

February 3, 2017

**VIA ELECTRONIC MAIL**

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*RE: The University of North Carolina at Chapel Hill — Case No. 00231*

Dear Jon and Naima:

The University of North Carolina at Chapel Hill continues to prepare its response to the Second Amended Notice of Allegations (Second ANOA). As you know, the Second ANOA reinserted a charge, in Allegation 1, related to the conduct of the ASPSA counseling staff. When this allegation appeared (in a slightly different fashion and without reference to Nyang'oro and Crowder) in the May 2015 Original Notice of Allegations, both the enforcement staff and the University worked for several months to align more accurately NCAA bylaws to the facts of the case. The Amended Notice of Allegations in April 2016 appropriately omitted allegations that the conduct of the ASPSA counselors violated NCAA Bylaw 16.11.2.1.

The Second ANOA also names Dr. Julius Nyang'oro and Ms. Deborah Crowder in Allegation 1. This addition contradicts the University and the enforcement staff's mutual conclusion that statements attributed to Dr. Nyang'oro and Ms. Crowder and conclusions drawn from them in the Cadwalader Report resulted from investigatory methods that did not comply with NCAA rules, constituted plain hearsay, and otherwise were unreliable under member-adopted legislation – and consequently could not be used as the basis of allegations.

These two circumstances put the University in the same situation that it was in after the issuance of the Original Notice of Allegations. Namely, that it must learn, examine and explore all of the facts and circumstances related to the enforcement and AMA staff's 2011-2013 internal discussions and decisions related to this case. As you know, at that time the

staff determined that based on the conduct referenced in Allegation 1 of the Second ANOA, no violations of NCAA rules had occurred.

This letter renews the University's requests, in accordance with NCAA Bylaw 19.5.9 (Access to Information), that have been made several times in this case. I described these requests in my October 1, 2015 letter to Jon Duncan, further referenced them in my October 15, 2015 letter to Jon Duncan, and reiterated them in my November 9, 2015 letter to Naima Stevenson, copies of which are enclosed. I have included below for your convenience, only the sections of the October 1, 2015 letter that refer to the institution's specific requests and not the entire letter.

*"Respectfully, the University believes that the only possible way to properly investigate this issue is to continue the cooperative and collaborative process that the University and NCAA enforcement staff has followed throughout the past four years. If the NCAA enforcement staff's current assessment of Allegation 1(a) remains unchanged, a review of all available evidence pertaining to the staff's previous and current determinations regarding the substance of the alleged rule violations would be necessary. Additionally, joint interviews of the involved NCAA employees is necessary. For these reasons, the University requests that the enforcement staff arrange the following:*

- (1) *A joint interview of Mike Zonder. Mr. Zonder was the NCAA enforcement staff member who led the investigation of the academic improprieties that occurred at the University. He collected information, communicated with the University and NCAA staff, conducted interviews and made determinations about whether NCAA violations occurred (on at least one known occasion with the documented assistance of the NCAA AMA staff) from July 2011 until sometime in April 2014.*
- (2) *A joint interview with Stephanie Hannah. Ms. Hannah supervised Mr. Zonder's investigative efforts and is known to have assisted him with his evaluation of the facts and circumstances related to the investigations and determinations that were made.*
- (3) *A joint interview of Kevin Lennon. Mr. Lennon supervised the NCAA's AMA staff throughout the time of the investigations that occurred while Mr. Zonder was responsible for the case. The University is now aware that Mr. Lennon has knowledge and records of the efforts and decisions made to accurately apply NCAA bylaws to the evidence that was gathered.*
- (4) *A joint interview of Kris Richardson. The University is now aware that Mr. Richardson has knowledge and records of the efforts and decisions made to accurately apply NCAA bylaws to the evidence that was gathered.*

- (5) *A joint interview of Dave Schnase. The University is now aware that Mr. Schnase has knowledge and records of the efforts and decisions made to accurately apply NCAA bylaws to the evidence that was gathered.*
- (6) *A joint interview of Steve Mallonee. The University is now aware that Mr. Mallonee has knowledge and records of the efforts and decisions made to accurately apply NCAA bylaws to the evidence that was gathered.*
- (7) *A joint interview of Jon Duncan. Mr. Duncan had access to all evidence gathered and the decisions made by the NCAA enforcement and AMA staffs regarding that evidence before he authorized Mr. Zonder's September 26, 2013, communication to the University. Mr. Duncan also approved the allegations included in Allegation 1(a) that are at issue here.*
- (8) *A joint interview of Kathy Sulentic. Ms. Sulentic has led the investigation from April 2014 until the present day. Upon accepting this responsibility, Ms. Sulentic had access to all evidence gathered and the decisions made by the NCAA enforcement and AMA staffs regarding the aforementioned evidence before and after Mr. Zonder's September 26, 2013, communication with the University. This included an evaluation of evidence and subsequent interpretation of applicable NCAA bylaws made by Mr. Mallonee on March 5, 2013. The staff's evaluation and Mr. Mallonee's interpretation were not provided to the University as part of the case file before the NCAA issued its May 20, 2015 Notice of Allegations to the University. The University learned of the existence of the interpretation through its own investigative efforts when its representatives requested and were granted access to the prior investigative file. The University representatives had not been given the interpretation prior to finding it themselves in the file. It is unlikely that the University would have ever gained access to this evidence had its representatives not traveled to the NCAA national office to research the NCAA staff's records that had been collected and reviewed prior to the time the case was assigned to Ms. Sulentic.*
- (9) *All electronic communications, all correspondence and notes, and all other records that are related in any way to the investigation or evaluation of academic improprieties at the University of North Carolina at Chapel Hill from July 1, 2011 through the present day. This should include all communications and records sent from, created by, or received by the eight NCAA staff members listed above.*

*The University of North Carolina at Chapel Hill is deeply appreciative of the opportunity to thoroughly investigate the potential violation and accurate application of NCAA bylaws with the NCAA in a cooperative manner. Accordingly, the University asks that the records and interviews requested be provided and arranged as quickly as possible to help ensure a full and complete review."*

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Throughout the investigation, the institution has cooperated with the NCAA enforcement staff's requests and has shared relevant information it developed on its own initiative in compliance with its obligations under NCAA Bylaws 2.8.1, 19.2.2, and 19.2.3.

But the University's multiple requests for information from the staff have been denied. On October 23, 2015, Ms. Stevenson responded to the University's requests for documents and interviews as follows:

*"Your request to conduct interviews of NCAA staff connected with an infractions case is not a request that the NCAA can agree to. Having NCAA enforcement staff responsible for investigating infractions matters become, themselves, fact witnesses in a particular infractions case is not supported by the membership adopted legislation governing the infractions process."*

The response continued:

*"...the institution may raise whatever issues it wants in its Response to the Notice of Allegations and ask for individuals to be present at the infractions hearing so that the Committee on Infractions may probe the issue that the institution raises."*

We respectfully but profoundly disagree. The decision to revive the charges in Allegation 1, the unprecedented procedural course of this case, and member-adopted legislation indicate that the University should have access to the information it requests.

Ms. Stevenson's stated concern over the "staff responsible for investigating infractions matters, become[ing], themselves fact witnesses" does not apply to the individuals identified in requests Nos. 3 through 6 because none of these individuals was responsible for investigating any potential violations. Rather, they are/were AMA personnel who, at the request of the enforcement staff, made one or more determination(s) that the facts available did not violate NCAA bylaws. Such determinations necessarily rest on facts provided to the AMA staff. The institution should be able to investigate what facts were used for AMA's determinations and the bases for those determinations. Additionally, our request No. 9 has never been addressed by anyone.

The procedural anomalies of this case make this information all the more important. The enforcement staff's decision not to include the charge at issue in the ANOA permitted the parties to move past Ms. Stevenson's October 2015 response. The NCAA's recent decisions to revive the charges in the Second ANOA, and to support them with Cadwalader Report material the staff previously concluded could not support such allegations, makes the University's requests even more critical.

More fundamentally, we disagree with Ms. Stevenson's assertion that the member-adopted legislation does not support the institution's requests. If there is legislative support for such

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a conclusion, we would appreciate learning what it is. All requests in my October 1, 2015 letter are supported by the following legislative provisions adopted by the membership.

Bylaw 2.8.2 states that it is the obligation of the Association to “afford the institution, its staff and student-athletes fair procedures in the consideration of an identified or alleged failure in compliance.” Similarly, Bylaw 19.01.1 states that, “The [infractions] program is committed to the fairness of procedures and the timely resolution of infractions cases.” As discussed in detail below, fair procedures require responses to the institution’s requests.

Bylaw 19.5.1 provides that “once the enforcement staff determines that an investigation is warranted, it “shall conduct an investigation on behalf of the entire membership to develop, to the extent reasonably possible, all relevant information” (emphasis added). The institution believes that the information used to determine that no violation occurred in 2013 is significant, relevant information. Bylaw 19.7.1 requires that the enforcement staff identify in the Notice of Allegations all of the factual information that it may rely on to support the violations it is charging. The institution does not have access to the possible exculpatory evidence except through this request to learn about the decision-making process in 2013. Pursuant to Bylaw 19.7.7.3, at the hearing, “the parties have the obligation to present, to the extent reasonably possible, material, relevant information necessary for the hearing panel to reach an informed decision.” The University believes that the information used in 2013 by the AMA staff to conclude that no violations of NCAA bylaws occurred is relevant to its case.

If you would like to discuss this matter further, I would welcome the opportunity to do so.

Thank you for your consideration of this request.

Sincerely,

BOND, SCHOENECK & KING, PLLC



Richard J. Evrard

RJE/gm

Enclosures

cc: Mr. Joel McGormley  
Chancellor Carol Folt  
Ms. Deborah Crowder  
Mr. Randall Roden  
Mr. William Thomas

# Enclosures

October 1, 2015 and October 15, 2015 letters to Jonathan Duncan, Vice President of Enforcement, and November 9, 2015 letter to Naima Stevenson, Deputy General Counsel previously provided (available on the University's website at <http://carolinacommitment.unc.edu/unc-chapel-hill-posts-additional-ncaa-correspondence/>).