



COLLEGE OF STATEN ISLAND
PUBLIC INFRACTIONS REPORT
NOVEMBER 21, 2013

I. INTRODUCTION

The NCAA Division III Committee on Infractions is an independent administrative body of the NCAA comprised of individuals from the NCAA Division III membership and the public. The committee is charged with deciding infractions cases involving member institutions and their staff. On Saturday, August 10, 2013, officials from the College of Staten Island appeared before the committee to address allegations of major infractions in the men's swimming program.¹ The former head men's swimming coach filed a response to the notice of allegations but did not attend the hearing. At issue were allegations of recruiting inducements provided by the former head men's swimming coach to six international prospective student-athletes from 2006 into 2011. The inducements included the provision of false documents designed to ensure that the student-athletes received visas to enter the United States, reduced-cost lifeguard certification classes and the head coach acting as a co-signer of apartment lease agreements. It was also alleged that the former head men's swimming coach engaged in unethical conduct and that the institution lacked control over the department of athletics.

The institution was in substantial agreement with the facts of the allegations and that the violations occurred. The former head men's swimming coach agreed with the majority of the facts and acknowledged that some violations occurred, but he did not agree that other violations had taken place. The committee concludes that the former head men's swimming coach provided the inducements to the prospective student-athletes and engaged in unethical conduct and that the institution lacked control over the department of athletics.

In light of the major infractions, and as set forth below, the committee concludes that the following principal penalties are appropriate: four years of probation, a two-year postseason ban for the men's swimming program, vacation of certain contests, a four-year show cause for the former head men's swimming coach and other penalties as detailed in the penalty section of this report.

¹ A member of the City University of New York Athletic Conference, the institution has an enrollment of approximately 14,000 students. The institution sponsors six men's and seven women's intercollegiate sports. This was the institution's first major infractions case.

II. CASE HISTORY

In July 2011, an institutional employee noticed a message posted by the head coach on the website of a [private swim club] ("private swim club") a private enterprise he formed in 2003 and was running at the time. The message requested that members of the swim club donate household items for two international prospective student-athletes who were scheduled to arrive in the United States later in the year. The posted notification caused the institution to initiate a review of files it maintained on international students. During the review, the institution discovered documentation in which the former head men's swimming coach ("head coach") his wife or the private swim club had agreed to sponsor and/or provide room and board to four incoming international student-athletes ("student-athletes 1, 2, 3 and 4," respectively) from 2007 to 2010.²

The institution submitted a self-report regarding the violations to the NCAA on September 6, 2011, and the enforcement staff issued a verbal notice of inquiry on October 11. In an ensuing investigation, the enforcement staff and institution discovered further violations. The enforcement staff issued a notice of allegations to the institution and head coach on March 14, 2013. The head coach submitted his response on June 13 and participated in a prehearing conference with the enforcement staff on June 27. The institution also submitted its response on June 27 and had a prehearing conference the same day.

Prior to the hearing, the head coach's counsel requested to appear without his client. Pursuant to Bylaw 32.8.6.1, the committee rejected his request. The head coach then requested through his counsel that he be allowed to appear via electronic media (Skype). The committee asked for information regarding why the head coach was unable to attend and information to assist in facilitating his possible appearance via electronic media. The head coach's counsel then indicated that the head coach would appear, but counsel came to the hearing alone, without his client. The head coach's counsel was not allowed to participate in the hearing without his client present.³

III. FINDINGS OF FACT

Visas for international student-athletes

² For the purposes of this report, the former head men's swimming coach will be referred to as "head coach" because he served in that position when the violations occurred. His employment was terminated by the institution in November 2011.

³ The head coach's counsel was given the option of remaining in the hearing room as an observer. He declined and chose to depart the room prior to the presentation of the case.

The institution hired the head coach as aquatics director and head men's and women's swimming coach in 1995. In 2003, he and his spouse incorporated the private swim club and entered into an agreement with the institution for the club to lease the pool at the institution's aquatics center. They renewed the agreements each year through 2012.

The head coach began recruiting international student-athletes in 2006. From then until his employment as head coach ended in November 2011, he recruited student-athletes 1, 2, 3 and 4 and two other international student-athletes ("student-athletes 5 and 6") who enrolled at the institution. As with all international students coming to this country, the six international student-athletes were required to obtain F-1 student visas to enter the United States. Once the students are able to demonstrate that they have the necessary funds to support themselves in this country, the visas are issued by American embassies in the students' home countries.

The visa process begins with the prospective student applying for admission in writing and providing necessary documentation. Once the institution's International Center issues an admission letter to the applicant, the prospective student receives a form known as an I-20 from the institution. Among other things, I-20 forms contain information regarding the applicant's sources of financial support. The applicant submits the I-20 to the American embassy in support of the F-1 visa application. A visa cannot be issued without an applicant demonstrating that he or she has the financial resources to support him/herself for at least the first academic year of studies.

Lifesaving courses on campus

Each spring from 2008-11, the institution sponsored American Red Cross (Red Cross) lifesaving courses at the institutional pool, located in the on-campus sports and recreation center.⁴ The head coach, in his role as aquatics director, supervised and managed the process. He provided the information regarding dates and times of the classes to recreation center personnel and hired the instructor ("instructor"). The institution published information regarding the classes in the local and institutional newspapers. The Red Cross required that each course have no less than six enrollees.

The Red Cross requires that all candidates for lifeguard certification complete a course of approximately 30 hours in length. The course includes swimming tests in the water, classroom education and hands-on skill instruction. To successfully complete the course, all candidates must learn, among other things, how to identify emergency situations, perform cardiopulmonary resuscitation (CPR), perform water rescues, provide first aid and activate whatever emergency plan is in place at the facility where they are working.

⁴ Lifeguard certification must be issued by an approved and accredited association. The American Red Cross is recognized as one such organization.

All candidates, regardless of any previous experience, must complete the initial certification course if they have not previously been certified by the Red Cross.

At this institution, the course for individuals being initially certified costs \$280. The institution requires that each course participant register with the institution, make payment and attend all sessions. The instructor provided all course materials to participants and, following successful completion of the course, certificates to all those who passed. She also reported the results of the class to the local Red Cross chapter. The institution paid the instructor an hourly rate for her services.

From 2008-11, the instructor also conducted recertification classes for lifeguards when they needed to update their credentials. The recertification classes were also offered through the Red Cross and were referred to as the "Lifeguard Challenge" or simply "challenge." The class was four hours in length and required the previously-certified guards to demonstrate their skills and pass brief tests designed to refresh their knowledge. The cost of the challenge class was anywhere from approximately \$100-\$160.

The head coach also arranged and scheduled challenge classes, although he administered them differently than the initial certification courses. He arranged for the instructor to provide the classes at various times throughout the year, did not advertise them in advance, and charged no more than the cost of the challenge course materials. He had participants pay the instructor directly. Because of his role as director of the aquatics center, the institution allowed him to offer the challenge classes as needed, thus ensuring that there would be enough certified lifeguards to provide proper supervision of the pool area at all times.

As will be set forth below, the head coach mentioned to student-athletes 3, 4, 5 and 6 prior to their initial enrollment that they might be able to work as lifeguards if they passed the certification course upon their arrival in this country. The head coach directed all four of them to the instructor, who certified them to work as lifeguards. However, none of the four took the full certification class; their instruction lasted far less than 30 hours, they were not in a group of at least six and they paid far less than the full price of \$280. Additionally, the instructor "backdated" the certificates of student-athletes 3, 4 and 6 to make it appear that they had taken the course at a time prior to their arrival in America.

In response to the committee's request for further information following the hearing, the head coach submitted a letter on September 3, 2013, stating that student-athletes 3, 4, 5 and 6 had provided proof of their work as lifeguards in their home country to the instructor before they took the certification test in this country. However, Red Cross rules in effect at the time student-athletes 3, 4 and 5 received their certifications in this country required that they complete the full 30 hour initial certification class, regardless

of any previous experience. Student-athlete 6, who was certified in this country two years before any of the other student-athletes, was properly certified by the instructor based on Red Cross rules in effect at the time.⁵ Following the discovery of the violations in this case, the Red Cross determined that student-athletes 3, 4 and 5 had not been properly certified. It required them to pay the full \$280 and complete the initial certification class before they were allowed to continue working as lifeguards.

The head coach claimed that a discount from the posted \$280 price for the certification class was available to all institutional students and that the instructor allowed certain individuals to take the class at a reduced rate. However, in a statement by the instructor that the head coach attached to his response to the notice of allegations, the instructor stated that she only allowed certain institutional students to pay less than \$280 when the head coach told her they did not have to pay the full amount. She stated that the students who paid less than full price were those that were going to work as the head coach's "own staff because [the institution's pool] has shortage of lifeguards in the morning and daytime hours."

The committee finds that the head coach supervised the certification process. He arranged for student-athletes 3, 4, 5 and 6 to attend the challenge recertification course, rather than the initial certification course, which allowed student-athletes 3, 4 and 5 to pay less than the full cost of becoming lifeguards in this country and circumvent the initial certification process.

The six international student-athletes

Student-athlete 1. Student-athlete 1 originally came to this country in 2006 to spend a year studying the English language before enrolling at the institution. When he arrived in America on September 6, 2006, he was met at the airport by the head coach. The head coach transported student-athlete 1 to campus, where he enrolled in the English Language Institute.⁶ He enrolled at the institution in September 2007.

As student-athlete 1 prepared to apply for enrollment in the institution for the 2007-08 academic year, he needed to renew his visa. On June 28, 2007, the International Center sent him a letter regarding the updated financial documents he needed to provide. The letter stated in part:

If you have a sponsor in the U.S. who is providing you free room and board, an original signed letter from that person must be submitted,

⁵ The Red Cross changed its certification rules in September 2009, after student-athlete 6 was certified but before student-athletes 3, 4 and 5 arrived in America and took the certification course.

⁶ The institution valued a trip from the airport to campus at approximately \$13.20.

specifying the terms of this agreement. You will receive a credit of \$8,000 if this proof is provided. (If you choose this option, the minimum amount you need to show on your bank statement is reduced to US \$15,600).

On July 13, 2007, the head coach provided a letter to student-athlete 1 on the private swim club letterhead. It was signed by the head coach and stated in part:

[The private swim club] will be your sponsor and will provide you with room and board during your study in USA. We will help you to reach your potential in swimming and assist you with any other living needs.

Student-athlete 1 presented the letter to the International Center, which included a notation of ["room and board \$8,000 private swim club] on his draft I-20 form. The International Center later generated a second form that student-athlete 1 actually used to renew his visa. It did not contain the information regarding room and board from the private swim club.

In his response to the notice of allegations, the head coach admitted to providing the letter after the International Center requested it. He justified writing the letter by stating that the request for the letter came just a few days before the admission period to the institution for the 2007-08 academic year closed, and there was not enough time for student-athlete 1 to obtain a verified financial statement from his parents back in his home country.⁷ The head coach stated that he provided the letter solely to keep student-athlete 1 from having to return to his home country and that student-athlete 1 was aware that the swim club was not going to pay for his room and board. He characterized the letter as "not real – no promise." The head coach did not provide any financial support to student-athlete 1.

The head coach provided the July 13, 2007, letter to student-athlete 1 after student-athlete 1 was informed by the International Center that presenting a letter of financial support would aid his application for a visa renewal. The head coach acknowledged that the letter aided student-athlete 1 by keeping him from having to return to his home country. The committee finds that the offer articulated in the July 13 letter constituted a benefit that helped student-athlete 1 renew his visa.

Student-athlete 2. Student-athlete 2 arrived in this country on July 3, 2007, approximately six weeks prior to his initial enrollment at the institution for the 2007-08 academic year. Upon student-athlete 2's arrival in this country, the head coach and

⁷ However, the draft I-20 also contains a notation that student-athlete 1's father would provide \$23,660 of support.

student-athlete 1 picked him up at the airport and transported him to the vicinity of campus.

On May 2, 2007, the head coach prepared a letter for student-athlete 2 on the private swim club letterhead. Similar to the situation involving student-athlete 1, the head coach signed the letter and included the following language:

[The private swim club] will be your sponsor and will provide you with room and board during your study in the USA. We will help you to reach your best potential in swimming and assist you with any other living needs.

The head coach provided the letter to the International Center, which issued an I-20 to student-athlete 2 the following day. The form contained a notation that \$8,000 room and board would be provided by the private swim club. Student-athlete 2 signed the form on the same day it was prepared, and his visa was issued on June 20, 2007.

In his response to the notice of allegations, the head coach admitted that he provided the letter in support of student-athlete 2's visa application. He claimed that he wrote the letter to show that student-athlete 2 would be supported in America, stating that "without this letter [student-athlete 2] will not be in USA." He asserted that student-athlete 2 and his family were aware that the head coach would not actually be providing any room and board. The head coach did not provide any financial support for student-athlete 2.

On May 3, 2007, the head coach wrote a letter to the American Embassy in student-athlete 2's home country, offering to be of any assistance during student-athlete 2's visa application process. The letter stated in part:

We would be proud to host this young man and assist him in any way in making sure that he satisfies all requirements for maintaining his F-1 Student Visa status while in the United States. If you have any further questions regarding our athletic program or [student-athlete 2's] Visa request, please do not hesitate to contact me.

An athletics administrator ("administrator") at the institution, who was acting as director of athletics at the time, also signed the letter. The administrator did not inquire about the propriety of providing statements of support for prospective student-athletes.

Similar to the situation involving student-athlete 1, the head coach's May 2, 2007, letter to the International Center offered financial support that assisted student-athlete 2 in procuring a visa. The head coach's May 3, 2007, letter to the American Embassy also offered to assist student-athlete 2 "in any way." The head coach admitted that, without

the letter of support, student-athlete 2 would not have been able to come to this country. The committee finds that the letters of support constituted benefits to student-athlete 2.

Student-athlete 3. Student-athlete 3 initially enrolled at the institution for the 2010-11 academic year. The International Center contacted him in his home country by email on May 3, 2010, and informed him that he needed to demonstrate an additional \$6,000 in financial support for his F-1 student visa application. On June 21, the head coach spoke with International Center personnel, stating that he would send them a room and board statement. He then submitted a Statement of Financial Support, signed by his wife. The statement contained a notation that the head coach's wife would provide student-athlete 3 with room and board.⁸ The International Center created student-athlete 3's I-20 on June 22, but the form did not include the head coach's wife's Statement of Financial Support. According to notes in the International Center file, the statement of support was not used because there was enough support from other sources and the head coach's wife did not provide a bank statement with the support statement.

In his response to the notice of allegations, the head coach stated that he "did not have any other choice" but to ask his wife to provide the statement of support. He claimed that there was not enough time for the head coach to request a new statement from student-athlete 3's parents back in his home country and, without the statement of support, student-athlete 3 would "never" come to America. Student-athlete 3 did not receive any room and board support from the head coach or his wife.

Student-athlete 3 acknowledged that it can be difficult for individuals from his home country to get permission to enter the United States. He stated that receiving financial support documents "just helps us [international students]" get to America.

The head coach's purpose in providing the Statement of Financial Support signed by his wife was to assist student-athlete 3's visa application. The head coach stated that student-athlete 3 would "never" have come to America without it, and student-athlete 3 acknowledged the assistance that financial support documents give to international students attempting to come to this country. The committee finds that the offer of room and board constituted a benefit that assisted student-athlete 3's efforts to come to this country.

The head coach told student-athlete 3 during the recruitment process that, if he passed a certification test, he would have an opportunity to work as a lifeguard and swimming instructor. Student-athlete 3 stated that, prior to his arrival in America, the head coach sent him some materials to be used for studying for the lifeguard certification test and

⁸ The line on the form for the amount of support was left blank, but the form itself contains a notation that the minimum amount of aid to be provided will be \$12,291.00 annually.

urged him to begin studying.⁹ Once he enrolled in September, an assistant swim coach ("assistant coach") told him to meet the instructor at the pool at a certain time. Student-athlete 3 went to the pool and took the certification test, which consisted of a written component, water-related training and demonstrated proficiency in CPR. He estimated that the entire process lasted approximately one hour and 40 minutes. He began working as a lifeguard in October 2010.

Student-athlete 3's best recollection was that he paid \$75 to take the lifeguard test and that he gave cash to the instructor. He and student-athlete 4 took the tests together and were the only two individuals who took the tests at that time. Once student-athlete 3 completed his testing, the instructor provided him with a "backdated" certification card showing that he had passed the course in the previous June.

Prior to student-athlete 3 arriving in this country, the head coach contacted a real estate company and arranged for his housing by co-signing the lease for the apartment student-athlete 3 was to share with student-athlete 4.¹⁰ The head coach stated that he did so because landlords would not rent to incoming international students without a local guarantor, meaning that the student-athletes would have arrived in the United States without a place to stay. The head coach also signed a lease as a guarantor for the apartment to be shared by student-athletes 3 and 4 in June 2011, prior to their second year of enrollment.

Upon his arrival in the United States on August 2, 2010, student-athlete 3 was picked up at the airport by the assistant coach. The head coach was out of the country at the time. Because student-athlete 3's apartment was not yet ready for occupancy when he arrived, the assistant coach transported him to the head coach's home, where student-athlete 3 stayed for two nights. He paid nothing for the lodging. The assistant coach reported that, prior to allowing student-athlete 3 to stay at the head coach's home, she phoned the head coach, who granted permission for student-athlete 3 to stay in the home. Student-athlete 3 reported that, during a phone conversation he had with the head coach when student-athlete 3 was still in his home country, the head coach granted permission for student-athlete 3 to stay at the head coach's home upon his arrival in America.

In July 2011, following the 2010-11 season, the head coach provided student-athlete 3 with a polo shirt valued at \$49. The coach had received the shirt as part of his coaching gear but, because the material irritated his skin, he did not wear it and instead gave it to student-athlete 3.

⁹ The enforcement staff and institution did not ask for detail regarding the materials he received and did not establish what, if any, value they had.

¹⁰ As will be discussed below, he also arranged housing and co-signed leases for student-athletes 5 and 6.

Student-athlete 4. Student-athlete 4 arrived in the United States on August 24, 2010. Prior to enrolling at the institution for the 2010-11 academic year, he attended the institution's English Language Institute.¹¹ Acting on a request from the head coach, an employee of the institution's aquatic center ("assistant aquatics director") picked student-athlete 4 up at the airport and transported him to campus. On June 22, 2010, the International Center issued student-athlete 4 an I-20 form. He used the form, which included the following information, to obtain his visa:

[Room and board] (\$18,896) is being provided by [the head coach].
Student has indicated his intention to apply for Business at the College of Staten Island upon successful completion of the English Language Training Program.

The head coach stated that he had "no choice" but to give a sponsorship letter for student-athlete 4 to the International Center. He explained that his statement of support was not "real" because student-athlete 4 and his family knew that he would not be paying anything to student-athlete 4, and that providing the statement was done only to get a visa. The head coach stated that his statement of support, coupled with the amount of support student-athlete 4's family could provide, would make it "easier to get a visa."

The head coach provided the sponsorship letter to aid student-athlete 4's bid to obtain a visa to travel to this country. The offer of sponsorship made it easier for student-athlete 4 to obtain the visa. The committee finds that the sponsorship letter provided a benefit to student-athlete 4.

Prior to student-athlete 4's arrival in this country, the head coach told him he could work as a lifeguard after earning his certification. To help student-athlete 4 become certified, the head coach sent him study materials by mail, including a book, CDs and DVDs. Once he arrived on campus, student-athlete 4 joined student-athlete 3 in the lifeguard certification class taught by the instructor. They were the only two individuals in the class. When student-athlete 4 met with the instructor, she asked him if he had ever worked as a lifeguard. Once student-athlete 4 told her that he had, the instructor explained "what I have to do when people are unconscious." He practiced what she showed him, after which time she, according to student-athlete 4, "recertified" him.

Student-athlete 4 paid either \$65 or \$75 for the class and received a certificate dated June 2010 (before his arrival in America). He began working as a lifeguard in mid-September 2010.

¹¹ His first enrollment at the institution was for the spring 2011 semester.

Student-athlete 4 moved into an apartment with student-athlete 3. As previously stated, the head coach personally obligated himself as a tenant of the apartment by signing a lease for the apartment prior to the student-athletes arriving in America. Further, on June 3, 2011, before student-athletes 3 and 4 began their second year of enrollment at the institution, the head coach again entered into a lease agreement as a tenant of the apartment occupied by the two student-athletes.

Student-athlete 5. Student-athlete 5 initially enrolled at the institution for the 2011-12 academic year. He arrived in the United States on July 15, 2011, and was picked up at the airport by the head coach, who transported him to campus.

On May 11, 2011, the head coach sent a letter to the American Embassy in student-athlete 5's home country in support of student-athlete 5's visa application. The letter contained the same language as the letter written four years earlier for student-athlete 2, including an offer to help make sure student-athlete 5 satisfied all necessary requirements for maintaining his visa while in America. An associate director of athletics ("associate director of athletics") also signed the letter. The associate director of athletics signed the letter because the head coach told him it would enhance student-athlete 5's chances of obtaining a visa. The head coach also told him that the administrator had previously done the same thing.¹²

On June 15, 2011, the head coach signed an apartment lease as a co-tenant of the apartment to be occupied by student-athlete 5. The term of the lease began on July 15, 2011, the day student-athlete 5 arrived in America. During his interview, the enforcement staff asked student-athlete 5 if the head coach had sent him "any books or materials" to help him study for the lifeguard certification test. Student-athlete 5 responded in the affirmative, but the enforcement staff elicited no further detail regarding what he actually received or the value of the items. Student-athlete 5's also expressed an "understanding" that he could possibly work as a lifeguard, because the head coach told him he could have a job once he passed the certification test.

In May 2011, the head coach posted a notice in the institution's sports and recreation center, which was also used by the private swim club, soliciting donations of "living needs" (linens, furniture, etc.) for "2 two new swimmers."¹³ The incoming swimmers were student-athlete 5 and another prospective student-athlete who eventually did not enroll. Student-athlete 5 received a few items for use in his kitchen as a result of the

¹² The associate director of athletics stated in his interview that he had signed one such letter and that he had done so on behalf of student-athlete 6. However, the only letter the institution could locate signed by him was in reference to student-athlete 5.

¹³ It was this posted notice, when observed by an institutional staff member later in the summer, that was the catalyst for this case.

solicitation.¹⁴ The head coach acknowledged posting the notice but stated that he was unaware that such a solicitation could result in violations of NCAA legislation.

Student-athlete 5 stated that he worked as a lifeguard in his home country, where "you don't need a certificate. You just need to be a swimmer." He described himself as a "master of sport," a status that allowed him to work as a lifeguard in his home country. By his own admission, he was not knowledgeable regarding CPR and other requirements to receive a lifeguard certificate in this country. After student-athlete 5 arrived on campus, the head coach told him to meet the instructor at the pool on a certain day and time. He did, paid her \$75 and, over the course of approximately a week, spent seven to eight hours taking various tests for lifeguard certification. No one else took the tests at the same time.

Student-athlete 6. Student-athlete 6 initially enrolled at the institution for the 2008-09 academic year. He arrived in the United States on July 18, 2008.

Prior to student-athlete 6's arrival in this country, the head coach sent him lifeguard study materials by mail and told him it was possible that he could work as a lifeguard after he passed the certification tests.¹⁵ Upon student-athlete 6's arrival at the institution, the head coach told him to contact the instructor and take the "challenge" course for lifeguard recertification.¹⁶ The instructor required him to show proficiency in CPR and administered a written test but did not require him to perform an actual swimming test or "sit through the course." Student-athlete 6 recalled paying anywhere from \$70-\$90 for the test and receiving a certificate from the instructor upon passing the course. He had no explanation why his certificate was dated June 5, 2008, prior to his arrival in America. He began working as a guard in the summer, before classes began, filling shifts for other guards who needed a substitute. He began working his own assigned shifts in the fall of 2008.

The head coach's statements during the investigation

The enforcement staff and institution conducted numerous interviews during the course of the investigation, including one with the head coach on October 13, 2011. Near the end of the interview, an exchange occurred in which the head coach stated that he had

¹⁴ The items were valued at less than \$100.

¹⁵ Student-athlete 6 stated that he received a lifeguard instruction textbook by email. The parties all agreed that the textbook was available free of charge.

¹⁶ Similar to student-athlete 5, student-athlete 6 stated that, because he was considered a "master of sport" in his home country, he had been able to work in a lifeguard capacity there prior to coming to America. He stated that he did not need any lifeguard certification to work in this capacity in his home country.

served as a reference for certain student-athletes. He did not disclose that he had signed leases with and on behalf of student-athletes.

Enforcement staff: Have you ever taken part at all in arranging for housing for any of the student-athletes we talked about today?¹⁷

Head coach: There's only one part of with what I did, if the potential renter of the house asked me, "Do you have any reference?"

Enforcement staff: Do you have any what?

Head coach: Do you have any reference? Because when [student-athlete 6] coming here, no Social Security, no credit cards, no jobs, no bank account, and only 200 in his pocket, and he coming to you, "Can you rent a room for me?"

Enforcement staff: Okay, so you served as a reference if the landlord asked.

Head coach: Yes, the landlords ask.

Enforcement staff: Was that just for --

Head coach: Just to get him into.

Enforcement staff: Just for [student-athlete 4], though, or --

Head coach: Whoever require, I ask it for. If they need for reference for to get the housing, I don't know it's a violation or not. I not even think about it because they need a place to stay and nobody can give reference with them but me who's a friend of the parents. He is a [unintelligible].

Enforcement staff: I understand. But do you know which student-athletes you did that for, just for my records here?

Head coach: Maybe for [student-athlete 6], and this is it. As far as I remember, nobody called me directly. [Student-athlete 1]. [Student-athlete 1's] landlord. He was calling.

Enforcement staff: [Student-athlete 1's] landlord. So --

Head coach: Before he rent apartment to him, he was asking me a question that -- I mean he is reliable or not reliable, if he smoke or not, if he use drug or not.

¹⁷ Previously in the interview, the parties had discussed student-athletes 1, 2, 3, 4, 5 and 6.

Earlier in the interview, the enforcement staff and head coach discussed student-athlete 3's arrival in this country and his accommodations for the first few days he was in America. During the exchange, the head coach stated that he did not give student-athlete 3 permission to stay in the home and was unaware he had stayed there until after the fact:

Enforcement staff: [Student-athlete 3] said that he -- until he found an apartment in town, that he stayed at your house for a week.

Head coach: I didn't notice about it because I was on vacation. If he stayed in my apartment, whatever, day, two, three, I wouldn't really know about that, and I didn't give him permission to stay there.

Shortly thereafter, the head coach stated:

I don't know. Just when we come back from vacation from [my wife's] point of view, the things around in the house wasn't the way how she left because the woman usual know better than the man where the things in apartment. She told, "Somebody was in our apartment." And I told, "No, nobody could be in," because I knew in advance. I was [unintelligible] nobody was, and I tried to work out with her. *Then later on, later on, I found out that [student-athlete 3] stay a day or two in my apartment* until he went to the place where he find to rent. (emphasis added)

A little later in the interview, the head coach stated that he only found out that student-athlete 3 had stayed in his apartment by asking him. However, both student-athlete 3 and the assistant coach reported that the head coach was aware that student-athlete 3 might stay in the apartment and gave permission for him to do so prior to his arrival. The assistant coach further stated that, on the day student-athlete 3 arrived in this country, she phoned the head coach and asked his permission and the head coach granted it. The committee finds that the head coach knew of the arrangement, approved it in advance, and was untruthful in his interview.

Regarding lifeguard study materials sent to prospective student-athletes, the head coach stated that that he sent student-athletes 3, 4 and 5 "the material that you have to learn to become a lifeguard." The materials he referred to consisted of a lifeguard instruction textbook, CDs and DVDs. The textbook is available online at no cost. He sent the materials directly to the student-athletes or as attachments to email. He said that he told the student-athletes to view the tapes, read the book and prepare themselves to take the "challenge" certification exam upon their arrival in America. He also told them that there was a possibility they could work as lifeguards, but they would have to pass the test and apply for the positions.

Student-athlete 5's and student-athlete 6's statements

The enforcement staff and institution interviewed student-athlete 5 twice during the investigation. During the first interview, student-athlete 5 stated that, upon his arrival in this country, he stayed with student-athlete 1 for three days before locating his own apartment. On March 16, 2012, in his second interview and under a grant of limited immunity, he stated that the head coach had located the apartment for him prior to his arrival and that student-athlete 5's father had sent money to the head coach to reserve the apartment.¹⁸ Later in the interview, student-athlete 5 admitted that the head coach had suggested what he should say in his first interview:

Enforcement staff: There must have been a reason why you would specifically not mention that you, your dad had already paid, reimbursed only for two months rent at an apartment that was designated for you?

Student-athlete 5: I don't know. I was just confused about like that.

Enforcement staff: Did [the head coach] tell you, ask you or somehow suggest to you in any way that you should not say that in our, in this interview?

Student-athlete 5: It was some kind of suggestion so that he asked of us.

Enforcement staff: From [the head coach]?

Student-athlete 5: Yeah.

Enforcement staff: How did he make that suggestion?

Student-athlete 5: He said that he, he couldn't find for me an apartment and that's why it's better to say that you will find it by yourself, so that's how it was.

The enforcement staff and institution also interviewed student-athlete 6 twice during the investigation. During the first interview, on October 12, 2011, student-athlete 6 reported that, upon his arrival in America, he briefly stayed with student-athlete 1 before locating his own apartment. In his second interview, conducted on March 16, 2012, under a grant of limited immunity, the enforcement staff asked him if the head coach had told him what to say in his interview. Student-athlete 6 stated that the head coach had told him not to say that the head coach had found his apartment for him:

Student-athlete 6: He didn't really I guess tell me what to say in the interview, but he made it clear to me that there is no like relationship between the coach and the athlete.

¹⁸ The committee granted limited immunity to student-athletes 5 and 6 pursuant to NCAA Bylaw 32.3.8.2

Like no – should not be any relationship between the coach and the athlete. Like no financial anything. No nothing.

Enforcement staff: You mean he told you those were the rules at some point or when you were getting for your interview he was trying to tell you what sort of things to stay away from?

Student-athlete 6: What to stay away from.

Enforcement staff: Tell me if you can and maybe that's everything you can remember, but think if there's – if you could be more specific about what [the head coach] said to you about what you would say in your interview. What sort of hints did he give you?

Student-athlete 6: He said I can always ask for a lawyer.

Enforcement staff: Oh. That's true.

Student-athlete 6: He told me to say – how did he put it – he told me to say everything the way it is, but just like – but I knew, see, I couldn't say that he found a apartment for me. Like he kind of made it clear that I wasn't – I shouldn't say that because it would be a –

Enforcement staff: Benefit?

Student-athlete 6: Not a benefit, but I guess he knew that it's not the way it's supposed to be, but at the same time, there was no other way for me to get an apartment. So I guess that's why he said that it's better not to say anything about it.

Student-athlete 6 went on to say in his second interview that, upon his arrival in America, he went directly to his apartment because "it was already found for me." He stated that he and the head coach met with a representative of the rental company, and both he and the head coach signed the lease because "they wouldn't have give (sic) me that apartment without [the head coach] on [the lease].

The committee finds that the head coach's position that he was nothing more than a reference is not credible. His name and signature appear as a co-tenant on student-athlete 5's June 15, 2011, lease and on the June 3, 2011, lease of student-athletes 3 and 4. Additionally, student-athletes 5 and 6 admitted in their second interviews that the head coach had been involved in finding their apartments. Their later statements are more credible than the statements made in their first interviews; they made the statements knowing that they were admitting to possible rules violations, and the statements are supported by copies of leases recovered by the enforcement staff and institution during the investigation. The committee finds that the head coach located apartments for the

student-athletes, co-signed the leases for them, and was untruthful about the circumstances when the enforcement staff interviewed him on October 13, 2011

The institution's execution and filing of student-athlete statements

During the investigation, the enforcement staff requested that the institution produce the completed student-athlete statements from the 2010-11 academic year for men's swimming student-athletes. The institution was unable to locate them or the statements for the women's swimming and men's tennis teams from the same year. The institution's former director of athletics ("former director of athletics") recalled that the statements had been completed because he relied on information contained in the statement of a certain men's tennis student-athlete when an eligibility question regarding the student-athlete arose during that year. However, neither he nor any other member of the administrative staff was able to locate the statements.

From the 2007-08 academic year until January 2012, the institution did not utilize the international student-athlete statement for its international student-athletes. During that time, nine international student-athletes enrolled at the institution. The assistant director of athletics was responsible for administering the student-athlete statements annually and was unaware that, in addition to the student-athlete statements required of all athletics participants, NCAA rules also require international student-athletes to execute an additional form.

The institution's provision of pre-enrollment expenses to prospective student-athletes through a discount pool leasing agreement

The head coach owned and operated the private swim club from its founding in 2003 until 2010, when he transferred ownership to his wife. From the time the private swim club came into existence, the institution leased the pool to it through a series of one-year licensing agreements. During that time, the private swim club leased the pool for substantially more time than any other outside entity.

From 2009 into 2011, the institution reviewed the licensing agreements at the sports and recreation center, including the pool. The review revealed that the private swim club was paying less than \$5 per lane per hour, while all other for-profit outside entities were paying around \$50 per lane, per hour. The institution then raised the private swim club's rates to make them comparable to the rates paid by other organizations.

During the period that the private swim club's rates were substantially lower than the rates paid by other outside organizations, student-athletes 1, 2 and 4 competed for the private swim club while they were still prospective student-athletes.

The institution's monitoring of, and control of, its athletics program

The head coach, in his dual role of head men's and women's swimming coach and aquatics director, exercised almost total control over the operations of the aquatic center. Conversely, from the time the head coach began working for the institution in 1995 to 2011, the institution had seven different directors of athletics and endured periods of constant turnover in other administrative positions as well. As a result, the head coach operated with nearly complete autonomy and a lack of checks and balances on his actions.

The head coach recruited international student-athletes through electronic communications and at times when he was vacationing overseas. He did not submit reports of his recruiting activities, he did not seek reimbursement for any recruiting expenses, and he did not discuss his recruiting efforts with members of the athletics administration.¹⁹ The administration never required him to give an accounting of his recruiting activities. Because the institution had no system for reviewing recruiting activities, and because he did not divulge his activities to any athletics administrators, the head coach's role in providing statements of financial support and co-signing leases for prospective student-athletes went undetected from 2007 to 2011.

The athletics staff held routine coaches meetings in which limited NCAA rules education occurred, although the meetings were not mandatory for the coaches. The meetings included discussions of recent rules changes, and administrators advised coaches generally of their responsibilities as members of Division III of the NCAA. However, even though the institution does not provide on-campus housing for students, there was no education presented regarding housing of student-athletes or the many issues involved in recruiting international student-athletes. Further, the athletics administration did not provide NCAA education to on-campus constituencies outside of the department of athletics. Therefore, for example, personnel at the International Center were unaware that the head coach could not provide statements of financial support for student-athletes.

The institution did not have an adequate system in place for ensuring the retention of annual student-athlete statements. When the NCAA requested the 2010-11 statements, the athletics administration could not locate them. The institution also did not administer the international student-athlete statement from 2007-12, resulting in all international student-athletes during that time practicing and competing without completing the statements. Finally, the institution did not recognize that its lease arrangement with the private swim club, which included prospective student-athletes, also triggered NCAA rules implications.

¹⁹ His recruiting budget was never more than a couple of hundred dollars per year.

IV. ANALYSIS

The violations in this case involve: (A) impermissible recruiting inducements and impermissible extra benefits; (B) unethical conduct by the head coach; and (C) failure of the institution to exercise control and to monitor the conduct and administration of its athletics program. The enforcement staff and institution agreed that the violations occurred. The head coach agreed with the majority of the facts but did not agree that all of the facts constituted violations of NCAA legislation. The committee concludes that the facts constitute violations of NCAA legislation.

A. THE HEAD COACH PROVIDED IMPERMISSIBLE RECRUITING INDUCEMENTS AND EXTRA BENEFITS TO PROSPECTIVE AND ENROLLED STUDENT-ATHLETES. [NCAA Bylaws 13.2.1, 13.2.1.1-(h) and 16.02.3].

The head coach provided impermissible inducements and extra benefits to student-athletes 1, 2, 3, 4, 5 and 6. Specifically, the head coach facilitated the visa process for international student-athletes, arranged reduced-cost lifeguard certification classes, arranged off-campus housing, and provided free lodging.

1. NCAA legislation regarding impermissible benefits and extra benefits.

The applicable portions of the bylaws state:

13.2.1 OFFERS AND INDUCEMENTS

13.2.1 General Regulation. An institution's staff member or any representative of its athletics interest shall not be involved, directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to the prospective student-athlete or the prospective student-athlete's relatives or friends, other than expressly permitted by NCAA regulations. Receipt of a benefit by prospective student-athletes or their relatives or friends is not a violation of NCAA legislation if it is demonstrated that the same benefit is generally available to the institution's prospective students or their relatives or friends or to a particular segment of the prospective student body determined on a basis unrelated to athletics ability. (*Revised: 1/13/98, 1/10/05, 1/9/0610/15/08*)

13.2.1.1 Specific Prohibitions. Specifically prohibited financial aid, benefits and arrangements include, but are not limited to, the following:

- (h) Free or reduced-cost housing;

16.02.3 Extra Benefit. An extra benefit is any special arrangement by an institutional employee or a representative of the institution's athletics interest to provide a student-athlete or the student-athlete's relative or friend a benefit not expressly authorized by NCAA legislation. Receipt of a benefit by student-athletes or their relatives or friends is not a violation of NCAA legislation if it is demonstrated that the same benefit is generally available to the institution's students or their relatives or friends or to a particular segment of the student body determined on a basis unrelated to athletics ability. *(Revised: 1/1091, 10/15/08)*

2. **The head coach provided impermissible recruiting inducements to prospective student-athletes and extra benefits to enrolled student-athletes when he facilitated the visa process, arranged for reduced-cost lifeguard certification classes, signed leases for student-athletes and provided cost-free housing.**

Bylaws 13.2.1 and 13.2.1.1 prohibit institutional staff members from providing or offering any benefits not permitted by NCAA legislation to prospective student-athletes. The only benefits that can be provided are those expressly authorized by NCAA legislation or those available to all prospective students, or a particular segment of the student body, without regards to athletics ability. Among the things expressly prohibited are free or reduced-cost housing.

The head coach provided recruiting inducements and benefits to student-athletes 1, 2, 3, 4, 5 and 6. He provided statements of financial support to assist student-athletes 1, 2, 3 and 4 as they attempted to procure visas allowing them to travel to this country. He also wrote letters to the American Embassy in support of the visa applications of student-athletes 2 and 5. He acknowledged providing the statements and letters, saying they were necessary to assist the student-athletes in coming to this country, prevent them from having to return to their home country when their visas expired, or simply make it easier for the student-athletes to obtain their visas. These types of benefits are not expressly authorized by NCAA legislation. Because the head coach made offers of assistance to the student-athletes, and those offers benefitted them in coming to, or remaining in, this country, he violated Bylaw 13.2.1.

The head coach supervised and managed the certification process for lifeguards and swim instructors at the institution. The cost of the initial certification class, which lasts approximately 30 hours, is \$280, but the instructor charged student-athletes 3, 4 and 5 far less (approximately \$75) after they were referred to her by the head coach. None of the three

student-athletes completed the required number of training hours, yet the instructor issued lifeguard certification certificates to them. Further, the instructor "backdated" the certificates of student-athletes 3 and 4 so that it appeared they had passed the certification course at times that pre-dated their arrival in the United States. Those times generally corresponded with the times the courses were normally offered on campus.²⁰

The head coach arranged for the student-athletes to attend the recertification course, rather than the initial certification course, and thus pay a rate lower than that charged to other lifeguard candidates. Further, the student-athletes did not have to complete the full certification course. The actions of the head coach in arranging the certification classes for student-athletes 3, 4 and 5 violated Bylaw 13.2.1.

The head coach arranged off-campus housing for student-athletes 3, 4, 5 and 6 prior to their initial enrollment at the institution when he co-signed their leases as a guarantor prior to their arrival in this country. He accompanied student-athlete 6 to a meeting with the rental company representative to execute a lease once student-athlete 6 arrived in America. The Division II Committee on Infractions dealt with a similar situation in *Abilene Christian University*, Case No. M290 (2009). In that matter, a head coach signed leases as a guarantor for two prospective student-athletes who moved into an apartment complex controlled by the institution. The prospects were only allowed to live there because the head coach signed the leases. The committee concluded that the coach in that case provided impermissible benefits to the prospects. The Division I committee has reached similar conclusions (e.g., *Boise State University*, Case No. M318 (2011)). In signing the leases, the head coach assisted the student-athletes in finding housing. His provision of this benefit is not sanctioned by NCAA legislation and, therefore, violated Bylaw 13.2.1.

The head coach also entered into a lease agreement on behalf of student-athletes 3 and 4 prior to their second year of enrollment at the institution. Because NCAA legislation does not allow coaches to co-sign leases on behalf of enrolled student-athletes, the head coach was in violation of Bylaw 16.02.3 when he became a guarantor of the lease of student-athletes 3 and 4 after they were enrolled.

²⁰ The committee noted that backdating the certificates would have created the appearance that the student-athletes were in classes of at least six candidates, as required by the Red Cross. It further noted that student-athlete 6 also paid less than \$280 for the certification course and was provided a backdated certificate. However, as the only information in the record indicated that he was properly certified prior to changes in Red Cross rules, the committee is unable to conclude that he received any impermissible inducements or benefits with respect to lifeguard certification.

Upon his arrival in the United States, student-athlete 3 stayed at the head coach's home for two nights, cost-free, while the head coach was out of the country. The head coach had prior knowledge that student-athlete 3 might stay at his home and had granted permission for him to stay there. Bylaw 13.2.2-(h) precludes institutional staff members from providing free or reduced-cost housing. When the head coach allowed student-athlete 3 to stay at his home, he did so in violation of Bylaws 13.2.1 and 13.2.2-(h).

The committee concludes that the facts as found constitute violations of NCAA Bylaws 13.2.1, 13.2.2-(h) and 16.02.3.

B. THE HEAD COACH VIOLATED THE PRINCIPLES OF ETHICAL CONDUCT AND FAILED TO PROMOTE AN ATMOSPHERE FOR COMPLIANCE. [NCAA Bylaws 10.01.1, 10.1-(c), 10.1-(d), 11.1.2.1 and 19.01.2]

The head coach provided inducements and benefits to international student-athletes. In his interviews during the investigation, he denied that he arranged housing for student-athletes 3, 4, 5 and 6 and that he allowed student-athlete 3 to stay at his home free-of-charge. Further, he requested that student-athletes 5 and 6 not divulge his involvement in arranging for their housing when they were interviewed by the enforcement staff during the investigation.

1. NCAA legislation regarding unethical conduct.

The applicable portions of the bylaws state:

10.01.1 Honesty and Sportsmanship. Individuals employed by (or associated with) a member institution to administer, conduct or coach intercollegiate athletics and all participating student-athletes shall act with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, shall represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports.

10.1 UNETHICAL CONDUCT

Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member, which includes any individual who performs work for the institution or the athletics department even if he or

she does not receive compensation for such work, may include, but is not limited to, the following: (*Revised: 1/10/90, 1/9/96, 7/20/10*)

- (c) Knowing involvement in offering or providing a prospective or enrolled student-athlete an improper inducement or extra benefit or improper financial aid; (*Revised: 1/9/96*)
- (d) Knowingly furnishing or knowingly influencing others to furnish the NCAA or the individual's institution false or misleading information concerning an individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation; (*Revised 1/13/10*)

11.1.2.1 Responsibility of Head Coach. It shall be the responsibility of an institution's head coach to promote an atmosphere for compliance within the program supervised by the coach and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach. (*Adopted: 4/11/06*)

19.01.2 Exemplary Conduct. Individuals employed by or associated with member institutions for the administration, the conduct or the coaching of intercollegiate athletics are, in the final analysis, teachers of young people. Their responsibility is an affirmative one, and they must do more than avoid improper conduct or questionable acts. Their own moral values must be so certain and positive that those younger and more pliable will be influenced by a fine example. Much more is expected of them than of the less critically placed citizen.

2. **The head coach violated the principles of ethical conduct and failed to promote an atmosphere for compliance when he provided impermissible inducements and benefits, and when he provided false or misleading information and advised student-athletes to provide false or misleading information.**²¹

Bylaw 10.01.1 obligates all institutional employees to act with honesty. Bylaw 10.1-(c) prohibits institutional staff members from offering or providing improper inducements or extra benefits, while subsection (d) of 10.1 precludes institutional employees from providing false or misleading information and influencing others from doing so. Bylaw 11.1.2.1 requires head coaches to promote an atmosphere for rules compliance in

²¹ The enforcement staff alleged that the head coach provided false *and* misleading information. However, the bylaw is written in the alternative and it is only necessary to show that the information was either false or misleading for a violation to be established.

their programs. Finally, Bylaw 19.01.2 sets forth the principle that coaches are teachers of young people. It articulates the affirmative responsibility of coaches to operate with the type of values that set a positive example for the young people they serve.

The head coach provided inducements to student-athletes 1, 2, 3, 4, 5 and 6 and benefits to student-athletes 3 and 4 as set forth in (A) above. As the benefits and inducements were not authorized by NCAA bylaws, they constituted violations of Bylaw 10.1-(c).

During his interview with the institution and enforcement staff on October 13, 2011, the head coach said that he did not arrange housing for student-athletes 3, 4, 5 and 6 but only served as a reference when potential landlords asked questions regarding the character of the student-athletes. He did not divulge that he had co-signed leases with the student-athletes, obligating him as a co-tenant. He further stated that he did not know that student-athlete 3 had stayed in his home and that he did not give student-athlete 3 permission to stay there. However, the head coach had given student-athlete 3 permission to stay and had also told the assistant coach that it was allowable for student-athlete 3 to stay in the home. Because the head coach did not divulge the extent of his involvement in procuring housing for the student-athletes, and because he was untruthful regarding student-athlete 3 staying at his home, he violated Bylaws 10.01.1 and 10.1-(d).

As student-athletes 5 and 6 stated in their March 16, 2012, interviews, the head coach requested that they not tell the NCAA he had found their apartments for them. In fact, in their first interviews in the fall of 2011, both student-athlete 5 and student-athlete 6 falsely stated that they had stayed with student-athlete 1 briefly before finding their own apartments. When the head coach directed two student-athletes to provide false or misleading information, he was sending a message that rules compliance was not of foremost importance as he administered the men's swimming program. He was not acting honestly, and was, therefore, not upholding the principle of exemplary conduct. His actions violated Bylaws 10.01.1, 10.1-(d), 11.1.2.1 and 19.01.2.

The committee concludes that the facts as found constitute violations of NCAA Bylaws 10.01.1, 10.1-(c), 10.1-(d), 11.1.2.1 and 19.01.2.

C. THE INSTITUTION FAILED TO EXERCISE CONTROL OVER AND MONITOR THE CONDUCT AND ADMINISTRATION OF ITS

ATHLETICS PROGRAM. [NCAA Constitution 2.1.1, 2.8.1, 6.01.1 and NCAA Bylaws 13.15.1, 14.1.3.2-(d) and 14.1.5.1]

The institution permitted certain student-athletes, including international student-athletes, to compete without executing student-athlete statements. It indirectly provided financial assistance to prospects when it maintained a contractual agreement with a private swim club at a significantly lower rate than published for other organizations. It failed to provide adequate NCAA rules education, failed to monitor the recruitment activities of the head coach and failed to monitor the housing arrangements of student-athletes.

1. NCAA legislation regarding failure to monitor and lack of institutional control.

The applicable portions of the constitution and bylaws state:

2.1 THE PRINCIPLE OF INSTITUTIONAL CONTROL AND RESPONSIBILITY

2.1.1 Responsibility for Control. It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures. *(Revised: 10/3/05)*

2.8.1 Responsibility of the Institution. Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to assure compliance and to identify the report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions. Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interest shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.

6.01.1 Institutional Control. The control and responsibility for the conduct of intercollegiate athletics shall be exercised by the institution itself and by the conference(s), if any, of which it is a member. Administrative control or faculty control, or a combination of the two, shall constitute institutional control.

13.15.1 Prohibited Expenses. An institution or a representative of its athletics interest shall not offer, provide or arrange financial assistance, directly or indirectly, to pay (in whole or in part) the cost of the prospective student-athlete's educational or other expenses for any period before his or her enrollment or so the prospective student-athlete may obtain a postgraduate education. *(Revised: 10/3/05)*

14.1.3. Student-Athlete Statement

14.1.3.2 Administration. The following procedures shall be used in administering the statement. *(Revised: 8/4/89, 12/506, 4/13/10)*

- (d) The statement shall be kept on file by the athletics director and shall be available for examination on request by an authorized representative of the NCAA.

14.1.5.1 Eligibility Form. The eligibility of an international student-athlete shall be certified on a form approved by the Management Council and must be completed before practice or competition. The completed form shall be maintained on file at the institution with other eligibility documents and shall be available for examination upon request by the NCAA staff, and, if the institution is a member of a conference, an authorized conference representative. *(Adopted: 1/10/95 effective 8/1/95 for those student-athletes first entering an NCAA institution on or after 8/1/95, Revised: 1/10/05)*

2. The institution failed to exercise control over and monitor the conduct and administration of its athletics program.

NCAA Constitutional provisions 2.1.1, 2.8.1 and 6.01.1 bestow a responsibility on all NCAA member institutions to administer their athletics departments in accordance with all rules and regulations of the Association. Each institution is also responsible for the control and monitoring of its department of athletics. Bylaws 13.15.1, 14.1.3.2 and 14.1.5.1 are components of institutional control and monitoring, precluding institutions from paying certain pre-enrollment costs of prospective student-athletes and requiring that all institutions maintain completed student-athlete statements on file for both domestic and international student-athletes.

From the time international students first began competing for the institution in 2007, the institution did not have them execute the international student-athlete statement. Further, during the course of the investigation, the institution was unable to locate the student-athlete

statements for men's and women's swimming and men's tennis for 2010-11. The former director of athletics recalled that the statements were executed, but they were not maintained for examination as required. The evidence also demonstrates that the institution charged the private swim club a significantly lower pool rental rate than that paid by other organizations. In doing so, the institution indirectly paid the training costs for student-athletes 1, 2 and 4, who competed for the private swim club prior to their initial enrollment at the institution.

Despite having no on-campus housing, the institution did not track the housing arrangements for student-athletes or offer education to staff on the topic. Further, although there was some limited NCAA rules discussion in non-mandatory staff meetings, the department of athletics' education effort was inadequate. Rules education was not provided to constituencies outside of the department, resulting in the International Center being unaware that certain actions of the head coach violated NCAA legislation. The department failed to ensure that student-athlete statement legislation was fully complied with, and it failed to monitor the relationship between the private swim club and the institution. Finally, the institution failed to monitor the recruiting activities of the head coach.

The institution failed to require its international student-athletes to execute student-athlete statements. It did not maintain student-athlete statements for domestic student-athletes for review by the NCAA and, in allowing the private swim club to pay substantial lower pool rental rates than other entities, it indirectly paid the pre-enrollment expenses of three prospective student-athletes. It did not monitor student-athletes housing or provide adequate rules education. In the aggregate, these shortcomings and failures established a lack of control over, and failure to monitor, the administration of the department of athletics. The committee concludes that the facts as found constitute violations of NCAA Constitution 2.1.1, 2.8.1 and 6.01.1 and Bylaws 13.1.5.1, 14.1.3.2-(d) and 14.1.5.1.

V. SECONDARY VIOLATIONS

In accordance with Bylaw 19.02.2.1, the committee concluded that the following facts constituted secondary violations of NCAA bylaws.

1. In September 2006, the head coach provided transportation from the airport to the vicinity of campus to student-athlete 1 on an occasion other than his initial arrival at the institution to attend class. The value of the benefit was approximately \$13.20. [NCAA Bylaws 13.2.1, 13.5.3]

2. In July 2007, the head coach provided transportation from the airport to the vicinity of campus to student-athlete 2 on an occasion other than his initial arrival at the institution to attend class. The value of the benefit was approximately \$13.20. [NCAA Bylaws 13.2.1, 13.5.3]
3. In August 2010, and at the direction of the head coach, the assistant aquatics director provided transportation from the airport to the vicinity of campus to student-athlete 4 on an occasion other than his initial arrival at the institution to attend class. The value of the benefit was approximately \$13.20. [NCAA Bylaws 13.2.1, 13.5.3]
4. In July 2011, the head coach provided transportation from the airport to the vicinity of campus to student-athlete 5 on an occasion other than his initial arrival at the institution to attend class. The value of the benefit was approximately \$13.20. [NCAA Bylaws 13.2.1, 13.5.3]
5. In July 2011, the head coach provided an article of clothing (polo shirt) valued at approximately \$49 to student-athlete 3. [NCAA Bylaw 16.02.3]
6. In July 2011, the head coach arranged for members of the private swim club Bto donate miscellaneous household items valued at less than \$100 to student-athlete 5. [NCAA Bylaws 13.2.1 and 13.2.2-(f)]
7. In the summer of 2010, the head coach mailed study materials for the lifeguard certification test to student-athlete 4. [NCAA Bylaws 13.2.1, 13.2.2-(f)]

I. PENALTIES

For the reasons set forth in Sections III and IV of this report, the Committee on Infractions finds that this case involved major violations of NCAA legislation. The committee is the independent administrative body of the NCAA charged with adjudicating infractions cases involving member institutions and their employees. Part of that charge includes the prescription of penalties for violations of NCAA legislation.

The committee also considered the institution's cooperation in the processing of this case. Cooperation during the infractions process is addressed in NCAA Bylaw 19.01.3 - Responsibility to Cooperate and NCAA Bylaw 32.1.4 – Cooperative Principle. The committee finds that the cooperation exhibited by the institution was consistent with its obligation under Bylaws 19.01.3 and 32.1.4. The committee notes that, although the violations remained undetected for years, the institution eventually self-detected and self-

reported the majority of the violations, acted quickly in investigating the violations it discovered, cooperated with NCAA investigators and assisted with the investigation.

The committee prescribes the following penalties. Those self-imposed by the institution are so noted, and the institution's corrective actions are contained in the Appendix.

General Administrative Penalties

1. Public reprimand and censure.
2. Four years of probation from November 21, 2013, through November 20, 2017.

Penalties for the Men's Swimming Program

3. The institution's men's swimming team shall end its 2013-14 and 2014-15 seasons with the completion of its conference tournament. No members of the team shall participate, either individually or as a team, in NCAA postseason competition.
4. The institution shall vacate the conference Coach of the Year honors for the head coach from 2007 through 2011. (Institution imposed)
5. Pursuant to NCAA Bylaws 19.5.2-(g) and 31.2.2.3, the institution shall vacate all individual records and performances of student-athletes 1, 2, 3, 4, 5 and 6 from the time they became ineligible for competition through the time their eligibility was reinstated. There will be no reconfiguring of finishes for the affected teams. This order of vacation applies to regular season competition, conference tournaments and NCAA postseason competition. Further, the institution's records regarding men's swimming, as well as the record of the head coach, will reflect the vacated records and will be recorded in all publications in which men's swimming records are reported, including, but not limited to institutional media guides, recruiting material, electronic and digital media plus institutional, conference and NCAA archives. Any institution which may subsequently hire the head coach shall similarly reflect the vacated results in his career records documented in media guides and other publications cited above. Any public reference to these vacated results shall be removed from athletics department stationary, banners displayed in public areas and any other forum in which they may appear.

Finally, to ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected in official NCAA publication and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA director of statistics and appropriate conference

officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the NCAA statistics department a written report detailing those discussions with the director of statistics. This document will be maintained in the permanent files of the statistics department. This written report must be delivered to the NCAA statistics department no later than 45 days following the initial Committee on Infractions release or, if the vacation penalty is appealed, the final adjudication of the appeals process.

Penalties for Head Coach's Conduct

6. The head coach provided impermissible inducements to prospective student-athletes and impermissible benefits to enrolled student-athletes. He provided false or misleading information in his interview with the NCAA and institution and he influenced two student-athletes to also provide false or misleading information. Therefore, the head coach will be informed in writing by the NCAA that, due to his involvement in the violations of NCAA legislation found in this case, if he seeks employment or affiliation in an athletically related position at an NCAA member institution during a four-year period, November 21, 2013, through November 20, 2017, he and the involved institution shall schedule an appearance before the Committee on Infractions to consider whether the member institution should be subject to the show-cause procedures of Bylaw 19.5.2-(q), which could limit his athletically related duties at the new institution for a designated period.

Other Administrative Penalties and Measures

7. During this period of probation, the institution shall:
 - a. In the second year of probation, undergo an audit of its athletics policies and procedures. The audit shall be conducted by an outside entity approved in advance by the committee and shall include a comprehensive evaluation of the following processes: eligibility monitoring, rules education and the monitoring of recruiting activities, transportation and living arrangements for student-athletes, the financial aid process and sources of income for student-athletes. The institution shall abide by all recommendations made by the auditor and include an update of the recommendations, and the institution's adherence to them, in its annual compliance reports (See Penalty 8-d)
 - b. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct the coaches, the faculty athletics representative, all athletics department personnel and all institution staff

- members with responsibility for the certification of student-athletes' eligibility for admission, financial aid, practice or competition;
- c. Submit a preliminary report to the Office of the Committees on Infractions by January 15, 2014, setting forth a schedule for establishing this compliance and educational program; and
 - d. File with the Office of the Committees on Infractions annual compliance reports indicating the progress made with this program by August 1 of each year during the probationary period. Particular emphasis should be placed on the policies and procedures listed in (a) above. The reports must also include documentation of the institution's compliance with the penalties adopted and imposed by the committee.
8. During the period of probation, the institution shall:
- a. Inform prospective student-athletes in men's swimming that the institution is on probation for four years and detail the violations committed. The information must be provided as soon as practicable after the prospective student-athlete is recruited pursuant to Bylaw 13.02.8 and, in all instances, before a prospective student-athlete signs a financial aid agreement or enrolls at the institution, whichever is earlier.
 - b. Publicize information regarding the violations committed, the term of probation and the penalties on the home page of the athletics website and in the media guide for men's swimming. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the major infractions case; and (iii) give members of the general public a clear indication of what happened in the major infractions case to allow the public (particularly prospective student-athletes and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient. The institution may meet its responsibility in a variety of ways and the committee's approval of the statement will not be unreasonably withheld.
9. At the conclusion of the probationary period, the institution's president shall provide a letter to the committee affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

As required by NCAA legislation for any institution involved in a major infractions case, the College of Staten Island shall be subject to the provisions of NCAA Bylaw 19.5.2.3,

concerning repeat violators, for a five-year period beginning on the effective date of the penalties in this case, November 21, 2013.

Should the College of Staten Island or the involved individual appeal either the findings of violations or penalties in this case to the NCAA Infractions Appeals Committee, the Committee on Infractions will submit a response to the appeals committee. As set forth in applicable NCAA Bylaws and procedures of the Infractions Appeals Committee, penalties, which are appealed, will be automatically stayed until the appeal is concluded, with all other penalties remaining in effect.

The Committee on Infractions advises the institution that it should take every precaution to ensure that the terms of the penalties are observed. The committee will monitor the penalties during their effective periods. Any action by the institution contrary to the terms of any of the penalties or any additional violations shall be considered grounds for extending the institution's probationary period or prescribing more severe sanctions or may result in additional allegations and findings of violations. An institution that employs an individual while a show-cause order is in effect against that individual, and fails to adhere to the penalties prescribed, subjects itself to allegations and possible findings of violations.

Should any portion of any of the penalties in this case be set aside for any reason other than by appropriate action of the Association, the penalties shall be reconsidered by the Committee on Infractions. Should any actions by NCAA legislative bodies directly or indirectly modify any provision of these penalties or the effect of the penalties, the committee reserves the right to review and reconsider the penalties.

NCAA COMMITTEE ON INFRACTIONS

Dave Cecil, chair

Keith R. Jacques

Amy Hackett

Nancy Meyer

APPENDIX ONE

CORRECTIVE ACTIONS AS IDENTIFIED IN THE INSTITUTION'S JUNE 27, 2013, RESPONSE TO THE NOTICE OF ALLEGATIONS.

1. The institution shall not recruit international prospective men's swimming student-athletes during the 2012-13 and 2013-14 academic years.
2. The college has removed/terminated the head coach, effective November 17, 2011.
3. Reassigned the former director of athletics who resigned from the position he was reassigned to and is no longer with the college.
4. Hired a new director of athletics with experience and knowledge of eligibility and recruiting regulations.
5. A new faculty athletics representative will be appointed for fall 2013.
6. The director of athletics will also be named the compliance officer on a temporary basis to allow him an opportunity to assess the full breadth of compliance duties and responsibilities.
7. NCAA Rules Education to all athletic department and institutional staff members involved with the recruitment of international student-athletes.
8. Additional NCAA Rules Education to all coaches regarding international student-athletes and head coach responsibility.
9. Athletics has been removed for the Division of Student Affairs and is now under the direct supervision of the president's office.
10. The president created a College Compliance Team to oversee compliance in the athletics department. The Compliance Team is comprised of the following members: deputy to the president and chief of staff (chair); vice president for finance and administration; vice president of student affairs; special counsel and labor designee; director of diversity and compliance; athletic director; compliance officer; faculty athletics representative and student representative.
11. The athletics department website is in the process of being modified. A new compliance section will be added providing the following: contact information for the compliance officer and compliance team members; college philosophy statement on compliance modeled after the NCAA Division III Philosophy Statement; a link to the NCAA Division III Manual; information concerning Title IX.

12. In addition to providing a website link to the NCAA Division III Manual, hard copies will be distributed to all administrators, coaches and others on the campus involved with athletics, prior to the commencement of the fall 2013 season.
13. Professional development concerning compliance for all athletic administrators, coaches, and staff and for the College's Center for International Service will be provided in the fall of 2013.
14. The president and five compliance team members attended the NCAA Convention in January 2013.
15. Five compliance team members attended the NCAA Regional Rules Seminar in May 2013.
16. Three compliance team members attended multiple NCAA compliance sessions at the National Association of College and University Attorneys annual conference in June 2013.
17. The lease for the private swim club will not be renewed resulting in a significant loss of revenue in excess of \$40,000 to the college.
18. The president created a Facilities Usage Committee to develop policies/procedures to, among other things, ensure equity in terms of rates charged to outside entities utilizing college facilities including the swimming pool.