



SAN JOSE STATE UNIVERSITY
PUBLIC INFRACTIONS DECISION
OCTOBER 26, 2016

I. INTRODUCTION

The NCAA Division I Committee on Infractions is an independent administrative body of the NCAA comprised of individuals from the Division I membership and the public. The committee decides infractions cases involving member institutions and their staffs.¹ This case involved the women's basketball program at San Jose State University.² It centered on the head coach failing to meet his responsibility to set an atmosphere for rules compliance by conducting impermissible out-of-season countable athletically related activities (CARA) over three semesters and directing a nonqualifier student-athlete to participate in team CARA. The head coach later provided false or misleading information regarding the nonqualifying student-athlete's participation. The panel concludes the violations are Level II and Level III.

The panel classifies this case as Level II – Mitigated for the institution and Level II – Aggravated for the former head women's basketball coach. The violations commenced before October 30, 2012, and continued after that date. The panel determined that the violations occurred predominantly after that date and therefore prescribed penalties pursuant to current NCAA Bylaw 19. The panel also determined that certain factors warranted downward deviation from core penalties. Utilizing current NCAA Bylaw 19, the panel adopts and prescribes the following core penalties: a one-year probationary period, a financial penalty and a one-year show-cause order for the former head women's basketball coach.

II. CASE HISTORY

On April 24, 2013, the director of athletics and deputy director of athletics walked into a campus facility where the women's basketball coaching staff was conducting an out-of-season skill-related instruction session for members of the women's basketball team. Because there were more than four student-athletes present and participating, the two administrators questioned whether the coaching staff was conducting the session consistent with NCAA playing and practice legislation. Two days later, the director of athletics admonished the coaching staff for allowing more than four

¹ Infractions cases are decided by hearing panels comprised of NCAA Division I Committee on Infractions members. Decisions issued by hearing panels are made on behalf of the Committee on Infractions.

² A member of the Western Athletic Conference, San Jose State University has an enrollment of approximately 33,000 students. It sponsors 13 women's and seven men's sports. The institution had previous infractions cases in 1979 (men's basketball) and 1969 (men's track and field).

student-athletes to participate at the same time in off-season skill sessions. The institution prepared a violation report and submitted it to the NCAA in late May 2013.

In August 2013, the institution's athletics administration received an anonymous report that a nonqualifier student-athlete had participated in team CARA. In an August 22, 2013, interview with the institution, the nonqualifier admitted to participating in team conditioning activities the previous spring. On September 27, 2013, the institution self-reported these violations to the NCAA enforcement staff.

In February 2015, the enforcement staff commenced an investigation and conducted interviews jointly with the institution through May 2015. On January 22, 2016, the enforcement staff issued a draft notice of allegation (NOA) to the institution, the former head women's basketball coach and a former assistant women's basketball coach. On February 19, 2016, the enforcement staff issued an NOA to the same three parties. The former head women's basketball coach and institution agreed to process the case through summary disposition, but the former assistant women's basketball coach declined. From April into June 2016, the institution, enforcement staff and both former coaches took part in additional interviews. The institution and two former coaches submitted responses to the NOA on May 19 and 20, 2016. Throughout the period from March 2016 through early August 2016, the former head women's basketball coach and former assistant women's basketball coach submitted numerous requests for information, deadline extensions, exclusions of information from the hearing and dismissal of the case. The panel consistently reminded the parties of their obligations under NCAA bylaws. At the hearing, each party was given the opportunity to restate any objections and articulate its positions on the requests. The panel considered each request and based its conclusions on all information presented. The panel concludes that there is neither a basis to grant the procedural arguments nor dismiss the case.

On June 17, 2016, the former head women's basketball coach and a former assistant women's basketball coach submitted supplemental responses to the NOA. One month later, the enforcement staff submitted its reply and statement of the case. The two coaches filed further supplemental responses on August 1, 2016, with the former head coach submitting a final response on August 2, 2016. On August 16, 2016, the panel held an in-person hearing.

III. FINDINGS OF FACT

The 2011-12 and 2012-13 women's basketball coaching staff

The institution hired the former head women's basketball coach (former head coach) to lead the women's basketball program prior to the 2011-12 academic year. He had spent the previous 10 seasons as head coach at another NCAA Division I institution. In all, he has served as a head basketball coach at four NCAA institutions for over 20 years. His coaching staff at San Jose State included a former assistant women's basketball coach (former assistant coach 1) and two other assistant coaches (former assistant coaches 2 and 3, respectively).

On August 30, 2013, as the institution was conducting an investigation into possible NCAA rules violations in the women's basketball program, the institution relieved the former head coach of his duties. The institution suspended the three assistant coaches from their duties on September 18, 2013, and subsequently did not retain them for the 2013-14 academic year.

The coaching staff conducted out-of-season athletically related skill instruction

Upon his arrival at the institution, the former head coach instituted preseason and postseason skill instruction and other athletically related activities for the women's basketball team. On August 24, 2011, April 18, 2012, August 23, 2012, and April 9, 2013, the compliance office sent emails to all institutional coaches, including the former head coach and his staff, explaining the NCAA rules regarding such sessions. The emails included reminders of the number of student-athletes that could participate in the sessions, as well as the text of NCAA Bylaws 17.1.6.2-(a) and 17.1.6.2.2. Those bylaws set forth the limitations on athletically related activities outside the playing season as well as the number of student-athletes who may participate in each session.

Before September 15 in the fall semesters of 2011 and 2012, the former head coach and his staff conducted individual skill-related instruction sessions with the women's basketball student-athletes. The former head coach allowed more than four student-athletes to participate at the same time, as long as no more than four worked at the same basket. In the spring of 2012, due to team attrition, the coaches only had 2-3 student-athletes available for the skill instruction sessions.

Beginning April 15, 2013, the former head coach and his staff conducted postseason skill-related instruction sessions in the same manner as they had prior to September 15 in the fall semesters of 2011 and 2012, that is, with more than four student-athletes but no more than four stationed at any one basket. On April 24, 2013, the director of athletics (director of athletics) and deputy director of athletics (deputy director of athletics) walked into a women's basketball skill instruction session unannounced while visiting the institution's main campus.³ As they entered the gym, they observed what the deputy director of athletics described as the "whole team," including all four coaches and from 10-14 student-athletes, participating in the drills. The administrators wondered aloud to each other whether the coaching staff could conduct the session with the number of student-athletes who were present.

Once the two administrators entered the gym, the former head coach approached them. The deputy director of athletics asked former head coach if he was allowed to have more than four student-athletes in the skill instruction session.⁴ The former head coach responded that he did not have another facility to practice in.⁵ The exchange ended at that point, the administrators left, and the

³ The offices of the director of athletics and deputy director of athletics are located on what is known as the institution's south campus. The skill-related instruction session was taking place in a facility on the institution's main campus, approximately a mile from where the administrators were housed. The two administrators had gone to the main campus for a meeting and decided to "drop by" the gym because they were in the vicinity.

⁴ The deputy director of athletics wondered if perhaps NCAA legislation had changed so as to allow more than four student-athletes to be present at the same time.

⁵ Certain institutional facilities were under construction or undergoing renovation at the time.

deputy director of athletics reported the matter to the athletics compliance office. On April 26, 2013, two days after observing the skill-related instruction session, the director of athletics met with the full women's basketball coaching staff. During the meeting, the director of athletics expressed his displeasure and anger at what he termed an intentional violation of NCAA rules.⁶ He told the coaches that they would have to face the consequences of their actions and that he wanted to know about all violations that had occurred. He told them that they would make the matter worse by not telling the truth.

During the meeting, the former head coach again justified his actions by pointing to the lack of campus facilities. The director of athletics told him it did not excuse any rules violations and that the former head coach did not get to make decisions regarding the rules. Neither the former head coach nor any member of his staff reported any other rules violations during the meeting, and none of them stated that they had received permission from the deputy director of athletics or any other administrator to circumvent offseason practice rules. Later on the same day, the former head coach sent an email to the director of compliance (director of compliance) stating that on April 15, 17, 22 and 24, 2013, he had conducted workouts with two groups of four at the same time.

During an interview with the enforcement staff on May 13, 2015, the former head coach claimed that he discussed the shortage of facility space with the deputy director of athletics in the spring of 2013. According to the former head coach, she gave him permission to conduct the sessions with more than four student-athletes if no more than four student-athletes worked at any one basket at a time. Also during the interview and at the hearing, the former head coach acknowledged conducting the skill-related instruction sessions with more than four student-athletes in 2011 and 2012. He did not ask for permission from any administrator prior to conducting the 2011 and 2012 sessions. The deputy director of athletics denied ever granting permission for the former head coach to conduct his skill sessions in this manner.

The record does not support the former head coach's claim that he had permission to conduct his skill-related instruction sessions with more than four student-athletes. The deputy director of athletics denied granting him permission to conduct the sessions with more than four student-athletes, saying she has "never given verbal permission to violate a bylaw."⁷ Moreover, the former head coach acknowledged that he conducted the skill-related instruction sessions with more than four student-athletes in 2011 and 2012 but did not seek permission from the athletics administration to do so until 2013. Finally, if the former head coach had permission to conduct the sessions with more than four, he surely would have mentioned it when the deputy director of athletics questioned him in the gym on April 24, 2013, and when he was angrily confronted by the director of athletics on April 26, 2013. However, he did not offer this justification until May 13, 2015. Based on the deputy director of athletics' denial, the former head coach's history of

⁶ The director athletics stated that he read the coaches "the riot act."

⁷ Even though it was not an issue relevant to any allegation, the panel also noted that the former head coach offered similar justification for student-athlete 1 being present at athletically related activities during her year in residence as a nonqualifier. He stated that the director of compliance officer told him that student-athlete 1 could observe team practice. Similar to the deputy director of athletics, the director of compliance denied making such a statement.

conducting skill-related instruction sessions with more than four student-athletes prior to the time he purportedly asked for permission, and his failure to mention the purported permission when confronted by his supervisors, the panel finds that he did not have permission to conduct off-season skill-related instruction sessions with more than four student-athletes before September 15 in 2011 and 2012 and after April 15, 2013.

The former head coach's use of a consultant

Also during April 2013, the former head coach allowed a basketball consultant (consultant) to step out on the floor during a team skill-related instruction session and demonstrate certain basketball skills to some members of the women's basketball team. The consultant is an alumnus of the institution and attended the institution's conference tournament in March 2013, where he, the former head coach and the coaching staff spoke about him possibly visiting the campus to speak to the team. The consultant visited a skill-related instruction session where, with most of the team members in attendance, he spoke to the team about his experiences and the history of the institution. He also spent approximately 30 minutes on the court with some of the student-athletes, working with them regarding offensive communication.

The former head coach directed a nonqualifier to participate in countable athletically related activities

A nonqualifier women's basketball student-athlete (student-athlete 1) took part in countable athletically related activities in April 2013, during her year in residence. She did so at the direction of the former head coach. Student-athlete 1 enrolled as a freshman at the institution in the fall of 2012. She did not qualify academically for practice or competition; therefore, the coaching staff held her out of all athletically related activities in the fall semester and through the 2012-13 season. However, after the season ended, the former head coach informed student-athlete 1 that she could work out with the team at practice and join team conditioning and weight training sessions. The women's basketball offseason training program began in April 2013. According to the contemporary logs the coaching staff kept of the activities, the team participated in open gym scrimmages without any coaches on Tuesdays and Thursdays and weights/conditioning and/or team drills on Mondays, Wednesdays and Fridays. Student-athlete 1 joined the team for team drills and strength and conditioning workouts.

Student-athlete 1 took part in the activities starting on April 2, 2013, after the former head coach told her she could participate. She attended the team skill-related instruction sessions where she did drills on her own at a side basket and also drilled with the team when instructed to do so by the former head coach. Multiple staff members and/or student-athletes recalled student-athlete 1 participating in team activities. Through the 2012-13 academic year prior to April, student-athlete 1 also lifted weights with the assistant strength and conditioning coach (strength coach) on her own, without other members of the team present. However, once the former head coach told her that she could work out with the team, she began lifting weights and conditioning with the team members. The former head coach also told the strength coach that student-athlete 1 could

participate in the weight/conditioning sessions.⁸ Two members of the women's basketball team (student-athletes 2 and 3, respectively) and former assistant coach 3 recalled student-athlete 1 participating in the individual skill sessions and in the weight room. Student-athlete 3 recalled that student-athlete 1 joined a workout with other post players when invited by the former head coach. An assistant athletic trainer who attended spring 2013 workouts stated that student-athlete 1 was there and "involved in whatever the team was doing." Student-athlete 1 participated in the April skill-related instruction, drills and weight/conditioning sessions from the beginning of the month until April 19, 2013, when she broke her nose in a pick-up game and was sidelined for the rest of the month.⁹ All members of the coaching staff were present for at least some of either the skill-related instruction sessions, team drills and/or strength/conditioning workouts.

The former head coach's statements regarding student-athlete 1's participation in team activities

In August 22 and 23, 2013, conversations with members of the institution's athletics administration, and in a May 13, 2015, interview with the enforcement staff, the former head coach denied awareness of student-athlete 1's participation in the April 2013 skill-related instruction sessions and strength/conditioning activities. The former head coach had a phone conversation with the director of compliance on August 22, 2013, in which he stated that student-athlete 1 was not involved in spring 2013 skill-related instruction activities and countable strength and conditioning. Contemporaneous notes from a meeting held the next day, and attended by the former head coach, the director of compliance, the deputy director of athletics and the strength coach, reflect the former head coach indicated he was unaware of student-athlete 1 participating in team conditioning as he was not involved or present for the sessions.¹⁰

In his May 13, 2015, interview, the former head coach stated that he told student-athlete 1 in the spring of 2013 that she could not participate with the team in strength/conditioning workouts or individual skill-related instruction sessions. According to the former head coach, "everyone was aware of student-athlete 1's status as a nonqualifier." He stated she did not participate in any team activities during the spring of 2013, although he told her that she could observe the activities. He relayed the same information to the strength coach. Regarding the team skill-related instruction, he claimed he told her that she could only play when the coaches were not present. At no time in any conversation or interview did the former head coach acknowledge any participation by student-athlete 1 in any team activities.

⁸ Former assistant coach 3 also recalled student-athlete 1 telling her and/or former assistant coach 2 that the former head coach said student-athlete 1 could participate in the strength/conditioning and individual workouts.

⁹ The strength coach estimated that student-athlete 1 participated in three or four of the four to five weeks of weight workouts.

¹⁰ In his interview of May 13, 2015, the former head coach stated that he in fact did observe the strength coach conduct some of the spring 2013 strength/conditioning workouts and that the note about him not being there was incorrect. He further stated that he saw student-athlete 1 observing some of those workouts but not participating.

IV. ANALYSIS

A. IMPERMISSIBLE COUNTABLE ATHLETICALLY RELATED ACTIVITIES [NCAA Division I manual Bylaws 17.1.6.2.2 and 17.3.6 (2012-12 and 2012-13)]

During three semesters, more than four women's basketball student-athletes participated in skill-related instruction sessions at the same time. The conduct occurred before September 15 and after April 15, when no more than four student-athletes could permissibly participate at a time. The institution and enforcement staff substantially agreed to the facts and that Level II violations occurred. The panel agrees.

1. NCAA legislation related to impermissible activities.

17.1.6.2.2 Skill Instruction—Sports Other Than Baseball and Football. Participation by student-athletes in skill-related instruction in sports other than baseball and football is permitted outside the institution's declared playing season, from the institution's first day of classes of the academic year or September 15, whichever occurs earlier, to one week prior to the beginning of the institution's final examination period at the conclusion of the academic year [see NCAA Bylaw 17.1.6.2-(a)]. More than four student-athletes from the team may be involved in skill-related instruction with their coaches from September 15 through April 15. Prior to September 15 and after April 15, not more than four student-athletes from the same team may be involved in skill-related instruction with their coaches at any one time in any facility. Skill-related instruction shall not be publicized and shall not be conducted in view of a general public audience.

17.3.6 Out-of-Season Athletically Related Activities. In basketball, student-athletes and members of the coaching staff shall not engage in countable athletically related activities outside the institution's playing season except as permitted in Bylaw 17.1.6.2.

2. During three semesters, more than four women's basketball student-athletes participated in skill-related instruction sessions either prior to September 15 or subsequent to April 15.

More than four women's basketball student-athletes participated in skill-related instruction sessions during the fall semesters of 2011 and 2012, as well as the spring semester of 2013. Because teams in sports other than baseball and football are limited to no more than four student-athletes participating in the sessions at those times, the activities violated NCAA Bylaw 17.

NCAA Bylaw 17.3.6 precludes student-athletes in the sport of basketball from engaging in athletically related activities that are subject to daily and weekly limitations except as permitted in NCAA Bylaw 17.1.6.2. NCAA Bylaw 17.1.6.2.2, which governs sports other than baseball and football, provides that, prior to September 15 and after April 15, no more than four student-athletes may be involved in skill related instruction at any one time. When the former head coach conducted women's basketball skill-related instruction sessions in the fall semesters of 2011 and

2012, and the spring of 2013, with more than four student-athletes, the institution violated these bylaws.

The panel concludes the violations are Level II. When more than four student-athletes drill together, the coaches are able to simulate game situations and observe more team members working with and against each other. This provides more than a minimal competitive advantage over institutions that adhere to NCAA legislation.

B. HEAD COACH RESPONSIBILITY [NCAA Division I Manual Bylaw 11.1.2.1 (2011-12 and 2012-13)]

During his tenure at the institution, the former head coach failed to promote an atmosphere of compliance within the women's basketball program in two areas: (1) instructing and permitting student-athlete 1 to participate in team activities, knowing that student-athlete 1 was not permitted to be involved in the activities; and (2) conducting, with his coaching staff, the activities that resulted in Violation No. 1, knowing that no more than four student-athletes were permitted to participate at the same time. The institution and enforcement staff substantially agreed to the facts and that Level II violations occurred. The former head coach agreed that more than four student-athletes participated in skill-related instruction at times they were precluded from doing so, but he claimed he did so only after he received permission from the athletics administration. He did not agree that he instructed and permitted student-athlete 1 to participate in impermissible activities. The panel concludes the violations occurred.

1. NCAA legislation related to head coach responsibility.

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.

2. In September 2011, September 2012 and April 2013, the former head coach failed to promote an atmosphere for rules compliance in the women's basketball program when he directed a nonqualifier to participate in team activities and conducted impermissible CARA.

During his tenure at the institution, the former head coach knowingly instructed student-athlete 1 to engage in impermissible activities and knowingly conducted impermissible activities with his staff. The former head coach's actions demonstrated that rules compliance was not of foremost importance in the administration of the women's basketball program and violated NCAA Bylaw 11.

NCAA Bylaw 11.1.2.1, adopted by the NCAA membership in 2005, places specific responsibilities on head coaches to promote an atmosphere for rules compliance within their

programs and among all staff members who report to the head coach.¹¹ The committee has consistently held that strict adherence to full rules compliance must be of foremost importance to head coaches as they administer their programs. *St. Peter's University* (2016) (concluding that a head coach failed to promote an atmosphere for rules compliance when he, among other actions, allowed two nonqualifier student-athletes to practice and/or compete); *Southeast Louisiana University* (2015) (concluding that a head coach who was involved in impermissible practice sessions with his staff and student-athletes failed to meet head coach responsibilities).

The former head coach instructed student-athlete 1 to engage in drills, weights/conditioning and skill-related instruction with the rest of the team in April 2013, a time when she was precluded from such activities due to her status as a nonqualifier. Further, along with his staff, the former head coach conducted off-season skill-related instruction sessions with more than four student-athletes at a time during the preseason of the 2011-12 and 2012-13 academic years and the postseason of 2012-13. By his knowing involvement in these impermissible activities, the former head coach did not set a proper tone for rules compliance in his program. His actions violated NCAA Bylaw 11.1.2.1.

The panel concludes the violation was Level II. The former head coach directing student-athlete 1 to participate in team CARA resulted in Level III violations. When he allowed more than four student-athletes to participate in off-season drills, Level II violations resulted. Because an underlying violation was Level II, the former head coach's failure to meet his responsibilities as a head coach was also a Level II violation.

C. UNETHICAL CONDUCT [NCAA Division I Manual Bylaws 10.01.1, 10.1 and 10.1-(d) (2013-14 and 2014-15)]

In 2013 and 2015, the former head coach violated the NCAA principles of ethical conduct and failed to deport himself in accordance with the generally recognized high standards of honesty and sportsmanship normally associated with the conduct and administration of intercollegiate athletics when he knowingly provided the NCAA enforcement staff and/or institution with false or misleading information regarding his knowledge of and/or involvement in violations of NCAA legislation. The institution and enforcement staff substantially agreed to the facts and that violations occurred. The former head coach did not agree to the facts or that violations occurred. The panel agrees to the facts and concludes that the former head coach committed Level II violations.

¹¹ The head coach responsibility bylaw is now found at NCAA Bylaw 11.1.1.1. Head coaches are presumed responsible for the actions of their staffs. That presumption is rebuttable. As the former head coach disputed that the violations occurred, he did not specifically attempt to rebut the presumption. The information in the record, including that presented by the former head coach, did not rebut the presumption.

1. NCAA legislation related to unethical conduct

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:

(d) Knowingly furnishing or knowingly influencing others to furnish the NCAA or the individuals' institution false or misleading information concerning an individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation

2. The former head coach engaged in unethical conduct when he provided false or misleading information regarding student-athlete 1 participating in team activities during her year in residence.

The former head coach violated NCAA ethical conduct legislation when he falsely claimed to be unaware that student-athlete 1 participated in team drills, weights/conditioning and skill-related instruction sessions during April 2013. The former head coach directed student-athlete 1 to participate in the activities during an academic year when she was a nonqualifier serving her year in residence. His false statements violated NCAA Bylaw 10.

NCAA Bylaws 10.01.1, 10.1 and 10.1-(d) require institutional staff member to act ethically and with honesty at all times. In particular, NCAA Bylaw 10.1-(d) prohibits institutional staff members from knowingly furnishing false or misleading information to his/her institution and/or the NCAA enforcement staff regarding the staff member's involvement in, or knowledge of, possible NCAA rules violations. An institutional staff member who provides false or misleading information in an interview engages in unethical conduct. *Southeastern Louisiana University* (2015) (concluding that a head coach provided false information when he inaccurately described the duties performed by a volunteer coach in his program); *University of Oklahoma* (2011) (concluding that a coach engaged in unethical conduct when he failed to divulge knowledge of a violation and later lied about it); *Indiana University* (2008) (concluding that a head coach engaged in unethical conduct when he lied during an interview); *Purdue University* (2007) (concluding that an assistant coach engaged in unethical conduct when she denied her participation in academic fraud during an interview).

In the spring of 2013, following the women's basketball season, the former head coach informed student-athlete 1 that she could participate in CARA with the women's basketball team. For approximately two and one-half weeks starting April 2, when team off-season activities began,

student-athlete 1 attended and took part in individual skill-related instructions sessions and weights/conditioning sessions. Members of the women's basketball coaching staff, including the former head coach, witnessed her participate in at least some of the sessions. On at least one occasion, the former head coach specifically invited her to participate.

In two separate interviews with institutional athletics staff members held August 22 and 23, 2013, the former head coach stated that he was unaware that student-athlete 1 participated in team CARA during the 2013 spring semester. On May 13, 2015, the institution and enforcement staff interviewed the former head coach. Again, he stated that he was unaware of student-athlete 1's participation in team skill-related instruction and/or strength and conditioning activities in the 2013 spring semester.

The former head coach pointed to perceived inconsistencies in interviews of various individuals to support his assertion that the statements regarding him directing student-athlete 1's involvement, and his knowledge of that involvement, were not credible. Student-athlete 1 was interviewed on four separate occasions by the institution, enforcement staff and/or representatives of the former head coach. In each of those interviews, she was clear regarding the main facts – the former head coach informed her in the spring of 2013 after basketball season that she could participate in team activities and she proceeded to do so. The panel considered that student-athlete 1 (as well as others, due to the passage of time) struggled to recall exact sequences and was mistaken regarding some information.¹² For example, student-athlete 1 stated at one point that former assistant coach 1 was present when she broke her nose, when records showed he was out of town. In her second interview, she stated the former head coach told her she could lift with the team *after* she broke her nose.¹³ However, in all her statements she clearly recalled that she had not participated in team activities all year and only began to do so after the season once the former head coach said she could. Other student-athletes and former assistant coach 3 observed her participating. The former head coach also told the strength coach that student-athlete 1 could participate in team activities in April 2013.¹⁴ When the former head coach denied that he had told student-athlete 1 that she could participate in team activities, and was unaware that she did so, he provided false or misleading information in violation of NCAA Bylaws 10.01.1, 10.1 and 10.1-(d).

The panel concludes that when the former head coach provided false or misleading information, he committed Level II violations. Under the circumstances of this case, his conduct did not rise to a Level I violation.

¹² The panel was also concerned that some individuals were not completely forthcoming, particularly in early interviews.

¹³ Student-athlete 1 recognized that she was having trouble recalling some details, stating that "to the best of my memory" the former head coach told her she could work out after she broke her nose and former assistant coach 1 was present when she broke her nose.

¹⁴ The strength coach also recalled the former head coach telling him later in the month that student-athlete 1 was "ineligible again" and actually could not participate.

V. LEVEL III VIOLATIONS

IMPERMISSIBLE PARTICIPATION BY A NONQUALIFIER [NCAA Division I Manual Bylaw 14.3.2.2 (2012-13)] The panel concludes that in April 2013, student-athlete 1 participated in out-of-season countable strength and conditioning and skill-related instruction activities with the women's basketball team on approximately nine occasions while serving a year in residence as a nonqualifier. The violation is Level III because: (1) student-athlete 1 could have (and at times did) participated in the activities on her own; (2) She did not participate in every session; (3) she stated that, when she did participate, she "jumped in and out;" and therefore (4) the institution gained only a minimal competitive advantage.

EXCEEDING COACHING LIMITATIONS [NCAA Division I Bylaws 11.7.1.1.1.4 and 11.7.4 (2012-13)] The parties agree that, on one occasion in April 2013, the former head coach used an outside consultant to provide on-court instruction to the women's basketball team during a skill-related instruction session. As a result, the institution exceeded the permissible number of countable women's basketball coaches.

VI. VIOLATIONS NOT DEMONSTRATED

The enforcement staff alleged that former assistant coach 1 engaged in unethical conduct. The panel does not conclude that the violation occurred. The staff alleged that former assistant coach 1 provided false information in interviews of August 27, 2013, and April 10, 2015 by denying that student-athlete 1 participated in the April 2013 athletically related activities even though he attended "multiple" sessions. Further, the staff alleged that former assistant coach 1 provided false information on April 10, 2015, when he reported that the women's basketball program only conducted impermissible skill instruction in April 2013 even though he had also attended multiple similar sessions in 2011 and 2012. The panel does not conclude that a violation occurred.

The only times student-athlete 1 could have been involved in the spring 2013 activities was from Tuesday, April 2, 2013, when they began, through Friday, April 19, 2013, when she broke her nose in a pickup basketball game and was sidelined until after May 1.¹⁵ The institution conducted no athletically related activities on any Saturdays or Sundays during the period. Open gym sessions without coaches were held on Tuesdays and Thursdays, while weights/conditioning drills were held on Mondays, Wednesdays and Fridays.¹⁶ Individual skill-related instruction sessions began on April 15, 2013. Therefore, from April 2 through April 19, there were eight days on which student-athlete 1 could have participated in countable activities, either weights, conditioning drills or skill-related instruction.

¹⁵ Despite breaking her nose, student-athlete 1 participated in the conditioning session later that day. Following that day, she did not participate in any team activities for the rest of the month.

¹⁶ Open gym sessions are designated as "practice" in institutional records.

Of those eight days, former assistant coach 1 was off-campus and out of town five of them. Speaking of the other three days, when he could have been involved in the sessions, he recalled student-athlete 1 working by herself at a basket off to the side in the gym. Position players worked together, and student-athlete 1 played a position he did not coach. Former assistant coach 1 consistently stated that, to his knowledge, student-athlete 1 did not participate in the team drills in the spring of 2013. He also recalled that, on one of the days drills were held when he was on campus, he was in his office counseling a student-athlete regarding an academic issue and did not attend the drills. Under the circumstances, the panel cannot conclude that his lack of recall and claims of not seeing student-athlete 1 work out with the team constituted the provision of false information.

The enforcement staff also alleged that, in his April 10, 2015, interview, former assistant coach 1 provided false information by stating that more than four student-athletes participated in off-season skill instruction only in the spring of 2013 when, in fact, he had attended similar sessions in 2011 and 2012. However, the panel noted that the enforcement staff did not begin its investigation for more than 16 months after the institution's first self-report, and did not interview former assistant coach 1 until more than three years had passed since the fall of 2012 and more than four years had gone by since the fall of 2011. In his interviews, former assistant coach 1 acknowledged the violations of April 2013. While the panel questioned whether former assistant coach 1 was completely forthcoming, under the circumstances it could not conclude that his statements, made after a number of years had passed, were false. Therefore, the panel concludes the violation was not demonstrated.

VII. PENALTIES

For the reasons set forth in Sections III, IV and V of this decision, the panel concludes that this case involved Level II and III violations of NCAA legislation. Pursuant to NCAA Bylaw 19.9.1, the panel concludes that the Level II violations commenced before October 30, 2012, and continued after that date; however, the conduct constituting the violations predominantly occurred subsequent to October 30, 2012. Therefore, the panel prescribes penalties pursuant to the current NCAA Bylaw 19 penalty guidelines. In considering the penalties under the new penalty structure, the panel reviewed the aggravating and mitigating factors and utilized the new penalty guidelines (Figure 19-1) to appropriately classify the case and violations.

The panel then determined the applicable penalty classification. Level II violations are significant breaches of conduct. The panel concludes that this case involved Level II violations consisting of impermissible CARA activities by the women's basketball team as well as failure to promote an atmosphere for compliance and unethical conduct by the former head coach. To determine the appropriate classification of this Level II case as mitigated, standard or aggravated, the panel considered aggravating and mitigating factors pursuant to NCAA Bylaws 19.9.3 and 19.9.4. When applying the penalty guidelines, the panel also assessed aggravating and mitigating factors by weight as well as number. The panel determined the following factors applied, resulting in the

panel classifying this case as Level II – Mitigated for the institution and Level II – Aggravated for the former head coach.

Aggravating Factors for the Institution

19.9.3-(g): Multiple Level II violations.

Mitigating Factors for the Institution

19.9.4-(b): Prompt acknowledgement and acceptance of responsibility and imposition of meaningful corrective measures and/or penalties;

19.9.4-(c): Affirmative steps to expedite final resolution of the matter; and

19.9.4-(d): Established history of self-reporting Level III or secondary violations.

19.9.4-(h): Other factors warranting a lower penalty range.

The institution reported the underlying violations to the NCAA and took meaningful corrective action by the end of September 2013. The NCAA enforcement staff did not act on the information for over 16 months, during which time the institution had no resolution of the case.

Aggravating Factors for the Former Head Coach

19.9.3-(g): Multiple Level II violations;

19.9.3-(h): Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct; and¹⁷

19.9.3-(m): Intentional, willful or blatant disregard for the NCAA constitution or bylaws.

Mitigating Factors for the Former Head Coach

19.9.4-(h): Other factors warranting a lower penalty range.

Although the panel determines the former head coach's case to be Level II – Aggravated, certain unique factors exist in this case to warrant downward penalty deviation. The institution reported the underlying violations to the NCAA enforcement staff by the end of September 2013. The institution relieved the former head coach of his position at approximately the same time.

¹⁷ The panel determines that NCAA Bylaw 19.9.3-(e), unethical conduct, is not applicable for the following reasons: (1) a number of the underlying violations were Level III; (2) the former head coach's unethical conduct violation does not rise to Level I; and (3) the former head coach did not interfere with the investigation.

The enforcement staff did not commence an investigation for over 16 months after the institution filed the violation reports. During that time, the former head coach had no resolution of the allegations. Once the NOA was finally issued, he engaged in extensive efforts to conduct necessary interviews and obtain information beyond that which the NCAA and institution had gathered. While his failure to be fully forthcoming in his interviews constituted violations, the underlying violations were reported by the institution as Level III, he did not interfere with the investigation and he admitted to having more student-athletes in off-season skill instruction than he should have. For these reasons, the panel deviates from the NCAA Bylaw 19 penalty guidelines.

The former head coach proposed two further mitigating factors: (1) exemplary cooperation; and (2) the violations were unintentional. The panel disagrees and does not determine that they exist in this case. While the former head coach gathered additional information once the NOA was filed and acknowledged some violations, he was not completely truthful in his interviews. He assisted in bringing the investigation to a close, as was his responsibility, but his cooperation was not exemplary. Further, he knew or should have known that his conduct violated NCAA legislation. He received multiple emails from the compliance office reminding him of off-season CARA rules, yet proceeded to conduct off-season skill-related sessions with more student-athletes than allowable. He was aware that student-athlete 1 was a nonqualifier, yet directed her to participate in team CARA during her year in residence.

All of the penalties prescribed in this case are independent of and supplemental to any action the Committee on Academics has taken or may take through its assessment of postseason ineligibility, historical penalties or other penalties. The institution's corrective actions are contained in the Appendix. The panel prescribes the following:

Core Penalties for Level II – Mitigated Violations (NCAA Bylaw 19.9.5)

1. Probation: One year from October 26, 2016, through October 25, 2017.
2. Financial Penalties: The institution shall pay a financial penalty of \$5,000. The institution shall submit payment of its financial penalty to the NCAA Accounts Receivable office no later than 45 days after the release of this decision. The payment may be submitted with the institution's preliminary probation report.

Show-Cause Order:

3. Head Coach Restrictions: The former head coach intentionally violated NCAA legislation related to countable athletically related activities when he allowed more than four student-athletes to participate in off-season skill-related instruction before September 15 in the 2011-12 academic year and before September 15 and after April 15 in the 2012-13 academic year. He also directed a nonqualifier student-athlete to participate in team activities during the nonqualifier's year in residence. By his actions he failed to promote an atmosphere for rules compliance in his program. Further, he provided false or misleading information to the institution and enforcement staff regarding his involvement in, and knowledge of, the

violations. Therefore, the former head coach will be informed in writing by the NCAA that the panel prescribes a one-year show-cause order pursuant to NCAA Bylaw 19.9.5.5. The show-cause period shall run from October 26, 2016, through October 25, 2017. During the term of the show-cause, any NCAA member institution employing the former head coach shall preclude him from: (1) any involvement in preseason athletically related activities from the start of the academic year through the beginning of formal practice; and (2) any involvement in postseason athletically related activities from the last game of the season through the end of final exams.

4. During the period of probation, the institution shall:
 - a. 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 for admission, retention, financial aid or competition;
 - b. Submit a preliminary report to the Office of the Committees on Infractions by December 15, 2016, setting forth a schedule for establishing this compliance and educational program;
 - c. File with the Office of the Committees on Infractions an annual compliance report indicating the progress made with this program by September 1, 2017. Particular emphasis shall be placed on rules education regarding preseason and postseason countable athletically related activities. The athletics compliance office shall also establish a schedule for spot-checking off-season athletically related activities for all sports;
 - d. Inform in writing prospective student-athletes in women's basketball that the institution is on probation for one year and detail the violations committed. If a prospective student-athlete takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospective student-athlete signs a National Letter of Intent;
 - e. Publicize specific and understandable information concerning the nature of the infractions by providing, at a minimum, a statement to include the types of violations and the affected sport programs and a direct, conspicuous link to the public infractions report located on the athletic department's main webpage and in the media guides for women's basketball. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the infractions case; and (iii) provide a clear indication of what happened in the infractions case. A statement that refers only to the probationary period with nothing more is not sufficient; and
 - f. Following the receipt of the final compliance report and prior to the conclusion of probation, 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.

Additional Penalties for Level II – Mitigated Violations (NCAA Bylaw 19.9.7)

5. Public reprimand and censure.

The Committee on Infractions advises the institution that it should take every precaution to ensure that it observes the terms of the penalties. 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, prescribing more severe penalties or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Melissa Conboy

Bobby Cremins

Tom Hill

Joel Maturi, Chief Hearing Officer

Eleanor Myers

Joe Novak

APPENDIX
CORRECTIVE ACTIONS AS IDENTIFIED IN THE INSTITUTION'S SEPTEMBER 20, 2016, RESPONSE TO THE NOTICE OF ALLEGATIONS.

1. The former head coach was relieved of his duties on August 30, 2013. Former assistant coaches 1, 2 and 3 were placed on suspension on September 18, 2013, and eventually were not retained at San Jose State University. Unlike the former head coach, the three former assistant coaches had faculty member agreements under the CSU system, which provided them with various due-process rights under the collective bargaining for their unit, which delayed the implementation of their personnel actions.
2. The strength coach was issued a letter of reprimand for allowing student-athlete 1 to participate in team conditioning activities as a nonqualifier. The strength coach met with the associate athletics director for compliance to review the eligibility roster distribution and the importance of being aware of who is eligible for participation.