



July 17, 2017

CONFIDENTIAL/VIA SECURE WEBSITE

P.O. Box 6222  
Indianapolis, Indiana 46206  
Telephone: 317/917-6222

Shipping/Overnight Address:  
1802 Alonzo Watford Sr. Drive  
Indianapolis, Indiana 46202

[www.ncaa.org](http://www.ncaa.org)

Chancellor Carol Folt  
University of North Carolina, Chapel Hill  
c/o Mr. Rick Evrard  
Bond, Schoeneck & King PLLC  
7500 College Boulevard, Suite 910  
Overland Park, KS 66210-4035

RE: Enforcement Written Reply and Statement of the Case, University of North Carolina, Chapel Hill; Case No. 00231.

Dear Chancellor Folt:

Enclosed is the enforcement written reply and the statement of the case regarding University of North Carolina, Chapel Hill's infractions case. NCAA Division I Bylaw 19.7.3 states that the NCAA enforcement staff shall submit a written reply to the hearing panel and pertinent portions to an involved individual or institution. In addition to submitting its reply and after the prehearing conference, the enforcement staff shall prepare a statement of the case, which shall set forth a brief history of the case, summary of the parties' positions on each allegation and a list of any remaining items of disagreement. An involved individual will be provided those portions of the statement in which he or she is named.

Any impermissible disclosure of confidential information that is contrary to Bylaw 19, and failure to protect the integrity of this case could result in an allegation that you violated the NCAA Principles of Ethical Conduct and/or the NCAA Cooperative Principle.

Please contact this office if you have any questions.

Sincerely,  


Tom Hosty  
Director of Enforcement

TCH:hlm

Enclosure

cc: Ms. Lissa Broome  
Mr. Lawrence R. Cunningham  
Mr. John D. Swofford  
NCAA Division I Committee on Infractions  
Selected NCAA Staff Members

National Collegiate Athletic Association

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## ENFORCEMENT WRITTEN REPLY

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

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### **I. INTRODUCTION**

It is important to be clear what this case is about. This case is about facts that are almost entirely undisputed. It is about straightforward application of those facts to well-known bylaws adopted by NCAA members. The bylaws at issue speak very clearly to benefits, which are and are not available to student-athletes, and to an institution's responsibility for controlling its athletics program. While the interests surrounding this case may be broad and complicated, the narrow issues before this hearing panel of the NCAA Division I Committee on Infractions are decidedly unique to the NCAA. Put simply, student-athletes received access to and assistance in certain courses that was not generally available to other students. The arrangements violated familiar NCAA bylaws and operated to the competitive disadvantage of other schools.

It is equally important to be clear what this case is not about. This case is not about so-called fake classes or easy courses. The institution acknowledges that although the courses at issue did not meet its expectations for academic rigor, the institution did not deem the courses to be fraudulent. Nor is this case about NCAA review of classroom curriculum. The institution continues to argue that the NCAA enforcement staff should not judge academic rigor or revisit classroom decisions. The enforcement staff continues to agree and feels strongly that those considerations are reserved to the sound discretion of individual schools and their accrediting agencies. Nothing in this case suggests otherwise.

Also, this case is not about the enforcement staff or the infractions process. The institution invests considerable energy criticizing both. The enforcement staff will respond to select accusations as necessary, but is confident in the integrity of how this case was investigated and processed.

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Accordingly, this written reply will address the merits of serious allegations, rather than inflammatory distractions or exhausted procedural arguments found in the institution's materials.

Before discussing individual allegations, it is important to address the threshold question of whether anything in this case is the NCAA's business. The institution says no and can only reach that position by rejecting large portions of an exhaustive external inquiry, discounting information provided by its own representatives, relying on its own tailored summaries drafted for its regional accrediting agency and attributing inaccurate positions or motives to the enforcement staff. The institution's desired outcome is not unexpected, but its analysis is materially flawed.

The issues at the heart of this case are clearly the NCAA's business. When a member institution allows an academic department to provide benefits to student-athletes that are materially different from the general student body, it is the NCAA's business. When athletics academic counselors exploit "special arrangement" classes for student-athletes in ways unintended by and contrary to the bylaws, it is the NCAA's business. When a member institution provides student-athletes an inside track to enroll in unpublicized courses where grades of As and Bs are the norm,<sup>1</sup> it is the NCAA's business. When a member institution uses "special arrangement" courses to keep a significant number of student-athletes eligible, it is the NCAA's business. When a member institution fails or refuses to take action after receiving actual notice of problems involving student-athletes, thereby allowing violations to compound and to continue for years, it is the NCAA's business. In sum, it is an NCAA matter when other member schools who choose not to provide impermissible benefits are disadvantaged by their commitment to compliance.

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<sup>1</sup>DCrowder\_TR\_051017\_NorthCarolina\_00231, Page Nos. 72 and 73.

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For these reasons, the allegations before this hearing panel are well within the purview of the NCAA infractions process. Indeed, to reach the behavior at issue in this case, there is no need to stretch existing bylaws or test the outer scope of the NCAA's authority. The enforcement staff would not have conducted an investigation or brought formal allegations if it believed otherwise.

The institution's contrary assertion notwithstanding, the behaviors outlined above are supported by uncontroverted facts and have been the focus since the beginning of this inquiry. Indeed, the current allegations are substantially similar to those contained in the original notice of allegations issued May 20, 2015.<sup>2</sup> Accordingly, rather than restating its position, the enforcement staff incorporates its September 19, 2016, written reply by this reference. The enforcement staff will focus here on subsequent amendments to the notice of allegations and statements made by Deborah Crowder (Crowder), former department administrator in the department of African and Afro-American Studies (AFRI/AFAM), in her recent interview.

### **II. TIMELINE**

The enforcement staff investigated this matter and issued its notice of allegations in less than one year. The case could have concluded in 2015 but was delayed because of untimely disclosure of more than one million emails by the institution, disclosure of additional violations by the institution and untimely engagement by Crowder.<sup>3</sup> Resolution was also materially delayed when the institution reversed course in mid-2016 and opted to raise procedural challenges designed to bar adjudication by

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<sup>2</sup> Subsequent allegations changed only as the enforcement staff tried to work with the institution, as it frequently does, to articulate agreed-upon facts for review by a hearing panel.

<sup>3</sup> As noted in other submissions, the institution was the subject of a separate infractions matter approximately six years ago. The allegations at issue here were not the focus of that prior investigation, primarily because the vast majority of information relevant to the current allegations was not provided to the enforcement staff at that time. Accordingly, resolution of the current allegations was impossible until all relevant information was finally provided.

the NCAA. Those challenges were appropriately rejected by this hearing panel after voluminous briefing and an in-person hearing.

**III. ALLEGATION NO. 1 –Crowder and Julius Nyang'oro (Nyang'oro), former chair and professor in the AFRI/AFAM department, violated the principles of ethical conduct and extra-benefit legislation in connection with certain anomalous AFRI/AFAM courses. The institution and its athletics department leveraged the relationship with Crowder and Nyang'oro to obtain special arrangements for student-athletes in violation of extra-benefit legislation. [NCAA Division I Manual Bylaws 10.01.1, 10.1 and 16.11.2.1 (2002-03 through 2010-11)]**

**A. Overview.**

The institution and Crowder dispute that extra-benefit and unethical conduct violations occurred. Nyang'oro has not responded.

The institution argues again that Allegation No. 1 is barred by the statute of limitations and principles of fundamental fairness. Because this hearing panel rejected the institution's fairness argument last year, the enforcement staff will focus its attention in this written reply on the merits and remaining substantive issues. The enforcement staff believes that extra-benefit and unethical conduct violations occurred as alleged and that exceptions to the statute of limitations apply.

**B. Enforcement staff's position as to why the violations should be considered Level I [NCAA Bylaw 19.1.1] and if the institution and involved individuals are in agreement.**

The enforcement staff believes a hearing panel could determine that Allegation No. 1 is a Level I violation because the unethical conduct and the impermissible extra benefits seriously undermined or threatened the integrity of the NCAA Collegiate Model. Neither the institution nor Crowder believe Allegation No. 1 is an NCAA violation and neither commented on the level. Nyang'oro has not responded.

**C. Enforcement staff's review of facts related to the allegation.**

NCAA Bylaw 16.11.2.1 is a long-standing and well-known rule. It is unremarkable and provides that, absent certain circumstances, member institutions may not give student-athletes benefits that are unavailable to other students. "The term 'extra benefit' refers to any *special arrangement* by an institutional employee ... not expressly authorized by NCAA legislation" (emphasis added). Bylaw 16.02.3 further states that receipt of a benefit by student-athletes is not a violation "if it is demonstrated that the same benefit is generally available to the institution's students or their family members or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability."

In this case, the institution and certain administrators provided extra benefits to student-athletes for over nearly 10 years, in two ways: access to and assistance in anomalous courses. There is no material factual dispute regarding the nature of the arrangements provided. Rather, the institution argues that the same arrangements were generally available to other students. The argument is incorrect and mischaracterizes the clear statements of numerous individuals with personal knowledge of the special arrangements. This written reply will summarize the origin of the anomalous courses and address student-athletes' access to the courses and the assistance provided to them following enrollment.

Background

Crowder began working for the institution February 11, 1979, and while her title changed during her tenure, her position remained relatively the same until her retirement.<sup>4</sup> Crowder described her job as "assistant to the chair" of the AFRI/AFAM department and her duties entailed "running everything

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<sup>4</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page No. 18.

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in the department."<sup>5</sup> Crowder worked for Nyang'oro after he became the departmental chair and during the last 10 years of her employment at the institution.<sup>6</sup> Nyang'oro was an expert in African political economy and he received worldwide requests to travel and provide information in his discipline.<sup>7</sup> As a result of his travel, he delegated many responsibilities to Crowder.<sup>8</sup> Regarding the anomalous courses, Nyang'oro's delegation was significant.

Crowder had a long-time relationship with the Academic Support Program for Student-Athletes (ASPSA). ASPSA consists of academic support staff housed in athletics who work exclusively with student-athletes on their respective academic needs including monitoring whether student-athletes met required NCAA academic progress legislation. Crowder worked regularly with the ASPSA staff and, in some instances, developed a close relationship with the individuals employed within ASPSA. As Crowder noted in her interview, she and Burgess McSwain, former tutor for ASPSA, were practically like "sisters."<sup>9</sup> Crowder also had a relationship with the men's basketball program. She stated in her interview, "at some level I am indeed part of the Carolina basketball family" by virtue of a personal relationship with a former letter winner.<sup>10</sup>

Crowder and the AFRI/AFAM department began offering anomalous or "special arrangement" courses in 1999.<sup>11</sup> These were closed enrollment classes where Crowder had almost exclusive enrollment authority. They were not published as options in the student catalog and they were not advertised in the institution's schedule of classes.<sup>12</sup> Early anomalous courses originated with a

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<sup>5</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page No. 18.

<sup>6</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page No. 20.

<sup>7</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page No. 20.

<sup>8</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page No. 20.

<sup>9</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page No. 38.

<sup>10</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page No. 43.

<sup>11</sup> FI32, WainsteinReport\_102114\_NorthCarolina\_00231, Page No. 17.

<sup>12</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page Nos. 58 through 60.

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curriculum change that left students unable to graduate due to the unavailability of a general education requirement called a Perspective Course. Crowder stated her concern and caring for students motivated her involvement in creating these "special arrangements." While the enforcement staff characterized the courses as anomalous, the Cadwalader, Wickersham & Taft LLP report described them as "irregular." During her interview, Crowder consistently and specifically referred to them as "special arrangements." Whatever name is assigned, there is no dispute that the courses were very different from other institutional offerings. It is also clear that administrators exploited them on behalf of student-athletes for eligibility purposes and other athletics advantages.

### Student-Athletes' Special Access to These Courses

Because the institution did not make them known or generally available, students could only learn about these "special arrangement" courses through arts and sciences advisors, word of mouth, Crowder herself or athletics academic counselors. They were not listed with other courses and a student needed one of these limited connections to learn of the classes. Unlike other courses that were published, advertised and officially made known by the institution, these were open only to a select group with inside knowledge and were not generally available to the student body.

It is uncontroverted that student-athletes were disproportionately enrolled in what Crowder insisted on calling the "special arrangement" courses. The Cadwalader report calculated that 47.4 percent of enrollees were student-athletes. In its response to the second amended notice of allegations dated May 16, 2017, the institution offers new calculations and asserts that 26.3 percent of enrollees in the "special arrangement" courses were then current student-athletes. Although the enforcement staff disputes the institution's new argument, the lower percentage is immaterial to the bylaw analysis. Specifically, during the relevant time period, it is uncontroverted that student-athletes constituted only 3 percent of

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the student body population.<sup>13</sup> Accordingly, under either Cadwalader's calculation or the institution's novel assertion, there was a disproportionately high number of student-athletes enrolled in the courses. The institution notes that "proportionality" of student-athlete enrollment is not an NCAA violation<sup>14</sup> and the enforcement staff agrees. However, the dramatically high student-athlete enrollment is a clear manifestation and illustration of the extra benefit of preferential access. The proportionally small universe of student-athletes could not have enrolled in such high numbers absent the preferential access Crowder provided them through her relationship with ASPSA.

The institution mentions that Travis Gore (Gore), AFRI/AFAM administrative support associate, saw roughly the same number of referrals from the College of Arts and Sciences advising as he saw from ASPSA.<sup>15</sup> This statement does not help the institution for at least two reasons. First, if Gore observed ASPSA counselors referring student-athletes as frequently as he saw academic advisors referring nonstudent-athletes, this directly undermines the institution's new calculation of 26.3 percent current student-athlete enrollment and supports the Cadwalader numbers of a more even split between student-athletes and nonstudent-athletes. Second, and more importantly, academic advisors served thousands of students in the College of Arts and Sciences. In contrast, ASPSA only worked with student-athletes. It is uncontroverted that this was a much smaller segment of the student body population and Gore's observation simply confirms the preferential access and extra benefits student-athletes enjoyed.

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<sup>13</sup> FI32, WainsteinReport\_102114\_NorthCarolina\_00231, Page No. 3.

<sup>14</sup> Institution's response, Page No. 13.

<sup>15</sup> Institution's response, Page No. 8.

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There came a point where Crowder had so many student-athletes in her office attempting to register for these courses that she instituted new processes. For example, she requested that athletics academic counselors in ASPSA send her a list each term of the student-athletes they wanted enrolled in special arrangement courses.<sup>16</sup> There is no information in the record suggesting that she made similar "group enrollment" accommodations for any other segment of campus. Rather, Crowder required regular students to confer individually with their campus academic advisors about their course needs and enrolled them only with the permission of their advisor.

By way of illustration, Crowder and other academic advisors used these courses for general students who found themselves in unforeseen circumstances. These included students who had family crises, personal crises or curriculum difficulties that could cause a delay in graduation. However, these were not Crowder's concerns with regard to student-athletes. Rather, Crowder stated that she made "special arrangements" for student-athletes because classes sometimes impacted a student-athlete's practice time.<sup>17</sup> Crowder essentially equated a student caring for a parent with cancer to a student-athlete who needed to attend a team practice.<sup>18</sup> Further, Crowder noted in her interview that all students had several course options to fulfill a perspectives requirement. However, there is no information in the record suggesting that every student-athlete enrolled in anomalous AFRI/AFAM courses for the purpose of fulfilling a perspectives course and avoiding a delayed graduation. In fact, as noted below, the ASPSA counselors instead viewed these courses as options where student-athletes did not have to attend class, stay awake and take notes, meet with professors, turn in their work or even pay attention

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<sup>16</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page Nos. 47 and 48.

<sup>17</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page No. 68.

<sup>18</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page No. 68.

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to the material.

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Even Crowder herself was uneasy about how these courses were used for student-athletes. When asked to enroll a student-athlete in a course section alone, without any other students, she mentioned that it "raised too many red flags."<sup>20</sup> Further, when asked for a favor by an athletics academic counselor, she mentioned that she could not do it because, "we have a little academic credibility to uphold."<sup>21</sup> Over time, Crowder's offerings of "special arrangement" courses grew, as did the number of student-athletes who took advantage of them.<sup>22</sup> Although other arts and sciences advisors were generally aware of the availability of "special arrangements," the athletics academic counselors in ASPSA knew Crowder and Nyang'oro and had an inside track to learn about these unpublicized courses and to enroll student-athletes in them. Jamie Lee (Lee), former athletics academic counselor, met with Nyang'oro personally and discussed both the "special arrangement" courses and student-athletes who were enrolled or planned to enroll in those courses.<sup>23</sup> Further, Crowder had a "soft spot" for student-athletes and believed they were treated unfairly.<sup>24</sup> As a result, athletics academic counselors leveraged these relationships to benefit student-athletes in ways not available to the general student body.

<sup>25</sup> However,

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<sup>19</sup> FI32, WainsteinReport\_102114\_NorthCarolina\_00231, Page No. 73.

<sup>20</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page No. 82.

<sup>21</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page No. 82.

<sup>22</sup> FI31, GovernorMartinFinalReport&Addendum\_121912\_NorthCarolina\_00231, Page Nos. 36 through 38.

<sup>23</sup> Exhibit NCAA-2, Item3\_LeeToNyangoro\_042710\_NorthCarolina\_00231.

<sup>24</sup> FI61, Item2\_CrowderFromWeiler\_021604\_NorthCarolina\_00231.

<sup>25</sup> FI39, BBridger\_TR\_081414\_NorthCarolina\_00231, Page No. 42.

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Despite the fact that Nyang'oro knew of Crowder's activity and was warned about student-athletes' enrollment in the "special arrangements," he did nothing to stop the activity.<sup>26</sup>

In short, the athletics academic counselors in ASPSA had the special knowledge and the special relationships necessary to gain special access to unpublicized courses for the benefit of student-athletes. Where general students had to navigate the process on their own by working with an academic advisor or contacting Crowder directly to identify and enroll in these courses, student-athletes impermissibly benefitted from the special access the ASPSA counselors had by virtue of their ongoing relationships in AFRI/AFAM, especially with Crowder. As a result, over the course of nearly a decade, student-athletes were enrolled in "special arrangement" classes at a rate 10 times greater than their representation in the student body, at a minimum, and as high as a one-to-one ratio with their general student colleagues.

Assistance Provided for Student-Athletes

Special access and use for NCAA eligibility purposes is not the only problem with these courses. Regarding Allegation No. 1-b, it is undisputed that ASPSA staff

<sup>27</sup> obtained assignments for these courses<sup>28</sup> and turned in papers on behalf of student-athletes.<sup>29</sup> These are basic educational tasks all students are expected to perform, yet numerous student-athletes at the institution were relieved of these obligations while administrators performed them instead.

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<sup>26</sup> FI32, WainsteinReport\_102114\_NorthCarolina\_00231, Page No. 17.

<sup>27</sup> FI39, BBridger\_TR\_081414\_NorthCarolina\_00231, Page No. 35.

<sup>28</sup> Enforcement written reply of September 19, 2016, Exhibit NCAA-4.

<sup>29</sup> Enforcement written reply of September 19, 2016, Exhibit NCAA-5.

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<sup>31</sup> On some occasions, the ASPSA staff even requested courses,<sup>32</sup> suggested assignments<sup>33</sup> and recommended grades for student-athletes.<sup>34</sup> Typically at this and other institutions, all of these responsibilities lie with students and not with athletics administrators.

ASPSA's close relationship with Crowder and Nyang'oro allowed ASPSA to obtain a higher level of assistance, support and privileges for student-athletes when compared to the general student body.

<sup>35</sup> Members of the general student body who enrolled in these "special arrangement" courses did not have the same assistance and benefits that student-athletes had because of this relationship.

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<sup>30</sup> FI42, RMercer\_TR\_070714\_NorthCarolina\_00231, Page No. 57.

<sup>31</sup> FI83, CReynolds\_TR\_112014\_NorthCarolina\_00231, Page No. 76.

<sup>32</sup> Exhibit NCAA-3, Item3\_LeeToNyangoro\_071510\_NorthCarolina\_00231.

<sup>33</sup> Exhibit NCAA-4, Item1\_BoxillToCrowder\_080108\_NorthCarolina\_00231.

<sup>34</sup> Exhibit NCAA-5, Item1\_BoxillToGore\_072210\_NorthCarolina\_00231.

<sup>35</sup> FI39, BBridger\_TR\_081414\_NorthCarolina\_00231, Page No. 36.

<sup>36</sup> FI117, WRead\_TR\_021815\_NorthCarolina\_00231, Page No. 8.

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<sup>37</sup> Other members of the ASPSA staff even mocked Read when she expressed concern over the lack of effort exerted by student-athletes enrolled in the "special arrangement" courses.<sup>38</sup> Read wanted all students to work hard and produce a good work product, but was told by an ASPSA colleague that student-athletes only needed to produce was a "middle school report."<sup>39</sup> Not only that, but a member of the ASPSA staff would wait for student-athletes working on a paper at the last minute, pick the paper up and turn it in for the student-athletes.<sup>40</sup>

### Why the Courses Were Valuable

As Crowder noted in her interview, students who enrolled in these courses would receive an A or B unless they submitted something out of the ordinary.<sup>41</sup> Crowder's grading standards consisted of only checking to see if a paper was of the required length, was on the assigned topic and had a bibliography.<sup>42</sup> If it met those conditions, she awarded a grade of A or B, consistent with Nyang'oro's standards. As Crowder said in her May 10, 2017, interview, she asked Nyang'oro about his grading standards for papers: "I asked, do you ever give any grades other than As and Bs and he said, no. He said, you have to work to get a C."<sup>43</sup>

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<sup>37</sup> FI117, WRead\_TR\_021815\_NorthCarolina\_00231, Page No. 8.

<sup>38</sup> Enforcement written reply of September 19, 2016, Exhibit NCAA-7.

<sup>39</sup> Enforcement written reply of September 19, 2016, Exhibit NCAA-7.

<sup>40</sup> Enforcement written reply of September 19, 2016, Exhibit NCAA-7.

<sup>41</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page No. 124.

<sup>42</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page Nos. 123 and 124.

<sup>43</sup> DCrowder\_TR\_051017\_NorthCarolina\_00231, Page Nos. 72 and 73.

<sup>44</sup> FI83, CReynolds\_TR\_112014\_NorthCarolina\_00231, Page No. 43.

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<sup>45</sup> Reynolds noted that if someone other than Crowder graded the papers, the student-athletes would receive "D's and C's at best."<sup>46</sup> Crowder disputes this assessment of her grading; however, it was certainly the belief of multiple individuals with ASPSA that this was true. Moreover, general students enrolled in the courses would not know who graded their papers, nor were they notified of potential avenues to ensuring they received a higher grade.

This is not the end of the institution's exploitation of "special arrangement" courses. In fact, ASPSA used these "special arrangement" courses for reasons that are very different from the reasons offered by Crowder. Primarily, athletics academic counselors used these courses to help maintain NCAA eligibility for student-athletes who were at risk academically. This, along with other benefits, such as the ability to control and monitor the administration of these courses, meant that student-athletes did not need to attend class or meet with AFRI/AFAM faculty or staff. Not only did this boost their NCAA eligibility, but it meant those student-athletes, unlike student-athletes at other member institutions, could spend more time on their sport. This made the courses especially valuable to athletics academic counselors, student-athletes and the athletics department.

The favorable access to these courses, along with the ability of ASPSA to administer them, significantly benefited the growing number of at-risk student-athletes ASPSA was required to support.

<sup>47</sup> The preferential access to the "special arrangement" courses and the corresponding course assistance provided the institution a competitive advantage because it allowed the institution to admit a significant number of student-athletes who were at risk. Once admitted, the

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<sup>45</sup> FI83, CReynolds\_TR\_112014\_NorthCarolina\_00231, Page No. 81.

<sup>46</sup> Enforcement written reply of September 19, 2016, Exhibit NCAA-11.

<sup>47</sup> FI83, CReynolds\_TR\_112014\_NorthCarolina\_00231, Page No. 49.

scheme also provided a mechanism to keep the student-athletes eligible and freed them to spend more time engaged in sport. The athletics academic counselors within ASPSA turned to the AFRI/AFAM courses and exploited them to maintain the academic eligibility of student-athletes who struggled with the academic demands of the institution. Nowhere is this better illustrated than in a PowerPoint presentation Bridger prepared for the football staff after a season of particularly poor academic performance.<sup>48</sup> She noted the following:

### What was part of the solution in the past?

- We put them in classes that met degree requirements in which
  - They didn't go to class
  - They didn't take notes, have to stay awake
  - They didn't have to meet with professors
  - They didn't have to pay attention or necessarily engage with the material
- AFAM/AFRI SEMINAR COURSES
  - 20-25 page papers on course topic
  - **THESE NO LONGER EXIST!**

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NCAA bylaws do not have a blanket prohibition against providing benefits to student-athletes. On the contrary, NCAA bylaws specifically identify types of benefits that a member institution may provide. Included in the list of permissible benefits are "counseling and tutoring services ... provided by the department of athletics."<sup>50</sup> However, the academic support for student-athletes permitted by Bylaw 16.3.1.1 is not unlimited. Unique access to and assistance in "special arrangement" courses like

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<sup>48</sup> FI94, PowerPoint1\_WainsteinSupplement\_NorthCarolina\_00231.

<sup>49</sup> FI41, JBlanchard\_TR\_073014\_NorthCarolina\_00231, Page Nos. 20 and 21.

<sup>50</sup> NCAA Division I Bylaw 16.3.1.1.

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those at issue here are not the type of benefits permitted under Bylaw 16. The benefits here are not at all similar to the permissible supports identified by member schools in Bylaw 16. On the contrary, the access and assistance provided by the institution here do not help "maximize the academic performances of student-athletes."<sup>51</sup> Rather, they alleviated the academic responsibilities for students that help them develop both as learners and adults. Instead of supporting academic and long-term success of student-athletes, they cut against this core principle of the Association. As noted above, the benefits provided here also created a competitive advantage over other member schools who supported student-athletes consistent with Bylaw 16.

These Extra Benefits Demonstrate Both a Willful Pattern of Violations and Such a Blatant Disregard for NCAA Bylaws That Two Exceptions to the Statute of Limitations Apply

The facts are uncontroverted and the bylaws are clear. Not only are these serious violations contrary to the NCAA Collegiate Model and fundamental fairness, they are timely before this hearing panel. The enforcement staff incorporates by reference its arguments on the statute of limitations from its September 19, 2016, written reply and summarizes the key points here.<sup>52</sup> The clock tolled February 21, 2014, when the enforcement staff was notified that the institution retained Kenneth Wainstein, attorney at Cadwalader, to conduct an inquiry into these matters. Therefore, any violations that occurred after February 21, 2010, are within the four-year statute of limitations. Some of the extra-benefit and unethical conduct violations in Allegation No. 1 occurred subsequent to February 21, 2010. Others occurred earlier and meet one or more exceptions to the statute of limitations.

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<sup>51</sup> Exhibit NCAA-6, NCAA Division I Bylaw 16.3.1.1, legislative rationale, 1991.

<sup>52</sup> The only reason the hearing panel could not make a final decision at the procedural hearing concerning the statute of limitations issue is because it must decide this allegation on its merits. The only remaining question for the hearing panel is whether it believes a violation occurred.

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Bylaw 19.5.11-(b) applies when there is a pattern of willful violations by an institution or involved individual. Despite concerns from administrators both within athletics and on campus, Nyang'oro, Crowder and ASPSA administrators continued to provide extra benefits, which began before and continued into the four-year period. Accordingly, the violations asserted in Allegation No. 1 are timely pursuant to this exception. The second applicable exception is found in Bylaw 19.5.11-(c). The intentional conduct of Nyang'oro and Crowder and ASPSA administrators spanned from 2003 until 2011, which indicates a blatant disregard of basic and well-known NCAA bylaws. The other conditions in the exception are also satisfied. Specifically, on June 2, 2014, Jon Duncan (Duncan), vice president of enforcement, notified the institution that the enforcement staff would investigate these matters. Within one year, the enforcement staff issued its notice of allegations. Therefore, Allegation No. 1 is properly before the hearing panel and should be decided on the merits.

### Systemic Problem and the Non-identification of Specific Student-Athletes

Unlike many extra benefit cases that involve specific and identifiable student-athletes, this case presents systemic problems that resulted in institutional administrators providing extra benefits to a population of student-athletes over the course of nearly 10 years. In light of how the violations unfolded, the passage of time and the lack of personally identifying information in the institution's records, it is not possible to specifically list each student-athlete who received an extra benefit. The enforcement staff appreciates the challenge this presents in fashioning penalties. However, the enforcement staff does not believe the violation analysis should be impacted by the systemic nature of the behaviors at issue or the lack of precise detail in the materials produced by the institution. Put simply, serious violations occurred even if factual information in the record does not identify each instance or each student-athlete who benefited.

**D. Remaining issues.**

1. Do one or more exceptions to the statute of limitations apply to Allegation No. 1?
2. As noted in Allegation No. 1-a, did Crowder and Nyang'oro violate NCAA extra-benefit legislation?
3. As noted in Allegation No. 1-a, did Crowder and Nyang'oro violate NCAA principles of ethical conduct?
4. As noted in Allegation No. 1-b, did the institution violate NCAA extra-benefit legislation?

**E. Rebuttal information.**

The institution refers the hearing panel to a bylaw interpretation provided by the Atlantic Coast Conference (ACC). The ACC interpretation does not support the institution's overall position, is not binding on this hearing panel and is not dispositive of the narrow issue presented here. Furthermore, the enforcement staff did not have the opportunity to participate in the interpretation and the institution did not allow the enforcement staff to comment on what it submitted to the ACC. As such, the interpretation request only contained facts and representations selected by the institution. The interpretation also did not address information discovered subsequently, such as Crowder's detailed description of the "special arrangements" she made for student-athletes.

The institution also discusses the applicability of Bylaw 10.01.1, the use of "student-athlete" courses by other institutions and matters purportedly involving the University of Michigan and Auburn University. The enforcement staff believes all of these issues are without merit and do not warrant a discussion in its written reply. The enforcement staff is, however, prepared to discuss these issues at the hearing if the panel desires.

**IV. ALLEGATION NO. 2 – Jan Boxill (Boxill), philosophy instructor, director of the Parr Center for Ethics, women's basketball athletics academic counselor in the ASPSA and chair of the faculty, knowingly provided academic extra benefits to women's basketball student-athletes. [NCAA Division I Manual Bylaws 10.1, 10.1-(c) and 16.11.2.1 (2003-04 through 2010-11)]**

**A. Overview.**

The institution and enforcement staff agree that the factual information in Allegation Nos. 2-a, 2-b, 2-d through 2-o and 2-q are substantially correct and violations of Bylaw 16.11.2.1 occurred. However, the institution argues that the factual information in Allegation Nos. 2-c and 2-p does not amount to an NCAA violation and reasserts its belief that the information identified in Allegation No. 2-r was previously reviewed and found to not be a violation. The institution further asserts that Boxill did not knowingly violate Bylaw 16 and any misconduct did not amount to unethical conduct under Bylaw 10. Boxill disputes Allegation No. 2 on the basis that she did not violate NCAA rules deliberately or unethically. Both the institution and Boxill argue that the allegations are barred by the statute of limitations.

**B. Enforcement staff's position as to why the violations should be considered Level I [NCAA Bylaw 19.1.1] and if the institution and involved individual are in agreement.**

The enforcement staff believes Allegation No. 2 should be considered a Level I violation because the substantial academic benefits Boxill provided seriously undermine the NCAA Collegiate Model. Boxill occupied multiple positions that afforded her a special relationship with both the women's basketball program and her faculty colleagues. Boxill abused these positions to provide impermissible benefits to multiple women's basketball student-athletes over the course of eight years. She knowingly provided the assistance, which amounts to unethical conduct under Bylaw 10.1. Boxill's impermissible

assistance to these student-athletes, who she admits may have failed but for her assistance, provided an extensive competitive advantage.

Both the institution and Boxill argue that Boxill's violations should be processed as Level III.

**C. Enforcement staff's review of facts related to the allegation.**

In its September 19, 2016, written reply, the enforcement staff submitted a detailed analysis for each subparagraph in Allegation No. 2. That written reply set forth the enforcement staff's position on the statute of limitations and the appropriate level for this serious allegation. The enforcement staff incorporates by reference the entirety of its argument from that written reply.<sup>53</sup>

As detailed in that written reply, the enforcement staff weighed the plain language of Boxill's emails and their attachments against her subsequent explanations of those communications when assessing the reliability of her interview answers. Of the over 60 messages the enforcement staff questioned Boxill about in two separate interviews, only 18 of those emails form the basis of Allegation No. 2. In each of these instances, the enforcement staff concluded that Boxill's after-the-fact explanations were notably inconsistent with her contemporaneous summations of the work she completed for student-athletes. The enforcement staff concluded that Boxill's contemporaneous comments in the emails regarding the attachments evidenced NCAA violations and were inherently more credible than her subsequent interview statements. Notably, the institution agrees with the enforcement staff in 15 of the 18 instances cited in Allegation No. 2.

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<sup>53</sup> While the substance of the allegation involving Boxill did not change when the amended notice of allegations was revised to the second amended notice of allegations, the order of the allegations did. As a result, the issues related to Boxill that appear in Allegation No. 2 in the second amended notice of allegations appeared previously in Allegation No. 1 in the amended notice of allegations.

Boxill includes in her May 16, 2017, response what appears to be previously undisclosed opinions from other parties to bolster her 2014 and 2015 interview statements. The speculative third-party statements are not probative or credible and they are improperly before this hearing panel. Boxill and her counsel failed to notify the enforcement staff that they intended to conduct interviews germane to this case. As a result, Boxill and her counsel did not comply with Committee on Infractions Internal Operating Procedure 3-12-1 and the hearing panel may reject the information she presents from these interviews. Regardless, the enforcement staff finds Boxill's contemporaneous email statements to be more credible and probative.

**D. Remaining issues.**

1. Do one or more exceptions to the statute of limitations apply to Allegation No. 2?
2. Does the factual information support violations of Bylaws 10 and 16 as alleged?
3. Should any violations that occurred be Level I, as alleged, or Level III?

**E. Rebuttal information.**

The November 19, 2014, Weber State University case should not be viewed as precedent in the current matter, as the decision to treat those violations as Level III was made by the enforcement staff based on unique process considerations and was not a substantive finding by the NCAA Division I Committee on Infractions.

To find more appropriate precedent on violations of this nature, the hearing panel can look to the institution's most recent major infractions case.<sup>54</sup> In 2012, the Committee on Infractions observed as follows in the introduction:

During the 2008-09 academic year and the summer of 2009, the former tutor engaged in academic fraud with and on behalf of three football student-athletes ... when the

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<sup>54</sup> University of North Carolina, Chapel Hill, Public Infractions Report, March 12, 2012.

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former tutor constructed significant parts of writing assignments for them. The former tutor wrote conclusive paragraphs for papers, revised drafts, composed 'works-cited' pages, researched and edited content and inserted citations, among other violations.

In the present case, Boxill wrote conclusive paragraphs for papers (Allegation Nos. 2-g, 2-i, 2-l through 2-n and 2-q), revised drafts (Allegation Nos. 2-a, 2-c through 2-e, 2-h, 2-j and 2-k) and provided a bibliography (Allegation No. 2-b), among other violations. In contrast to the former tutor assisting three football student-athletes for two years, Boxill engaged in nearly identical activity with nine women's basketball student-athletes over the course of eight years. The Committee on Infractions further summarized in the 2012 infractions report the obligations of athletics academic support staff at the institution, including that staff were not "to make changes on electronic versions of the student-athletes' written assignments" and should not "provide academic assistance anywhere but the institution's academic center."<sup>55</sup> As evidenced by the email exchanges associated with the subparagraphs identified in Allegation No. 2, it is clear that Boxill disregarded both of these restrictions on athletics academic support staff by exchanging content revisions with women's basketball student-athletes electronically and not doing the work in the academic center.

At the same time the institution's former tutor engaged in academic fraud in 2008-09, Boxill provided impermissible assistance to former women's basketball student-athletes and \_\_\_\_\_ as outlined in Allegation Nos. 2-k through 2-o. In Allegation No. 5, the institution admits it failed to monitor Boxill. As a result, the institution failed to detect Boxill's violations in a timely manner. Had the institution been more vigilant and had the extent of Boxill's assistance to women's basketball student-athletes been fully known at the time of the 2012 infractions report, it, too, would have been identified as academic fraud and processed with the major infractions case. As such,

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<sup>55</sup> University of North Carolina, Chapel Hill Public Infractions Report, March 12, 2012, Page No. 3.

the institution could not now have argued that Boxill's violations were merely secondary and cannot now argue that they are Level III. Although Boxill characterizes her conduct with the student-athletes as professorial prerogative, such conduct is the same type of misconduct the Committee on Infractions concluded in the 2012 infractions report, was a very serious violation of NCAA bylaws. If the behavior here is different, it is only because it is worse.

**F. Additional matters that relate to Allegation No. 2.**

The institution and Boxill raise arguments regarding the statute of limitations set forth in Bylaw 19.5.11. The institution, restates the argument it made before the hearing panel at the procedural hearing October 28, 2016, regarding the appropriateness of including Allegation No. 2-r as the basis for a violation. As the hearing panel has already resolved this issue and found this email is "properly included for the panel's consideration," the enforcement staff will not reargue the matter.<sup>56</sup> Moreover, the enforcement staff addressed its position on the statute of limitations in Section 3 of the amended notice of allegations reply, as well as during the procedural hearing. The enforcement staff incorporates by reference the arguments previously raised.

Significant to resolving the application of the statute of limitations is the extent to which the allegations involving Boxill amount to "willful violations" or "indicate a blatant disregard" for fundamental bylaws. Boxill argues that because she was a professor, any assistance she provided to a student-athlete was appropriate as professorial prerogative and was neither willful nor in blatant disregard of NCAA bylaws. As noted above, the enforcement staff disagrees. The only allegation involving a course in which Boxill served as the instructor is Allegation No. 2-f. In the remaining 17 instances, she served instead in her capacity as an athletics academic counselor to the women's

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<sup>56</sup> Committee on Infractions' Procedural Hearing Letter dated November 28, 2016, Page Nos. 4 through 5.

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basketball student-athletes while still insisting the assistance she provided amounted to legitimate educational benefits. This highlights the distinction between Boxill's role as professor and as athletics academic counselor. She dismisses the truism, but she cannot be an athletics academic counselor and simultaneously enjoy a professorial prerogative. She occupied such a special relationship with both the women's basketball student-athletes and her faculty colleagues where, in one instance, she communicated with her faculty colleagues that one student-athlete "was unable to do any meaningful academic work and would need extra time and accommodation in order to complete her courses."<sup>57</sup> It is commendable to have faculty willing to work with students through difficult circumstances, but it also illustrates the special position Boxill occupied among her colleagues. It is doubtful another athletics academic counselor could have achieved the same results with faculty. The extent to which Boxill provided impermissible academic extra benefits to women's basketball student-athletes and used her position among the faculty to further this level of assistance demonstrates a willful pattern and a blatant disregard for NCAA bylaws.

**V. ALLEGATION NO. 3 – Crowder engaged in unethical conduct and failed to cooperate when she refused to timely interview with the enforcement staff. [NCAA Division I Manual Bylaws 10.1, 10.1-(a) and 19.2.3 (2014-15)]**

**A. Overview.**

The institution and enforcement staff agree that the factual information contained in Allegation No. 3 is substantially correct and a violation occurred. Crowder questions whether noncooperation by a retired individual can amount to unethical conduct.

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<sup>57</sup> Boxill's response to second amended notice of allegations, Page No. 9.

**B. Enforcement staff's position as to why the violations should be considered Level I [NCAA Bylaw 19.1.1] and if the institution and involved individual are in agreement.**

On its face, Bylaw 10.1 expressly applies to current and former institutional staff members. The refusal of a former institutional staff member, especially one with key information such as Crowder, to timely interview with the enforcement staff adversely impacts the NCAA's ability to investigate potential violations. Crowder ultimately agreed to an interview nearly five months following the release of the second amended notice of allegations and three years after the enforcement staff initially requested to interview her. Refusing basic investigative requests creates significant problems and a decision not to cooperate cannot be encouraged or minimized. Crowder's untimely participation amounts to unethical conduct under NCAA bylaws by undermining the common interests of the NCAA's membership and the preservation of its enduring values. It is presumptively a Level I violation. The institution takes no position on the level of Allegation No. 3.

**C. Enforcement staff's review of facts related to the allegation.**

Crowder retired from the institution in 2009. The enforcement staff and institution requested an interview with Crowder through her attorney in July 2014. She refused to interview. On March 9, 2017, Crowder submitted a letter and affidavit to Duncan, indicating she may be interested in participating in the NCAA infractions process. Crowder agreed to an interview May 10, 2017.

The Committee on Infractions commented on noncooperation similar to Crowder's in its March 6, 2015, Syracuse University Public Infractions Decision. In that matter, an academic coordinator repeatedly declined to interview with the enforcement staff during the investigation but agreed to participate within a month of the hearing. The academic coordinator interviewed and ultimately participated in the hearing as well. The Committee on Infractions concluded that the academic

coordinator's refusal to fully cooperate was contrary to the principles of ethical conduct and the cooperative principle. However, due to her eventual cooperation, the Committee on Infractions found the academic coordinator's violations were Level II, not Level I in nature.<sup>58</sup>

The enforcement staff finds this precedent instructive in the current matter. While the enforcement staff certainly appreciates Crowder's eventual participation, full and timely cooperation is essential to a meaningful infractions process and to timely disposition of cases. The infractions process cannot be effective or efficient if individuals subject to NCAA bylaws may choose not to participate, or may choose to participate in a manner and on a timeline of their liking. The enforcement staff cannot close investigations and the Committee on Infractions cannot convene timely hearings when an institution's current or former staff members dictate the terms of their cooperation.

**D. Remaining issue.**

Does Crowder's time and manner of participation amount to unethical conduct and a failure to cooperate?

**E. Additional matters that relate to Allegation No. 3.**

From the time Crowder first indicated her potential interest in participating in the NCAA infractions matter to the submission of her March 9, 2017, response to the second amended notice of allegations, her attorney made public disclosures in violation of Bylaw 19.01.3. First, the response itself was submitted to the media outlet Inside Carolina, an affiliate of the Scout.com network, the same day it was submitted to the enforcement staff. Second, Crowder's attorney provided to the media additional correspondence with the enforcement staff, including letters dated April 4 and 11, 2017. On information and belief, neither Crowder nor her attorney are public entities subject to open records

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<sup>58</sup> Syracuse University Public Infractions Decision, March 6, 2015, Page Nos. 48 through 49.

laws in North Carolina. The enforcement staff is not aware of any other legitimate reason for Crowder or her attorney to disclose confidential, case-related information.

The enforcement staff considered amending the second amended notice of allegations to include these violations. However, given the procedural posture and duration of this matter, the enforcement staff opted not to amend the allegations so all parties could finally bring this matter to resolution. The enforcement staff presents this information for context and for the hearing panel's general consideration.

**VI. ALLEGATION NO. 4 – Nyang'oro engaged in unethical conduct and failed to cooperate when he refused to interview with the enforcement staff. [NCAA Division I Manual Bylaws 10.1, 10.1-(a) and 19.2.3 (2014-15)]**

**A. Overview.**

The institution and enforcement staff agree that the factual information contained in Allegation No. 4 is substantially correct and a violation occurred. Nyang'oro provided no response.

**B. Enforcement staff's position as to why the violations should be considered Level I [NCAA Bylaw 19.1.1] and if the institution and involved individual are in agreement.**

The refusal of a former institutional staff member, such as Nyang'oro, to interview with the enforcement staff adversely impacts the NCAA's ability to investigate alleged violations. Such unethical conduct undermines the common interests of the NCAA's membership and the preservation of its enduring values. Accordingly, it is presumptively a Level I violation. The institution takes no position on the level of Allegation No. 4.

**C. Enforcement staff's review of facts related to the allegation.**

Nyang'oro retired from the institution in 2012. The enforcement staff and the institution requested an interview with Nyang'oro through his attorney. Nyang'oro refused. Consistent with Bylaw 19.7.2, the hearing panel may view the lack of timely response by Nyang'oro as an admission.

**D. Remaining Issues.**

None.

**VII. ALLEGATION NO. 5 – The institution lacked control and failed to monitor the conduct and administration of its athletics programs.** [NCAA Division I Manual Constitution 2.1.1, 2.8.1 and 6.01.1 (2002-03 through 2010-11)]

**A. Overview.**

The institution agrees that it failed to monitor Boxill but disputes it lacked institutional control as alleged. The enforcement staff believes that the institution lacked control as it pertains to Allegation Nos. 1 and 2.

**B. Enforcement staff's position as to why the violations should be considered Level I [NCAA Bylaw 19.1.1] and if the institution and involved individual(s) are in agreement.**

The NCAA enforcement staff believes a hearing panel could determine that Allegation No. 5 is Level I because the violations seriously undermine or threaten the integrity of the NCAA Collegiate Model and because lack of institutional control violations are presumed to be Level I. The institution believes that, at most, it failed to monitor the conduct of Boxill as described in Allegation No. 2 and that this failure resulted in a Level II violation.

**B. Enforcement staff's review of facts related to the allegation.**

The enforcement staff briefed many of these issues in its September 19, 2016, written reply and incorporates by reference its discussion of the institution's failure to monitor and lack of institutional

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control. Those subjects are addressed on Page Nos. 30 through 45 of that written reply. To avoid repetition, the enforcement staff briefly summarizes its position below.

Although housed in the athletics department, funded by athletics, dedicated to the assistance of only student-athletes and bound by specific NCAA bylaws, ASPSA reported to a dean within the College of Arts and Sciences.<sup>59</sup> For a significant portion of the time period at issue in this allegation, Owen served in that capacity.

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In the absence of effective leadership, the athletics academic counselors lacked the supervision necessary and largely operated independently without the typical monitoring present in most athletics academic centers. The institution acknowledged that no member of the ASPSA staff had less supervision than Boxill.

Exacerbating the lack of guidance plaguing the ASPSA athletics academic counselors was the growing number of student-athletes admitted by the institution who were academically at risk.

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<sup>59</sup>Having athletics academic advising reporting to arts and sciences does not absolve the institution of the responsibility to monitor this group. If this logic applied, institutions could avoid compliance with NCAA legislation simply by crafting reporting lines outside of athletics.

<sup>60</sup> FI39, BBridger\_TR\_081414\_NorthCarolina\_00231, Page No. 12.

<sup>61</sup> FI41, JBlanchard\_TR\_073014\_NorthCarolina\_00231, Page Nos. 13 and 14.

<sup>62</sup> FI41, JBlanchard\_TR\_073014\_NorthCarolina\_00231, Page Nos. 13 and 14.

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<sup>64</sup> As a result of the growing pressures placed on the ASPSA staff by the sheer number of "special admits," they turned to the AFRI/AFAM department and the "special arrangements" it offered.

Crowder had a close relationship with the ASPSA staff.

<sup>65</sup> It was this relationship with Crowder, and her corresponding sympathy for student-athletes in particular, that allowed ASPSA to obtain more benefits from the AFRI/AFAM department when compared to the student body. Registering student-athletes in courses, obtaining assignments and turning in papers on behalf of student-athletes demonstrate the benefit Crowder, Nyang'oro, and the AFRI/AFAM department provided. The high enrollment numbers by student-athletes also reflect and illustrate the preferential access they enjoyed. Representatives of the institution knew it and chose to do nothing.

Several individuals brought concerns surrounding the "special arrangement" courses to the attention of campus administrators.

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<sup>63</sup> FI41, JBlanchard\_TR\_073014\_NorthCarolina\_00231, Page Nos. 24 and 25.

<sup>64</sup> FI83, CReynolds\_TR\_112014\_NorthCarolina\_00231, Page Nos. 11 and 12.

<sup>65</sup> FI83, CReynolds\_TR\_112014\_NorthCarolina\_00231, Page No. 76.

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Despite the concerns within athletics, neither campus officials, nor Dick Baddour, former director of athletics, provided support or guidance to athletics on this issue. Ultimately, institutional leaders chose not to act. This allowed the problem not only to continue, but to worsen.

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<sup>69</sup> However, despite the warning to reduce enrollment numbers and despite Blanchard's and Mercer's concerns about the courses, student-athletes continued to use these courses at a disproportionate rate and continued to accept impermissible assistance in completing them. Meanwhile, nobody from the institution's leadership looked into why athletics found these courses so useful.

<sup>70</sup> The institution created a high-risk environment, knew of resulting

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<sup>66</sup> FI41, JBlanchard\_TR\_073014\_NorthCarolina\_00231, Page Nos. 36 and 37.

<sup>67</sup> FI42, RMercer\_TR\_070714\_NorthCarolina\_00231, Page No. 15.

<sup>68</sup> FI42, RMercer\_TR070714\_NorthCarolina\_00231, Page No. 70.

<sup>69</sup> FI39, BBridger\_TR\_081414\_NorthCarolina\_00231, Page No. 42.

<sup>70</sup> FI83, CReynolds\_TR\_112014\_NorthCarolina\_00231, Page No. 89.

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concerns about courses and relationships and then wholly failed to monitor or control the athletics department's exploitation of known practices.

The institution demonstrated similar failures with respect to Boxill.

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<sup>74</sup> Even though administrators were concerned, they failed to monitor Boxill.

Not only did the institution provide little monitoring or guidance to ASPSA, it also failed to provide ASPSA with adequate NCAA rules training.

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<sup>77</sup> The compliance staff did, however, have actual knowledge of the "special arrangement" courses. In an email between Brent Blanton, athletics academic counselor, and Amy Hermann (Hermann), former director of compliance, Hermann refers to

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<sup>71</sup> FI41, JBlanchard\_TR\_073014\_NorthCarolina\_00231, Page No. 41.

<sup>72</sup> FI39, BBridger\_TR\_081414\_NorthCarolina\_00231, Page No. 21.

<sup>73</sup> FI43, Item1\_BoxillTo\_NorthCarolina\_00231, Page Nos. 76 and 77.

<sup>74</sup> FI42, RMercer\_TR\_070714\_NorthCarolina\_00231, Page No. 21.

<sup>75</sup> FI42, RMercer\_TR\_070714\_NorthCarolina\_00231, Page No. 27.

<sup>76</sup> FI39, BBridger\_TR\_081414\_NorthCarolina\_00231, Page No. 16.

<sup>77</sup> FI87, JLee\_TR\_081214\_NorthCarolina\_00231, Page No. 20.

the "infamous paper classes."<sup>78</sup> Nowhere does the record indicate any follow up by the compliance staff concerning the "special arrangement courses," Boxill's relationship with women's basketball student-athletes or ASPSA's close relationship with the AFRI/AFAM department. This, coupled with the lack of oversight from arts and sciences, allowed the behavior described in Allegations Nos. 1 and 2 to continue unabated for an extended time period. As such, the institution failed to satisfy any essential element of institutional control in connection with these long-standing and well-documented "special arrangements."

**D. Remaining issues.**

1. Did the institution lack institutional control as alleged?
2. Is this allegation a Level I or Level II violation?

**VIII. ADDITIONAL MATTERS RELATED TO THE CASE**

On February 8, 2017, CBS Sports published stories containing substantive, confidential, case-related information attributed to Bubba Cunningham (Cunningham), director of athletics.<sup>79</sup> In his remarks to the reporter, Cunningham discussed the merits of this infractions case, his views about the potential bias of the chair of the Committee on Infractions and other matters related to this pending case. He did not share the information pursuant to Bylaw 19.5.2. After reading the articles, Duncan sent the institution a letter stating the enforcement staff's concerns about the Cunningham interview and reminding the institution of its obligations under oft-cited bylaws, formal operating procedures

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<sup>78</sup> Enforcement written reply of September 19, 2016, Exhibit NCAA-11.

<sup>79</sup> Exhibit NCAA-7.

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and hearing panel instructions regarding confidentiality of NCAA investigations.<sup>80</sup>

Cunningham violated NCAA legislation when he shared case-related information with the media. However, the enforcement staff chose not to amend the second amended notice of allegations and cite the violation because it would restart the processing clock and, as detailed in Section II, this case has already taken a significant amount of time. The enforcement staff notes Cunningham's violation of Bylaw 19.01.3 for the hearing panel's consideration.

**IX. POTENTIAL AGGRAVATING AND MITIGATING FACTORS**

For a complete review of potential aggravating and mitigating factors, the hearing panel's attention is directed to the July 17, 2017, statement of the case.

National Collegiate Athletic Association

July 17, 2017

KAS:hlm

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<sup>80</sup> Exhibit NCAA-8.

Individuals Who May Be Mentioned During The Hearing

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

former women's basketball student-athlete.

**Baddour, Dick** – former director of athletics.

**Blanchard, John** – former senior associate director of athletics.

**Blanton, Brent** – athletics academic counselor.

**Boxill, Jan** – philosophy instructor, director of the Parr Center for Ethics, women's basketball athletic academic counselor in the Academic Support Program for Student-Athletes (ASPSA) and chair of the faculty.

– former women's basketball student athlete.

**Bridger, Beth** – former associate director in the ASPSA.

– former women's basketball student-athlete.

**Crowder, Deborah** – former department administrator in the African and Afro-American Studies (AFRI/AFAM) department.

**Cunningham, Bubba** – director of athletics.

**Davis, Butch** – former head football coach.

– former women's basketball student-athlete.

**Duncan, Jon** – vice president of enforcement.

**Folt, Carol** – chancellor.

**Gore, Travis** – AFRI/AFAM administrative support associate.

**Hermann, Amy** – former director of compliance.

**Kleissler, Amy** – former learning specialist in the ASPSA.

– former women's basketball student-athlete

**Lee, Jamie** – former academic counselor.

– former women's basketball student-athlete.

– former women's basketball student-athlete.

**McSwain, Burgess** – former tutor for ASPSA.

**Mercer, Robert** – former director of the academic support program for student-athletes.

– former women's basketball student-athlete.

**Nyang'oro, Julius** – former chair and professor in the AFRI/AFAM department.

**Owen, Bobbi** – former senior associate dean for undergraduate education.

**Read, Whitney** – former tutor for ASPSA.

**Reynolds, Cynthia** – former associate director of ASPSA.

– former women's basketball student-athlete.

**Wainstein, Kenneth** – attorney at Cadwalader, Wickersham & Taft LLP.

**From:** Jaimie Lee <jaimielee@unca.unc.edu>  
**Sent:** Tuesday, April 27, 2010 4:51 PM  
**To:** jen321@email.unc.edu  
**Subject:** Greetings....  
**Attach:** TEXT.htm

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Hello!! Just checking in to see when I should come see you about these papers. Is the morning best for you? I have another appointment tomorrow at 1pm, so I can also come after that (after 2pm or so).

Thank you, and I hope all is well!

Jaimie

Jaimie Lee  
Academic Counselor, UNC Football  
Academic Support Program for Student Athletes  
University of North Carolina-Chapel Hill  
919-843-6566 w  
919-619-2077 c  
jaimielee@unca.unc.edu

**From:** Jaimie Lee <jaimielee@unca.unc.edu>  
**Sent:** Thursday, July 15, 2010 10:36 AM  
**To:** Julius Nyang'oro <jen321@email.unc.edu>  
**Subject:** Re: Hey  
**Attach:** TEXT.htm

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Hello!!! It's time to harass you again! When will you be in town?? I would like to come meet with you as soon as you can. Thank you sincerely, and I hope all is well!!!

Jaimie

Jaimie Lee  
 Academic Counselor, UNC Football  
 Academic Support Program for Student Athletes  
 University of North Carolina-Chapel Hill  
 919-843-6566 w  
 919-619-2077 c  
 jaimielee@unca.unc.edu

>>> "Julius Nyang'oro" <jen321@email.unc.edu> 6/8/2010 2:28 PM >>>  
 OK.....

Jaimie Lee wrote:

>  
 > Oh that's right! Okay, Thursday it is!! It's been crazy around here! 4pm  
 > on Thursday okay??  
 >  
 >  
 > Jaimie Lee  
 >  
 > Academic Counselor, UNC Football  
 >  
 > Academic Support Program for Student Athletes  
 >  
 > University of North Carolina-Chapel Hill  
 >  
 > 919-843-6566 w  
 >  
 > 919-619-2077 c  
 >  
 > jaimielee@unca.unc.edu  
 >  
 >  
 >  
 >>> "Julius Nyang'oro" <jen321@email.unc.edu> 6/8/2010 2:09 PM >>>  
 > Either Wed or Th. Friday I am gone...Thought you didn't love me  
 > anymore.....)  
 >  
 > Jaimie Lee wrote:  
 >>  
 >> Greetings!! So glad you emailed me. Time to harass you again! Should I  
 >> come on Friday?? Monday?? What day is best for you??  
 >>  
 >> J  
 >>  
 >>  
 >> Jaimie Lee  
 >>  
 >> Academic Counselor, UNC Football  
 >>  
 >> Academic Support Program for Student Athletes  
 >>  
 >> University of North Carolina-Chapel Hill  
 >>  
 >> 919-843-6566 w  
 >>  
 >> 919-619-2077 c  
 >>  
 >> jaimielee@unca.unc.edu  
 >>  
 >>  
 >>  
 >>>> "Julius Nyang'oro" <jen321@email.unc.edu> 6/7/2010 8:20 PM >>>>  
 >> Do you miss me?????:)  
 >>

--

**From:** Jaimie Lee <jaimielee@unca.unc.edu>  
**Sent:** Thursday, July 22, 2010 4:26 PM  
**To:** Beth Bridger <bridgerb@unca.unc.edu>  
**Cc:** Tia Overstreet <overstre@unca.unc.edu>  
**Subject:** afri 521  
**Attach:** TEXT.htm

---

Here's my list for guys who need the Afri. We will prob need to come together soon to request anything which may need to be added!!

FYI, Swah 403 paper won't be possible until the Spring.

521

I have emailed to see if Afam 428 and Afri 520 will be offered. Any other ideas?

Jaimie Lee  
Academic Counselor, UNC Football  
Academic Support Program for Student Athletes  
University of North Carolina-Chapel Hill  
919-843-6566 w  
919-619-2077 c  
jaimielee@unca.unc.edu

**From:** Boxill, Jeanette M <jmboxill@email.unc.edu>  
**Sent:** Friday, August 1, 2008 2:14 PM  
**To:** Crowder, Deborah A <dacrowde@email.unc.edu>  
**Subject:**

---

Hi Debby,  
I found an assignment that you gave to \_\_\_\_\_ for Swah 003, in 2005; it was on the evolution of the Swahili culture...  
I just met with \_\_\_\_\_ and I gave that to her and told her just to follow that. Is that okay?

Thanks,  
Jan

--

Jan Boxill, Ph.D.  
Director, Parr Center for Ethics  
Senior Lecturer  
Director of Undergraduate Studies  
Department of Philosophy  
University of North Carolina  
Chapel Hill, NC 27599-3125  
Email: [jmboxill@email.unc.edu](mailto:jmboxill@email.unc.edu)  
Website: [parrcenter.unc.edu](http://parrcenter.unc.edu)  
Phone: 919-962-3317  
FAX: 919-843-3929

**stitutions shall provide general academic counseling and tutoring services to all recruited student-athletes. Such counseling and tutoring services may be provided by the department of athletics or through the institution's nonathletics student support services."**

**Source:** All six members of the American South Conference, all eight members of the Atlantic Coast Conference, all nine members of the Big East Conference, all 10 members of the Big Ten Conference, all 11 members of the Big West Conference, all 10 members of the Pacific-10 Conference, all six members of the Patriot League, all 10 members of the Southeastern Conference and all eight members of the Sun Belt Conference.

**Effective Date:** August 1, 1991.

**Rationale:** An institution that recruits a student-athlete owes that individual the opportunity to receive a comprehensive educational experience. This proposal would require that as a minimum standard, the institution make academic counseling or tutoring services available to such recruits. Its objective is to maximize the academic performances of student-athletes.

**Primary Contact Person:**

**Name:** Linda Bruno, Assistant Commissioner

**Address:** Big East Conference  
321 South Main Street  
Providence, Rhode Island 02903

**Telephone Number:** 401/272-9108

**NO. 38 TRAINING-TABLE MEALS**

**Intent:** To specify that a member institution may provide only one training-table meal per day to a student-athlete during the academic year when regular institutional dining facilities are open.

**Bylaws:** Amend 16.5.1, page 167, as follows:

[Division I only]

"16.5.1 Permissible. Identified housing and meal benefits incidental to a student's participation in intercollegiate athletics that may be financed by the institution are:

[16.5.1-(a) and 16.5.1-(b) unchanged.]

"(c) **Training-Table Meals. An institution may provide only one training-table meal per day to a student-athlete during the academic year on those days when regular institutional dining facilities are open.**"

[16.5.1-(c) and 16.5.1-(d), relettered as 16.5.1-(d) and 16.5.1-(e), unchanged.]

**Source:** All six members of the American South Conference, all eight members of the Atlantic Coast Conference, all nine members of the Big East Conference, all 10 members of the Big Ten Conference, all 11 members of the Big West Conference, all 10

members of the Pacific-10 Conference, all six members of the Patriot League and all eight members of the Sun Belt Conference.

**Effective Date:** August 1, 1996.

**Rationale:** The objective of this proposal is to encourage the integration of the student-athlete into the student body. However, it recognizes the necessity for the student-athlete to be provided a nutritional meal required by a person who engages in strenuous physical exercise and encounters a lack of available eating facilities at the conclusion of practice in some sports. A five-year phase-in period is permitted to enable institutions sufficient opportunity to adjust, as well as to fulfill recruiting commitments made to currently enrolled or entering student-athletes.

**Primary Contact Person:**

**Name:** Thomas C. Hansen, Commissioner

**Address:** Pacific-10 Conference  
800 South Broadway, Suite 400  
Walnut Creek, California 94596

**Telephone Number:** 415/932-4411

**NO. 39 ATHLETICS HOUSING**

**Intent:** To specify that a Division I member institution may not house student-athletes in athletics dormitories when institutional dormitories are open to the general student body; to define athletics dormitories and athletics wings as dormitories, wings or floors in which at least 50 percent of the residents are student-athletes, and to apply financial aid restrictions related to athletics dormitories on a federated basis.

**Bylaws:** Amend 16.5.2 by adding new 16.5.2.2, page 167, as follows:

[Division I only]

"**16.5.2.2 Athletics Housing. The institution may not house student-athletes in athletics dormitories or athletics blocks within institutional dormitories on those days when institutional dormitories are open to the general student body.**

"**16.5.2.2.1 Athletics Dormitories. Athletics dormitories shall be defined as institutional dormitories in which at least 50 percent of the residents are student-athletes.**

"**16.5.2.2.2 Athletics Blocks. Athletics blocks shall be individual blocks, wings or floors within institutional dormitories in which at least 50 percent of the residents are student-athletes.**"

**Source:** All six members of the American South Conference, all eight members of the Atlantic Coast Conference, all nine members of the Big East Conference, all 10 members of the Big Ten Conference, all 11 members of the Big West Conference, all 10

# North Carolina AD lays out academic fraud defense: NCAA 'overcharged' Tar Heels

The investigation into academic fraud at UNC has been going on for six years now



by **Dennis Dodd** @dennisdoddcbcs 18h ago • 6 min read **UPDATE** 8h ago



UNC AD claims NCAA has gone too far with investigation



The NCAA "overcharged" [North Carolina](#) in its long-standing academic fraud case, UNC athletic director Bubba Cunningham told CBS Sports in a wide-ranging conversation about the association's tactics and intentions during the investigation.

Revealing what seems to be North Carolina's defense in the case, Cunningham told CBS Sports, "Is this academic fraud? Yes, it is by a normal person's standards. But by the NCAA definition [it is not]."

The school has been charged with unethical conduct, lack of institutional control and extra benefits provided by a perpetrator of a bogus class scheme.

"They -- what we believe -- overcharged us," Cunningham said.

Cunningham said the school is worried about an overreach by the NCAA. He specifically mentioned the emotionally charged cases this decade at [USC](#), [Miami](#) and [Penn State](#). In each case, the NCAA was accused of -- or admitted to -- surpassing its enforcement powers.

"[Those] are the three cases that we continue to bring back, [saying], 'You're doing it again. Don't do it.'" Cunningham said.

Back in play is the competitive core of UNC athletics. The NCAA has widened the scope of the investigation from 2002-11. The broadened investigation could conceivably put the 2005 and 2009 men's basketball championships at risk.

Several sources familiar with the NCAA process have speculated that to mean postseason, scholarships and/or vacated wins could be in play as penalties.

Cunningham is concerned about the "wide latitude" given to the NCAA Committee on Infractions in applying possible penalties. He called the committee that adjudicates NCAA wrongdoing "anonymous people that are justice warriors."

"So you do worry about the scope?" he asked rhetorically. "As much as I worry about the scope and punishment, I think we have all kinds of legal arguments that will hold up.

"[I just hope] the NCAA doesn't do something that's outside the boundaries."

In its latest allegations, the NCAA contends UNC "leveraged a relationship" with professor Julius Nyang'oro and clerical assistant Debbie Crowder. Both are accused of setting up fake classes. The NCAA says those classes ensured the eligibility of several UNC athletes.

"We leveraged the relationship, we had special arrangements ... happens every day," Cunningham countered. "Last year, we went to the business school. The business school teaches a leadership class. It was for the leaders of the fraternities and student body leadership positions.

"We asked ... 'Can you create a class for our student-athlete advisory committee?' They said, 'Absolutely.' So we leveraged our relationship. ... One-hundred percent of the students in the class were athletes."

Cunningham added that example, "... will be mentioned at the hearing -- absolutely."

Semantics may be at the heart of North Carolina's defense when presented to the infractions committee later this year. Historically, the NCAA has been all over the map with regard to what it considers academic fraud.

In general, the association has shied away from defining academic impropriety. However, academic fraud strikes to the heart of the amateurism model and the NCAA constitution.

In April, the NCAA sought some clarity in [changing its academic integrity rules](#).

This case will no doubt continue a debate that has been raging for decades: what right the NCAA has in telling any school what classes it can offer.

"I'm telling you what happened was bad, but it's not against the rules," Cunningham said of the UNC case. "So you have to change the rules.

"[I told the NCAA] if a class is on my transcript, I have a grade, I have a credit," Cunningham added. "How are you -- as the outside athletic agency -- telling

me that's not good?"

In the public arena, at least, UNC's case is widely considered the worst case of academic fraud in history. The investigation -- now stretching into its sixth year -- began when a faulty transcript in another case revealed what appeared to be a trail of bogus classes stretching back 18 years.

Approximately 3,100 students took those classes. Approximately half of those were athletes. The highest concentration of those athletes were football and men's basketball players.

The classes in question reportedly never met. Minimal work was required. UNC called in the NCAA immediately in 2011 when it discovered the questionable classes.

The association initially passed on an investigation. The NCAA was later forced to consider the improprieties because of the dogged reporting of the *Raleigh News and Observer*.

"What they're charging is just so bizarre," Cunningham said of the NCAA.

The original NCAA allegation said Nyang'oro and Crowder were in charge of "anomalous classes." The NCAA later adopted the detailed testimony of both Nyang'oro and Crowder to former U.S. assistant attorney general Ken Wainstein in an independent investigation.

Cunningham contended that interview wasn't proper because it wasn't part of "the NCAA process. That means it's a joint interview. The NCAA is there and the institution is there."

It's rare for such a high-ranking university official to speak out during such a contentious case. However, Cunningham arrived from [Tulsa](#) in 2011. He inherited the case. It did not occur during his watch.

In June 2015, North Carolina's accrediting agency took the rare step of [putting the school on probation in light of the scandal](#). Since last summer, UNC has been back in good standing with the Southern Association of Colleges and Schools Commission.

Cunningham: "They said, 'If you've graduated [the students], the classes count. ... If you haven't graduated, the classes count, the grade counts. However, we think you should take additional hours.'"

"The kids said, 'Fine.' They took additional hours."

The latest UNC charges were applied after a rare third notice of allegations from the NCAA in November. Until then, North Carolina basketball and football were seemingly out of danger from being sanctioned. That was before [UNC challenged the NCAA's procedures and jurisdiction in the case](#).

Asked specifically whether he thought UNC antagonized the NCAA with that challenge, Cunningham said, "I don't know the answer to that. I've gotten that question a fair amount of times."

Asked later if he thought the new allegations were retaliatory, Cunningham said, "It is and it isn't."

Until that point, a second notice of allegations seemingly had limited wrongdoing to women's basketball and Jan Boxill, a former women's basketball academic counselor. That third notice re-inserted charges against men's basketball and football.

That 73-page response that preceded those allegations could be the foundation for a legal challenge to the NCAA if UNC disagrees with the outcome of the case. Cunningham stressed that no lawsuit has been discussed.

"The NCAA and the Committee on Infractions do not comment on the substance of pending infractions cases. It is important to note that when deciding any case, the Committee on Infractions uses a fair process, which was established by NCAA members," a spokesman told CBS Sports.

"During its comprehensive review of a case, the hearing panel has access to a full record, and not just information made available in public statements. The panel gives all parties the opportunity to present information to the panel, and decides whether violations of NCAA rules occurred. It is within this membership established process that infractions cases are ultimately decided."

It is known that some at North Carolina are concerned that SEC commissioner Greg Sankey is overseeing the case as infractions committee chairman.

"I don't like it. It's competitor versus competitor. It's fraught with conflict," Cunningham said.

Without naming Sankey, Cunningham said he did support a chairman -- such as a retired judge -- who is a "professional arbitrator." That concept has been discussed in the past within NCAA circles.

"Be fair about the facts and render a decision," Cunningham said.



**Dennis Dodd**  
CBS Sports Senior Writer



Dennis Dodd has covered college football for CBS Sports since it was CBS SportsLine in 1998. He is one of only seven media members to attend all 16 BCS title games and has chronicled conference realignment... [FULL BIO](#)

84 COMMENTS

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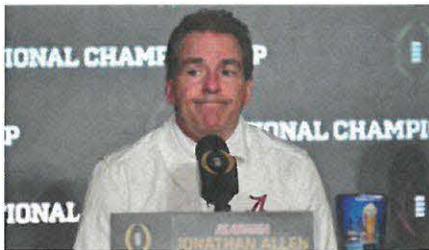
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February 8, 2017



P.O. Box 6222  
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 Indianapolis, Indiana 46202

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CONFIDENTIAL/VIA EMAIL

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

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

Dear Rick:

The NCAA enforcement staff is aware of media reports containing case-related information provided by your client. At least one report appeared as recently as February 7, 2017. As I discussed with you this morning, the enforcement staff is currently considering how to address these case-related disclosures. We will keep you advised regarding our deliberations.

As you know, NCAA Division I Bylaw 19.01.3 provides as follows:

Except as provided in this article, the Committee on Infractions, the Infractions Appeals Committee and the enforcement staff shall not make public disclosures about a pending case until the case has been announced in accordance with prescribed procedures. An institution and any individual subject to the NCAA constitution and bylaws involved in a case, including any representative or counsel, shall not make public disclosures about the case until a final decision has been announced in accordance with prescribed procedures.

The confidentiality bylaw is not unclear, and our team has discussed it previously with yours. Further, in both its November 28 and December 23, 2016, letters, the NCAA Division I Committee on Infractions reminded all parties about their confidentiality obligations as follows:

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.

In addition to the Committee on Infractions' operating procedure regarding confidentiality, the NCAA enforcement staff's operating procedure 1-8-1 also addresses disclosures and provides as follows:

National Collegiate Athletic Association

*Supporting student-athlete success on the field, in the classroom and for life*

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Mr. Rick Evrard  
February 8, 2017  
Page No. 2

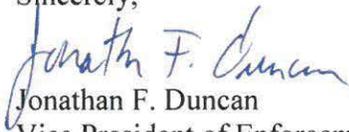
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The parties shall not disclose information about an investigation in violation of Bylaws 19.01.3 or 19.5.2. If a party improperly discloses information, the enforcement staff may investigate the source of leaked or disclosed information and bring appropriate allegations if the Committee on Infractions could conclude from the information discovered that a party violated confidentiality legislation.

This correspondence serves to remind your client of its confidentiality and nondisclosure obligations under, among others, Bylaw 19.01.3, Committee on Infractions operating procedure 4-1 and NCAA enforcement staff operating procedure 1-8-1. These provisions are important components of the infractions process and adherence to them is critical for all parties.

We will be in touch regarding statements already made to media outlets. In the meantime, do not hesitate to contact me if you have any questions.

Sincerely,



Jonathan F. Duncan  
Vice President of Enforcement

JFD:hlm