



CONFIDENTIAL/VIA ELECTRONIC MAIL

December 16, 2015

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Mr. Rick Evrard  
Bond, Schoeneck and King  
7500 College Boulevard, Suite 910  
Overland Park, Kansas 66210

RE: University of North Carolina, Case No. 00231.

Dear Mr. Evrard:

This is a follow up to our December 2 telephone conversation regarding the University of North Carolina's correspondence dated October 1 to Jon Duncan and November 9 to Naima Stevenson. The enforcement staff reviewed your letters carefully, and we appreciate the opportunity to address the institution's concerns. In preparing this response, we discussed each concern internally with individuals who have personal knowledge of the institution's cases. We also confirmed the accuracy of representations made here and previously.

The institution's central contention is that Allegation No. 1-a is supported by information that was previously known and evaluated by the enforcement staff and the academic and membership affairs (AMA) staff to not be a violation of NCAA bylaws. Further, the institution asserts that fair procedures allow the enforcement staff only one opportunity to gather relevant information and allege possible violations, absent a showing that it could not have reasonably obtained the information in the first instance. Finally, the institution seeks additional information regarding (1) the October 28, 2011, infractions case heard by the NCAA Division I Committee on Infractions; (2) correspondence between the enforcement staff and AMA staff dated March 5, 2013; and (3) correspondence provided to the institution September 26, 2013.

As the institution is aware, the enforcement staff issued a notice of allegations June 4, 2011. The notice included allegations regarding the involvement of professional sports agents in the football program and academic misconduct involving one of the institution's academic support center tutors. At the time the notice was issued and based on the facts then available, there was no review by the enforcement staff, and presumably the institution, of extra benefits involving athletics academic counselors and student-athletes enrolled in Department of African and Afro-American (AFAM) courses as described in Allegation No. 1-a. The institution submitted its response to the notice September 19, 2011. At approximately the same time, media accounts surfaced regarding student-athletes enrolled in AFAM courses. The institution informed the enforcement staff that it would take the lead in investigating these matters.

N a t i o n a l C o l l e g i a t e A t h l e t i c A s s o c i a t i o n

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The enforcement staff agreed, and a member of the staff participated in interviews conducted by the institution. As the enforcement staff understood it, the institution's investigation was primarily focused on whether student-athletes who were enrolled in the AFAM courses completed the coursework to earn their grades. In other words, the investigation explored whether academic misconduct occurred in violation of NCAA Bylaw 10.1-(b). An important factor during that investigation was the institution's desire to keep the original infractions case on track for an October 28, 2011, hearing.

In a matter of just several weeks, the institution concluded its investigation and, together with the enforcement staff, agreed that no Bylaw 10.1-(b) academic misconduct allegation had been substantiated. There were no strong indications at that time suggesting that student-athletes were essentially removed from full academic participation in their AFAM courses. As a result, there was no extra-benefit allegation, as now described in Allegation No. 1-a.

The institution subsequently commissioned additional external investigations and reviews of the AFAM department and other courses. For example, on December 19, 2012, former North Carolina Governor James Martin issued a report related to his review of the institution's AFAM department. It is important to note that Governor Martin did not possess the vast majority of information now cited in support of Allegation No. 1-a. Accordingly, his report did not focus on behaviors contained in the current notice of allegations. Instead, the primary focus of the Martin report was a review of "anomalies in the course offerings and methods of instruction" of the AFAM department.

The enforcement staff obtained a copy of the Martin report, provided it to AMA and asked whether AMA staff members believed the report indicated potential NCAA violations. Other than the cover email and the report itself, the enforcement staff provided no additional information to AMA. By email dated March 5, 2013, which the institution obtained from the enforcement staff case file after requesting and being granted access to it by the enforcement staff in 2015, the AMA staff answered in the negative. As a result, the enforcement staff did not supplement the institution's investigation at that time. The enforcement staff is not aware of additional correspondence or other communications regarding AMA's review of the Martin report.

On September 26, 2013, the institution asked the enforcement staff to confirm that it did not intend to reopen the investigation into academic matters in the AFAM department. The institution's correspondence acknowledged that the enforcement staff's position was "based on the available information." The enforcement staff responded the same day and confirmed the institution's understanding. Again, at the time of this email, the enforcement staff was not aware that extra-benefit violations, as now outlined in Allegation No. 1-a, may have occurred, nor was any other external investigator aware of all the facts now known. Contrary to the institution's recent assertion that "the entire substance of Allegation 1(a) has been previously evaluated and accurately addressed by the NCAA enforcement and AMA staffs," the full information now known by all parties was not available to the enforcement staff until much later. More directly,

the enforcement investigators assigned to the original case confirmed that the facts now known are materially different from the facts available to them in 2011 and 2012. They did not evaluate, nor did they submit to AMA for evaluation, the behaviors described in Allegation No. 1-a.

After the Martin report was completed and after communications between the institution and enforcement staff in September 2013, the institution commissioned another investigation. Specifically, the institution retained former U.S. Assistant Attorney General Kenneth Wainstein to "ask tough questions, follow the facts wherever they lead and take any further steps necessary to address any questions left unanswered during previous reviews commissioned by the university," and presumably the institution's and enforcement staff's 2011 investigation related to the AFAM department.

Mr. Wainstein gathered and reviewed voluminous materials not previously produced by the institution or known to the enforcement staff, including approximately 1.6 million emails. He also secured interviews with individuals who had not cooperated with or participated in the institution's initial investigation, or had not been completely forthcoming. Based on the information he retrieved and reviewed, Mr. Wainstein issued a comprehensive report dated October 16, 2014. His report contained an abundance of new facts and new information suggesting potential violations never before known by the enforcement staff. Following the release of Mr. Wainstein's report, the institution confirmed the thoroughness of his investigation and the new information it revealed when it issued the following statement on its website:

Former U.S. Assistant Attorney General Kenneth L. Wainstein's investigation will be the University's final investigation into past academic irregularities and it builds on the previous efforts and reviews outlined here. We are confident that with Mr. Wainstein's thorough investigation we now have a comprehensive understanding of what happened at the University. The Wainstein report yields additional guidance to correct past mistakes and implement new reforms to strengthen our University.

In its October 22, 2014, "Carolina Point of View" statement, the institution pointed out that Mr. Wainstein's "investigation was different," and that the institution "was confident this was the most thorough and complete investigation possible." The institution cited eight new actions and initiatives it was taking based on the information revealed by Mr. Wainstein's investigation. These included, among others, fact-based termination or disciplinary actions involving nine institutional staff members. These statements and actions by the institution following Mr. Wainstein's report indicate that the institution, like the enforcement staff, learned substantial information not previously known.

The institution now seeks interpretive guidance from AMA. In its draft request for an interpretation, the institution identified 10 emails the enforcement staff possessed in September 2011 that are also identified as factual items related to Allegation No. 1-a. The enforcement staff acknowledges that these emails were available in 2011. However, that small sample of emails

alone does not demonstrate an extra-benefit violation. Rather, it was the tremendous amount of additional information collected by Mr. Wainstein, and the testimony elicited during subsequent enforcement interviews, that revealed the behaviors now cited in Allegation No. 1-a.

More specifically, the current notice of allegations lists over 220 factual information items supporting Allegation No. 1-a, of which the 10 previously identified emails form only a small fraction. Not only are the 10 emails small in number, but they do not reflect the scope, breadth or nature of the benefits provided to student-athletes at the institution. Moreover, in September and October 2015, the institution provided the enforcement staff with approximately 2,000 additional emails relevant to Allegation No. 1-a, of which over 80 will likely be included in the amended notice of allegations we have discussed with the institution. That would bring the total factual items of information supporting Allegation No. 1-a to over 300. Only three percent of those factual items were available to the enforcement staff before Mr. Wainstein's report.

Having reviewed and considered carefully the institution's concerns, it is the enforcement staff's position that the present case is appropriately and fairly alleged pursuant to NCAA infractions procedures. We understand that the institution disagrees, and there are numerous opportunities for the institution to present its position to its peers on the Division I Committee on Infractions before and during the hearing. As you are aware, it is the Committee on Infractions, and not the enforcement staff, that will conclude whether violations occurred. Should the institution disagree with whatever decision the committee renders, there is also a robust appellate opportunity available.

Thank you again for the opportunity to respond to your client's concerns. I look forward to continued communication and cooperation as we move this case to completion.

Sincerely,



Tom Hosty  
Director of Enforcement

TCH:lef

cc: Selected NCAA Staff Members