



WICHITA STATE UNIVERSITY
PUBLIC INFRACTIONS DECISION
JANUARY 29, 2015

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 is charged with deciding infractions cases involving member institutions and their staffs.¹ This case involves the baseball program at Wichita State University.² It centered on 21 baseball student-athletes who received impermissible extra benefits in the form of discounted athletics apparel and other clothing items. The student-athletes ordered the items through an account set up by the institution's athletics apparel provider. The case also involved the former head baseball coach and the former administrative assistant for baseball.

The institution agreed with all of the violations set forth in this decision. The former head baseball coach did not agree that he failed to fulfill his responsibilities to monitor the former administrative assistant, which was alleged by the enforcement staff but not concluded by the panel. The former administrative assistant agreed with the facts but disagreed that the facts constituted violations of NCAA legislation.

The former administrative assistant for baseball committed Level II violations of NCAA legislation when she allowed the student-athletes to order discounted items through the apparel account, which she controlled. Further, she committed Level III violations when she allowed the softball coach of a two-year institution to order discounted apparel for his team. In light of these Level II and III infractions, and as set forth below, the panel prescribed the following principal penalties: one-year of probation, vacation of victories in which baseball student-athletes competed while ineligible and other penalties as detailed in the penalty section of this report.

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 Missouri Valley Conference, the institution has an enrollment of approximately 14,500 students. It sponsors seven men's and eight women's sports. This is the institution's eighth major infractions case. It previously had major infractions cases in 1956, 1958, 1963, 1968, 1974, 1982 and 1983.

II. CASE HISTORY

In November 2013, the institution's current head baseball coach ("head coach") began to notice a large number of packages being delivered to the desk of the then administrative assistant for baseball ("former administrative assistant"). The head coach expressed concern to the senior associate athletics director for external operations ("senior associate athletics director for external operations") that student-athletes might be receiving discounted items of apparel through the former administrative assistant. On November 21, the head coach opened a box that had been delivered to the baseball office for a student-athlete. When he found that the box contained items of athletics apparel, he took the box and its contents to the associate athletic director for student services ("associate athletic director for student services").

In early December, the institution contacted the enforcement staff regarding the apparel deliveries. The institution and enforcement staff initiated an investigation on December 17. The enforcement staff presented a verbal notice of inquiry to the institution on January 9, 2014, and sent a notice of allegations to the institution, former administrative assistant and the institution's former head baseball coach ("former head coach") on May 9, 2014.

The former head coach and institution submitted responses to the notice of allegations on July 25, 2014, and August 6, 2014, respectively. The former administrative assistant did not submit a response. The enforcement staff held prehearing conferences with the institution, former head coach and former administrative assistant in late August and filed its written reply and statement of the case on October 6. A panel of the Division I Committee on Infractions heard the case on November 6, 2014.

III. FINDINGS OF FACT

Background

The Former Head Coach

The former head coach served as the institution's head baseball coach for 36 years, from 1977 through the 2013 season. During his tenure, the team appeared 28 times in the NCAA tournament after having never previously reached the tournament in the program's history. The team reached the pinnacle of the sport, the NCAA Men's College World Series, seven times, winning a national championship in 1989 and finishing as runner-up in 1982, 1991 and 1993. The former head coach ended his career as the second-winningest coach in NCAA baseball history and produced 27 academic All-Americans, leading all NCAA programs in that category from 1982-2013. Two of those individuals were named NCAA Academic Player of the Year.

The Former Administrative Assistant

The former administrative assistant was a long-time employee of the department of athletics at the institution. Prior to 1993, she worked in the student affairs office, which is the office that oversees NCAA rules compliance. She described herself as a computer specialist. In 1993, she asked to be transferred to the baseball office when a job opened up there. From then until the institution placed her on administrative leave on December 3, 2013, she served as baseball administrative assistant.³ The former head coach, who hired her to work in the baseball office, was the head baseball coach and her direct supervisor for all but approximately the last six months of her active employment as baseball administrative assistant.

At the hearing, counsel for the former head coach commented positively on the former administrative assistant's "drive," "initiative" and technical skills. He described her as "fiercely loyal to the program." In his interview during the investigation, the former head coach complimented her computer skills and ability to interact with other people. Consequently, she eventually held a wide range of duties and responsibilities in the baseball office. She was involved with equipment and apparel procurement, recruiting activities, interaction with professional baseball scouts, fundraising and baseball camps. She handled all electronic communications and much of the logistics of team travel. The associate athletic director for student services stated in his interview that the former administrative assistant "kind of had the role of a director of operations" and was, "from a skills standpoint, ... probably our best administrative assistant." The assistant baseball coach ("assistant baseball coach") who worked with her on recruiting correspondence described her in his interview as a "great secretary."

The Institution's Baseball Apparel Account

In 2008, the institution's baseball program contracted with an apparel provider ("apparel provider") to serve as its exclusive apparel and equipment supplier. Under the terms of the contract, the apparel provider supplied a predetermined number of uniforms, footwear and other items each year for the duration of the contract. Additionally, the apparel provider paid the institution an annual "rights fee" and gave the baseball program an annual "allowance" for use in purchasing products. The contract also allowed the institution to purchase additional products at wholesale prices in addition to those items purchased with the product allowance.

The former administrative assistant and the athletics equipment manager were the only individuals with authorization to order items from the account. They placed orders through a secure website set up by the apparel provider. The process for purchasing apparel operated in this manner from the contract's 2008 inception until early 2012.

³ The institution informed the former administrative assistant in writing on April 17, 2014, that her employment would not be renewed.

The VIP apparel account

Establishing the VIP account

From the time the institution entered into the baseball apparel account in 2008, the former administrative assistant used the account regularly to order team attire. The apparel provider representative who serviced the account ("account representative") also allowed the former administrative assistant to order personal items at a 50 percent discount from retail price through the account.

In January 2012, the account representative and former administrative assistant had a conversation regarding the frequency with which the former administrative assistant used the apparel account. Because she contacted him so often with apparel orders, the apparel company and account representative made a "workload management decision" to provide the former administrative assistant an account that she could access directly to order merchandise. The account, known as the VIP account, was established in the name of the former administrative assistant on January 12, 2012, so that she could bypass the account representative and order merchandise directly from the company. She continued to enjoy the same 50 percent discount from retail price when ordering through the VIP account.⁴

The institution interviewed the account representative during the investigation. He reportedly stated that he established the VIP account with certain conditions. Specifically, the account was to be used only by the former administrative assistant, there were to be no bulk orders placed through it, only one credit card could be used to make orders and there were limits on how much it could be used.⁵ The account representative stated that he relayed this information in an email to the former administrative assistant, but no party was able to locate such a communication. The former administrative assistant stated that she was given the account to "help out the baseball program when needed" and that it could be used by anybody, including student-athletes, coaches and herself, to order items at a 50 percent discount. Her understanding was that orders submitted through the VIP account were not limited to equipment and apparel for the institution's baseball program.

In March 2012, not long after the account was activated, an internal auditing process at the apparel provider's office "flagged" that multiple credit cards and addresses were being used in conjunction with the VIP account. The account representative reported that he spoke with the former administrative assistant by phone regarding use of the account. She purportedly told him that the coaches were not computer literate and "this is the way [the account] has to work." The apparel company did not audit or review the account further until potential NCAA violations came to light in November 2013. The panel found that,

⁴ At the same time, the account representative also established a VIP account for the former head baseball coach. At the hearing, the former head baseball coach stated that he was unaware of the existence of the account. He never used it. Likewise, he was unaware of the former administrative assistant's VIP account.

⁵ The account representative did not agree to allow the enforcement staff to be present or the conversation to be recorded.

regardless of whether the apparel provider initially articulated limits on the VIP account, it allowed the former administrative assistant the autonomy to use the account as she chose.

Ordering Merchandise Through the VIP Account

Once the apparel provider established the VIP account, the former administrative assistant used it to purchase personal items at the discounted rate. She purchased a pair of shoes for her daughter and ordered items at the behest of an athletic department volunteer, parents of her daughter's friends, an ex-athletic trainer and friends of the baseball batgirls. Many of the purchases were made in her name, but the person ordering the merchandise always paid for it. They told her what items they wanted and gave her a credit card number, which she used to place the order. From February 7, 2012, to November 25, 2013, 39 individuals besides the former administrative assistant placed 69 individual orders either through the former administrative assistant or by using her log-in credentials. All 39 individuals received the 50 percent discount off the retail price.

Student-Athletes' Use of the VIP Account

Twenty-one of the 39 individuals who ordered items through the VIP account were student-athletes.⁶ The former administrative assistant concluded on her own that the activity did not violate NCAA legislation because the student-athletes were paying for the items they were ordering. She did not check with the compliance office or any other administrators to confirm that her conclusion was accurate.

From February 2012 into November 2013, the 21 student-athletes ordered a variety of items. Many of the items were baseball team apparel, including T-shirts, caps, "hoodie" sweatshirts, jackets, shorts and athletic shoes. The student-athletes used many of these items for training and practice purposes. Some of them also ordered polo shirts and backpacks, as well as hunting gear, including boots, "camo" items, gloves, pants, jackets and "bibs." In total, the student-athletes ordered merchandise with a retail value of \$15,187.68. They paid a total of \$7,593.50 for the items, \$7,594.18 below the retail price.

⁶ The enforcement staff alleged that 22 student-athletes ordered merchandise through the VIP account. However, one individual had left the institution and signed a professional baseball contract approximately one year before he placed his order. Another individual only placed approximately half of his orders while he was a student-athlete enrolled at the institution. He ordered the remainder of his items after he left the institution and signed a professional baseball contract. The totals listed in this decision do not include the alleged benefits these two individuals received following their withdrawal from the institution and signing of professional baseball contracts. Unlike the recent case of *University of New Hampshire*, Case No. 00010 (2014), the parties in this case did not agree that the receipt of items by individuals who were no longer enrolled at the institution violated NCAA Bylaw 16. The record in this case contained no information that the individuals were promised any benefit while enrolled as student-athletes and had no expectation of benefits following their time as student-athletes. The panel believed that the length of time since a student-athlete was enrolled, along with whether the institution received any competitive or other advantage from the provision of benefits to former student-athletes, are important factors in considering whether a violation had occurred. Under the circumstances of this case, the panel concluded that any benefits received by the student-athletes after they left the institution and signed professional baseball contracts did not constitute NCAA rules violations.

Consistent with the way the former administrative assistant ordered merchandise for others, she initially placed orders for the student-athletes. However, the former administrative assistant also allowed the baseball student-athletes to place their own orders. Because she was busy, she supplied them with her log-on information so that they could access her computer and the VIP account. The student-athletes believed that they could order merchandise in this manner as part of the institution's agreement with the apparel provider.

The Former Head Coach Observing Student-Athletes Ordering Apparel

Sometime in December 2012, the former head coach noticed three or four baseball student-athletes gathered around the former administrative assistant's desk. Later in the day he asked her what the student-athletes had been doing; the former administrative assistant replied that they were ordering Christmas presents. The former head coach was aware that the team apparel contract permitted purchases for the team at wholesale pricing if the team ever exceeded the annual product allowance. In response to the former administrative assistant's explanation, the former head coach admonished her to "be sure [the student-athletes] pay for it themselves and are paying the same price ... you sell it to other people for, outsiders, whatever that is." The former administrative assistant replied "they are, I'm making sure of that," leaving the former head coach with the impression that the student-athletes were receiving no special consideration. He admitted that, in hindsight, he could have asked her further follow-up questions.

Use of the VIP Account by a Two-Year College Coach

In October 2013, the head coach of a two-year college baseball program ("two-year college baseball coach") and the head softball coach at the same two-year institution ("two-year college softball coach") participated in a Wichita State fundraising event. All participants in the event received a "pullover" shirt. The two-year college softball coach later mentioned to the two-year college baseball coach (who has significant ties to the Wichita State baseball program) that he liked the pullovers and was considering purchasing a similar type of item for his softball student-athletes. The two-year baseball coach said he could assist in ordering the items.

The two-year college softball coach gave an order for 20 shirts and his credit card information to the two-year college baseball coach. The two-year college baseball coach passed the order on to the former administrative assistant, whom he knew to be responsible for ordering the baseball apparel at the institution. The apparel provider filled the order on November 20, 2013. The two-year college softball coach paid \$370.30 for the shirts and dispersed them to his softball student-athletes. The total retail value of the items was \$647.80. The two-year college softball coach was unaware that he received the items at a discount.

General Availability of the VIP Account

At the hearing, the former administrative assistant asserted that she helped anyone who wanted to order discounted items through the VIP account. She stated that she "never said no" and that the account was "generally available" to anyone who wished to place an order with her. The former administrative assistant did not advertise the availability of the discounts or the opportunity for others to take advantage of the VIP account. She stated that knowledge of the account spread through "word of mouth." The majority of those who purchased merchandise through the account were institutional baseball student-athletes. No orders were placed by student-athletes involved in any other sports at the institution. The panel found that, under the specific facts of this case, the benefit was not generally available to the institution's students and their family members or friends.

Discovery of potential NCAA rules violations

The institution hired the current head coach on June 13, 2013. On August 24, he noticed four baseball student-athletes gathered around the computer of the former administrative assistant in the baseball office. He told them that they could not use the computers in the office and directed them to the lounge where such equipment was available for use by student-athletes.

By November 2013, the head coach had completed his team's fall practices and much of his off-campus recruiting. As he was spending more time in the baseball office, he began to notice a large number of packages from the apparel provider being delivered to the former administrative assistant. Recalling the August incident, the head coach became concerned that student-athletes might be receiving items of apparel. On November 15, the head coach asked one member of the team whether he had received any such items. The student-athlete confirmed that he had ordered discounted items of apparel through the former administrative assistant. The head coach reported the matter to the senior associate athletics director for external operations on the next business day. On November 21, the head coach opened a package delivered to the baseball office from the apparel provider for another student-athlete. When he found that it contained items of athletics apparel, he took the items to the institution's associate athletic director for student services and reported his concerns. The institution then began an investigation into the use of the VIP account by student-athletes.

The former administrative assistant's rules and compliance education

While employed in the institution's student services office prior to 1993, the former administrative assistant prepared forms and paperwork, including NCAA rules compliance-related materials. In his interview, the associate athletic director for student services remarked that, through her work in the student services office, the former administrative assistant developed a "fairly good working knowledge of NCAA rules."

Once she transferred to the baseball office, the former administrative assistant attended the weekly baseball staff meetings. As part of those meetings, the staff discussed rules issues. She was one of many staff members who received departmental emails, memos and newsletters regarding rules compliance issues, including a daily compliance email update provided by the associate athletic director for student services. In September 2011, she attended an educational program put on by the associate director for student services. The program included a PowerPoint presentation geared for issues facing administrative assistants, and each attendee received a "mini-educational manual" to use as a reference.

The associate athletic director for student services stated in his interview that "I didn't really ever question anything that [the former administrative assistant] may have been doing from a rules standpoint because I always felt – I always had a lot of trust in our staff." The former head coach stated at the hearing that the former administrative assistant would never intentionally circumvent the rules. The former administrative assistant stated that, while she intended for the student-athletes ordering items through the VIP account to receive a discount on those items, she never intended to violate any NCAA rules.

The associate athletic director for student services recalled that the former administrative assistant called him "all the time" about rules-related issues, including questions regarding official paid visits and promotions that involved the use of team logos or jerseys. He considered her knowledgeable about the rules that affected her duties.

The former head coach's commitment to rules compliance

The Former Head Coach's Adherence to NCAA Rules

The enforcement staff acknowledged that the violations in this case were the only problems of any significance in the baseball program over the course of the former head coach's tenure and represented a deviation from otherwise compliant practices. The program reported some secondary rules violations through the years but never had a major rules violation until this situation arose.⁷

The former head coach took compliance with NCAA rules seriously. He regularly attended meetings in which rules were discussed, insisted that his staff strictly adhere to NCAA rules and asked questions of the compliance office when he had a question regarding rules. The assistant baseball coach, who worked with the former head coach for decades, stated in his interview:

Oh, he very, very much we're staying within the rules, very much so. [The former head coach] had no patience for people that were like, if there was,

⁷ As of August 1, 2013, the former two-tiered system of major and secondary violations changed to a four-tiered violation structure. The present structure defines violations as Level I, II, III or IV.

you know, you hear rumors all the time about this team's doing this and that, he was very conscientious about doing what we need to do, compliance, making sure we knew what the rules are, making sure you know what you can and can't do. He took that very seriously.

The director of athletics ("director of athletics"), senior associate director of athletics/senior woman administrator (SWA) ("SWA") and associate athletics director for external operations were all of the opinion that the former head coach insisted upon rules compliance in the baseball program. The SWA oversees the compliance office. The former head coach called her regarding compliance issues once or twice weekly for 20 years. The senior associate athletics director for external operations only worked with the former head coach for a few months. During that time, he formed the opinion that the former head coach was "not a cheater" and "ran a clean program." The director of athletics dismissed the former head coach from his position as head baseball coach.⁸ Nonetheless, he stated this in his interview regarding the former head coach's commitment to rules compliance:

I would say his philosophy in compliance was he was always, always, always – never questioned that he was always going to run a program at the highest integrity and run it by the rules.

The former head coach met with the director of athletics to discuss the responsibilities of a head coach. He also regularly attended departmental "all staff" meetings and considered rules compliance to be an important part of his duties. His weekly staff meetings included discussions regarding rules compliance. He was knowledgeable about NCAA rules and, when a situation arose in which he was unsure of what was allowable, he contacted the compliance office for guidance. He did not act until he was certain that he was in compliance with the rules applicable to the situation at hand. The record contains no information that the former head coach was anything but diligent about complying with NCAA rules. The panel found that the former head coach ran his program in a manner consistent with NCAA rules and insisted that all others associated with the program also operate within NCAA rules.

The Former Head Coach's Monitoring of the Former Administrative Assistant

The former administrative assistant served the baseball program for 20 years. Her direct supervisor was the former head coach, who considered her a trusted, knowledgeable employee. The institution provided her with NCAA rules education. Through that education, as well as her years of employment at the institution, she developed an understanding regarding the rules applicable to her job.

⁸ The reasons for the former head coach's dismissal were not related to the violations in this case.

The former head coach consistently reminded his staff to check with the compliance office when they had any questions regarding NCAA rules. The former administrative assistant regularly called the compliance staff to ask questions. According to the associate athletic director for student services, she "did not hesitate to call me with compliance questions."⁹

The former head coach reviewed all purchase orders for his program. The program could spend no money without his authorization, and he personally checked orders when they arrived to ensure that the correct quantities of the correct equipment/merchandise had been shipped. He tracked the amount of money being spent so as to ensure that his program did not exceed the product allowance of the apparel contract. He raised questions if he saw something that did not belong in the baseball office.

The former head coach never noticed any of the packages containing merchandise ordered through the VIP account for the student-athletes from February 2012 until his departure in June 2013. From December 2011 through 2012 and into 2013 he dealt with a personal situation that resulted in him often being out of the office. Even at times he was present, he was often in his office with the door closed. As a result, as he said at the hearing, he "did not interact as much."

During those times, the former head coach often entered into the building through a back door, away from the former administrative assistant's work space. He was rarely in the locker room, where the former administrative assistant delivered the packages for the student-athletes when the packages arrived at the baseball office.

The former administrative assistant was a long-time trusted employee with a history of rules knowledge and compliance. Based on the totality of circumstances in this case, the panel found that the former head coach monitored the former administrative assistant.

Institutional monitoring

Educating the Former Administrative Assistant

The institution acknowledged that it should have provided the former administrative assistant with further rules education. While it provided effective and routine rules education for departmental employees, the education for administrative assistants was lacking in scope and specificity. The associate athletic director for student services stated that the actions of the former administrative assistant indicated to him that "there needs to be more education in this area." Since the violations occurred, the institution has implemented measures designed to address the deficiencies in its education and rules compliance programs.

⁹ The associate athletic director for student services stated that the former administrative assistant was just one member of the baseball staff who made these regular calls to him.

The institution believed that the former administrative assistant knew, or should have known, that her actions were contrary to NCAA legislation.¹⁰ The panel found that she did not intend to violate NCAA rules when she allowed student-athletes to order discounted apparel through the VIP account. Due to the admitted deficiencies in the rules education program at the time, as well as her failure to inquire of the compliance office, she mistakenly concluded that she would not be providing impermissible benefits in this situation under the circumstances.

Monitoring the Former Administrative Assistant's Duties Pertaining to the Apparel Accounts and the Baseball Program's Procurement of Equipment

In February 2011, the institution received a report from an outside entity that had conducted an assessment of the athletics policies and procedures. The report included a recommendation that the institution establish a centralized system for the issuance and retrieval of equipment. The report also noted that most coaches on campus supervised the equipment functions of their teams individually, which it identified as "not an advisable practice." It urged the institution to institute tighter issuance and retrieval procedures for equipment, provide more administrative support for the process and dedicate additional personnel to the process. Despite seeing the risk posed by the equipment procurement system in place at the time the report was issued, the institution did not centralize the equipment function within the baseball program until after it discovered the existence of the VIP account and the violations that led to this case.

IV. ANALYSIS

A. IMPERMISSIBLE EXTRA BENEFITS. [NCAA BYLAWS 16.11.2.1 (2011-12 through 2013-14 NCAA Division I Manuals) and 16.11.2.2 (2011-12 through 2012-13 NCAA Division I Manual)]

1. NCAA legislation relating to extra benefits.

16.11.2 Nonpermissible.

16.11.2.1 General Rule. The student-athlete shall not receive any extra benefit. The term "extra benefit" refers to any special arrangement by an institutional employee or representative of the institution's athletics interests to provide the student-athlete or his or her family members or friends with a benefit not expressly authorized by NCAA legislation. *(Revised: 1/19/13 effective 8/1/13)*

¹⁰ The enforcement staff's position was that the violations were unintentional, as the former administrative assistant did not know it was impermissible for a student-athlete to purchase items at discounted prices through the VIP apparel account.

16.11.2.2 Discounts and Credits. A student-athlete may not receive a special discount, payment arrangement or credit on a purchase (e.g., airline ticket, clothing) or a service (e.g., laundry, dry cleaning) from an institutional employee or a representative of its athletics interests.

2. **From February 2012 into November 2013, the former administrative assistant provided impermissible extra benefits to 21 student-athletes through the VIP apparel account when she allowed them to purchase items at discounted prices.**

From February 2012 into November 2013, the former administrative allowed 21 student-athletes to order discounted items of apparel from her VIP account. The student-athletes received a 50 percent discount from the retail price of items, which included athletics shoes and clothing as well as hunting gear and other non-athletics items. The student-athletes received a total discount of \$7,594.18. The panel concludes that the former administrative assistant provided impermissible extra benefits to the student-athletes when she allowed them to order the discounted items.

NCAA Bylaws 16.11.2.1 and 16.11.2.2 preclude institutional employees from providing any extra benefit to student-athletes. "Extra benefits" are defined as "special arrangements ... to provide the student-athlete or his family or friends with a benefit not expressly authorized by NCAA legislation." NCAA bylaws do not expressly allow student-athletes to receive apparel discounts from institutional employees. However, NCAA Bylaw 16.11.1.1 states that the receipt of a benefit by a student-athlete "is not a violation of NCAA rules if it is demonstrated that the same benefit is generally available to the institution's students and their family members or friends." The former administrative assistant stated that the discount was available to anyone and that she never said "no" to anyone who asked for it. However, the former administrative assistant did not advertise the discount. As a practical matter, the only people aware of the discount were those associated with the baseball program or people who the former administrative assistant told about it. The discount was not "generally available" as contemplated by NCAA Bylaw 16.11.1.1. Therefore, the panel concluded that the former administrative assistant provided prohibited extra benefits to the student-athletes in violation of NCAA Bylaws 16.11.2.1 and 16.11.2.2 when she allowed them to order discounted items.

B. FAILURE TO MONITOR BY THE INSTITUTION. [NCAA CONSTITUTION 2.8.1 (2011-12 through 2013-14 NCAA Division I Manual)]

1. NCAA legislation relating to failure to monitor.

2.8.1 Responsibility of 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 and 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 interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.

2. From February 2012 into November 2013, the institution failed to monitor the baseball program when it did not closely monitor the activities of the former administrative assistant, make timely changes to its apparel ordering system or adequately educate the former administrative assistant.

The institution acknowledged that it did not closely monitor the activities of the former administrative assistant regarding her use of the VIP account and that it failed to provide her with adequate rules education. The institution further acknowledged that it failed to implement recommended changes to its apparel purchasing system in a timely fashion. The panel concludes that these shortcomings constituted a failure to monitor on the part of the institution.

NCAA Constitution 2.8.1 requires each member institution to monitor its athletics program to assure compliance with NCAA rules and regulations and to identify and report instances in which compliance has not been achieved. The institution acknowledged that it should have monitored the activities of the former administrative assistant more closely to ensure that the baseball program's apparel agreement was fulfilled in a manner consistent with NCAA legislation. In 2011, an outside auditor recommended that the institution change its system of apparel ordering to minimize risk, but the institution did not act on the recommendation until after these violations were discovered in late 2013.

At the hearing, the institution acknowledged that its education for administrative assistants was "lacking." Because the institution did not

improve its equipment procurement system in a timely fashion, did not monitor the former administrative assistant's use of the VIP account and did not provide adequate rules education to her, it failed to monitor the baseball program as required by NCAA Constitution 2.8.1. This lack of monitoring was partially responsible for the violations noted in IV.A.2 above.

C. LEVEL III VIOLATION

RECRUITING INDUCEMENTS. [NCAA BYLAWS 13.2.1 and 13.8.2 (2011-12 through 2012-13 NCAA Division I Manual)]

On November 20, 2013, the former administrative assistant provided recruiting inducements to the two-year college softball coach and two-year college prospective student-athletes when she allowed the coach to order 20 pullover shirts through the VIP apparel account. The two-year college softball coach paid \$370.30 for the shirts, \$277.50 less than their retail value of \$647.80. He dispersed the shirts to the members of his team, who were prospective student-athletes. No members of his team enrolled at the institution.

V. VIOLATIONS NOT DEMONSTRATED

Responsibility of Head Coach

The enforcement staff alleged that the former head coach did not monitor the duties and activities of the former administrative assistant pertaining to her use of the VIP apparel account as required by NCAA Division I Bylaws 11.1.2.1 (2011-12 and 2012-13) and 11.1.1.1 (2013-14).¹¹ The enforcement staff further alleged that, as a result of the former head coach's failure to monitor, he was responsible for the violations the former administrative assistant committed. The panel concluded that the former head coach met his responsibilities because he promoted an atmosphere for rules compliance and did not fail to monitor the former administrative assistant.

Over the twenty years that the former head coach supervised the former administrative assistant, he insisted that she comply with NCAA rules at all times. She was a trusted and competent employee who attended the weekly baseball staff meetings. Those meetings included a rules education component. She had an awareness of the rules that impacted her job. The former head coach instructed her to contact compliance personnel if necessary when questions arose. Further, he reviewed apparel and equipment

¹¹ Both versions of the head coach responsibility bylaw were in effect at times the Level II violations occurred. Former NCAA Bylaw 11.1.2.1 was replaced by present NCAA Bylaw 11.1.1.1 as of October 30, 2012. In spite of the differences in the language of the bylaws, the analysis of the former head coach's potential violations is the same under either version.

purchases made through the only apparel account he was aware of (the account created by the 2008 contract). All institutional employees interviewed on the subject agreed that the former head coach was serious about his program operating in a manner consistent with NCAA rules.

The former head coach did not notice the packages arriving at the office for student-athletes. The record contains no information showing that they arrived at times he was present or that he was in a position to notice them. The fact that he did not notice any packages addressed to student-athletes does not mean he was somehow negligent in his monitoring duties or turned a "blind eye." When he observed student-athletes gathered around the former administrative assistant's desk and learned they were ordering Christmas presents, he appropriately reminded his long-time, trusted, rules-compliant assistant to ensure that the student-athletes did not receive any benefit. In hindsight, he should have asked further follow-up questions. However, his failure to do so in one instance does not negate decades of monitoring his assistant and setting the proper atmosphere for rules compliance in his program.

NCAA Bylaws 11.1.2.1 and 11.1.1.1 require that a head coach set an atmosphere of rules compliance within the program and monitor the activities of those who report to the head coach. The bylaws further include a presumption that a head coach is responsible for the violations of an individual the head coach supervises. This presumption may be rebutted by a showing that: (1) the head coach promoted an atmosphere for rules compliance; and (2) the head coach monitored the activities of the individual who committed the violations. The panel concluded that the former head coach in this case did not fail to monitor the former administrative assistant and promoted an atmosphere for rules compliance in the baseball program. Accordingly, the panel concluded that the former head coach did not violate the head coach responsibility bylaws, NCAA Bylaws 11.1.2.1 and 11.1.1.1.

VI. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the panel concluded that this case involved Level II and Level III violations of NCAA legislation. Level II violations are significant breaches of conduct, while Level III violations are less serious breaches of conduct that are isolated or limited and provide no more than minimal benefits or advantages. The panel concluded that this case involved the former administrative assistant unintentionally providing impermissible benefits to 21 student-athletes (Level II) totaling \$7,594.18 and impermissible inducements to a two-year college coach and prospective student-athletes (Level III) totaling \$277.50.

Infractions cases under NCAA Bylaw 19 are processed pursuant to the procedures applicable to the highest level of violations in the case. To determine the appropriate

classification of this Level II case, the panel considered aggravating and mitigating factors pursuant to NCAA Bylaws 19.9.3 and 19.9.4. When reviewing a case under the penalty guidelines, the panel assesses aggravating and mitigating circumstances by weight as well as number. The panel determined that the following factors apply in this case, resulting in this case being classified as Level II - mitigated:

Aggravating Factors for the Institution

None

Mitigating Factors for the Institution

19.9.4-(b): Prompt acknowledgement of the violation; 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;

19.9.4-(d): An established history of self-reporting Level III or secondary violations;

19.9.4-(g): Violations are unintentional, limited in scope and represent a deviation from otherwise compliant practices; and

19.9.4-(h): Other factors warranting a lower penalty range. Specifically, pursuant to NCAA Bylaw 16.8.1, the institution could have provided some of the items that the student-athletes brought through the VIP account for practice and competition purposes. Additionally, the student-athletes could have purchased the items themselves through a website or at a sporting goods store without violating NCAA rules. The record did not contain information breaking down how much of the \$7,594.18 worth of merchandise fell into this category, but all parties agreed that it was a portion of the total.

Aggravating Factors for the former administrative assistant

None

Mitigating Factors for the former administrative assistant

19.9.4-(g): Violations are unintentional, limited in scope and represent a deviation from otherwise compliant practices.

The panel then conducted a separate analysis and made a separate determination as to whether to prescribe penalties under the former or current NCAA Bylaw 19 penalty guidelines. Because the violations occurred both before and subsequent to the effective date of the new penalty structure (October 30, 2012), the panel reviewed whether the new penalty guidelines were more lenient in this case. The panel determined that the new penalty guidelines were more lenient than would be penalties prescribed under former NCAA Bylaw 19.5.2.

The penalties prescribed in this case are independent of and supplemental to any action that has been or may be taken by the Committee on Academics through its assessment of postseason ineligibility, historical penalties or other penalties. After considering all information relevant to this case, the panel prescribed the following:

General Administrative Penalties Prescribed for the Institution

1. Public reprimand and censure.
2. One year of probation from January 29, 2015, through January 28, 2016.¹²

Penalties Prescribed for the Baseball Program

3. The institution shall pay a financial penalty of \$5,000. (Institution imposed)
4. When the former administrative assistant provided impermissible extra benefits to 21 student-athletes, she rendered them ineligible for NCAA intercollegiate competition. Therefore, pursuant to NCAA Bylaws 19.9.7-(g) and 31.2.2.3, the institution shall vacate all regular season and conference tournament wins in which the 21 ineligible student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition. Further, if any of the 21 student-athletes competed in the NCAA Division I Baseball Championships at any time they were ineligible, the institution's participation in the championship shall be vacated. The individual records of the student-athletes shall also be vacated. Further, the institution's records regarding baseball, as well as the record of the former head coach, will reflect the vacated records and will be recorded in all publications in which baseball 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 former head coach shall similarly reflect the vacated wins in his career records documented in media guides and other publications cited above. Head coaches with vacated wins on their records may not count the vacated wins to attain specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to these vacated contests shall be removed from athletics department stationery, banners displayed in public areas and any other forum in which they may appear. 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 media coordination and statistics staff and appropriate

¹² Level II – mitigated cases under the current NCAA Bylaw 19 are not subject to a term of probation. However, the institution recommended a one-year term of probation. The panel adopts that recommendation.

conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the NCAA media coordination and statistics staff a written report detailing those discussions. This document will be maintained in the permanent files of the NCAA media coordination and statistics department. This written report must be delivered to the NCAA media coordination and statistics staff no later than 45 days following the initial infractions decision release or, if the vacation penalty is appealed, at the conclusion of the appeals process. A copy of the written report shall also be delivered to the Office of the Committees on Infractions at the same time.

Penalties Prescribed for the Conduct of the Former Administrative Assistant

5. The former administrative assistant provided impermissible extra benefits to 21 student-athletes by allowing them to order merchandise through her VIP apparel account at a 50 percent discount from the retail price. The discount was not "generally available" as contemplated by NCAA Bylaw 16.11.1.1. She also provided impermissible recruiting inducements to a two-year college coach and his student-athletes by providing them an apparel discount through the VIP account.

However, the violations were inadvertent and the result of a good-faith mistake by the former administrative assistant. For the 20 years that the former administrative assistant served the baseball program, she was attentive to and compliant with NCAA rules. She attended staff meetings where rules were discussed and regularly contacted compliance personnel if she had a question regarding NCAA legislation. The institution acknowledged that the violations she committed were partly due to a failure by the institution to provide adequate rules education. The enforcement staff described the violations as a deviation from otherwise compliant practices. Further, the panel noted that NCAA rules would have allowed the institution to provide, at no cost, some of the apparel that the student-athletes ordered for use in the baseball program. Similarly, the student-athletes could have purchased the apparel they used for baseball purposes themselves at any local sporting goods store or through a website without running afoul of NCAA legislation. The violations occurred because the student-athletes ordered the items at a discount through an apparel account maintained by an institutional staff member.

For all of these reasons, the panel concludes that the violations are mitigated. Therefore, the panel declined to issue a show-cause order pursuant to NCAA Bylaw 19.9.7-(i) resulting from the conduct of the former administrative assistant. The Office of the Committees on Infractions will not maintain a record of her violations.

Other Administrative Penalties and Measures

6. During this 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' eligibility for admission, financial aid, practice or competition;
 - b. Submit a preliminary report to the Office of the Committees on Infractions by April 1, 2015, setting forth a schedule for establishing this compliance and educational program; and
 - c. File with the Office of the Committees on Infractions an annual compliance report indicating the progress made with this program by November 15, 2015. Particular emphasis should be placed on rules education for support staff and education regarding the purchase or provision of athletic apparel to student-athletes. The report must also include documentation of the institution's compliance with the penalties adopted and prescribed by the panel.

7. During the period of probation, the institution shall:
 - a. Inform prospective student-athletes in baseball 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.
 - b. 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 the involved sports. 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.

8. 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.
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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, prescribing more severe penalties or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Carol Cartwright

Melissa Conboy

Thomas Hill

Joel Maturi

Eleanor Myers (Chief Hearing Officer)

James O'Fallon

Greg Sankey

APPENDIX

CORRECTIVE ACTIONS AS IDENTIFIED IN THE INSTITUTION'S AUGUST 6, 2014, RESPONSE TO THE NOTICE OF ALLEGATIONS.

With regard to institutional corrective actions, the university has revised its athletics equipment policies and procedures to ensure that no intercollegiate sport is able to interact with an athletics equipment and apparel manufacturer without the oversight of the equipment manager and sport supervisor. Additionally, the university will ensure that it has a review of its athletics compliance functions performed by an outside entity with expertise in analyzing such programs.

Finally, moving forward, the baseball program will report directly to the senior associate athletic director for external operations.