



SOUTHERN ILLINOIS UNIVERSITY AT CARBONDALE
PUBLIC INFRACTIONS DECISION
September 7, 2018

I. INTRODUCTION

The NCAA Division I Committee on Infractions (COI) is an independent administrative body of the NCAA comprised of individuals from the Division I membership and the public. The COI is charged with deciding infractions cases involving member institutions and their staffs.¹ This case involved the women's swimming and diving program at Southern Illinois University at Carbondale (SIU).² It centered on impermissible diving lessons and involved two coaches; the head swimming and diving coach and the diving coach. A COI panel considered this case through the cooperative summary disposition process in which all parties agreed to the primary facts and violations, as fully set forth in the summary disposition report (SDR). SIU self-imposed corrective actions and penalties, most of which the panel adopted. However, the panel proposed additional penalties to the institution and two involved coaches. SIU and the two coaches accepted the additional penalties. Therefore, the parties may not appeal.

Over a two-year period, a lack of monitoring by SIU and the head swimming and diving coach allowed the institution's diving coach to conduct and/or arrange for two international student-athletes, who are sisters, to receive numerous impermissible "fee-for-lesson" diving lessons at the institution's on-campus recreation facility (rec center). Other individuals also received the impermissible lessons, but on a more limited basis. This case is yet another example of the risks involved when student-athletes move to an institution's locale prior to full-time enrollment and gaining eligibility.

The impermissible lessons began when the two student-athletes first arrived on campus as prospects and continued after they enrolled at SIU as nonqualifiers. The parties agree that the impermissible diving lessons resulted in recruiting and eligibility violations. Further, the student-athletes competed and received travel expenses while ineligible. More limited impermissible fee-for-lesson diving instruction also occurred with two other prospects and a younger individual. Further, the parties agreed that the scope and nature of these violations reflected that the head men's and women's swimming and diving coach did not demonstrate that he promoted an atmosphere of compliance and that he failed to monitor his staff. Finally, SIU and the enforcement staff agreed that the institution failed to monitor its women's swimming and

¹ Infractions cases are decided by hearing panels comprised of COI members. Decisions issued by hearing panels are made on behalf of the COI.

² A member of the Missouri Valley and Mid-American Conferences, SIU has a total enrollment of approximately 14,500 students. It sponsors seven men's and eight women's sports. This is SIU's second major, Level I or Level II infractions case. Its only prior case occurred in 1985 and involved the men's basketball program.

diving program in general and, in particular, the conduct of the diving coach. They also agreed that SIU failed to provide adequate rules education. The panel concludes that all violations in this case are Level II.

The panel accepts the parties' factual agreements and concludes that violations occurred. After considering applicable aggravating and mitigating factors, the panel classifies this case as Level II-Standard for the institution and Level II-Aggravated for both the head coach's and the diving coach's violations. Utilizing the current penalty guidelines and NCAA bylaws authorizing additional penalties, the panel adopts and prescribes three years of probation, a \$5,000 fine, recruiting restrictions in women's swimming and diving, scholarship reductions in women's swimming and diving, show-cause orders for the two coaches and vacation of records in women's swimming and diving. The penalty section details these and other penalties.

II. CASE HISTORY

In February 2017, the Missouri Valley Conference office notified SIU of possible eligibility and recruiting violations involving two international student-athletes (student-athletes 1 and 2). In response to this notification, SIU conducted an internal investigation culminating in the submission of a self-report to the NCAA enforcement staff on June 20, 2017. From August to November 2017, the enforcement staff and SIU conducted a joint inquiry. In late February 2018, the enforcement staff shared a draft notice of allegations with SIU, the head swimming and diving coach (head coach) and the diving coach (diving coach). In early March 2018, the parties agreed to process the case via summary disposition.

On May 4, 2018, the parties submitted the SDR to the COI.³ A COI panel reviewed the SDR on June 18, 2018. The panel accepted the facts and violations as set forth in the SDR but determined that additional penalties were warranted. On June 25, 2018, the panel proposed the following additional penalties to SIU and the two involved coaches: three years of probation, scholarship reductions, recruiting restrictions, show-cause orders for the two coaches and vacation of records. The parties notified the panel on July 2 and 3, 2018, that they accepted the additional proposed penalties.

III. PARTIES' AGREEMENTS

A. PARTIES' AGREED-UPON FACTUAL BASIS, VIOLATIONS OF NCAA LEGISLATION AND VIOLATION LEVELS

³ Pursuant to COI Internal Operating Procedure (IOP) 4-9-2-1, panels in future cases may view this decision as less instructive than a decision reached after a contested hearing because violations established through the summary disposition process constitute the parties' agreements.

The parties jointly submitted an SDR that identified an agreed-upon factual basis, violations of NCAA legislation, aggravating and mitigating factors, and violation levels.⁴ The SDR identified:

1. [NCAA Division I Manual Bylaws 12.4.2.1, 13.2.1 and 13.2.1.1-(g) (2014-15 and 2015-16); 13.11.1 (2014-15 through 2016-17); and 13.02.5.5 (2015-16)] (Level II)

SIU, the diving coach and the enforcement staff agree that from February 2015 through February 2017, the diving coach conducted and arranged for a then women's diving student-athlete to conduct numerous impermissible tryouts and fee-for-lesson instruction with two then women's diving prospects at the institution's on-campus rec center. Further, the diving coach arranged approximately \$205 in impermissible recruiting inducements in the form of 41 reduced-cost diving lessons for the two then women's diving prospects.⁵ Additionally, the diving coach, the then women's diving student-athlete and a then volunteer diving coach conducted numerous impermissible tryouts and fee-for-lesson instruction with other women's diving prospects and a non-prospect-aged individual at the rec center. Specifically:

- a. Between February 27, 2015, and January 14, 2016, the diving coach arranged for the then women's diving student-athlete to conduct approximately 37 impermissible fee-for-lesson instructions with student-athletes 1 and 2 using institutional facilities. Further, 35 of the lessons were provided at a reduced cost. Additionally, the diving coach conducted approximately six diving lessons with student-athletes 1 and 2 at a reduced cost, which also constituted impermissible tryouts. [NCAA Bylaws 12.4.2.1, 13.2.1, 13.2.1.1-(g) and 13.11.1 (2014-15 and 2015-16)]⁶
- b. Between July 27, 2015, and February 6, 2016, a then women's diving student-athlete conducted six impermissible fee-for-lesson instructions with two women's diving prospects and a non-prospect-aged individual using institutional facilities. [Bylaw 12.4.2.1 (2014-15 and 2015-16)]
- c. On November 10, 2015, the diving coach conducted one diving lesson during a dead period with student-athletes 1 and 2. [Bylaw 13.02.5.5 (2015-16)]

⁴ This decision provides the agreed-upon factual basis, violations and violation levels exactly as stated in the SDR, except for shortening references to the parties, student-athletes and prospective student athletes.

⁵The student-athletes each paid a reduced cost rate of \$10, which was \$2.50 less than the normal price of \$12.50 per individual. In sum, they each received \$102.50 in reduced-cost lessons, for a total of \$205 in impermissible recruiting inducements.

⁶ Violation No. 1-a resulted in ineligible competition by the student-athletes as detailed in Violation No. 2.

- d. Between August 28, 2016, and February 7, 2017, the diving coach or a then volunteer diving coach conducted six diving lessons with a prospect at the rec center, which constituted impermissible tryouts. [Bylaw 13.11.1 (2016-17)]

2. [NCAA Division I Manual Bylaws 12.11.1, 14.3.2.1.1, 16.8.1 and 16.11.2.1 (2015-16 and 2016-17)] (Level II)

SIU the diving coach and enforcement staff agree that during 2016, the diving coach provided and arranged for the then volunteer diving coach to provide \$410 in impermissible benefits in the form of 75 reduced-cost diving lessons to student-athletes 1 and 2 at the institution's on-campus rec center.⁷ As a result of the impermissible diving lessons, the diving coach and the then volunteer diving coach engaged in impermissible practice during the 2016 calendar year with the nonqualifier student-athletes serving their year in residence. As a result of these violations, and those in Violation No. 1-a, during January and February 2017, student-athletes 1 and 2 competed in a total of five dates of competition and received actual and necessary expenses while ineligible. Specifically:

- a. Between January 24, 2016, and August 19, 2016, the diving coach provided student-athletes 1 and 2 each approximately 30 impermissible reduced-cost diving lessons. [Bylaws 14.3.2.1.1 and 16.11.2.1 (2015-16 and 2016-17)]
- b. Between August 22, 2016, and December 7, 2016, the diving coach arranged for the then volunteer diving coach to provide student-athletes 1 and 2 each approximately 45 impermissible reduced-cost diving lessons. [Bylaws 14.3.2.1.1 and 16.11.2.1 (2016-17)]

3. [NCAA Division I Manual Bylaw 11.1.1.1 (2014-15 through 2016-17)] (Level II)

SIU, the head coach and enforcement staff agree that during February 2015 through February 2017, the head coach is presumed responsible for the violations detailed in Violation Nos. 1 and 2 and did not rebut the presumption of responsibility. Specifically, the head coach did not demonstrate that he promoted an atmosphere of compliance and did not demonstrate that he monitored his staff within the men's and women's swimming and diving program because the head coach was aware the diving coach was providing student-athletes 1 and 2 diving lessons and failed to report the matter to compliance or inquire as to whether it was permissible.

⁷ Student-athlete 1 received 68 semi-private and seven private reduced-cost lessons, and student-athlete 2 received 69 semi-private and six private reduced-cost lessons. As previously noted in Footnote No. 5, the semi-private lessons were reduced by \$2.50 per session. The private lesson reduced cost rate the student-athletes paid was \$20, which was \$5 less than the normal price of \$25 per individual. In sum, they each received \$205 in reduced-cost lessons, for a total of \$410 in impermissible extra benefits.

**4. [NCAA Division I Manual Constitution 2.8.1 (2014-15 through 2016-17)]
(Level II)**

The enforcement staff and SIU agree that from February 2015 through February 2017, the scope and nature of the violations detailed in Violation Nos. 1 and 2 demonstrate that SIU violated the NCAA principle of rules compliance when it failed to adequately monitor its women's diving program and the conduct of the men's and women's diving coach to ensure compliance with NCAA legislation. Specifically:

- a. SIU failed to monitor the activities of student-athletes 1 and 2, who were on campus engaging in impermissible tryouts, fee-for-lesson instruction and practice from February 2015 through December 2016.
- b. SIU failed to monitor the activities of the diving coach who provided and arranged for the provision of impermissible recruiting inducements and benefits to student-athletes 1 and 2.
- c. The institution failed to monitor the activities of the diving coach, and at the direction of the diving coach, the then volunteer diving coach and then student-athlete who conducted impermissible tryouts, fee-for-lesson instruction and practice with student-athletes 1 and 2, other women's diving prospects and a non-prospect-aged individual.
- d. SIU failed to educate the women's swimming and diving coaching staff, student-athletes and institution's rec center staff concerning NCAA rules, which prevented the head coach, the diving coach, then volunteer coach and then women's diving student-athlete from recognizing the violations detailed in Violation Nos. 1 and 2.

B. PARTIES' AGREED-UPON AGGRAVATING AND MITIGATING FACTORS

Pursuant to Bylaw 19.6.2-(g), the parties agreed to the following aggravating and mitigating factors:

SIU:

1. Aggravating factors [Bylaw 19.9.3]
 - a. Multiple Level II violations by the institution. [Bylaw 19.9.3-(g)]
 - b. Persons of authority condoned, participated in or negligently disregarded violation. [Bylaw 19.9.3-(h)]

2. Mitigating factors [Bylaw 19.9.4]

- a. Prompt acknowledgement of the violations, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties. [Bylaw 19.9.4-b]
- b. Affirmative steps to expedite final resolution of the matter. [Bylaw 19.9.4-(c)]
- c. An established history of self-reporting Level III or secondary violations. [Bylaw 19.9.4-(d)]
- d. The absence of prior conclusions of Level I, Level II or major violations. [Bylaw 19.9.4-(h)]

Head Coach

1. Aggravating Factor [Bylaw 19.9.3]

Persons of authority condoned, participated in or negligently disregarded violation. [Bylaw 19.9.3-(h)]

2. Mitigating Factors [Bylaw 19.9.4]

- a. Prompt acknowledgement of the violation, acceptance of responsibility. [Bylaw 19.9.4-(b)]
- b. The absence of prior Level I, Level II or major violations. [Bylaw 19.9.4-(h)]

Diving Coach

1. Aggravating Factors [Bylaw 19.9.3]

- a. Multiple Level II violations. [Bylaw 19.9.3-(g)]
- b. Persons of authority condoned, participated in or negligently disregarded violation. [Bylaw 19.9.3-(h)]

2. Mitigating Factor [Bylaw 19.9.4]

- a. Prompt acknowledgement of the violation, acceptance of responsibility. [Bylaw 19.9.4-(b)]
- b. The absence of prior Level I, Level II or major violations in the sports program. [Bylaw 19.9.4-(h)]

IV. REVIEW OF CASE

The SDR fully detailed the parties' positions in the infractions case and included the agreed-upon primary facts, violations, violation levels, and aggravating and mitigating factors. After reviewing the parties' principal factual agreements and respective explanations surrounding those

agreements, the panel accepts the parties' SDR and concludes that the facts constitute Level II violations of NCAA legislation.

SIU and the head coach's lack of monitoring allowed SIU's diving coach to conducted and/or arrange impermissible fee-for-lesson instruction for two international student-athletes (before and after they enrolled at SIU), two prospective student-athletes and a non-prospect aged individual. These lessons violated Bylaws 12, 13, 14 and 16.⁸ The provision of these lessons also demonstrate that the head coach did not promote an atmosphere of compliance in violation of Bylaw 11. Finally, the institution's failed to adequately monitor its women's swimming and diving program and the conduct of the head coach as required by the NCAA Constitution.

Impermissible Fee-for-Lesson Instruction

This case centered on impermissible fee-for-lesson instruction provided for and/or arranged by the diving coach. Student-athletes are allowed to receive compensation or teaching or coaching in their respective sport(s) on a "fee-for-lesson" basis, but under specific conditions, one of which was not satisfied in this case. The diving coach conducted some of the lessons, but other individuals, including a then student-athlete and a volunteer diving coach, also conducted lessons at the behest of the diving coach. These individuals provided most of these impermissible lessons to student-athletes 1 and 2, which occurred both before and after the two student-athletes enrolled at SIU. In addition, two prospects and a younger individual also received these impermissible lessons. Prior to the student-athletes' enrollment, the conduct violated Bylaws 12 and 13.

Bylaw 12 governs amateurism and eligibility. Among other things, it regulates how the employment of student-athletes can affect eligibility. If certain conditions are met, Bylaw 12.4.2.1 allows student-athletes to receive payment for their services in providing "fee-for-lesson" instruction and not affect their eligibility. One of these conditions prohibits the use of institutional facilities for these lessons. If a prospect is eligible under Bylaw 12, institutions may recruit him/her. Recruiting legislation is set forth under Bylaw 13 and prohibits prospects from receiving benefits in the form of recruiting inducements. Bylaw 13.2.1 identifies specific examples of recruiting inducements and forbids staff members from arranging or providing these inducements. Among these prohibited benefits is free or reduced cost services as set forth in Bylaw 13.2.11-(g). In addition, Bylaw 13.11.1 prohibits tryouts. Finally, no in-person contacts or evaluations can be made with prospects during dead periods as set forth in Bylaw 13.02.5.5.

The provision of the impermissible lessons violated amateurism and eligibility legislation. Specifically, the diving coach violated Bylaw 12.4.2.1-(a) when she arranged for a then student-athlete to provide impermissible fee-for-lesson instruction to student-athletes 1 and 2, and three other individuals at SIU's rec center.

The diving coach's provision of and/or arranging the diving lessons to the two student-athletes prior to their enrollment violated recruiting legislation. When the diving coach provided for or arranged these diving lessons at reduced cost, she violated Bylaws 13.2.1 and 13.2.1.1-(g).

⁸ The full text of the specific bylaws violated in this case can be found at Appendix Two.

Further, the diving coach conducted impermissible tryouts in violation of Bylaw 13.11.1 when she arranged or provided the diving lessons to student-athletes 1 and 2 before they enrolled at SIU, and when she provided lessons to another prospect. Finally, when the diving coach conducted a diving lesson with student-athletes 1 and 2 during a dead period while they were prospects, she violated Bylaw 13.02.5.5.

In January 2016, after student-athletes 1 and 2 enrolled at SIU in a nonqualifier status, the impermissible lessons continued. This activity triggered a new set of violations under Bylaws 14.16 and 12.

Bylaw 14 governs academic eligibility and qualification for athletically related financial aid, practice and competition. More specifically, Bylaw 14.3.2.1 defines a nonqualifier as a student who, among other requirements, has not attained a SAT/ACT score required to be a qualifier. Relatedly, Bylaw 14.3.2.1.1 prohibits nonqualifiers from engaging in competition or practice during an academic year of residence. Bylaw 16.11.2.1 forbids student-athletes from receiving an "extra benefit" which is any special arrangement by an institutional employee to provide a student-athlete with a benefit not expressly authorized by NCAA legislation. Bylaw 16.8.1 allows institutions to provide expenses to student-athletes in conjunction with competition. However, to receive competition-related expenses, student-athletes must be eligible. Relatedly, if a student-athlete receives an extra benefit, Bylaw 12.11.1 obligates institutions to immediately withhold the ineligible student-athlete from competition.

Pursuant to Bylaw 14.3.2.1, because student-athletes 1 and 2 did not take either the SAT or ACT, they were in a nonqualifier status serving a year of residency during the 2016 calendar year and, therefore, could not engage in practice. However, they continued to receive diving lessons arranged or conducted by the diving coach which constituted practice and therefore violated Bylaw 14.3.2.1.1.

The impermissible diving lessons also violated benefit legislation under Bylaw 16. Specifically, because the diving lessons were at a reduced cost, the lessons constituted an "extra benefit" and violated Bylaw 16.11.2.1, rendering the student-athletes ineligible. Consequently, because the institution did not withhold the two student-athletes from competitions during January and February 2017, violations of Bylaw 12.11.1 occurred. Finally, Bylaw 16.8.1 allows institutions to provide expenses to student-athletes in conjunction with competition. However, to receive competition-related expenses, student-athletes must be eligible. Because the two student-athletes received expenses associated with dates of competition while ineligible in early 2017, SIU violated Bylaw 16.8.1.

No prior cases involved a violation of Bylaw 12.4.2.1, Fee-for-Lesson Instruction. However, since the implementation of the current process and penalty structure, one case involved impermissible lessons and has some similarity to this case. In that case, the panel determined that these impermissible lessons constituted a Level II recruiting violation. *See Coastal Carolina University (2015)* (concluding Level II violations occurred when the head men's golf coach provided individual golf lessons for a prospect and arranged and paid for others). Pursuant to Bylaw 19.1.2, the panel concludes that the impermissible lessons comprise a Level II

violation because these lessons provided SIU with more than a minimal competitive advantage. Such impermissible lessons, along with extra periods of instruction and practice are not common violations but can confer a competitive advantage for the involved institution.

Head Coach Responsibility

The head coach agreed that he failed to fulfill his head coach responsibilities. Over the course of two years, the head coach failed to exercise proper oversight and is presumed responsible for violations that occurred in his program. He also failed to monitor his staff. His conduct violated Bylaw 11.

Bylaw 11 governs the conduct of athletics personnel, including head coaches. Pursuant to Bylaw 11.1.1.1, a head coach is presumed to be responsible for the actions of those who report to him/her. An institution's head coach shall promote an atmosphere of compliance within his or her program and shall monitor the activities of all institutional staff members who report to the head coach.

The head coach failed to rebut the presumption that he was responsible for the violations in his program. The head coach agreed that, from February 2015 through February 2017, his oversight failures relative to the diving coach's involvement in the provision of impermissible diving lessons for the two student-athletes and others demonstrated that he failed to monitor his coaching staff. Although the head coach was aware that his diving coach conducted lessons with student-athletes 1 and 2 at SIU's rec center, he did not consider these lessons to be a violation of NCAA rules. Rather, he viewed the diving lessons to be like any other class or instruction provided at the rec center, such as aerobics or martial arts. Furthermore, due to his belief that such lessons were permissible, he did not consult with the compliance office and did not report the lessons. The head coach's misunderstanding of the legislation notwithstanding, his decision not to monitor the actions of his diving coach relative to the impermissible diving instruction, combined with neglecting to consult with compliance, demonstrated that he both failed to monitor and failed promote an atmosphere of compliance. In doing so, the head coach failed to rebut the presumption of responsibility in violation of Bylaw 11.1.1.1. The impermissible lessons provided the head coach's program with the benefit of additional "hands on" instruction conducted and/or arranged by one of his coaches for the two student-athletes prior to them becoming eligible; a competitive advantage not enjoyed by compliant programs.

The COI has previously concluded that head coaches who allow impermissible coaching or practice activities involving nonqualifier student-athletes fail to promote an atmosphere of compliance. See *University of Northern Colorado* (2017) (concluding, among other underlying violations, that the head men's basketball coach failed to promote an atmosphere of compliance and failed to monitor his staff when he directed staff members to engage in on-court coaching instructions with a nonqualifier student-athlete); *San Jose State University* (2016) (concluding, among other violations, that the head women's basketball coach failed to promote an atmosphere of compliance when he instructed and permitted a nonqualifier student-athlete to participate in team activities, knowing that the student-athlete was not permitted to be involved in the activities); and *Jackson State University* (2016) (concluding that the head men's tennis coach failed to promote an atmosphere of compliance when he permitted a nonqualifier to practice,

compete and receive travel expenses). Similar to those coaches, the head coach failed to promote an atmosphere of compliance in his program because he knew the activity was occurring and failed to inform or consult with compliance.

Consistent with Bylaw 19.1.2-(e), the COI has repeatedly concluded that head coach responsibility violations stemming from underlying Level II violations are also Level II. The COI has also specifically concluded that head coaches commit Level II head coach responsibility violations when they fail to consult with compliance regarding activity in their programs. *See Sacramento State* (concluding that the head women's tennis coach committed a Level II head coach responsibility violation when he failed to detect, or ignored, the tennis director's recruiting activity and did not report or consult with compliance about the director's recruiting efforts); and *Houston Baptist University* (2018) (concluding that the head football coach committed a Level II head coach responsibility violation when he initiated an impermissible student-athlete host program without consulting with the compliance office). Like these cases, and pursuant to Bylaw 19.1.2, the COI concludes that the head coach committed a Level II head coach responsibility violation.

Failure to Monitor

The two student-athletes moved to the institution's locale a year before enrolling at SIU. During this time, and later, while enrolled in a nonqualifier status, the institution failed to monitor the student-athletes' activities and the actions of the diving coach in providing or arranging impermissible diving lessons, despite the fact that the head coach was aware that the two were on campus. Further, the institution failed to provide adequate compliance education. These inadequacies demonstrated that SIU failed to monitor its women's diving program over a two-year period in violation of Constitution 2.8.1.

Constitution 2 sets forth principles for institutions' conduction intercollegiate athletics programs. Constitution 2.8.1 requires institutions to abide by all rules and regulations, monitor compliance and report instances of noncompliance.

The institution failed to monitor the activity of the two student-athletes, and more importantly, the conduct of the diving coach. Student-athlete 1 moved to Carbondale, Illinois, from her home country in late 2014 and her sister, student-athlete 2, followed a few months later. Both attended SIU's Center for English as a Second Language (CESL) with the intention of enrolling full-time at SIU and competing for the women's diving team. Both engaged in unmonitored diving lessons conducted and/or arranged by the diving coach beginning in late January 2015, while the student-athletes attended the CESL, and continued during the 2016 calendar year when student-athletes 1 and 2 enrolled at SIU as nonqualifiers. These lessons violated several areas of NCAA legislation relating to tryouts, recruiting inducements, benefits and practice.

SIU had processes in place to monitor prospects who had moved to the campus locale prior to enrollment. However, the form used to notify the compliance office about such prospects was not submitted for student-athletes 1 and 2 until mid-December 2015, after the two had been on campus and receiving diving lessons for approximately one year. Therefore, the institution's compliance office was not aware of, and did not monitor the activity of student-athletes 1 and 2

during their first year on campus. Furthermore, after the two student-athletes enrolled at SIU in January 2015 as nonqualifiers, the institution's compliance staff was still not aware that the two student-athletes continued to receive impermissible diving instruction at the rec center. Consequently no "red flags" were raised and no monitoring of the two occurred during that time as well.

As noted, the two student-athletes were on campus for a considerable period before enrolling at SIU, and for additional time after they enrolled, but were ineligible. As the COI has repeatedly warned, institutions must closely monitor prospects when they move to an institution's locale prior to enrollment, as there is an increased risk for violations under these circumstances, including a risk of a failure to monitor or a lack of institutional control. *See Sacramento State* (concluding that the institution failed to monitor when, among other violations, the tennis director committed recruiting violations by arranging cost-free or reduced cost tennis instruction, cost-free facility use and other inducements for prospects prior to their enrollment, most of whom were international); and *Monmouth University (2017)* (concluding that the institution failed to monitor the conduct of the former head men's tennis coach, who, among other violations, arranged housing for an international prospect and permitted him to practice prior to enrollment). This case is yet another example of staff members providing or arranging impermissible recruiting inducements for prospects residing in an institution's locale prior to enrollment, despite the fact that the membership has been on notice for many years that such conduct violates NCAA legislation.

SIU also failed to monitor the activities of the diving coach and those she directed to provide lessons to the two student-athletes, two prospects and a non-prospect aged individual. Again, the compliance office was not aware that the diving coach, and others at her direction, provided lessons at the rec center for student-athletes 1 and 2 and other individuals. Furthermore, compliance staff members denied ever fielding questions from the diving coach or the head coach about the permissibility of conducting diving lessons with student-athletes 1 and 2. As a result, the activities of the diving coach, the volunteer diving coach and a student-athlete in conducting the impermissible diving lessons went undetected. Consequently, the impermissible lessons eventually triggered violations across multiple areas of NCAA legislation.

Finally, the institution failed to provide rules education to institutional staff members that may have forestalled or limited the violations in this case. SIU staff members received no rules education pertaining to international prospects who are on campus prior to enrollment. Consequently, staff members, specifically employees at the rec center, had no knowledge that the diving lessons arranged and/or provided for by the diving coach and various individuals associated with the women's diving team were impermissible. Although the compliance office provided some rules education to the coaching staffs and student-athletes that focused on tryouts and fee-for-lesson instruction, it did not provide sufficient, targeted rules education that would have addressed the circumstances triggering the violations in this case. Furthermore, the institution failed to provide rules education to student-athletes 1 and 2 when they arrived on campus as prospects, education that also may have helped avert violations in this case. An inadequate rules education program as a component of a failure to monitor was encountered by the COI in one previous case. *See University of Louisiana, Lafayette (2007)* (concluding that the

institution failed to monitor its football and men's basketball programs, when, among other shortcomings, it failed to provide adequate rules education).

Member institutions must closely monitor all sports, including non-revenue sports such as swimming and diving, especially when activity occurs at off-campus facilities, as in this case, which involved impermissible activity at the institution's rec center. *See Sacramento State* (concluding that the institution failed to monitor when, among other deficiencies, it did not regularly spot check the tennis programs' activities conducted at an off-campus facility).

The head coach, the diving coach and SIU failed to meet their responsibilities under the bylaws and Constitution, demonstrating that the institution failed to monitor. Pursuant to Bylaw 19.1.2-(b), the institution's failure to monitor is Level II. *See North Carolina Central University* (2018) (concluding that the institution violated the principles of rules compliance, a Level II violation, when it failed to monitor student-athlete eligibility certification to ensure compliance with NCAA legislation); and *Rutgers University* (2017) (concluding that the institution violated the principle of rules compliance, a Level II violation, when it failed to monitor its football program and the head football coach failed to promote an atmosphere of compliance and monitor his staff). Like these cases, this case is illustrative of the requirement for coaches and administrative staff to be vigilant in monitoring all aspects of their respective sports programs and for institutions to provide targeted, relevant compliance education.

V. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the panel accepts the parties' agreed-upon factual basis and violations and concludes this case involved Level II violations. Level II violations are significant breaches of conduct that provide or are intended to provide more than a minimal but less than a substantial or extensive recruiting advantage, including violations that involve more than a minimal but less than a substantial or extensive impermissible benefit.

In considering penalties, the panel first reviewed aggravating and mitigating factors pursuant to Bylaws 19.9.2, 19.9.3 and 19.9.4 to determine the appropriate classifications for the parties. The panel then used the current penalty guidelines (Figure 19-1) and Bylaws 19.9.5 and 19.9.7 to prescribe penalties.

Regarding aggravating factors, SIU and the enforcement staff disagreed on one aggravating factor, which the panel had to resolve. Specifically, SIU argued that Bylaw 19.9.3-(b) *A history of Level I or major violations by the institution* should not apply as an aggravating factor. Because SIU's only previous infractions case occurred in 1985 and involved a different sport, the panel agreed with the institution and determined that this aggravating factor did not apply.

With respect to mitigating factors, the panel determines that three of the four agreed-upon factors apply. Regarding the one mitigating the panel determined did not apply, prior to releasing the decision in this case, the panel reconsidered and withdrew the mitigating factor contained in

Bylaw 19.9.4-(h) *The absence of prior conclusions of Level I, Level II or major violations in the sport program.* In taking this action, the panel noted that, consistent with historical practice, panels only apply aggravating and mitigating factors to the parties in a case. Previously, the COI has applied the mitigating factor to an institution or involved individual that has never had a previous Level I, Level II or major case. SIU had a prior major infractions case in 1985. Therefore, pursuant to Bylaw 19.9.2, the panel determines that the mitigating factor does not apply. The withdrawal of this mitigating factor has no effect on the agreed-upon penalties in this case.

The panel assessed the aggravating and mitigating factors by weight and number. Based on its assessment, the panel concludes that this case is Level II-Standard for SIU and Level II-Aggravated for both the head coach's and the diving coach's violations. Pursuant to Bylaw 19.6, because SIU and the two involved coaches agreed to the facts and violations, and accepted the panel's proposed additional penalties, they do not have the opportunity to appeal.

All penalties prescribed in this case are independent and supplemental to any action that has been or may be taken by the NCAA Division I Committee on Academics through its assessment of postseason ineligibility, historical penalties or other penalties. In prescribing penalties, the panel considered SIU's cooperation in all parts of this case and determines it was consistent with the institution's obligation under Bylaw 19.2.3. The panel also considered SIU's corrective actions, which are set forth in Appendix One. After considering all information relevant to this case, the panel prescribes the following penalties (self-imposed penalties are noted):

Core Penalties for Level II-Standard Violations (Bylaw 19.9.5)

1. Probation: A three-year probationary period beginning September 7, 2018, through September 6, 2021.
2. Financial penalty: SIU shall pay a \$5,000 fine to the NCAA.
3. Scholarship reductions: Beginning with the 2019-20 academic year through the 2021-22 academic year, SIU shall reduce the number of equivalencies in women's swimming and diving by 10 percent from the average number awarded over the four-year span from the 2013-14 through 2016-17 academic years (12.05). This limits the institution to no more than 10.85 equivalencies in women's swimming and diving during each of the specified three years. The institution has the option to implement the scholarship reductions beginning with the 2018-19 academic year and conclude with the 2020-21 academic year.
4. Recruiting Restrictions.
 - a. Official visits: During each academic year of the probationary period (2018-19 through 2020-21), the institution shall limit official visits in women's swimming and diving to 12.
 - b. Recruiting communication: During each academic year of the probationary period, SIU shall implement a six-week ban on recruiting communication (phone calls, text

messaging, emails, social media etc.) in women's swimming and diving. The six weeks shall be at the institution's discretion and the plan for implementing the recruiting communication restriction shall be included in the institution's preliminary compliance report.

- c. Off-campus recruiting: During each academic year of the probationary period, SIU shall implement a six-week off-campus recruiting ban in women's swimming and diving. The six weeks shall be at the institution's discretion and the plan for implementing the off-campus recruiting ban shall be included in the institution's preliminary compliance report.

Core Penalties for Level II-Aggravated Violations (Bylaws 19.9.5.4 and 19.9.5.5)

5. Show-cause order, head swimming and diving coach: The head swimming and diving coach agreed that he is presumed responsible for the violations that occurred in his program. He also agreed that he failed to monitor his diving coach. By his own admission, he did not rebut the presumption of responsibility. Specifically, he could not demonstrate that he promoted an atmosphere for compliance and monitored his staff because of his failure to consult with compliance about potential violations of NCAA legislation and his failure to monitor the activities of his diving coach in her provision and/or arrangement of impermissible diving lessons. Therefore, the head coach shall be subject to a one-year show-cause order from September 7, 2018, to September 6, 2019.

Head coach restriction: SIU suspended the head coach for one competition in the fall of 2017. In addition to the suspension self-imposed by SIU, the institution shall suspend the head coach from all coaching duties for 30 percent of the maximum allowed dates of competition during the 2018-19 academic year. *See* Bylaws 17.02.6 and 17.21.5.1. This equates to six days of suspension during that year. The provisions of this suspension require that the head coach not be present in the natatorium where the swim meets are conducted and have no contact or communication with members of the swimming coaching staff and student-athletes during the suspension dates. The prohibition includes all coaching activities for the period of time which begins at 12:01 a.m. the day of the competition and ends at 11:59 p.m. that day. During that period, the head coach may not participate in any activities including, but not limited to, team travel, practice, video study and team meetings. The results of the competition from which the head coach is suspended shall not count in his career coaching record. The institution shall adhere to this penalty and reporting requirements during the one-year period. The six dates of suspension shall be at the institution's discretion and the plan for implementing the suspension shall be included in SIU's preliminary compliance report. If the head coach obtains employment or affiliation in an athletically related position at another NCAA member institution during the show-cause period, the employing institution shall, within 30 days of hiring him, be required to contact the OCOI to make arrangements to show cause why the suspension should not apply or notify the OCOI that it will abide by the show cause order and fulfill reporting requirements.

Although each case is unique, the COI has previously prescribed similar suspensions. *See University of Utah* (2018) (prescribing a 25 percent suspension associated with the head coach's Bylaw 11.1.1.1 violations); *Sam Houston State University* (2017) (prescribing, among other show-cause restrictions, a 30 percent suspension associated with the head coach's violations); and *Monmouth* (prescribing, among other show-cause provisions, a 30 percent suspension associated with the head coach's Bylaw 11.1.1.1 violations). The suspension from 30 percent of the dates of competition in this instance falls within the panel's classification of the head coach's violations.

6. Show-cause order, diving coach. The diving coach agreed that she violated NCAA legislation when, over the course of two years, she provided and/or arranged impermissible diving instruction for student-athletes 1 and 2 in addition to other individuals. Therefore, pursuant to Bylaw 19.9.5.4, the diving coach shall be subject to a three-year show-cause order from September 7, 2018, to September 6, 2021, as follows:

SIU suspended the diving coach for two competitions during the 2017-18 academic year. In addition to the two competitions suspension self-imposed by SIU, the institution shall suspend the diving coach from all coaching duties for five dates of competition during each of the 2018-19 through 2020-21 academic years. *See* Bylaws 17.02.6 and 17.21.5.1. The provisions of this suspension require that the diving coach not be present in the natatorium where the swim meets are conducted and have no contact or communication with members of the swimming and diving coaching staff and student-athletes during the five days of competition suspension. The prohibition includes all coaching activities for the period of time which begins at 12:01 a.m. the day of the competition and ends at 11:59 p.m. that day. During that period, the diving coach may not participate in any activities including, but not limited to, team travel, practice, video study and team meetings. The institution shall adhere to this penalty and the reporting requirements during the three-year period. The five dates of competition shall be at the institution's discretion and the plan for implementing the suspension shall be included in SIU's preliminary compliance report. If the diving coach obtains employment or affiliation in an athletically related position at another NCAA member institution during the show-cause period, the employing institution shall, within 30 days of hiring her, be required to contact the Office of Committee on Infractions (OCOI) to make arrangements to show cause why the suspension should not apply or notify the OCOI that it will abide by the show cause order and fulfill reporting requirements.

Additional Penalties for Level II-Standard Violations (Bylaw 19.9.7)

7. Public reprimand and censure.
8. Vacation of team and individual records: SIU acknowledged that ineligible participation in the women's diving program occurred as a result of the violations in this case. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3, SIU shall vacate all regular season and conference tournament records and participation in which the ineligible student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition. This order of vacation includes all regular season competition and

conference tournaments. Further, if any of the ineligible student-athletes participated in NCAA postseason competition at any time they were ineligible, SIU participation in the postseason shall be vacated. The individual records of the ineligible student-athletes shall also be vacated. However, the individual finishes and any awards for all eligible student-athletes shall be retained. Further, SIU records regarding its athletics programs, as well as the records of the head coach, shall reflect the vacated records and be recorded in all publications in which such 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 that may subsequently hire the 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 toward specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to the vacated records shall be removed from the athletics department stationary, banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in these sports shall be returned to the Association.

Finally, to aid in accurately reflecting all institutional and student-athlete vacations, statistics and records in official NCAA publications and archives, the sports information director (or other designee as assigned by the athletics director) must contact the NCAA Media Coordination and Statistics office and appropriate conference officials to identify the specific student-athletes and matches impacted by the penalties. In addition, the institution must provide the NCAA Media Coordination and Statistics office with a written report detailing those discussions. This written report will be maintained in the permanent files of the NCAA Media Coordination and Statistics office. This written report must be delivered to the office no later than 45 days following the release of this decision. A copy of the written report shall also be delivered to the OCOI at the same time."

9. The head coach and the diving coach attended an NCAA Regional Rules Seminars in 2018 and both will be required to attend a seminar again in 2019. Attendance at both seminars is at the coaches' own expense. (Self-imposed.)

10. During the period of probation, SIU 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 institutional staff members with responsibility for NCAA recruiting and certification legislation;
- b. Submit a preliminary report to the OCOI by October 30, 2018, setting forth a schedule for establishing this compliance and educational program;
- c. File with the OCOI annual compliance reports indicating the progress made with this program by July 30 during each year of probation. Particular emphasis shall be placed

on monitoring prospects who arrive in the local area prior to enrollment and compliance education pertaining to fee-for-lesson instruction;

- d. Inform in writing women's swimming and diving prospects that SIU is on probation for three years and detail the violations committed. If a prospect 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 prospect signs a National Letter of Intent;
- e. Publicize specific information concerning the infractions by providing, at a minimum, a statement to include the types of violations in the women's diving program and a direct, conspicuous link to the public infractions report located on the athletic department's main or "landing" webpage. The information shall also be included in the women's swimming and diving media guides (either paper or digital versions) and in an alumni publication. The institution's statement must: (1) clearly describe the infractions and how they occurred; and (2) include the penalties associated with the infractions case and;
- f. Following the receipt of the final annual compliance report and prior to the end of probation date, SIU's chancellor shall provide a letter to the COI affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

The COI advises SIU that it should take every precaution to ensure the terms of the penalties are observed. The COI will monitor the penalties during their effective periods. Any action by SIU contrary to the terms of any of the penalties or any additional violations may be grounds for prescribing more severe penalties or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Michael F. Adams
Carol Cartwright
Jody Conradt
Tom Hill
Joyce McConnell
Gary L. Miller, Chief Hearing Officer
Dave Roberts

APPENDIX ONE

**SOUTHERN ILLINOIS UNIVERSITY AT CARBONDALE'S CORRECTIVE ACTIONS
AS IDENTIFIED IN THE MAY 4, 2018, SUMMARY DISPOSITION REPORT**

1. During the course of SIU's investigation, two letters were sent to the Recreation Center that addressed the employment of coaching staff to teach lessons only to nonprospect-aged individuals and to clarify that student-athletes are not permitted to teach lessons in SIU's facilities.
2. Since discovering these violations, SIU has revised its "Green Card" form to include information on international prospects and nonqualifiers who move to the community prior to achieving eligibility.
3. SIU has re-emphasized to the entire coaching staff the importance of completing the existing "Green Card" monitoring system used for tracking prospective student-athletes being recruited. Use of this system would have helped SIU identify that prospects were in the community prior to enrollment. SIU also highlighted the necessity of using that tracking device especially for mid-year entrants such as student-athletes 1 and 2. This rules education program was conducted on December 18, 2017.
4. SIU will not recruit divers from a specific country for the 2018-19 or 2019-20 academic years.⁹

⁹ The panel acknowledges this as an action taken by SIU but takes no position on its merit.

APPENDIX TWO
Constitution and Bylaw Citations

Division I 2014-15 Manual

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.

11.1.1.1 Responsibility of Head Coach. An institution's head coach is presumed to be responsible for the actions of all assistant coaches and administrators who report, directly or indirectly, to the head coach. An institution's head coach shall promote an atmosphere of compliance within his or her program and shall monitor the activities of all assistant coaches and administrators involved with the program who report, directly or indirectly, to the coach.

12.4.2.1 Fee-for-Lesson Instruction. A student-athlete may receive compensation for teaching or coaching sport skills or techniques in his or her sport on a fee-for-lesson basis, provided:

- (a) Institutional facilities are not used;
- (b) Playing lessons shall not be permitted;
- (c) The institution obtains and keeps on file documentation of the recipient of the lesson(s) and the fee for the lesson(s) provided during any time of the year;
- (d) The compensation is paid by the lesson recipient (or the recipient's family) and not another individual or entity;
- (e) Instruction to each individual is comparable to the instruction that would be provided during a private lesson when the instruction involves more than one individual at a time; and
- (f) The student-athlete does not use his or her name, picture or appearance to promote or advertise the availability of fee-for-lesson sessions.

13.2.1 General Regulation. An institution's staff member or any representative of its athletics interests shall not be involved, directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to a prospective student-athlete or his or her relatives or friends, other than expressly permitted by NCAA regulations. Receipt of a benefit by a prospective student-athlete or his or her relatives or friends is not a violation of NCAA legislation if it is determined that the same benefit is generally available to the institution's prospective students or their relatives or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability.

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

(g) Free or reduced-cost services, rentals or purchases of any type;

13.11.1 Prohibited Activities. A member institution, on its campus or elsewhere, shall not conduct (or have conducted on its behalf) any physical activity (e.g., practice session or test/tryout) at which one or more prospective student-athletes (as defined in Bylaws 13.11.1.1 and 13.11.1.2) reveal, demonstrate or display their athletics abilities in any sport except as provided in Bylaws 13.11.2 and 13.11.3.

Division I 2015-16 Manual

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.

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- (a) Institutional facilities are not used;
- (b) Playing lessons shall not be permitted;
- (c) The institution obtains and keeps on file documentation of the recipient of the lesson(s) and the fee for the lesson(s) provided during any time of the year;
- (d) The compensation is paid by the lesson recipient (or the recipient's family) and not another individual or entity;
- (e) Instruction to each individual is comparable to the instruction that would be provided during a private lesson when the instruction involves more than one individual at a time; and
- (f) The student-athlete does not use his or her name, picture or appearance to promote or advertise the availability of fee-for-lesson sessions.

12.11.1 Obligation of Member Institution to Withhold Student-Athlete From Competition. If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the

applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Committee on Student- Athlete Reinstatement for restoration of the student-athlete's eligibility as provided in Bylaw 12.12 if it concludes that the circumstances warrant restoration.

13.02.5.5 Dead Period. A dead period is a period of time when it is not permissible to make in-person recruiting contacts or evaluations on or off the institution's campus or to permit official or unofficial visits by prospective student-athletes to the institution's campus. It remains permissible, however, for an institutional staff member to write or telephone a prospective student-athlete during a dead period.

13.2.1 General Regulation. An institution's staff member or any representative of its athletics interests shall not be involved, directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to a prospective student-athlete or his or her relatives or friends, other than expressly permitted by NCAA regulations. Receipt of a benefit by a prospective student-athlete or his or her relatives or friends is not a violation of NCAA legislation if it is determined that the same benefit is generally available to the institution's prospective students or their relatives or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability.

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

(g) Free or reduced-cost services, rentals or purchases of any type;

13.11.1 Prohibited Activities. A member institution, on its campus or elsewhere, shall not conduct (or have conducted on its behalf) any physical activity (e.g., practice session or test/tryout) at which one or more prospective student-athletes (as defined in Bylaws 13.11.1.1 and 13.11.1.2) reveal, demonstrate or display their athletics abilities in any sport except as provided in Bylaws 13.11.2 and 13.11.3.

14.3.2.1.1 Nonqualifier. A nonqualifier is a student who has not graduated from high school or who, at the time specified in the regulation (see Bylaw 14.3), did not present the core-curriculum grade-point average and/ or SAT/ACT score required for a qualifier or an academic redshirt.

16.8.1 Permissible. An institution may provide actual and necessary expenses to a student-athlete to represent the institution in practice and competition (including expenses for activities/travel that are incidental to practice or competition). In order to receive competition-related expenses, the student-athlete must be eligible for competition.

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 relatives or friends with a benefit not expressly authorized by NCAA legislation.

Division I 2016-17 Manual

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.

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12.11.1 Obligation of Member Institution to Withhold Student-Athlete From Competition. If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Committee on Student-Athlete Reinstatement for restoration of the student-athlete's eligibility as provided in Bylaw 12.12 if it concludes that the circumstances warrant restoration.

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