and that it should have done more to monitor Professor Boxill's activities as an ASPSA academic counselor. Professor Boxill was an unconventional member of the ASPSA staff.

(See FI-41, pages 45-46; FI-43, page 19; FI-47, page 43; FI-83, pages 39-40.)

(See FI-40, page 31; FI-47, pages 42-43; FI-43, page 19; FI-83, pages 39-40.)

(See FI-36, pages 15-18; FI-41, pages 41-46, 48; and FI-42, pages 34, 45-48.) The University's insufficient monitoring of Professor Boxill's conduct as an ASPSA academic counselor contributed to the acknowledged violations referenced in Allegation 2, Subparagraphs a, b, d-e, and g-q.⁴⁰

There is no evidence to support a finding, however, that a lack of institutional control caused Professor Boxill's conduct. The University had policies and procedures in place that limited the amount of academic assistance that ASPSA personnel were supposed to provide to student-athletes. (See **Exhibit 5-1**.) The violations occurred, in part, because the University failed to monitor Professor Boxill's compliance with these policies and procedures – not because there were no policies and procedures.

As noted above, the statute of limitations bars allegations that occurred before June 30, 2010, which is four years before the date of the oral Notice of Inquiry. The only allegation within this period is 2(r) on . Because Professor Boxill's conduct referenced in Allegation 2(r) did not violate NCAA rules, there are no violations of NCAA rules regarding the failure to monitor Professor Boxill's conduct within the statute of limitations.

⁴⁰ The violation alleged in Subparagraph f of Allegation 2 relates to Professor Boxill's conduct as an instructor – not her role as an ASPSA academic counselor, and, therefore, is not within the scope of Allegation 5.

C. LEVEL OF ALLEGATION 5

As explained above, the NCAA constitution and bylaws and the record do not support the alleged lack of institutional control and failure to monitor allegations with respect to Allegation 5(a) which deals with the University's failure to timely identify and investigate the Courses and ASPSA's alleged violations of bylaws due to a lack of guidance, education, or supervision.

If the Panel rejects the University's arguments on the statute of limitations and finds a failure to monitor Professor Boxill's activities as an ASPSA academic counselor, the severity of such a violation would not rise above Level II. Under Bylaw 19.1.2-(b), failure to monitor violations are "presumed Level II" violations absent proof that the failure was "substantial or egregious." The ANOA does not contain evidence of that kind. Here, any failure to monitor involved only one employee. That employee was a respected, full-time faculty member and served for a period of time as the director of the ethics center at the University. Professor Boxill was an expert in the field of sports ethics, the author of multiple books, articles, and presentations on the subject. She was exactly the kind of person universities routinely trust to educate their students.

In addition, Professor Boxill provided relatively modest assistance in each instance identified in Allegation 2. The degree of academic help went beyond the University's expectations for an academic counselor, and many of those instances violated NCAA rules at the time they occurred. However, in deciding egregiousness of the conduct for purposes of the appropriate level of the violation, it is relevant that the NCAA declined to pursue as violations similar levels of assistance in the 2014 Weber State matter, and it treated somewhat greater levels of assistance as Level III extra benefit violations. (See **Exhibit 2-13**, page 3 and fn. 7.) The Staff has provided no evidence to justify treating Professor Boxill's academic help more severely than the conduct in Weber State.

Further, under the rules effective on the date of this Response, Professor Boxill's allegedly impermissible assistance would not be a violation at all. As explained in the University's response to Allegation 2, an NCAA Educational Column and Question and Answer document describing the recent legislative changes and statements made by the Staff show that Professor Boxill's conduct would not be a violation under these NCAA rules adopted as NCAA Proposal 2015-66. Under these circumstances, any failure to monitor the person who provided such

assistance cannot reasonably be “substantial or egregious” or otherwise justify a Level I violation.

Finally, the Staff has cited Bylaw 19.1.1(a) to support its position that the alleged violation should be treated as a Level I violation. Bylaw 19.1.1(a) requires a finding of a lack of institutional control. As is stated above, there was only a failure to monitor, not a lack of institutional control. As such, Bylaw 19.1.2(b) controls the level of the violation.

CONCLUSION

As set forth above, the record in this case does not support the existence of the bylaw violations set forth in Allegations 1 and 5(a). That absence of bylaw violations is confirmed by the history of this case. As noted above, in 2011, 2012 and 2013, the Staff decided not to allege any violations of any kind relating to these Courses, despite knowing the material facts about them. AMA approved of the Staff’s determinations that there were no bylaw violations in 2013. The NOA did not charge any ethical conduct violations related to the Courses. The Staff dropped the extra-benefit violations allegations as to the University in the April 25, 2016, Amended Notice of Allegations.

After the Panel’s decision on November 28, 2016, the Staff issued the Second ANOA on the same factual record without doing any additional investigation, interviews or review of documents. Allegations that were taken out after careful deliberation were added back, not based on anything new in the record or on any additional investigation. The only change to the record since November 28 is that Ms. Crowder has submitted her response and affidavit and has provided testimony, all of which reinforce the very reasons that supported the Staff’s decision to drop the extra benefit charges in the ANOA.

This history establishes that the facts asserted in Allegation 1 do not fit within any NCAA bylaw, case precedent, interpretation, official rules education or other authority. The Panel must acknowledge the limits of the bylaws and their lack of applicability in the same manner as the Staff previously concluded. The Panel should not apply new and novel standards to penalize the University based on rules that did not exist when the conduct in question took place.

Public commentary and reports ignore the fact that it is NCAA member schools who determine what they regulate through the proposal, adoption and amendment of NCAA bylaws, not the

NCAA's enforcement and infractions processes. Legislative and procedural barriers that previously prevented the NCAA from punishing schools for academic issues have been removed. NCAA member institutions accomplished this in the only appropriate manner by revising our regulatory rules on April 28, 2016 by adopting Proposal 2015-66. The resulting new bylaws specifically require all member schools to adopt and enforce comprehensive policies related to an expanded range of academic areas. The new regulatory standards became effective August 1, 2016 – but do not apply to the many cases and determinations that precede that date, including this case.

The Panel can also rest assured that the academic irregularities which this proceeding has examined have been appropriately addressed by the University and its academic accreditor at extraordinary cost and effort by the University. The University takes seriously its obligations to comply with NCAA bylaws, but fundamentally believes that the matters at issue here were of an academic nature that do not implicate the NCAA bylaws in the manner alleged in the Second ANOA.

D. Request for Supplemental Information.

1. Provide mailing and email addresses for all necessary parties to receive communications from the hearing panel of the NCAA Division I Committee on Infractions related to this matter.

Please direct all communications from the hearing panel to the University's outside counsel for this matter:

Rick Evrard
revrard@bsk.com

Bond, Schoeneck & King, PLLC
7500 College Boulevard, Suite 910
Overland Park, Kansas 66210

2. Indicate how the violations were discovered.

See the Introduction and responses to Allegations 1, 2 and 5 of the University's Response.

3. Provide a detailed description of any corrective or punitive actions implemented by the institution as a result of the violations acknowledged in this inquiry. In that regard, explain the reasons the institution believes these actions to be appropriate and identify the violations on which the actions were based. Additionally, indicate the date that any corrective or punitive actions were implemented.

The University's January 15, 2015, annual report to the Committee on Infractions contains a detailed examination of the University's current compliance practices and the series of corrective actions that are pertinent to both the University's 2012 infractions matter and the current infractions case.⁴¹ The report includes a summary of the University's implementation of significant changes and/or enhancements to: Academic Support Program for Student-Athletes (ASPSA) policies and procedures; the hiring, training and supervision of ASPSA tutors; tutor, student-athlete and staff rules education; and other programs put in place by the University to ensure academic integrity. Further, the report details significant restructuring and growth in the Athletics Compliance Office and the ongoing efforts of the compliance staff to educate and monitor all aspects of NCAA compliance.

Specific examples of the University's corrective actions and its efforts to monitor, educate and enhance the ASPSA program include:

- The appointment of a new Director of ASPSA (Michelle Brown) and the removal of individuals who formerly oversaw the program. The new director has appropriate credentials and background related to higher education and advising.
- In conjunction with the appointment of the new director, ASPSA began reporting directly to University Provost Jim Dean, UNC's chief academic officer, instead of the College of Arts and Sciences.
- Centralizing all ASPSA operations and counselors to a single facility.
- Replacing a dotted-line relationship by designating a senior associate athletics director as a liaison with the ASPSA and the Office of Undergraduate Admissions to provide

⁴¹ The University was previously advised by the Office of the Committee on Infractions (OCOI) to hold the January 15, 2015, report – the last report required under the probationary penalty in the prior case – due to the present matter. Inasmuch as the report contains a comprehensive evaluation of the information central to this Supplemental Information request, the report is provided as **Exhibit D-1** and is being submitted to the OCOI with the University's Response to the Second ANOA. Due to the substantial nature of the materials cited as "Appendices," those records and documents are not provided as part of this exhibit but can be accessed through the OCOI.

contextual information related to compliance with the clear understanding that academic functions are independent of athletics.

- Eliminating the ASPSA student mentoring program.
- Beginning in 2014, the University began offering reimbursement for ASPSA personnel and counselors to attend national meetings concerning industry standards, best practices, NCAA rules, etc. to encourage education and participation in those opportunities. Participation has increased each academic year since the commitment to funding professional development opportunities was made. See Exhibit D-2.
- The Provost's Office and Faculty Athletics Representative (FAR) began hosting regular meetings including the Department of Athletics, Registrar and ASPSA to improve communication and coordination. The "CARE" meeting (Compliance, Academics, Registrar for Excellence) facilitates discussion between key parties regarding current national topics, NCAA rule interpretations, educational scenarios, and processes that cross over several divisions. The meeting is chaired by the FAR. Meeting agendas and sample educational materials shared during those meetings are provided as **Exhibit D-3.**
- Launching the Academic Processes for Student-Athletes website (www.apsa.unc.edu). The website provides detail of the Student-Athlete Academic Initiative Working Group's review and analysis of 21 comprehensive processes related to student-athletes and academics at the University. One such process, Process 7 – Academic Support for Student-Athletes, includes guiding principles for the role(s) and conduct of ASPSA employees.

4. Provide a detailed description of all disciplinary actions taken against any current or former athletics department staff members as a result of violations acknowledged in this inquiry. In that regard, explain the reasons the institution believes these actions to be appropriate and identify the violations on which the actions were based. Additionally, indicate the date that any disciplinary actions were taken and submit copies of all correspondence from the institution to each individual describing these disciplinary actions.

Inasmuch as there were no NCAA rules violations by a member of the athletics department staff, the University did not take any disciplinary actions against any current or former athletics department staff member related to this matter.

5. Provide a short summary of every past Level I, Level II or major infractions case involving the institution or individuals named in this notice. In this summary, provide the date of the infractions report(s), a description of the violations found by the Committee on Infractions/hearing panel, the individuals involved, and the penalties and corrective actions. Additionally, provide a copy of any major infractions reports involving the institution or individuals named in this notice that were issued by the Committee on Infractions/hearing panel within the last 10 years.

The University has been involved in two prior major infractions cases:

Date:

March 12, 2012 (See Exhibit D-4.)

Description:

Violations of NCAA legislation involving: a former tutor engaging in academic fraud and providing extra benefits to student-athletes; student-athletes receiving preferential treatment benefits based on their athletics reputation and interaction with prospective agents; ineligible participation; failure to monitor; unethical conduct by the former tutor and a former assistant coach; and a failure to report outside income by the former assistant coach.

Involved Sport (Individuals):

Football (former tutor, former assistant coach)

Penalties and Corrective Actions:

- Public reprimand and censure
- Three years of probation
- One-year postseason ban
- Vacation of all contests and records involving ineligible student-athletes
- Reduction of grants-in-aid by a total of 15 over a three-year period
- Three-year show cause order for the former assistant coach
- \$50,000 financial penalty

Date:

January 10, 1961

Description:

Improper entertainment and lodging for parents of student-athletes; improper recruiting entertainment.

Sport/Individuals Involved:

Men's Basketball

Penalties and Corrective Actions:

- One-year probation
- One-year postseason ban

6. Provide a chart depicting the institution's reporting history of Level III and secondary violations for the past five years. In this chart, please indicate for each academic year the number of total Level III and secondary violations reported involving the institution or individuals named in this notice. Also include the applicable bylaws for each violation, and then indicate the number of Level III and secondary violations involving just the sports team(s) named in this notice for the same five-year time period.

See Exhibit D-5.

7. Provide the institution's overall conference affiliation, as well as the total enrollment on campus and the number of men's and women's sports sponsored.

The University of North Carolina, Chapel Hill, is a member of the Atlantic Coast Conference.

The University sponsors thirteen (13) men's programs: baseball, men's basketball, men's cross country, men's fencing, football, men's golf, men's lacrosse, men's soccer, men's swimming and diving, men's tennis, men's indoor track & field, men's outdoor track & field and wrestling.

The University sponsors fifteen (15) women's programs: women's basketball, women's cross country, women's fencing, field hockey, women's golf, gymnastics, women's lacrosse, rowing, women's soccer, softball, women's swimming and diving, women's tennis, women's indoor track & field, women's outdoor track & field, and volleyball.

Undergraduate campus full-time enrollment for the spring of 2017 was 16,397 students. Total campus full-time enrollment for the spring of 2017 was 22,671 students.

8. Provide a statement describing the general organization and structure of the institution's intercollegiate athletics department, including the identities of those individuals in the athletics department who were responsible for the supervision of all sport programs during the previous four years.

Organizational charts for the University of North Carolina, Chapel Hill's Department of Athletics for the past five years are provided as **Exhibit D-6**. In addition to the athletics director and those senior administrators listed in the organizational charts who have department-wide responsibilities, a small group of individuals has been directly responsible for the supervision of the University's sports programs. Since 2011, supervision of the institution's sports programs has been divided among seven to eight individuals.⁴² Current sports supervisors for the institution's sports programs are:

- Bubba Cunningham, director of athletics (football, men's and women's basketball)
- Larry Gallo, executive associate athletic director (fencing, field hockey, swimming and diving, baseball and women's soccer)
- Vince Ille, senior associate athletic director (wrestling and men's tennis)
- Nicki Moore, senior associate athletic director and senior woman administrator (track and field/cross country, women's golf, men's soccer and volleyball)
- Clint Gwaltney, senior associate athletic director (women's tennis and men's lacrosse)
- Paul Pogge, associate athletic director (men's golf)
- Mike Bunting, associate athletic director (softball)
- Rick Steinbacher, senior associate athletic director (women's lacrosse)
- Martina Ballen, senior associate athletic director and CFO (gymnastics)

The compliance office conducts regular, systematic rules education with all University sports programs, student-athletes and staff members. The education is provided through daily compliance information, regular emails and in-person meetings. Calendars of the compliance office's rules-education activities for the 2014-15 through 2016-17 academic years are provided as **Exhibit D-7**.

⁴² Current director of athletics Bubba Cunningham was hired in October 2011. Prior to that date, the supervisors of the institution's sports programs were: Dick Baddour, director of athletics (football and men's basketball) and Beth Miller, senior associate director of athletics (all other sports).

Additionally, as referenced above in response to Item 3, the University's most recent annual report to the Committee on Infractions contains a detailed examination of the University's current compliance practices, including numerous examples of the materials utilized by compliance staff to review NCAA and institutional regulations and monitor for compliance with those rules. (See Exhibit D-1.)

Outside compliance reviews have been conducted of the University's compliance program by the Atlantic Coast Conference in 2011 and 2016 (in progress).

9. State when the institution has conducted systematic reviews of NCAA and institutional regulations for its athletics department employees. Also, identify the agencies, individuals or committees responsible for these reviews and describe their responsibilities and functions.

The compliance office conducts regular, systematic rules education with all University sports programs, student-athletes and staff members. The education is provided through daily compliance information, regular emails and in-person meetings. Calendars of the compliance office's rules-education activities for the 2014-15 through 2016-17 academic years are provided as **Exhibit D-7**.

Additionally, as referenced above in response to Item 3, the University's most recent annual report to the Committee on Infractions contains a detailed examination of the University's current compliance practices, including numerous examples of the materials utilized by compliance staff to review NCAA and institutional regulations and monitor for compliance with those rules. (See Exhibit D-1.)

Outside compliance reviews have been conducted of the University's compliance program by the Atlantic Coast Conference in 2011 and 2016 (in progress).

10. Provide the following information concerning the sports programs identified in this inquiry:

- The average number of initial and total grants-in-aid awarded during the past four academic years.

Women's Basketball

Average Initial Grants-in-Aid (2013-14 to 2016-17):	3.75
Average Total Grants-in-Aid (2013-14 to 2016-17):	12

Men's Basketball

Average Initial Grants-in-Aid (2013-14 to 2016-17):	2.75
Average Total Grants-in-Aid (2013-14 to 2016-17):	13

Football

Average Initial Grants-in-Aid (2013-14 to 2016-17):	22.25
Average Total Grants-in-Aid (2013-14 to 2016-17):	82.25

- The number of initial and total grants-in-aid in effect for the current academic year (or upcoming academic year if the regular academic year is not in session) and the number anticipated for the following academic year.

Women's Basketball

Initial Grants-in-Aid (2017-18):	
Total Grants-in-Aid (2017-18):	14

Men's Basketball

Initial Grants-in-Aid (2017-18):	
Total Grants-in-Aid (2017-18):	13

Football

Initial Grants-in-Aid (2017-18):	
Total Grants-in-Aid (2017-18):	85

- The average number of official paid visits provided by the institution to prospective student-athletes during the past four years.

Women's Basketball

Average Official Paid Visits (2013-14 to 2016-17):	5.25
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Men's Basketball

Average Official Paid Visits (2013-14 to 2016-17):	5.5
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Football

Average Official Paid Visits (2013-14 to 2016-17):	33
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- Copies of the institution's squad lists for the past five academic years.

See Exhibit D-8.

- Copies of the institution's media guides, either in hard copy or through electronic links, for the past five academic years.

Women's basketball media guides for the 2012-13 through 2016-17 seasons are available at the following website:

http://www.goheels.com/ViewArticle.dbml?DB_OEM_ID=3350&ATCLID=205682698

Men's Basketball Media Guides:

http://www.goheels.com/ViewArticle.dbml?DB_OEM_ID=3350&ATCLID=211263564

Football Media Guides:

http://www.goheels.com/ViewArticle.dbml?DB_OEM_ID=3350&ATCLID=205682681

- A statement indicating whether the provisions of NCAA Bylaws 31.2.2.3 and 31.2.2.4 apply to the institution as a result of the involvement of student-athletes in violations noted in this inquiry.

The women's basketball student-athletes identified in Allegation 1 as recipients of "extra benefits in the form of impermissible academic assistance and special arrangements," participated in team championships with the women's basketball team (in various capacities) during the 2002-03 through 2012-13 seasons. The violations adversely affected each student-athlete's eligibility for future competition at the point in time in which the extra benefit was provided, per the terms of Bylaw 16.11.2.1, and thus the student-athletes' participation in team championships during the 2002-03 through 2012-13 seasons is subject to the provisions of NCAA Bylaws 31.2.2.3 and 31.2.2.4. A chart summarizing the years of competition and number of contests competed (including championship participation) for each involved student-athlete is provided as **Exhibit D-9**.

- A statement indicating whether the provisions of Bylaw 19.9.7-(g) apply to the institution as a result of the involvement of student-athletes in violations noted in this inquiry.

As noted above, the acknowledged extra benefit violations in Allegation 1 adversely affected the eligibility of the identified women's basketball student-athletes for future competition, per the terms of Bylaw 16.11.2.1. Accordingly, the student-athletes' participation in certain contests during the 2002-03 through 2012-13 seasons is subject to the provisions of NCAA Bylaw 19.9.7-(g). See Exhibit D-9.

11. Consistent with Committee on Infractions IOP 4-16-2-1 Total Budget for Sport Program and 4-16-2-2 Submission of Total Budget for Sport Program, please submit the three previous fiscal years' total budgets for all involved sport programs. At a minimum, a sport program's total budget shall include: (1) all contractual compensation including salaries, benefits and bonuses paid by the institution or related entities for coaching, operations, administrative and support staff tied to the sport program; (2) all recruiting expenses; (3) all team travel, entertainment and meals; (4) all expenses associated with equipment, uniforms and supplies; (5) game expenses; and (6) any guarantees paid associated with the sport program.

Women's Basketball Budget Summary

Expense Type	2013-2014	2014-2015	2015-2016
Salaries/Benefits	\$ 1,293,293	\$ 1,375,100	\$ 1,498,296
Recruiting	\$ 143,600	\$ 143,600	\$ 153,600
Team Travel	\$ 430,135	\$ 637,611	\$ 506,696
Equipment/Supplies	\$ 106,350	\$ 106,350	\$ 106,350
Game Expenses	\$ 167,488	\$ 195,488	\$ 208,288
Guarantees	\$ 138,000	\$ 145,500	\$ 221,500
Other*	\$ 113,220	\$ 113,220	\$ 135,720
Total Budgeted Expenses	\$ 2,392,086	\$ 2,716,869	\$ 2,830,450

*Other consists of communication, repairs, rentals, and printing expenses.

Men's Basketball Budget Summary

Expense Type	2013-2014	2014-2015	2015-2016
Salaries/Benefits	\$ 3,584,049	\$ 3,567,624	\$ 3,659,464
Recruiting	\$ 175,000	\$ 175,000	\$ 175,000
Team Travel	\$ 1,397,973	\$ 1,692,512	\$ 1,844,187
Equipment/Supplies	\$ 175,000	\$ 175,000	\$ 175,000
Game Expenses	\$ 639,360	\$ 544,371	\$ 616,534
Guarantees	\$ 630,000	\$ 402,500	\$ 540,000
Other*	\$ 163,510	\$ 163,510	\$ 163,510
Total Budgeted Expenses	\$ 6,764,892	\$ 6,720,517	\$ 7,173,695

*Other consists of communication, repairs, rentals, and printing expenses.

Football Budget Summary

Expense Type	2013-2014	2014-2015	2015-2016
Salaries/Benefits	\$ 6,511,368	\$ 6,454,579	\$ 7,301,408
Recruiting	\$ 634,200	\$ 634,200	\$ 634,200
Team Travel	\$ 1,285,381	\$ 1,463,375	\$ 1,235,550
Equipment/Supplies	\$ 520,300	\$ 620,300	\$ 665,100
Game Expenses	\$ 971,560	\$ 836,480	\$ 971,560
Guarantees	\$ 1,550,000	\$ 1,300,000	\$ 900,000
Other*	\$ 671,900	\$ 671,900	\$ 873,375
Total Budgeted Expenses	\$ 12,144,709	\$ 11,980,834	\$ 12,581,193

*Other consists of communication, repairs, rentals, and printing expenses.