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January 7, 2016

VIA ELECTRONIC MAIL

Mr. Thomas C. Hosty
Director of Enforcement
National Collegiate Athletic Association
P.O. Box 6222
Indianapolis, IN 46206-6222

Dear Tom:

This is in response to your December 16, 2015, letter and further follows up on the requests for the production of documents and information, and scheduling of interviews of witnesses, that we first made on behalf of the University of North Carolina, Chapel Hill (the "institution") in correspondence to Jon Duncan on October 1, 2015, and reiterated to Naima Stevenson, Esq., on November 9, 2015.

Neither your December 16, 2015, letter nor Ms. Stevenson's October 23, 2015, letter have addressed the institution's central points that: (1) Bylaw 16.3 requires the institution to provide its student-athletes with general academic counseling and tutoring services and permits the institution to use its discretion to provide other academic and support services to its student-athletes; (2) there is no legislation, interpretation, or case precedent that (a) prohibits the types of conduct identified in Allegation 1(a) in the May 20, 2015, Notice of Allegations ("NOA") or (b) indicates that the types of conduct identified in Allegation 1(a) of the NOA are not within the institution's discretion and the scope of the required and authorized academic counseling, tutoring, and other support services; and (3) the membership-adopted legislation (a) requires fair procedures, (b) entitles the institution to full and complete access to all information that may be pertinent to an issue in an infractions proceeding, and (c) bars the enforcement staff from reopening matters absent relevant, material information that could not have been reasonably ascertained during the prior proceedings. Further, there is no authority that indicates that the number of times an act is performed is relevant to whether the act is impermissible absent any legislated numerical limits; or that acts that are individually permissible can become impermissible when combined with other individually permissible acts, absent any legislated limitations.[1] The institution is anxious to receive responses to the numerous requests and

[1] In addition, significant issues exist regarding whether the statute of limitations that is set forth in Bylaw 19.5.11 bars Allegation 1(a).

concerns we have communicated to you, Vice President of Enforcement Jon Duncan and Deputy General Counsel Naima Stevenson.[2]

At the risk of being repetitive, but to ensure clarity as to the institution's position on these important issues, the institution renews its request that the enforcement staff withdraw Allegation 1(a) since there is no support in the bylaws or precedent for it. If the enforcement staff continues to refuse to withdraw Allegation 1(a), the institution is entitled to access the documents and information and interview the witnesses identified in my October 1, 2015, letter and described in this letter so that it can prepare a response to Allegation 1(a). In support of the institution's positions, we provide the following expanded rationale and analysis for your and your staff's consideration.

THE RELEVANT LEGISLATION AND PRECEDENT

Bylaw 16.3.1.1 requires that institutions "make general academic counseling and tutoring services available to all student-athletes," permits the institution to finance "other academic support services" that the institution, at its discretion, determines to be appropriate and necessary for the academic success of its student-athletes, and authorizes the institution to provide these services via a program that is available only to student-athletes. The institution's Academic Support Program for Student-Athletes ("ASPSA") conformed to all of the requirements of Bylaw 16.3.1.1 and the services that its counselors provided were permissibly limited to student-athletes. When the concerns about certain courses in what was then known as the African and Afro-American Studies Department ("AFRI/AFAM") emerged in 2011 and throughout multiple investigations that continue to this day, the institution has consistently taken the position that the conduct referenced in Allegation 1(a) and the supporting factual information items ("FI's"), whether viewed collectively or individually, falls within the institution's discretion and scope of permissible general academic counseling and tutoring services required, and the other academic support services authorized, by Bylaw 16.3.1.1. The institution has noted that, to its knowledge, there is no major or secondary infractions report, rules interpretation, official rules education, or other authority or precedent holding that the conduct alleged in Allegation 1(a) is beyond the scope of the services required or authorized by Bylaw 16.3.1.1[3] regardless of the number of times the conduct occurred or the combinations of the types of conduct. Although the enforcement staff asserts that the volume of the acts or the combination of acts can somehow result in the conduct becoming an impermissible extra benefit under Bylaw 16.11.2.1, it has never provided the institution with any authority for its position. Both your and Ms. Stevenson's letters are silent as to the broad discretion and scope of services permitted under Bylaw 16.3.

The enforcement staff's failure to provide any precedent that supports its novel theory (which it then applies retroactively to the institution), is compounded by its refusal to provide the

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[2] In the opening sentence of your December 16 letter, you refer to our December 2, 2015, telephone conversation. The only mention of this matter during that conversation was that the institution was awaiting a reply from Ms. Stevenson to my November 9, 2015, letter.

[3] The only exception is one secondary infractions case that involved a coach who drove off campus to an adjunct instructor's home to turn in papers for student-athletes which was reported as an extra benefit in the amount of $1.00 for the amount of gasoline used to transport the papers. See **Exhibit 1**.

institution with access to the items set forth in my October 1, 2015, letter. NCAA Constitution 2.8.2 and Bylaw 19.01.1 require that the institution be provided fair procedures throughout the infractions process, including during the investigative stage. Bylaw 19.5.1 requires that, on behalf of the membership, the enforcement staff develop, to the extent reasonably possible, all relevant information – not just the information that supports a theory that an infraction may have been committed. Under Bylaw 19.5.9, the enforcement staff must provide the institution with access to "factual information pertinent to the case."

On February 8, 2013, the enforcement staff initiated efforts to obtain an opinion from the NCAA's Academic and Membership Affairs staff ("AMA") concerning whether any violations of NCAA bylaws occurred in connection with the AFRI/AFAM issue and AMA found none occurred. The institution is entitled access to the underlying pertinent information relating to these events, particularly since the enforcement staff is contending that the review and opinion issued by AMA were limited and, therefore, irrelevant.

Bylaw 19.8.3 states that a determination by the Committee on Infractions ("COI") is "final, binding, and conclusive and shall not be subject to further review by any governance body" absent an appeal or a request for reconsideration. Bylaw 19.8.2 permits a hearing panel to reconsider a decision but only upon a showing of prejudicial error or "new information." Bylaw 19.02.2 defines "new information" as "relevant, material information that could not have reasonably been ascertained prior to the Committee on Infractions hearing." As the institution has previously shown and as is demonstrated in detail below, information about the conduct set forth in Allegation 1(a) was provided to the enforcement staff in 2011. Some of that information was used by the enforcement staff as the basis for questions to witnesses, both in the form of documents and statements during interviews. Neither you nor Ms. Stevenson disputes that fact. Your letter specifically admits that 10 of the emails that the enforcement staff has cited in the FI's supporting Allegation 1(a) were provided to it in September 2011. (Hosty Letter, p. 3, last paragraph). As described below, much more information than just those 10 emails was provided to the enforcement staff in 2011 that was relevant and material to the conduct described in Allegation 1(a).

Regardless of the number of times that the conduct was documented in interviews conducted by the enforcement staff and materials provided to the NCAA by the institution in connection with those interviews in 2011 prior to the October 28, 2011, COI hearing, there has been no attempt to demonstrate, by either you or Ms. Stevenson, that additional instances of the same conduct "could not have reasonably been ascertained" in 2011. Instead, you assert that because the exact volume of the conduct was not known in 2011 (because the enforcement staff was not concerned about the conduct at the time and chose not to seek information about its frequency), the enforcement staff can revisit the conduct years later. (Hosty Letter, pp. 3-4). That, however, is not the standard. The applicable standard, established by the membership in its bylaws, is whether additional instances of the same conduct "could not have reasonably been ascertained" in 2011. The enforcement staff has not met this standard. We believe that aside from being irrelevant, your assertion that "only a small fraction" of the conduct was known in 2011 is simply wrong.

THE UNDISPUTED FACTS

A. The 2010-2011 Proceedings

The following facts are beyond question. During the joint investigation by the enforcement staff and the institution that took place in 2010 and continued through the issuance of the June 21, 2011, NOA, the enforcement staff thoroughly investigated the conduct of ASPSA personnel. During the investigation, more than 60 interviews were conducted that related, at least in part, to the receipt of impermissible academic assistance or free academic tutoring. The interviews included student-athletes, coaches, department of athletics administrators, current and former employees of ASPSA, and other University personnel with knowledge about the work of ASPSA. At the conclusion of the investigation, the enforcement staff charged, in Allegation 1, that a former ASPSA tutor provided three student-athletes with impermissible academic assistance during the time that the tutor worked for ASPSA. The impermissible academic assistance referenced in Allegation 1 of the June 21, 2011, NOA involved conduct by an ASPSA tutor making substantive changes and supplying content to student-athletes' papers in several courses, including papers for courses in the AFRI/AFAM department.

The institution learned on August 17, 2011, of potential issues relating to conduct pertaining to courses that student-athletes took in the AFRI/AFAM department, and the institution promptly reported the potential issues to the enforcement staff. Immediately thereafter, Mike Zonder and Chance Miller, the two assistant directors of enforcement assigned to the case, and the institution began a joint investigation[4] of the AFRI/AFAM issue. The joint investigation in August and September of 2011 of the AFRI/AFAM issue included the institution supplying documentation to the NCAA enforcement staff on a number of occasions, multiple discussions between Mr. Zonder and one or more of the members of the institution's working group on the AFRI/AFAM issue, and the joint interviews of 16 individuals (Dr. Julius Nyang'oro, Travis Gore and Professor Tim McMillan all of AFRI/AFAM; Beth Bridger, Jamie Lee, Amy Kleissler and Tia Overstreet all of ASPSA; Dr. Boxill both as an instructor and an ASPSA counselor; and seven student-athletes who had taken AFRI/AFAM courses).

Among the records provided to the NCAA enforcement staff in the summer of 2011 were a number of documents evidencing the conduct asserted in Allegation 1(a), which you admit included at least 10 documents that are now cited as FI's in support of Allegation 1(a). (The institution believes that 13 of the FI's were previously produced). Another 18

[4] The institution believes that your description of the effort to investigate the AFRI/AFAM issue as "the institution's investigation" (Hosty Letter, p. 1, par. 3; p. 2, par. 1, 2 and 4) is wrong. The investigation into the AFRI/AFAM issue started approximately on August 19, 2011. Mr. Zonder fully participated in the investigation of the AFRI/AFAM issue. He was present, either in person or by telephone, at each of the 16 interviews, and he engaged in substantive questioning throughout the interviews. It is the institution's understanding that Mr. Zonder requested documentation and information and participated in discussions regarding who should be interviewed and what topics should be covered. Indeed, in Mr. Zonder's February 8, 2013, email to Kris Richardson (which is discussed in detail below), Mr. Zonder stated that after the institution self-reported concerns about the AFRI/AFAM issue to the NCAA, "[t]he enforcement staff investigated." This information clearly refutes your understanding and characterization of the enforcement staff's involvement in the investigation.

email threads appear to have been provided to the NCAA enforcement staff in 2011 that involved the conduct asserted in Allegation 1(a) that are not listed in the FI's supporting Allegation 1(a). Further, the conduct referenced in Allegation 1(a) and documents evidencing that conduct were discussed multiple times and in multiple interviews all of which occurred in the presence of Mr. Zonder and, in fact, many of the questions relating to the emails were asked by Mr. Zonder. The details of the foregoing documents and the relevant portions of the interviews are set forth below.

You imply in your letter that the 2011 investigation was limited to the issues of whether student-athletes completed their coursework in AFRI/AFAM courses and whether academic misconduct occurred in violation of Bylaw 10.1(b) (Hosty Letter, p. 2, par. 1), but nowhere in the record was there a limit placed on the issues or relevant bylaws that were being investigated. The institution's records from 2011 indicate that both parties were considering whether the AFRI/AFAM issue included any special treatment of the student-athletes, which pertains to an understanding of the proper application of Bylaw 16.3 and a Bylaw 16.11.2.1 analysis. Indeed, a number of witnesses were asked if student-athletes were given special treatment or privileges relating to the AFRI/AFAM courses. Further, as is noted below, there was detailed questioning about how the courses were created, how the student-athletes were enrolled in courses, and how the student-athletes obtained their assignments in the AFRI/AFAM courses.[5]

Regardless of the initial impetus for any investigation, it is the enforcement staff's responsibility to pursue new issues and potential violations as they arise. In this regard, Bylaw 32.5.1-(g) required that the enforcement staff inform institutions in the Notice of Inquiry that regardless of the initial scope of the inquiry, "other facts may be developed during the course of the investigation that may relate to additional violations." The June 7, 2011, Notice of Inquiry to the institution referenced Bylaw 32.5 and after describing the initial scope of the inquiry, stated "However, please note that new information often is developed during an investigation that leads to expanded inquiries." Thus, your statement that the investigation was limited in scope and could not consider the conduct that was disclosed in 2011 [and is now asserted in Allegation 1(a)] is untrue.[6]

Prior to the October 28, 2011, COI hearing, the enforcement staff and the institution agreed in conversations with the institution's working group that no NCAA violations occurred relating to the AFRI/AFAM issue. Your attempt to limit the determination to only deciding that no Bylaw 10.1(b) violations had occurred (Hosty Letter, p. 2, par. 2) is baseless. There was no such limitation and the bylaws provide no such constraint. The institution submitted its response on September 19, 2011, the COI hearing took place on October 28, 2011, and a Public Infractions Report was issued on March 12, 2012.

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[5] Moreover, Mr. Zonder's February 8, 2013, email to Mr. Richardson shows that the enforcement staff was also considering Bylaw 16.11.2.1 issues and was not limited to Bylaw 10.1 issues.

[6] Also, your implication that the enforcement staff was constrained from looking into the conduct that forms the basis of Allegation 1(a) by "the institution's desire to keep the original case on track for an October 28, 2011, hearing" (Hosty Letter, p. 2, par. 1), is without basis. The time allowed to the enforcement staff to process a case has never been limited by an institution's desires.

B. The Events Between March 13, 2012, and September 26, 2013

After the issuance of the March 12, 2012, Public Infractions Report, the institution continued to communicate with and provide documents and information to Mr. Zonder and the NCAA enforcement staff. Those communications included information that pertained to the conduct asserted in Allegation 1(a). In the continuing conversations with Vince Ille, senior associate athletic director, that started in the summer of 2012, Mr. Zonder repeatedly indicated that the additional documents and evidence that he was provided were "more of the same" and that there were no NCAA violations.

The extensive information supplied by the institution to the enforcement staff between March 2012 and September 2013 included copies of the February 7, 2013, Report of the North Carolina UNC Board of Governors Academic Review Panel ("Board of Governors Report") and the reports by James G. Martin entitled "The University of North Carolina at Chapel Hill Academic Anomalies Review, Report of Findings," dated December 19, 2012, and "The University of North Carolina at Chapel Hill Academic Anomalies Review, Report Addendum," dated January 24, 2013, (collectively the "Martin Report"). Although you asserted in your letter that the Martin Report "did not focus on behaviors contained in the current notice of allegations" (Hosty Letter, p. 2, par. 3), the Martin Report specifically discussed the fact that ASPSA "academic counselors built relationships with Dr. Nyang'oro and Ms. Crowder" and that this effort was "in the hopes of providing the highest level of support possible to student-athletes." See Martin Report (Report of Findings), p. 27. In addition, the Board of Governors Report noted that ASPSA "guided student-athletes into the [AFRI/AFAM] courses." See Board of Governors Report, p. 4. These statements taken directly from the Reports clearly pertain to the assertion in Allegation 1(a) that ASPSA personnel "leveraged their relationships with" AFRI/AFAM personnel to the benefit of student-athletes.

Unbeknownst to the institution, on February 8, 2013, Mr. Zonder reached out to Mr. Richardson of AMA by email and stated that he and his supervisor, Stephanie Hannah, had been continuing to investigate the AFRI/AFAM issues. Among the noteworthy items in Mr. Zonder's email are:

- His description of events during the summer of 2011 where he stated: "The enforcement staff investigated and did not substantiate any additional violations, to include in the case." He did not try to characterize the investigation as "the institution's investigation" or to limit the determination to whether there were any Bylaw 10.1-(b) violations, as your letter indicates.

- His statement that he and Ms. Hannah had been meeting, gathering additional information, and "analyzing the situation up through the release of the [Martin] report" and "we did not spot any information that substantiated **any** violations." (Emphasis supplied).

- At the suggestion of the then vice president of enforcement, Mr. Zonder asked AMA to review at least the Martin Report to "make sure we did not overlook anything with issue spotting" and to "ensure we haven't overlooked **anything** of significance." (Emphasis supplied).

- Mr. Zonder listed the issues that the enforcement staff had been examining and one of those issues was "Whether student-athletes were provided **any extra benefits from the way the courses were created or administered**." (Emphasis supplied).

- Mr. Zonder noted that the matter had "drawn heavy media interest and scrutiny" and that the requested review by AMA "isn't something that is time sensitive."

Your letter moves from Mr. Zonder's February 8, 2013, email to Steve Mallonee's March 5, 2013, email (Hosty Letter, p. 2, par. 4); however, several relevant intervening events occurred. On February 8, 2013, Mr. Richardson wrote to Dave Schnase, then the managing director of AMA, with a copy to Geoff Silver, then the director of AMA, suggesting that the matter warranted a "different type of review." That "different type of review" involved one or two of AMA's staff examining "the material" and a member of the AMA staff's academic fraud team, John Shukie, reviewing "the material" as well. Those reviews were to be followed by a joint meeting and sharing of "their perspectives" before a response was sent. On February 12, 2013, Mr. Schnase wrote to Kevin Lennon, then vice president of AMA, and summarized the requested task as "Basically, enforcement is asking us to review the UNC case and determine whether there are additional issues" and suggested using Mr. Mallonee and "someone from academics as well" to complete this review. These communications do not limit "the material" to be reviewed to the Martin Report or limit the scope of the issues for review. The institution has never learned what else occurred prior to Mr. Mallonee's March 5, 2013, email on behalf of himself and Mr. Shukie. That is one of the primary reasons why the institution has made the requests that are set forth in its October 1, 2015, letter to Mr. Duncan.[7]

Although Mr. Zonder continued to communicate with the institution through September 2013, including telephone conversations about whether there was any basis to pursue additional violations relating to the AFRI/AFAM issues, he never informed the institution that the enforcement staff had sought interpretive assistance from AMA as to whether any violations had occurred, including "whether student-athletes were provided any extra benefits from the way the [AFRI/AFAM] courses were created or administered" as requested in Mr. Zonder's February 8, 2013, email.

On September 26, 2013, Mr. Zonder and Mr. Ille exchanged emails in which Mr. Zonder confirmed, with the approval of Mr. Duncan as vice president of enforcement, that "no additional investigation of the issues regarding [the AFRI/AFAM] issues is being contemplated by the NCAA enforcement staff" and the staff does not "believe that any modification of the infractions case that was completed on March 12, 2012, is necessary" based on the available information [which included information from documents and interview testimony about each of the types of conduct asserted in Allegation 1(a)].

[7] You asserted that the enforcement staff provided no additional information to AMA (Hosty Letter, p. 2, par. 4), but never stated whether AMA otherwise obtained additional information. The institution's interests are primarily focused on exactly what materials and information were considered by AMA and all staff members who were involved in any analysis or determinations.

C. The Institution's Discovery of AMA's Prior Review

The statement in your December 16, 2015, letter that the communications in February and March 2013 were provided to the institution as part of the case file (Hosty Letter, p. 2, par. 4) is inaccurate. In spring 2014, the enforcement staff posted an online case file and granted the institution access to it. The February/March 2013 email thread described above was not part of the case file, even though Bylaw 19.5.9 requires that the enforcement staff provide access to, among other things, all "factual information pertinent to the case."

It was only after the institution had received the May 20, 2015, NOA and insisted on going to the NCAA National Office in Indianapolis to review the enforcement staff's records that the institution learned about the email thread described above. During our July 13, 2015, visit, Kathy Sulentic, the NCAA enforcement staff's lead investigator for the current investigation, arranged for us to receive and review a flash drive. The flash drive contained a variety of documents provided by the institution to the NCAA enforcement staff during the initial investigation in 2011 through September 26, 2013, that the enforcement staff had not included in the online "case file." Among the documents on the flash drive was the February/March 2013 email thread. The institution requested that the enforcement staff add the email thread and a number of other relevant documents to the online case file.

MR. HOSTY'S AND MS. STEVENSON'S LETTERS ARE NOT RESPONSIVE TO THE INSTITUTION'S OCTOBER 1, 2015 REQUESTS AND ARE IN CONTRAVENTION TO THE INSTITUTION'S RIGHTS AND THE ENFORCEMENT STAFF'S OBLIGATIONS UNDER THE MEMBER ADOPTED LEGISLATION

After Mr. Duncan referred the institution's October 1, 2015, letter and requests to the NCAA's legal counsel, we received Ms. Stevenson's response, which only addressed some of the institution's requests and made an unsupported assertion that the membership-adopted legislation does not entitle the institution to what is clearly pertinent information. We responded to Ms. Stevenson by letter dated November 9, 2015, and noted her silence on some of the institution's requests and cited the institution's legislative entitlement to all of the items requested. Since we have heard nothing further from Ms. Stevenson, we assume that she does not dispute that the legislation cited entitles the institution to the items it requested and that she had no other basis for denying access to the institution. Your December 16, 2015, letter likewise is silent on the legislative provisions that entitle the institution to the requested items. However, you asserted the position that the enforcement staff has investigated the events in February and March 2013 by discussing the institution's concerns with unnamed individuals and concluded that there is no basis for the institution's position. (Hosty Letter, p. 1, par. 1; p. 2, par. 5; p.4, par. 3). Basically, you stated "trust us."

As you know, the institution is not compelled to accept the enforcement staff's contentions that it has investigated the facts and determined that they do not support the institution's position. Nor is the institution prepared to accept the staff's other claim that the only way to access the information is to have the COI ask questions at the COI hearing. (Hosty Letter, p. 4, par. 3). It seems clear to the institution that your recitation of the "facts" demonstrates that the enforcement staff is trying to present the "facts" in a light that is most favorable to them and to omit or withhold facts that are not favorable. Fair procedures require, and the bylaws mandate,

that the institution have equal access to the pertinent facts so that it can present all of the relevant facts to the COI. Indeed, Bylaw 19.7.7.3 requires that both the enforcement staff and the institution present all relevant information to the COI. Accordingly, please identify all of the unnamed individuals with whom you communicated. If any of the unnamed individuals are not already identified in my October 1, 2015, letter to Mr. Duncan, please add them to the list of individuals we have requested to interview and whose records we have requested for review.

YOUR OVERSTATED IMPACT OF THE CADWALADER REPORT ON THE ISSUES RELATING TO ALLEGATION 1(a)

In your December 16, 2015, letter there are multiple statements regarding the Cadwalader Report's impact on Allegation 1(a) that the institution believes are either misstatements or mischaracterizations of the relevant facts as is described below.

In the first full paragraph on page 3 of your letter you characterize the scope of Cadwalader's inquiry. The material quoted in the second sentence is accurately taken from the institution's news release about the retention of the Cadwalader firm and Mr. Wainstein. However, you follow the quoted material with the statement that the institution retained Mr. Wainstein "presumably" to address questions left unanswered by the institution's and enforcement staff's 2011 investigation into NCAA issues related to the AFRI/AFAM Department. Your presumption is incorrect. There were no NCAA-related questions left unanswered by the 2011 joint NCAA investigation. Both the enforcement staff and the institution agreed that there were no NCAA violations relating to the AFRI/AFAM issue prior to the October 28, 2011, COI hearing. Moreover, Mr. Wainstein was not charged, and in fact did not try, to identify or analyze any potential NCAA rules violations. The only references in the Cadwalader Report to NCAA-related issues are that (1) the NCAA was already on campus in 2011 when the AFRI/AFAM issue first arose, (2) the institution and the NCAA jointly investigated the AFRI/AFAM issue, and (3) the NCAA closed its investigation into the AFRI/AFAM issue with a determination that there were no new NCAA violations (Cadwalader Report, pp. 24-25).

However, and as you already know, the institution directed Mr. Wainstein to report any facts that he learned during his investigation that might indicate potential NCAA violations to me, as the institution's outside counsel for NCAA matters, and through me to the NCAA, for any further investigation and analysis (Cadwalader Report, p. 30). Thus, there were no open NCAA issues for the Cadwalader firm to investigate, for doing such was beyond the scope of Mr. Wainstein's inquiry and expertise. Indeed, the methods by which Mr. Wainstein conducted his inquiry (no recordings or transcripts of interviews; no advisements given to the witnesses about their right to counsel, their duty to cooperate and their obligation to provide truthful information; no description provided of the purpose and possible use of the interview; no disclosure given of the witness' right to access the recording or notes of the interview; no questions related to the application of specific NCAA bylaws) prevent the NCAA from relying on much of the Cadwalader Report, including but not limited to the summaries of or references to the interviews of Dr. Nyang'oro and Ms. Crowder.

On page 3, second full paragraph of your letter, you assert that the Cadwalader Report "contained an abundance of new facts and new information suggesting potential violations never before known by the enforcement staff." You continue by claiming that Allegation 1(a) is based on the "tremendous amount of additional information gathered by Mr. Wainstein." (Hosty Letter, p. 4, par. 1). Further, you contend that the Cadwalader Report contained "materially

different" facts than were previously known. (Hosty Letter, p. 3, par. 1). These statements are not accurate. The following is a summary of what was known by the enforcement staff about the conduct listed in Allegation 1(a) before the Cadwalader investigation began, and what new facts appear in the text of the Cadwalader Report. This summary demonstrates that the Cadwalader Report provided limited new instances of the same type of conduct that is asserted in Allegation 1(a) and was previously known to the enforcement staff (of course, the Cadwalader Report also contained substantial new information that is not relevant to Allegation 1(a) or any other type of conduct that violates NCAA bylaws).

1. ASPSA Requesting that AFRI/AFAM Offer Classes.

As we have already established with the enforcement staff, there are no major or secondary infractions case reports, rules interpretations, official rules education, or other authority notifying member institutions that an academic counselor (a) asking if a course is going to be offered, or (b) asking for a course to be offered is an impermissible form of academic counseling or support under Bylaw 16.3.1.1 or is an impermissible benefit under Bylaw 16.11.2.1. To the contrary, the Atlantic Coast Conference (the "ACC") has issued a determination that both of these types of inquiries are permissible under Bylaw 16.3.[8]

In any event, five emails that are referenced as FI's following Allegation 1(a) (Nos. 42, 110, 112, 113 and 114) concerning this issue were provided to the NCAA enforcement staff in 2011.

(See Bridger 8/29/11 Trans., p. 44).[9]

(See Nyang'oro 8/31/11 Trans., pp. 71-74).

(See Bridger 8/29/11 Trans., p. 50; Nyang'oro 8/29/11 Trans., pp. 71-74).

(See Gore 8/31/11 Trans., pp. 87-92, 119-122). One of the key issues in the 2011 investigation was whether courses were being created for student-athletes (as opposed to student-athletes taking advantage of courses that were available to all students). Thus, the issue of ASPSA's involvement with the creation or offering of AFRI/AFAM courses was squarely before the enforcement staff when it (a) decided prior to the October 28, 2011, COI hearing that there were no violations relating to the

[8] Although the institution believes that the lack of authority for the enforcement staff's position ends the inquiry, it is noteworthy that the record from both the current investigation and the Cadwalader Report indicate that similar inquiries were made by non-ASPSA counselors, such as Betsy Taylor, Alice Dawson, and other members of the "good old girls network" on behalf of non-athlete students. (Cadwalader Report, p. 51). Thus, any inquiries by ASPSA counselors on behalf of a student-athlete were not a "special arrangement" that is prohibited by Bylaw 16.11.2.1.

[9] The references to the page numbers in the transcripts are to the copies of the transcripts that the institution had prepared of the interviews. The transcripts of the August and September 2011 interviews that are referenced herein are being supplied with this letter.

AFRI/AFAM issue, and (b) advised the institution on September 26, 2013, with the approval of Mr. Duncan, that the investigation into the AFRI/AFAM issue was closed and that no violations had been found.

To that point, the Cadwalader Report did not present "materially different" facts and it certainly did not present an "abundance" or "a tremendous amount" of new and "materially different" information relating to ASPSA's involvement in requesting AFRI/AFAM courses and thereby "suggesting potential violations never before known to the enforcement staff." These actions by ASPSA counselors were known to the enforcement staff, vetted by the enforcement staff during the 2011 investigation and properly determined not to be violations of NCAA legislation.

The only references in the Cadwalader Report to ASPSA personnel requesting courses from AFRI/AFAM are the statements that: (1) there were "countless emails to Crowder in which ASPSA counselors keep a steady drumbeat of requests for paper classes" (Cadwalader Report, p. 44); and (2) "the ASPSA counselors approached Dr. Nyang'oro after Ms. Crowder's retirement and asked him to resume the classes that were designated as lecture classes but taught in an independent study format and that he did so." (Cadwalader Report, pp. 2, 4, 23-24, 35-36, 99). No emails were cited in the Cadwalader Report in support of the first statement that there were "countless" emails from ASPSA to Crowder requesting paper classes.[10]

The Cadwalader Report only cites two email threads in support of the second assertion about Dr. Nyang'oro being approached by ASPSA personnel requesting the resumption of the lecture classes taught in an independent study format.[11] One email is an August 26, 2009, email in which Ms. Lee stated to Ms. Crowder:

> Just wanted to follow up and see if you were considering dropping the AFAM 396 course. Our guys could definitely use it and it would be great if they could hold on but I understand if that's not going to work.

and Ms. Crowder replied:

> Tell me what you think. If you really need it, we can keep it. My preference would be to cancel it for a number of reasons but if you need it I am sure JN would work with you.

(Cadwalader Report, Ex. 7). Thus, Ms. Lee simply asked if a course would be available and noted that there was interest by some student-athletes in taking the course. The course in question was designated as an independent study class (not a lecture

[10] Based on the institution's analysis, at the most, there are five emails to Crowder in all of the FI's to Allegation 1(a) that relate to the "requesting courses" category.

[11] The two paragraph summary of the lengthy interview of Dr. Nyang'oro in the Cadwalader Report includes two sentences on this issue. As the enforcement staff has readily acknowledged, due to the lack of required procedures and protections, the statements attributed to Dr. Nyang'oro in the Cadwalader Report cannot be used in this matter.

course taught in an independent study format and not a bifurcated class). (See Cadwalader Report, Ex. 10). Further, although a number of student-athletes enrolled in the independent studies course in the fall of 2009, so did seven non-athletes and three sports athletes. Therefore, there was interest in the course beyond that expressed by Ms. Lee. In any event, the nature of this contact is no different than what was previously available to the enforcement staff during the 2011 interviews and in the additional information provided by the institution before September 26, 2013.

The second email cited was a March 17, 2010, exchange in which Ms. Lee asked Dr. Nyang'oro:

> I failed to mention yesterday that Swahili 403 last summer was offered as a research paper course. I meant to as[k], do you think this may happen in the future?? If not the summer, maybe the fall?

There is no evidence that Dr. Nyang'oro ever answered Ms. Lee's question about SWAH 403 being offered as a research paper class and there is no indication in the Cadwalader Report that SWAH 403 was offered as a paper class. Instead, Dr. Nyang'oro advised Ms. Lee that AFAM 398 would be offered in the summer. However, AFAM 398 was not identified by Mr. Wainstein as an independent study class, a paper class or a bifurcated class. (See Cadwalader Report pp. 35-36 and Exs. 11 and 12).

(See Nyang'oro 8/29/11 Trans., pp. 71-74). Therefore, this was nothing "new."

In sum, the Cadwalader Report cites one email where an ASPSA counselor simply asked if a course was going to be offered and the course was offered. By comparison, the NCAA enforcement staff had six emails and multiple interview statements on this same topic back in 2011. Given these facts, there is no basis to claim that the Cadwalader Report presented "an abundance" or "a tremendous" amount of new and "materially different" information about ASPSA personnel requesting that AFRI/AFAM offer courses that suggested potential violations never before known to the enforcement staff.

2. ASPSA Contacting the AFRI/AFAM Department to Register Student-Athletes

Consistent with the discussion in Number 1 above, we have already established with the enforcement staff that there are no major or secondary infractions case reports, rules interpretations, official rules education or other authority notifying member institutions that an academic counselor registering a student-athlete for a class is a prohibited activity under Bylaw 16.3.1.1 or is considered an impermissible benefit under

Bylaw 16.11.2.1. To the contrary, the ACC has opined that this conduct is permissible academic counseling under Bylaw 16.3.[12]

During August and September 2011, the institution provided the enforcement staff with 14 emails on this issue.

(See Boxill 9/1/11 Trans., pp. 12-14, 38-39; Bridger 8/29/11 Trans., pp. 3, 8-10, 16-17, 20-21, 24-25; Lee 8/26/11 Trans., pp. 17-28, 32-35, 48-49; Overstreet 8/26/11 Trans., pp. 16-18, 24-27).

(See Boxill 9/1/11 Trans., p. 33; Bridger 8/29/11 Trans., pp. 59-60; Gore 8/31/11 Trans., pp. 52-53, 95-99, 111-112; Lee 8/26/11 Trans., pp. 17-21, 23-25, 26-28, 32, 34-35, 48-49; Overstreet 8/26/11 Trans., pp. 16-18, 24-27;
). Therefore, the enforcement staff had more than ample information regarding this type of conduct prior to its decisions in 2011 and 2013 to not charge any violation relating to it.

Thus, Mr. Zonder apparently understood the discretion and scope of services permitted by NCAA Bylaw 16.3 and was therefore not concerned about ASPSA's involvement in this type of conduct. As a result, no new charges were added pertaining to this conduct prior to the October 28, 2011, hearing and Mr. Zonder advised the institution on September 26, 2013, with the approval of Mr. Duncan, that the investigation into the AFRI/AFAM issues was closed and that no violations had been found.

There is very limited information on the subject of ASPSA's involvement in the enrollment of student-athletes in AFRI/AFAM courses in the text of the Cadwalader Report and what little information exists on this issue can hardly be characterized as "an abundance" or "a tremendous" amount of new and "materially different" information "suggesting potential violations never before known by the enforcement staff."

In this regard, the Cadwalader Report does not cite to any particular documents to support its statements that on some occasions ASPSA personnel (particularly Ms. Reynolds, Ms. McSwain and Mr. Walden) would call Ms. Crowder and ask that student-athletes be enrolled. Instead, references were made to statements from unrecorded, unverified interviews conducted by the Cadwalader firm that do not meet NCAA

[12] Although the institution believes that the lack of authority for the enforcement staff's position ends the inquiry, it is noteworthy that the record from both the current investigation and the Cadwalader Report indicate that the non-ASPSA counselors, such as Ms. Taylor, Ms. Dawson, and others routinely contacted Ms. Crowder about registering non-athletes in AFRI/AFAM courses. (Cadwalader Report, p. 51). Thus, the efforts by ASPSA counselors to register student-athletes were not "special arrangements" prohibited by Bylaw 16.11.2.1.

enforcement standards and, therefore, they may not be relied upon. (See Cadwalader Report, pp. 16, 19, 44, 47-48, 66). In sum, the Cadwalader Report provided only general characterizations of the involvement of ASPSA personnel in enrolling student-athletes that, in any event, were wholly consistent with the 14 documents provided to the enforcement staff and multiple interview statements made in the presence of and in response to questioning by Mr. Zonder in 2011.

3. ASPSA Obtaining Assignments for AFRI/AFAM Courses on Behalf of Student-Athletes

Consistent with the advisory in Numbers 1 and 2 above, we have already established with the enforcement staff that there are no major or secondary infractions case reports, rules interpretations, official rules education or other authority notifying member institutions that academic support personnel are: (a) prohibited from obtaining from an academic department staff member a courtesy copy of an assignment so they may help the student-athlete with the assignment; or (b) prohibited from obtaining a copy of an assignment and forwarding it to a student-athlete. The enforcement staff apparently must believe that both of these acts are either impermissible activities under Bylaw 16.3.1.1 and considered an impermissible benefit under Bylaw 16.11.2.1. To the contrary, the ACC has determined that both of these types of conduct are permissible under Bylaw 16.3.1.1.

As with the prior violations, this issue was clearly before the enforcement staff in 2011. In this regard, two emails that are part of the FI's supporting Allegation 1(a) (Nos. 30 and 154) were provided to the enforcement staff in August 2011. In addition, two other emails on this issue were provided to the enforcement staff in 2011.

(See Bridger 8/29/11 Trans., pp. 33-36, 62-65, 76, 79; Lee 8/26/11 Trans., pp. 38-39; Nyang'oro 8/31/11 Trans., pp. 80-81.)

Thus, in 2011 and 2013 Mr. Zonder and the enforcement staff were fully apprised of this conduct, accurately applied NCAA bylaws and correctly chose not to charge any violations relating to this conduct prior to the October 28, 2011, COI hearing. Further, Mr. Zonder advised the institution on September 26, 2013, that the investigation into the AFRI/AFAM issues was closed and that no violations had been found. Mr. Duncan authorized this determination and the resulting communication.

The Cadwalader Report makes two brief mentions of the issue of ASPSA personnel obtaining assignments on behalf of student-athletes for AFRI/AFAM courses. [See Cadwalader Report p. 17 (Ms. Crowder "sent the paper topics out to the students [or through the ASPSA counselors for student-athletes]"), p. 66 ("the counselor often served as the liaison with Crowder, receiving the topic assignment from her")]. There is no citation to any specific emails or statements made by witnesses in support of either of these statements. Thus, the claim that the Cadwalader Report provided "an abundance" or a "tremendous amount" of new and "materially different" information regarding ASPSA personnel obtaining AFRI/AFAM assignments that "suggested potential violations never before known to the enforcement staff" on this issue is baseless.

4. ASPSA Suggesting Assignments to AFRI/AFAM for Student-Athletes to Complete

Consistent with the advisory in Numbers 1 through 3 above, we have already established with the enforcement staff that there are no major or secondary infractions case reports, rules interpretations, official rules education or other authority notifying member institutions that this conduct is not permissible under Bylaw 16.3.1.1 and instead may be a "special arrangement" in violation of Bylaw 16.11.2.1. Moreover, the very few instances cited in the NOA involve situations where the AFRI/AFAM department had not yet assigned a topic for the course even though the semester and the course had already begun, the ASPSA counselor asked if an assignment previously developed and assigned by the department could be re-used, and there is no evidence that the re-use requested by ASPSA was granted by the AFRI/AFAM department.[13]

In 2011, the NCAA enforcement staff was provided two emails that raised this issue (January 19, 2011, and May 18, 2011, emails from Dr. Boxill to Mr. Gore).

(See Boxill 9/1/11 Trans., pp. 33-34, 55-56). In addition to the evidence before the enforcement staff in 2011, on June 7, 2013, the institution sent an email with attached documents to Mr. Zonder which included an email to Ms. Crowder from an ASPSA employee Suzie Dirr with "Cynthia Reynolds AFAM Topics" referenced by Dirr in the subject line of the message. In the email Dirr wrote, "I have been working on some additional topics for AFAM papers and wanted to get your input on them to see if they would be acceptable." The email attached four proposed paper topics. Mr. Ille discussed this email with Mr. Zonder, and Mr. Zonder expressed no concern that it evidenced a violation of the bylaws. Thus, the enforcement staff was aware of multiple

[13] The ACC was asked for an interpretation on this issue as well. The ACC stated that, in its opinion, an effort to influence course content would not fall within the permissible limits of Bylaw 16.3. The ACC was not informed that the facts establishing that the request came after the course had already begun, the student had not received an assignment from the instructor per faculty policy, the request was to reuse course content from an earlier academic term, and that there is no evidence as to whether the request was granted. It is unknown what the ACC's opinion would be if it considered these facts.

instances of this conduct prior to the October 28, 2011, COI hearing and prior to advising the institution on September 26, 2013, that no additional violations relating to AFRI/AFAM had been found.

The text of the Cadwalader Report makes no mention of the issue of ASPSA personnel suggesting topics for AFRI/AFAM courses. Thus, there is absolutely no basis to assert that the Cadwalader Report provided "an abundance" or "a tremendous amount" of new and "materially different" information about this particular item "suggesting potential violations never before known by the enforcement staff." Indeed, it appears from the FI's supporting Allegation 1(a) contain, at most, six instances of this conduct and Mr. Zonder had notice of four of those instances.

5. ASPSA Turning in Papers to the AFRI/AFAM Department On Behalf of Student-Athletes

Consistent with the advisory in Numbers 1 through 4 above, we have already established with the enforcement staff that there are no major or secondary infractions case reports, rules interpretations, official rules education or other authority notifying member institutions that when an academic counselor emails a paper to an instructor or drops off a paper on behalf of a student-athlete while incurring no cost is not permissible under Bylaw 16.3.1.1 and instead may be an impermissible "special arrangement" in violation of Bylaw 16.11.2.1.[14] The ACC was asked about this item and it determined this conduct is permissible under Bylaw 16.3.

This conduct was brought to the attention of the NCAA enforcement staff in 2011 when: (a) Mr. Zonder was provided with five of the emails that the enforcement staff has listed as FI's relating to Allegation 1(a) (FI's 5, 6, 31, 44 and 92); (b) one additional email between Dr. Boxill and Mr. Gore appears to have been disclosed to Mr. Zonder; and (c)

(See Boxill 9/1/11 Trans., pp. 24-26; Gore 8/31/11 Trans., pp. 41, 44-45;) Thus, Mr. Zonder and the enforcement staff had multiple examples that this conduct had occurred, vetted this information with witnesses, accurately applied NCAA bylaws and determined that no violations relating to the issue would be added to the June 21, 2011, NOA prior to the October 28, 2011, hearing before the COI. Further, Mr. Zonder advised the institution on September 26, 2013, that the investigation into the AFRI/AFAM issues was closed and that no violations had been found. Mr. Duncan authorized this determination and the resulting communication.

The Cadwalader Report barely mentions the subject of ASPSA personnel turning in AFRI/AFAM papers on behalf of student-athletes. In one passing reference to the issue, it is noted in the Report that after Ms. Crowder retired, Ms. Lee attempted to build a relationship with Dr. Nyang'oro by, among other things, "personally delivering student

[14] As was noted above, there is one secondary infraction report where a coach drove papers to a professor's home for student-athletes and there was a determination that the student-athletes received a $1.00 impermissible benefit, which represented the estimated cost of the gasoline that was used for the trip. See **Exhibit 1**.

papers to him." (Cadwalader Report, p. 23). The basis for this singular statement was apparently Ms. Lee's interview with the Cadwalader attorneys (Cadwalader Report, p. 120), which was not conducted consistent with NCAA enforcement standards and, consequently, unavailable for this investigation. In any event, the involvement of Lee and other ASPSA counselors in turning in work was disclosed in 2011.

Therefore, there is no support for the contention that the Cadwalader Report contained "an abundance" or "a tremendous" amount of new and "materially different" information on the issue of ASPSA personnel turning in AFRI/AFAM assignments thereby "suggesting potential violations never before known by the enforcement staff."

6. ASPSA Recommending Grades to the AFRI/AFAM Department For Student-Athletes

Consistent with the advisory in Numbers 1 through 5 above, we have already established with the enforcement staff that 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 informing an instructor what grade is needed for a student-athlete to remain eligible or that it is an impermissible benefit under Bylaw 16.11.2.1.

It must be noted that the enforcement staff has not distinguished between "recommending what grade should be awarded for a particular assignment" and "stating what grade a student-athlete needs to earn in order to maintain athletic eligibility" both of which are referenced in the May 20, 2015, NOA. In connection with the latter item, there certainly are innumerable instances throughout the membership in which an instructor is informed that a student-athlete needs a certain grade to remain eligible. In most of these instances, this information presumably comes directly from the student-athlete; however, there are other times that the information might come from a third-party, such as an academic counselor. Clearly any possible violation does not occur unless and until that information is used by the instructor as an element of deciding the appropriate grade for the student. There is no evidence of that in this case.

There is no allegation or evidence that in this situation a student-athlete was given a grade that was unwarranted in an effort to keep the student-athlete eligible.

(See Boxill 9/1/11 Trans., pp. 25-30, 32-36; Gore 8/31/11 Trans., pp. 44-47, 49, 54-57, 59-66). Despite having extensive knowledge in the summer of 2011 about this occurrence, no violation was alleged prior to the October 28, 2011, COI hearing and the September 26, 2013, email from Mr. Zonder, which was approved by Mr. Duncan. That email exchange stated that no further investigation was warranted and no modification of the infractions case that resulted in the March 12, 2012, Public Report was needed in connection with the issues pertaining to AFRI/AFAM. As a result of the foregoing, during conversations with me and Mr. Ille, Ms. Sulentic agreed to withdraw

reliance on the , email before the NOA was issued on May 20, 2015, and therefore exclude it as an FI in any amended NOA.

Except for the , email that is discussed in the next paragraph, the only other emails that are referenced in the May 20, 2015, NOA that have any relevance to ASPSA personnel communicating with AFRI/AFAM about grades are emails where student-athletes apparently did not turn in work on time and the ASPSA counselor indicated that they should receive an AB or IN because they had not turned in their work on time (FI's 13, 17 and 129). Indeed, in one of them, Ms. Reynolds argued against giving the student-athlete a "C" until all work was turned in (FI 129). In this regard, the award of a temporary grade was consistent with conduct throughout the institution.[15]

The Cadwalader Report twice referenced the issue of ASPSA counselors recommending grades to AFRI/AFAM. (Cadwalader Report pp. 4, 39-40). The Cadwalader Report references two emails involving Dr. Boxill and this issue. One email is the , email exchange between that was provided to Mr. Zonder and The only other instance was a , email exchange between Dr. Boxill and Ms. Crowder regarding the fact that a student only needed a "D" in the class. Although this single example may have been "new" to the enforcement staff, it is noteworthy that the student at issue Thus, when Dr. Boxill indicated the student needed a "D," she was not referring to needing this grade to establish or maintain her athletic eligibility.[16]

It is the institution's position that one or two instances over a 20-year period (with the second one not even involving a then current student-athlete) does not support your claim that the Cadwalader Report contained "an abundance" or "a tremendous" amount of new and "materially different" information regarding ASPSA personnel recommending grades in AFRI/AFAM courses and thereby "suggesting potential violations never before known by the enforcement staff."

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[15] The Martin Report found some slightly higher use of temporary grades in AFRI/AFAM. (See Martin Report, pp. 40-44). Therefore, the AMA was aware of this fact when it found no further violations on March 5, 2013, and the enforcement staff was aware of this anomaly before closing its investigation on September 26, 2013.

[16] The only other reference to this issue in the Cadwalader Report was a statement that Ms. Crowder indicated in her interview that Ms. Reynolds routinely sent her emails with attached spreadsheets at the beginning of the semester listing the football student-athletes who were registered and the grade that each needed to stay eligible. (See Cadwalader Report, p. 39). The enforcement staff has agreed that due to the fact that Ms. Crowder's interview did not comply with NCAA enforcement staff standards it cannot and will not rely on her purported statements to Cadwalader attorneys. Further, the Cadwalader Report noted that it could not locate a single one of these emails among the 1.6 million emails to which it had access and, in any event, Ms. Crowder stated that she ignored the emails from Reynolds because all students received a high grade. (See Cadwalader Report p. 39). The May 20, 2015, NOA does not reference this purported conduct. As a result, it is the institution's understanding that the enforcement staff is not alleging that Ms. Reynolds suggested any grades via spreadsheets.

7. Summary

None of the conduct asserted in Allegation 1(a) has ever been identified in a precedent or other authoritative material as being beyond the scope of Bylaw 16.3.1.1 or an impermissible special arrangement under Bylaw 16.11.2.1. In addition, the institution is not aware of a single bylaw, major or secondary infractions report, rules interpretation, official rules education or other authority that has ever held that engaging in conduct once or a few times is permissible but that if some unspecified number of occurrences of the conduct takes place, the aggregation of such conduct makes it impermissible (when the conduct is not otherwise specifically limited by NCAA Bylaws).[17] The enforcement staff has never once cited any authority for this novel and illogical proposition. The institution believes that the membership would be startled to learn that the enforcement staff would take such a position and pursue a violations case on this ground with no prior warning to the membership.

Your assurances at the outset of his letter ("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") are belied by the facts, as laid out in detail above. We believe that the details show that (1) over 30 (not 10) emails were provided to Mr. Zonder and the enforcement staff in 2011 regarding the conduct now charged as violations of NCAA bylaws in Allegation 1(a) in 2015; (2) although never mentioned anywhere in your letter, the conduct now charged as violations of NCAA bylaws in Allegation 1(a) in 2015 was the subject of extensive questioning in numerous interviews during the enforcement staff's and institution's joint investigation in the summer of 2011; and (3) your characterization of the Cadwalader Report as containing "an abundance of new facts and new information suggesting potential violations never before known by the enforcement staff," your statement that "it was the tremendous amount of additional information collected by Mr. Wainstein and the testimony during subsequent enforcement interviews that revealed the behaviors now cited in Allegation 1-a" and, your claim that the Cadwalader Report presented "materially different" facts (Hosty Letter, p. 2, par. 4; p. 3, par. 1; p. 4, par. 1), are simply unfounded.

In that regard, the institution requests that it be informed with whom you checked and confirmed the accuracy of the foregoing statements.[18]

YOUR APPLICATION AND RELIANCE ON THE NUMEROSITY ARGUMENT

In the first full paragraph of page 4 of your December 16, 2015, letter, you make an argument that the number of times that each conduct occurred somehow is relevant to whether any violation occurred. As is set forth above, there is absolutely no authority for the position that if you engage in conduct 10 times there is no extra benefit but if you do it 20 or 30 times the

[17] To be distinguished, of course, are the situations where a single act is impermissible and is considered a Level III or IV violation, but if the act occurred many times it may be treated as a Level II violation. [See Bylaw 19.1.2-(c), -(d), -(f)].

[18] In your letter, you state that after receiving the Cadwalader Report, the institution took disciplinary action against nine individuals. (Hosty Letter, p. 3, par. 5). To the extent that you are implying that the employment actions were based on new information that the institution learned about the conduct asserted in Allegation 1(a), your assertion is inaccurate.

permissible conduct somehow transforms into impermissible conduct, unless such a limitation is expressly established by an NCAA bylaw. Without citation of legislation, interpretation or case precedent, it is impossible for a reasonable person to accept this novel proposition and new standard.

Aside from these basic flaws, the "facts" that have been asserted in your letter are not accurate. As has been detailed above, the institution provided over 30 emails pertaining to these issues in 2011 and has cited abundant support to confirm the staff's knowledge of and appropriate decision to not allege these actions are violations. If the acts had been violations, they should have been charged and found to be a violation, just as the one documented instance of a coach using $1.00 in gas to drive to an adjunct professor's home to turn in papers for student-athletes was found to be a violation in the secondary infractions report that is available to the membership in your secondary violations database and attached as **Exhibit 1**.

It appears that the information included in your letter also inflates the number of "new" instances of the conduct that the enforcement staff alleged in its May 20, 2015, NOA. In this regard, the letter states there are "over 220 factual information items supporting Allegation No. 1-a." The institution agrees that more than 220 "FI's" are listed after Allegation 1, but there is no indication in the NOA identifying which FI's support Allegation 1(a) and which support Allegation 1(b). However, even if all the FI's involving emails are intended by your staff to apply to Allegation 1(a), by the institution's count, based on its review of all of the FI's that cite to emails, only 85 of them arguably relate in some way to the six types of conduct identified in Allegation 1(a). The more than 135 remaining emails pertain to conduct:

(1) involving departments other than AFRI/AFAM even though Allegation 1(a) is based upon the contention that ASPSA counselors "leveraged their relationships with faculty and staff members in the [AFRI/AFAM] department to obtain and/or provide special arrangements to student-athletes that were not generally available to the student body" thereby rendering FI's concerning non-AFRI/AFAM conduct irrelevant to prove the alleged "leveraged" relationship and if anything disproved that any special conduct was occurring vis-a-vis AFRI/AFAM;

(2) that is the opposite of what is asserted (e.g., showing that student-athletes turned in their own papers or directly obtained their assignments from AFRI/AFAM); or

(3) that is not alleged as impermissible in Allegation 1(a).

Further, of the 85 emails that have anything to do with one of the six types of conduct alleged, 13 were disclosed in 2011. Of the remaining 72 emails, many of them do not actually provide any evidence of the conduct alleged, involve individuals who were not student-athletes at the time of the conduct, or involve understandable conduct (e.g., delivering a paper for a student-athlete who is not on campus due to participation on a national team, registering a student-athlete who is in practice at the time of registration, or simply asking if a course is going to be offered). Thus, even the number 85 is overstated.

In an apparent effort to bolster the numbers, the information in your letter inaccurately states that in October 2015 the institution "provided the enforcement staff with approximately 2,000 additional emails relevant to Allegation No. 1-a." (Emphasis supplied). The institution never indicated it believed these 2,000 emails were "relevant." Rather, in an effort to avoid any future claim that it did not disclose an email and therefore the investigation should be re-opened, the institution disclosed any email that the enforcement staff might possibly be interested in, including emails that do not support Allegation 1(a) for the various reasons cited in the preceding paragraphs. The fact that the enforcement staff has indicated it currently plans to use only 80 of those emails demonstrates just how over inclusive the institution was. The institution has not yet carefully analyzed the 80 new emails you reference in your letter, but they are likely to suffer from many of the same faults that are identified above.

In any event, it appears to the institution that your letter attempts to quantify in relative terms the number of instances of the conduct alleged that were known to the enforcement staff before the Cadwalader Report to those learned after the Cadwalader Report ("small sample," "only three percent"). We believe that such an assertion is not only inaccurate but irrelevant. The standard, under Bylaw 19.8.2, is whether the information that is purportedly "new" "could not have been reasonably ascertained" prior to the October 28, 2011, COI hearing. There was nothing that would have prevented the enforcement staff from seeking and obtaining additional instances of the conduct that was clearly in front of the enforcement staff in 2011 and is now charged as violations of NCAA bylaws in Allegation 1(a) in 2015. This could have been done any time before the October 28, 2011, COI hearing. Instead, Mr. Zonder, the enforcement staff, and all other NCAA staff members who participated in the evaluation of the facts plainly did not view the more than 30 emails and numerous interview statements about the six types of conduct as evidencing conduct that violated any bylaws. Their evaluation was correct and was confirmed again by the Vice President of Enforcement Jon Duncan when he authorized Mr. Zonder's September 26, 2013, communication to the institution agreeing with the institution that "no additional investigation of the issues regarding [the AFRI/AFAM] issues is being contemplated by the NCAA enforcement staff" and the staff does not "believe that any modification of the infractions case that was completed on March 12, 2012, is necessary".

MR. DUNCAN'S TOTALITY OF THE CIRCUMSTANCES THEORY

Before closing, one additional matter must be addressed. During a meeting on August 6, 2015, with you, Ms. Sulentic, Derrick Crawford, Todd Shumaker, Mr. Duncan, Bubba Cunningham and me, and expanded upon during a meeting on August 20, 2015, with Oliver Luck, Kevin Lennon, Mr. Duncan, Mr. Cunningham, Mr. Ille and me, Mr. Duncan was asked about his and his staff's

justification for Allegation 1(a) considering all of the previous determinations made by the NCAA enforcement and AMA staffs, the correct application of the bylaws previously made by the NCAA, and the absence of even a single interpretation, reported secondary violation or reported major violation to substantiate the allegation. Mr. Duncan responded to the question by noting that the violations alleged in Allegation 1(a) are based on a theory he called "the totality of the circumstances." He stated that if any one student-athlete was involved in all six of the types of conduct charged in Allegation 1(a) that collectively, considering the "totality of the circumstances," that student-athlete had been relieved of the academic responsibilities (outside of performing the classwork) of a general student and therefore a violation would be substantiated.

There is no basis in the bylaws, major or secondary infractions reports, rules interpretations, official rules education, or other authority for this position. In any event, Mr. Duncan offered to have the enforcement staff perform an analysis (in fact, on August 20, 2015, he indicated that the analysis was being performed but was not yet concluded) of the information to identify when and where the threshold he established had been met so as to support his and his staff's position that some student-athletes were relieved of the academic responsibilities of a general student. The promised analysis was provided to the institution on September 17, 2015.

Given that the NOA covers a 10-year period that would have involved thousands of student-athletes, with student-athletes taking thousands of courses each year and a significant portion of those courses being taken in the AFRI/AFAM department, the chart prepared by the enforcement staff for its analysis disproves the basic tenet of Allegation 1(a) as explained by Mr. Duncan – that the "totality of the circumstances" would reveal conduct that relieved student-athletes of their academic responsibilities. In any event, there is no known basis or precedent for the vice president of enforcement or the enforcement staff to establish this type of theory and threshold for the purpose of applying it to conduct permitted by NCAA rules in order to justify making a charge that violations of NCAA bylaws have occurred.

CONCLUSION

The institution has repeatedly communicated its position in detail – that there is no bylaw, case precedent or other authority that supports Allegation 1(a) and it therefore should be withdrawn. Further, if the enforcement staff continues to refuse to withdraw that allegation, the institution is entitled to and the enforcement staff is obligated to provide access to the documents, information and witnesses that are listed in my October 1, 2015, letter and this letter. The institution has explained in great detail the basis for its position. The enforcement staff's responses have been to avoid the requests for citation to the bylaws or existing precedent, to make broad statements that are not accurate, and to refuse to provide the institution with

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access to relevant information numerous times in violation of the association's own bylaws and established responsibilities. This is not acceptable. Either Allegation 1(a) should be withdrawn or access should be immediately provided to the requested evidence and the identified witnesses should be interviewed.

Sincerely,

BOND, SCHOENECK & KING, PLLC

Richard J. Evrard

RJE/gm/trb

Enclosures

cc: Ms. Lissa Broome
Mr. Lawrence Cunningham
Mr. Jonathan Duncan
Ms. Carol Folt
Mr. Vincent Ille
Mr. David Parker
Mr. David Schnase
Naima Stevenson, Esq.
Ms. Katherine Sulenic

EXHIBIT 1

Student-Athlete Reinstatement Case Report

SA Reinstatement Case ID:	0
Secondary Case ID:	17901
Verbal SA Reinstatement Decision Date:	
Division:	I
Sport(s):	Football
Bylaw(s):	16.11.2.1 General Rule.
SA Reinstatement Appeal:	No

Facts:
The assistant football coach arranged for the delivery of six student-athletes' term papers to a university professor's home. Specifically, at the end of fall 2001 semester, the coach directed the football secretary to deliver the student-athletes' term papers for a psychology course to the professor's home. Because the professor is an adjunct professor and does not have an office on campus, he requested that the coach gather the student-athletes' papers and have them delivered to his home. The student-athletes had not turned in the papers on schedule; however, the professor indicated he would accept papers until the final date on which he must turn in grades. Further, the professor indicated he permits papers to be turned in late for all students. The coach agreed to collect the papers and have them delivered in order for him to better ensure the student-athletes completed their assignments.

Institutional Action:
The mileage value for driving the papers to the professor's residence is $1. Each SA is being required to repay this value and will remain ineligible until restitution is complete. In addition, a letter of admonishment will be issued to the assistant football coach. The athletics department has reminded the football coaching and administrative staff, and the academic advisors, that it is not permissible to provide this benefit in the future.

Enforcement Action:
No further action.

Eligibility:

Rationale:
