



November 28, 2016

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

To All Parties:

This matter came before the Division I Committee on Infractions (COI) on a number of threshold procedural issues raised by the institution responses to the amended notice of allegations (ANOA). Taking into account the length of the case and the importance of the issues it raises, the panel determined that hearing these procedural issues separately would facilitate the most efficient resolution of the case and the most thorough vetting of all the issues, both procedural and substantive.

The scope and breadth of this case are vast. The conduct spans 18 years and appears to implicate issues at the very core of the Collegiate Model. The panel is mindful that this case involves difficult issues. Indeed, before its own accrediting body, the institution described the potential violations in this case as academic fraud and was subsequently placed on probation. At this point in the process, the panel makes no judgments as to the nature of the potential NCAA violations. It does conclude that the procedural claims raised by the institution do not bar the panel's consideration of this case on the merits. In sum, the panel concludes that the record supports that the infractions process is properly invoked to consider the merits of this case and neither the statute of limitations nor principles of fundamental fairness or finality bar the panel's consideration of this case.

Case History

The NCAA enforcement staff issued its notice of allegations (NOA) on April 25, 2015. On August 10, 2015, the parties informed the chair of the COI that they were reopening the investigation to review additional material information that could impact the NOA. On August 26, 2015, the chair conducted a procedural status call to ensure the parties

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continued to move the case toward resolution. In an October 26, 2015, written status update, the parties informed the chair of the need to issue an ANOA. The chair continued to monitor the case's status, receiving additional updates on January 8, 2016, and March 9, 2016. On April 25, 2016, the enforcement staff issued an ANOA. On August 1, 2016, the institution and Dr. Boxill filed responses to the ANOA. Both responses identified procedural claims for the COI's consideration.

The institution raised five threshold procedural claims that it asserted should bar or alter the panel's consideration of the allegations in the ANOA. Generally, the institution claimed: (1) the academic allegations tethered to institutional control and a failure to monitor are outside the jurisdiction of the NCAA infractions process; (2) certain allegations are barred because of issues previously resolved in the March 2012 infractions decision and the underlying investigation; (3) fundamental fairness considerations should bar the panel from considering certain allegations; (4) the statute of limitations bars certain allegations; and (5) portions of the Cadwalader Report, commissioned by the institution, should not be used to demonstrate NCAA violations.

On October 28, 2016, the panel conducted a procedural hearing with representatives from the institution, the enforcement staff and Dr. Boxill and her attorney. The panel had notified Dr. Julius Nyang'oro and Ms. Deborah Crowder of the hearing; however, neither responded nor participated in the hearing.

Analysis

Jurisdiction to hear allegations

At the highest level, courses and the involvement of student-athletes and institutional staff can present potential violations of NCAA legislation without running afoul of general institutional academic autonomy. Based on the face of the ANOA, the limited procedural hearing record and presentations at the procedural hearing, the panel concludes that the infractions process is appropriately invoked to hear the core of this case.

The NCAA's constitution and bylaws do not generally contemplate the infractions process addressing quality and content assessments regarding academic courses. The NCAA membership, however, has recognized an appropriate space for the infractions process to address circumstances involving an athletics department, coaching or athletics staff members, or other institutional personnel improperly influencing student-athletes' eligibility or academic performance. This is particularly true where conduct could demonstrate orchestrated efforts to inappropriately establish, preserve or obtain eligibility. Those issues cut to the core of the NCAA Collegiate Model, the notions of integrity and fair play and the purpose of the NCAA.

As a starting point, the COI obtained jurisdiction over this case once the enforcement staff filed the NOA. Pursuant to NCAA Bylaw 19.7.6, the chair actively monitored the procedural progress of the case to ensure it was moving and to understand delays in connection with the development of new information. The enforcement staff then entirely recast the allegations. What had been impermissible academic assistance allegations involving multiple sport programs over approximately 18 years in the original NOA, Allegation No. 1, were removed. The ANOA substituted failure to monitor and lack of institutional control allegations. Apart from allegations involving Dr. Boxill, it is unclear whether there are other underlying violations that form the foundation for the failure to monitor and lack of institutional control allegations. With the issuance of the ANOA, both the involved sport programs and the number of

years of alleged conduct changed. The enforcement staff, however, appears to have included much of the prior information related to the original NOA in its reply.

At the procedural hearing, the panel probed the underlying reasons for amending the original NOA. The panel is concerned about the parties' expressed rationale for removing former Allegation No. 1. The change appears to have been based, in part, on a belief by the enforcement staff that the COI does not generally support the consideration of impermissible academic assistance allegations. That is not an accurate characterization of the COI's position. The COI will consider allegations of violations of NCAA rules, including those involving impermissible academic assistance and academic misconduct, when the facts are present to support such allegations. The COI does not support impermissible academic assistance allegations that appear to constitute academic misconduct. The COI has never intended to suggest that appropriately framed academic allegations (i.e., impermissible academic assistance or academic misconduct) should not be presented to the COI. In reviewing the ANOA, the panel believes there is a basis for alleging violations of NCAA legislation.

The panel's position is further supported by the parties' presentations and the limited procedural record in this case. Upon discovering irregularities within its AFRI/AFRAM courses, the institution developed an institutional process to understand the conduct related to the courses and to reach conclusions about what occurred. That process consisted of numerous internal and external reviews. Those reviews suggested that five categories of courses existed that did not comply with institutional requirements.¹ They also culminated with the institution asserting in its January 12, 2015, response to its accrediting body that academic misconduct occurred:

The Wainstein report explains this information at length and in significant detail and demonstrates, as SACSCOC correctly observes, that the academic fraud was long-standing and not limited to the misconduct of just [two former institutional employees]. [Cadwalader at 29.]

Further, the parties' representations and other procedural hearing record materials may indicate that the behaviors surrounding these classes could be of the same qualitative nature as sample behaviors identified in the April 16, 2014, education column (e.g., doctoring transcripts or arranging to receive credit for a course a student-athlete did not enroll in or complete). The panel recognizes that those behaviors are only sample behaviors and not an exhaustive list. Some of the conduct at issue could also implicate impermissible academic assistance. The ultimate conclusion whether any type of NCAA academic rules violations occurred is an issue to be resolved at a hearing on the merits. The panel intends to explore those issues whether under the current or another amended notice. *See NCAA Bylaw 19.7.7.4.*

This case is unique in its scope, the iterations of the allegations, the procedural arguments that brought the case to this stage and in that the allegations may not be framed in a manner consistent with the information presently before the panel. Based on these factors and pursuant to NCAA Bylaw 19.7.8.1, the panel requests that the enforcement staff review whether the potential violations in this case are alleged in a fashion to best decide this case. Were the enforcement staff to determine that any material changes are necessary to best position the case for the panel's consideration, it should follow NCAA Bylaw 19.7.4 and COI Internal Operating Procedure (IOP) 3-12-3 and issue a second ANOA. Thereafter and pursuant to NCAA Bylaw 19.7.2, all parties would have an opportunity to respond within the

¹ In its submissions to the COI, the institution also described its policy decision to offer students who had taken at least some of these courses the opportunity to take an additional course if they "believed the quality of [their] education was compromised or negatively impacted by enrollment in an irregular course." Response to ANOA, Ex. IN-2 at 5.

legislated timeframes. Parties could also present the chief hearing officer with an agreed-upon expedited response period so as to hear the case as efficiently as possible.

Finally, the parties are reminded that the chair or his designee may be consulted for an initial determination related to processing. *See NCAA Bylaw 19.5.1.2.* This bylaw, however, should be used cautiously and only in truly unique circumstances.

Pursuant to these observations, should any amendments or further action be required to the ANOA, the parties should inform the panel as soon as possible, but no later than **Tuesday, January 3, 2017.**

Finality

The enforcement staff is not barred from presenting allegations involving some of the subject matter previously known at the time of the 2011 infractions investigation. At that time, the parties only had access to limited and incomplete information. The information available appears to have changed. No one disputes that a number of reviews generated more information and that the information underpins allegations different from those brought in the 2011 infractions case. After reviewing more complete information, the parties appropriately processed this case under NCAA Bylaw 19. The issues in this case were not final, binding and conclusive as a result of the COI's 2012 infractions decision.

NCAA Bylaw 19.8.3 addresses the finality of the infractions process. The bylaw identifies that a decision made by a hearing panel that is not appealed or reconsidered is final, binding and conclusive. In the weeks preceding the institution's 2011 appearance before the COI, the enforcement staff and the institution identified some potential NCAA issues involving student-athletes' academics. Neither the institution nor the enforcement staff appears to have fully understood the breadth and scope of the potential academic issues. Neither the institution nor the enforcement staff brought the potential academic issues to the COI's attention at the 2011 infractions hearing. The parameters of the 2011 allegations and violations decided in the infractions case are clear in the March 12, 2012, infractions decision.

Subsequent to the 2011 hearing, the institution continued to explore the potential academic issues with the understanding that it might uncover facts implicating academic accreditation, NCAA legislation or other issues. All parties agree that over the past five years, various credible, experienced professionals have conducted independent inquiries into the institution's academic matters, some of which involved student-athletes. Those inquiries have culminated in a more comprehensive, thorough understanding of the matters. The most complete account of what transpired appears to be memorialized in the Cadwalader Report. The Cadwalader Report's development of previously unknown information led to additional informed decisions from the institution and its accrediting body. The Cadwalader Report was new information. It also provided the institution and the enforcement staff with information not previously identified related to potential NCAA matters.

Because the various reports, including the Cadwalader Report, continued to develop information not previously known in 2011, the enforcement staff's allegations are not barred by finality. Similarly, Allegation No. 1-(r) is not barred by finality simply because the enforcement staff asked

Like the scope and breadth of the conduct involving the AFRI/AFRAM department, later developed information appears to tell a more complete story. On the face of the charging document, it is alleged that there is a pattern of similar conduct involving Dr. Boxill that occurred over approximately seven years. Therefore, Allegation No. 1-(r) is properly included for the

panel's consideration. Whether the conduct violated NCAA legislation or not, however, will be addressed at a hearing on the merits.

Fundamental Fairness

The institution has received the fundamental fairness contemplated by the NCAA constitution and bylaws. The process has provided the institution notice and the opportunity to cooperatively investigate the facts. The institution will have a full and fair hearing on the merits. The panel concludes, however, that additional steps should be afforded to Dr. Boxill.

NCAA Constitution 2.8.2 establishes that the Association shall afford institutions, staff and student-athletes fair procedures in the consideration of an identified or alleged failure in compliance. NCAA Bylaw 19.01.1 identifies the infractions program's commitment to procedural fairness. It also identifies the ability to investigate allegations as critical to the common interests of the Association's membership and preservation of its enduring values. NCAA Bylaw 19.2.3 places an affirmative obligation on current and former institutional staff members to assist the COI to further the objectives of the Association's infractions program. Within that obligation rests the requirement for parties to make a full and complete disclosure of all relevant information. Finally, NCAA Bylaw 19.5.9 requires the enforcement staff to make available all factual information (FIs) *pertinent* to the case. Division I COI IOP 3-6 parallels that bylaw. It defines *pertinent* as documents, submissions and information that could reasonably affect an allegation or potential penalty against a party, or a potential defense for any party.

Regarding the institution, the panel is unpersuaded by the institution's position that fairness estops the enforcement staff from pursuing issues that were partly known or could have been partially raised earlier. Like the institution's finality argument, the institution's claim turns, in large part, on the completion of the Cadwalader Report. Prior to 2014, the parties were hamstrung by limited and incomplete information. If the institution had complete information previously, it would have had an obligation to thoroughly investigate the information, report any potential violations and the COI would have heard allegations. That did not occur. New information emerged in 2014. At that time, the institution also had an affirmative obligation to determine whether the information supported potential violations of NCAA legislation and report any instances of noncompliance to the enforcement staff. Likewise, the enforcement staff had an obligation to review the materials for potential violations. Neither party was foreclosed from reviewing the information. The enforcement staff is not now foreclosed from presenting allegations to the COI.

As it relates to Dr. Boxill, the panel believes she should have all pertinent emails. Dr. Boxill has been put in a position requiring her to defend herself against allegations dating back to 2003. Because she is no longer employed at the institution, she does not have ready access to her institutional emails. Dr. Boxill has requested the ability to review her institutional emails during the time in question. The panel defines these documents as any email which Dr. Boxill sent or directly received (i.e., where her name appeared in the "To" or "From" line). Based on the cooperative infractions process, the panel strongly encourages the enforcement staff to work with the institution to provide Dr. Boxill with the pertinent information. Pursuant to NCAA Bylaw 19.2.3, the provision of these emails will facilitate the infractions program and ensure that complete and accurate information is presented to the panel. The panel is not indifferent to the institution's confidentiality concerns and presumes that the parties will work cooperatively to facilitate this request through appropriate means (i.e., redaction, confidentiality agreement or other analogous methods). The panel expects this information to be provided to Dr. Boxill as soon as possible. The panel

further requests the enforcement staff, on behalf of the parties, provide the panel a status update no later than **Tuesday, January 3, 2017**.

Statute of Limitations

A definitive ruling on the statute of limitations' application to the entire case is premature. Therefore, the statute of limitations does not bar the case from moving forward. Consistent with NCAA Bylaw 19, the panel will determine the effect of the statute of limitations for all parties when the panel addresses the substantive underlying conduct at a hearing on the merits.

NCAA Bylaw 19.5.11 identifies a four-year statute of limitations from the date of the notice of inquiry or the date the institution notifies (or should have notified) the enforcement staff. It also identifies three exceptions to the four-year statute. The enforcement staff claims two of the exceptions are applicable to the current case: (1) the allegations indicate a pattern of willful violations that began before but continued into the four-year period and (2) the allegations demonstrate a blatant disregard for fundamental bylaws and the enforcement staff issued an NOA within one year after learning of the matter.

On the face of the charging document, procedural submissions and the limited record for the procedural hearing, there appears to be, at the very least, a pattern of continuous activity that occurred over numerous years. That activity appears to have started before and carried into the four-year period. It will be incumbent upon the panel to determine whether that activity supports any violations of NCAA legislation and whether any exceptions to the statute of limitations apply. Additionally, the panel will be required to determine whether the provisions of NCAA Bylaw 19.5.11-(c) are satisfied to support the timeliness of allegations under that section.

Therefore, the panel concludes that the statute of limitations does not prevent the panel from considering allegations at a hearing on the merits. The full application of the statute of limitations and its exceptions will be addressed after the panel considers any substantive allegations and concludes whether any violations of NCAA legislation occurred.

Cadwalader Report

The Cadwalader Report is the type of credible information appropriately used in the administrative infractions hearing process. The panel concludes that there is neither a basis to exclude the report nor to parse the report's data from its conclusions.

NCAA bylaws establish a broad admissibility standard for infractions hearings. NCAA Bylaw 19.7.8.3 identifies that hearing panels shall base decisions on information that it determines to be credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs.

The institution claimed that portions of the Cadwalader Report should be excluded from the panel's consideration – mainly, its reliance on and conclusions derived from two interviewees who the Cadwalader firm interviewed outside of NCAA investigative bylaws.²

The panel is not indifferent to the parties' expressed concerns that they did not have an

² NCAA Bylaws 19.5.4 through 19.5.8 detail NCAA enforcement processes related to conducting interviews. Generally, they include the opportunity to have an attorney present, notice, the obligation to provide truthful information, the opportunity for an institutional representative to be present during the interview, the ability to use a court reporter and a requirement that contents of the interview remain confidential.

opportunity to participate in the interviews, question the witnesses or review the contents of the interviews. But that is not what the bylaw establishes as the standard for admissibility. Two points demonstrate why that is true – namely, the institution was aware the review could identify NCAA issues and that the information within the report may be relevant on the merits.

According to the institution, it commissioned the Cadwalader firm to conduct an honest, open and transparent investigation that, among other things, could discover possible violations of NCAA bylaws. Once finished, both the institution and its accrediting body relied, in part, on the complete report to take official action. Further, the parties have not raised similar concerns with any of the other independent reviews and corresponding reports.

At a minimum, all parties agree that the underlying data and statistics are credible. The panel agrees. The panel also believes that other information and conclusions may be relevant when it considers the merits of any allegations. Like other relevant FIs, the panel will weigh the information contained in the Cadwalader Report appropriately when it finds facts and concludes whether any violations of NCAA legislation occurred. Therefore, the panel concludes the full Cadwalader Report meets the standard of information that may be relied upon under NCAA Bylaw 19.7.8.3 and is appropriately included in the FIs.

Conclusion

Pursuant to NCAA Bylaws 19.01.1 and 19.3.6-(f), the panel remains committed to processing this case in a timely manner. Pursuant to NCAA Bylaw 19.2.3, the panel expects the parties to collaborate and facilitate Dr. Boxill's request. The panel requests a complete update on the status of this case on January 3, 2017; after which point, the panel will determine the next appropriate steps in moving this case towards resolution.

All parties are reminded that NCAA Bylaw 19.01.3 requires that all infractions-related information such as location, date/time, panel identification and involved parties remain confidential throughout the infractions process. *See also COI IOP 4-1 Confidentiality*. If you have any questions, please contact Joel McGormley, managing director at (317-917-6774) jmcmgormley@ncaa.org or Matt Mikrut, associate director at (317-917-6838) mmikrut@ncaa.org.

Sincerely,

Carol Cartwright
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Larry Parkinson
Jill Pilgrim
Greg Sankey, Chief Hearing Officer

cc: Mrs. Lissa Broome
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Commissioner John Swofford
Ms. Marielle vanGelder
Selected NCAA Staff Members