

[May 16, 2019, Erratum - Footnote 2 of this decision contained a typographical error. Cal Poly is a member of the Big West Conference, not the West Coast Conference. The decision was changed to reflect the correct conference.]



**CALIFORNIA POLYTECHNIC STATE UNIVERSITY
PUBLIC INFRACTIONS DECISION
April 18, 2019**

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 decides infractions cases involving member institutions and their staffs.¹ This case involves California Polytechnic State University (Cal Poly) and centers on two categories of violations: the provision of impermissible book-related financial aid that did not equal the actual cost of books and supplies; and the institution's failure to monitor.² The underlying facts in this case are undisputed. The only areas of disagreement were the level of the financial aid violations and whether the institution failed to monitor.

For a period of three-and-one half years, Cal Poly violated book-related financial aid legislation. Specifically, from the 2012-13 academic year through the 2015 fall quarter, Cal Poly provided 265 student-athletes impermissible financial aid in the form of \$800 cash stipends for books and course-related supplies that was not equal to the actual cost of those items, as required by NCAA legislation. The institution mistakenly believed it could provide the book stipends in the same manner it provided room and board stipends. Some student-athletes used portions of these funds to pay for items that were not required course-related books and supplies and, in doing so, received impermissible benefits.

The multiyear provision of impermissible book stipends demonstrated that the institution failed to monitor book-related financial aid over the period of the violations. The failure to monitor occurred when Cal Poly: (1) misapplied financial aid legislation; (2) did not provide pertinent rules education; and (3) failed to implement targeted policies and procedures. All violations are Level II.

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 Big West Conference and Big Sky Conference (football only), Cal Poly has a total enrollment of approximately 21,300 students. It sponsors 11 women's and 11 men's sports. This is Cal Poly's third major, Level I or Level II infractions case. The institution had previous cases in 1995 (baseball) and 1987 (men's basketball).

The panel classifies this case as Level II-Mitigated. Utilizing the current penalty guidelines and bylaws authorizing additional penalties, the panel adopts and prescribes the following penalties: two years of probation, a \$5,000 fine and a vacation of records.

II. CASE HISTORY

The violations in this case first came to light shortly after an October 27, 2015, financial aid summit hosted by the Big West Conference and attended by a representative from the NCAA's Academic and Membership Affairs (AMA) staff. A few days after the summit, the conference office notified Cal Poly of information received from AMA indicating that the provision of the cash stipend for books could be a financial aid violation. This prompted Cal Poly to review its financial aid procedures. The review revealed that Cal Poly had incorrectly awarded the \$800 cash stipends for books to numerous student-athletes over several years.

On August 16, 2016, an AMA staff member notified the Big West Conference that Cal Poly's provision of cash payments for books would require a self-report to the NCAA and processing as a violation of NCAA legislation. In January 2017, the institution contracted with an outside agency to review its financial aid practices and assist in the production of the self-report. In late August 2017, Cal Poly submitted its self-report to the enforcement staff. On October 3, 2017, the enforcement staff provided a verbal notice of inquiry to the institution. Cal Poly followed with an updated self-report on February 22, 2018, in which it corrected the number of student-athletes who received impermissible book-related financial aid and the monetary amount of impermissible aid received.

On July 26, 2018, the enforcement staff issued a notice of allegations (NOA). Cal Poly submitted its written response to the allegations on October 20, 2018, followed by the enforcement staff's written reply submitted on December 6, 2018. The infractions hearing took place on March 1, 2019.

III. FINDINGS OF FACT

This case centers on book-related financial aid provided to student-athletes in most of the institution's sports programs. Cal Poly agreed that it provided an \$800 cash stipend to cover the book portion of a typical grant-in-aid.

From the 2012-13 academic year through the 2015 fall quarter, Cal Poly provided 265 student-athletes in 18 sports programs an \$800 cash stipend that was not equal to the actual cost of required course-related books purchased. Of those student-athletes, 72 received funds that exceeded the actual book costs and the receipt of \$800 caused 30 student-athletes to exceed their individual financial aid limits. Further, several student-athletes used the book stipend to pay for items that were not related to required books or supplies such as food, rent, utilities and car repairs. On an individual basis, for those student-athletes who received cash that exceeded the cost of books and

supplies, the value of the overages ranged from \$5 to \$734 and totaled \$16,180. Collectively, the 30 student-athletes who exceeded their individual financial aid limits received a total of \$5,237 in excess of their financial aid limits.

The institution agreed that it "misapplied" book-related financial aid legislation. Because the institution did not understand how to correctly apply book-related financial aid legislation, specifically cash stipends for books, it was unaware of the need to provide education and develop monitoring processes in this area.

Regarding misapplication of book-related financial aid, the institution administered cash stipends for books in the same manner as it did room and board stipends. It did not require receipts for the spending of the cash stipends for books, just as it did not require receipts for room and board expenses. At the infractions hearing, the institution's outside counsel admitted, "There's no question that Cal Poly, for these four years and for whatever years before that, had a process that was incorrect." He characterized the financial aid violations as "an inch wide, but going pretty deep because it was a long-standing way of doing things."

From an education perspective, the compliance office provided NCAA rules education to athletics department staff, including education covering financial aid. However, because the institution was unaware of, or, in its words, "misapplied" the legislation governing cash for books and supplies, the compliance staff was oblivious of the need to provide education to athletics department staff and/or the financial aid office in this particular area of financial aid legislation.

With respect to processes for monitoring cash stipends for books, as earlier set forth, Cal Poly treated cash stipends for books in the same manner as room and board stipends. Student-athletes have the latitude to use room and board stipends as they see fit to cover their off-campus living expenses and are not required to provide receipts for these expenses. On the other hand, financial aid legislation requires that cash stipends for books must equal the exact cost of the books and course-related supplies. During her interview with the enforcement staff, the institution's long-time compliance director reported that, because the institution was unaware that it was incorrectly applying the legislation relating to cash stipends for books, the compliance office did not implement policies and procedures to monitor the use of these stipends. Nevertheless, in its response to the notice of allegations and at the infractions hearing, Cal Poly argued that it monitored financial aid and that no previous cases included a failure to monitor with underlying violations similar to its case.

IV. ANALYSIS

The violations in this case fall into two areas: (A) Improper Book-related Financial Aid and (B) Failure to Monitor. The panel concludes that both violations are Level II.

A. IMPERMISSIBLE BOOK-RELATED FINANCIAL AID [NCAA Division I Manual Bylaws 14.11.1 and 16.8.1.2 (2012-13); 15.01.2, 15.01.6, 15.2.3, 15.2.3.1 and 16.11.2.1

(2012-13 through 2015-16); 14.10.1 (2013-14); 16.8.1³ (2013-14 through 2015-16); and 12.11.1 (2014-15 through 2015-16)] (Level II)

Over three and a half years, Cal Poly provided numerous student-athletes impermissible financial aid in the form of cash stipends. In some instances, student-athletes used portions of the cash stipends to pay for items other than course-related books and supplies. As a result of these violations, student-athletes competed while ineligible. The institution agreed to the underlying facts of this violation but asserted that the violation is Level III. The panel concludes that the violation occurred and is Level II.

1. NCAA legislation relating to financial aid.

The applicable portions of the bylaws may be found at Appendix Two.

2. For multiple years, the institution provided improper book-related financial aid to student-athletes in the form of cash stipends. Some student-athletes used the cash stipends to obtain impermissible benefits.

From the 2012-13 academic year through the 2015 fall quarter, Cal Poly provided 265 student-athletes impermissible financial aid in the form of cash that was not equal to the actual cost of required course-related books purchased.⁴ Some of these student-athletes received cash that exceeded the actual book costs and others exceeded their individual financial aid limits. Further, some student-athletes used portions of the book money to pay for items that were not required course-related books or required course supplies. As a result of the impermissible financial aid, some of the student-athletes competed and received actual and necessary expenses while ineligible. The improper financial aid resulted in violations of Bylaws 15, 16 and 12.

Bylaw 15 governs financial aid, including financial aid for books. Pursuant to Bylaw 15.2.3, institutions may provide a student-athlete with funds that cover the cost of required course-related books and supplies. Further, such financial aid may be in the form of cash, but the amount of cash provided must equal the actual cost of the books and/or supplies. In accordance with Bylaw 15.01.6, institutions are prohibited from awarding financial aid that exceeds the cost of attendance. Receipt of financial aid not permitted by the NCAA renders a student-athlete ineligible under Bylaw 15.01.2. Pursuant to Bylaw 16.11.2.1, institutions are forbidden from providing student-athletes with extra benefits. An extra benefit is any special arrangement by an institution to provide a student-athlete with a benefit not authorized by NCAA legislation. Under Bylaw 16.8.1, a student-athlete may compete and receive expenses associated with competition, but only if the

³ Bylaw 16.8.1 underwent a nonsubstantive change on August 1, 2013. The bylaw language changed from "an institution" to "an institution, conference or the NCAA may provide actual and necessary expense to a student-athlete to represent the institution."

⁴ For the purposes of this case, the enforcement staff and the institution agreed to limit Cal Poly's responsibility for this violation to the period from the 2012-13 academic year through the 2015 fall quarter, although the institution acknowledged that it had provided a cash stipend for books that was not equal to the cost of books for many years prior to that period.

student-athlete is eligible for competition. Bylaw 12.11.1 requires member institutions to withhold student-athletes from competition if they are ineligible.⁵

Cal Poly's provision of \$800 cash stipends for books to student-athletes resulted in financial aid, extra benefits and failure-to-withhold from competition violations. Specifically, the \$800 cash stipend for books violated Bylaw 15 because the amount was not equal to the cost of books purchased. Further, because the stipend did not equal the cost of books, it is considered improper financial aid and violated an additional provision of Bylaw 15. The receipt of the stipend caused 30 student-athletes to receive aid that exceeded their individual financial aid limits, also violating Bylaw 15.⁶ Violations of Bylaw 16 occurred when some student-athletes received impermissible benefits by using portions of these stipends to purchase items and services unrelated to books and supplies. Additionally, the receipt of the impermissible \$800 cash stipend rendered student-athletes ineligible. When these ineligible student-athletes received expenses associated with competition, additional violations of Bylaw 16 occurred. Finally, Cal Poly violated Bylaw 12 when it failed to withhold ineligible student-athletes from competition.

The COI has previously concluded that violations of Bylaws 15, 16 and, in some cases, Bylaw 12 occur in association with misapplication of book scholarship legislation and/or misuse of financial aid provided for books. *See Charleston Southern University* (2018) (concluding violations of Bylaws 15, 16 and 12 occurred when, during at least a two-year period, 34 student-athletes received impermissible benefits when student-athletes used their book scholarships to purchase items other than course-related books or supplies.); *University of Arkansas at Pine Bluff* (2014) (concluding violations of Bylaws 15 and 16 occurred when during two academic years, 15 student-athletes, whose athletics financial aid award did not include books, received impermissible extra benefits in the form of books ranging in value up to \$700); and *Howard University* (2014) (concluding violations of Bylaws 14 (now Bylaw 12), 15 and 16 occurred when Howard allowed student-athletes to purchase impermissible items at the institution's bookstore and failed to withhold these student-athletes from competition). Cal Poly's provision of impermissible book-related financial aid aligns with the type of conduct that consistently gives rise to Bylaw 15, 16 and, in some cases, Bylaw 12 violations.

Although the parties agreed to the underlying facts of the violations in this case, the parties disagreed on the level of the violations. Cal Poly argued that the book-related financial aid violations were Level III, while the enforcement staff believed they were Level II. The panel concludes the violations are Level II.

Bylaw 19.1.2 defines a Level II violation as "a significant breach of conduct" that provides, or is intended to provide, more than a minimal but less than a substantial or extensive recruiting,

⁵ Beginning with the 2014-15 Division I Manual, a member institution's obligation to withhold ineligible student-athletes from competition moved from Bylaw 14 to Bylaw 12. For ease of reference, this decision will refer to that obligation under Bylaw 12 rather than Bylaw 14.

⁶ All 30 student-athletes were full-grant-in-aid recipients. Those 30 over-awards totaled \$5,237.10, for an average total over-award of \$174.57 per student.

competitive or other advantage or include more than a minimal but less than a substantial or extensive impermissible benefit. Bylaw 19.1.3 defines a Level III violation as "a breach of conduct." A breach of conduct is one or more violations that are isolated or limited in nature, provide no more than a minimal recruiting, competitive or other advantage and provide no more than a minimal impermissible benefit. Among examples specifically identified in the legislation as a Level III violation are "inadvertent violations that are isolated or limited in nature and extra-benefit, financial aid, academic violations that do not create more than minimal advantages."

The book-related financial aid violations do not meet the definition of a Level III violation for several reasons. First, the violations were not isolated. They occurred over three-and-a-half years and involved 265 student-athletes, 72 of whom received funds that exceeded the cost of books. Further, the total value of the impermissible benefits was over \$16,000. Therefore, it was more than a minimal benefit. The facts that form the basis of this case more closely align with Level II violations. They occurred over multiple years and therefore were not isolated. In addition, among examples specifically identified in the legislation as a Level II violation are "multiple financial aid violations that do not amount to a lack of institutional control," as seen in this case. Consequently, pursuant to Bylaw 19.1.2, the panel concludes that the impermissible book stipend violations are Level II.

Finally, although Cal Poly maintained that it inadvertently "misapplied" the financial aid legislation relating to cash for books, the panel notes that Bylaw 15.2.3.1, which requires that cash provided for books must equal the exact cost of the books, has been in the NCAA Manual for over a quarter century. The bylaw number and language have remained unchanged the entire time. While the panel saw no nefarious intent by Cal Poly, there is no ambiguity in the wording of this legislation and thus no room for misinterpretation. Cal Poly simply failed to abide by this rule.

The COI's recent cases involving book-related financial aid violations reflect that in every case, except one, the COI determined that this type of violation is Level II based on factors such as duration of the violations, the number of involved student-athletes and the value of the benefit. *See Charleston Southern and Arkansas, Pine Bluff.*

The only exception to the Level II determination in recent cases for book-related financial aid violations occurred in *Alabama State University* (2016). In that case, the COI concluded that Alabama State committed a Level III violation when, during one academic year, it permitted 170 student-athletes to use their book scholarships to purchase items that were not required course-related books or supplies. Most of the student-athletes received benefits valued at \$100 or less. The total amount of the extra benefits received was approximately \$5,565. The panel in *Alabama State* noted that the violations occurred over a relatively short period of time (one year), the benefit for most student-athletes was limited in value (less than \$100), and the total value of the benefit was \$5,565. In contrast, the financial aid violations in this case occurred over multiple years, involved 265 student-athletes and included individual benefits ranging as high as \$734 with a total value in excess of \$16,000. Past cases reflect that the majority of book-related financial aid violations have been determined to be Level II. The Level II designation is appropriate here.

B. FAILURE TO MONITOR [NCAA Division I Manual Constitution 2.8.1 (2012-13 through 2015-16)] (Level II)

Over approximately a three-and-a-half-year period, the institution violated the NCAA principle of rules compliance when it failed to monitor its book scholarship program to ensure compliance with NCAA rules. The institution disputed the allegation. The panel concludes that the institution failed to monitor book-related financial aid, a Level II violation.

1. NCAA legislation related to institutional responsibility to monitor its athletics program.

The applicable portions of the bylaws may be found at Appendix Two.

2. The institution failed to monitor book-related financial aid.

From the 2012-13 academic year through the 2015 fall quarter, the scope and nature of the violations set forth in Violation No. 1 demonstrate that the institution violated the NCAA principle of rules compliance when it failed to monitor its book scholarship program. The monitoring failure manifested in three areas: (1) the institution misapplied financial aid legislation; (2) the institution did not provide pertinent rules education; and (3) the institution failed to implement targeted policies and procedures to enable oversight of the book scholarship program. Cal Poly's failure to monitor its book-related financial aid violated Constitution 2.8.1 institutional responsibility legislation.

NCAA Constitution 2 sets forth core principles for institutions conducting intercollegiate athletics programs. Specifically, Constitution 2.8.1 requires member institutions to abide by all rules and regulations of the association, monitor compliance with those rules, and report any instances of noncompliance to the NCAA.

Cal Poly lacked a fundamental understanding of the permissible use of cash stipends for books, which it characterized as "misapplying" the rule. At the hearing, the institution admitted that it "had a process that was incorrect" and described the violations as "an inch wide, but going pretty deep" because of the length of time over which they occurred. Because Cal Poly was unaware that it was violating book-related financial aid legislation, the institution did not have rules education programs or monitoring policies designed to ensure the compliant administration of cash stipends for books—effectively perpetuating the violation for a number of years.

The parties agreed that Cal Poly misapplied the legislation relating to cash stipends for books. When institutions misapply or fail to apply legislation, as in this case, they violate their responsibility to monitor under Constitution 2, which requires member institutions to comply with all applicable rules and regulations of the Association. Panels in past cases have concluded that misapplying legislation is a factor in determining that institutions failed to monitor. *See North Carolina Central University* (2018) (concluding that the institution repeatedly misapplied a specific facet of NCAA progress-toward-degree legislation, which was a factor demonstrating the

institution's failure to monitor); *Campbell University* (2016) (concluding that the registrar's misapplication and misunderstanding of eligibility certification legislation contributed to a failure to monitor); and *Mississippi Valley State University* (2017) (concluding that the institution's misapplication of eligibility legislation contributed to a failure to monitor).

Further, Cal Poly did not provide education relating to cash stipends for books. As previously established, Cal Poly's compliance staff did not know how to correctly apply book-related financial aid legislation, specifically how to treat cash stipends for books. Consequently, because Cal Poly's compliance staff was unaware of the legislation that required cash stipends for books to equal the cost of books, the institution did not provide rules education in this particular area of financial aid to the athletics department and other pertinent departments, such as the financial aid office.

Past cases have included educational failures as contributing factors in determining that institutions failed to monitor. *See Southern Illinois University* (2018) (concluding that the institution's failure to educate the women's swimming and diving coaching staff and others concerning rules governing instruction provided to prospects contributed to a failure to monitor); *Houston Baptist University* (2018) (concluding that the institution's failure to educate the football program regarding student host legislation was one of two factors that resulted in a failure to monitor); and *Alabama State* (concluding that the institution's failure to provide adequate rules education to institutional staff members and bookstore personnel contributed to a failure to monitor bookstore purchases). As these cases demonstrate, and as seen in this case, providing thorough compliance education as a component of monitoring systems is key to preventing violations of NCAA legislation.

Last, the institution failed to implement appropriate policies and procedures relating to book-related financial aid. Cal Poly's compliance office did not understand how to apply the legislation governing cash stipends for books. Consequently, the institution mistakenly treated the cash stipend for books in the same manner as room and board stipends. Student-athletes can spend room and board stipends as they see fit to cover their off-campus living expenses. On the other hand, cash provided to student-athletes for books must equal the exact cost of the books. The institution argued that no receipts are required for off-campus room and board expenses, and it treated cash stipends for books in the same manner as room and board stipends. Because of this approach, the institution did not implement policies and procedures to monitor the use of cash stipends for books—such as requiring receipts—to ensure that student-athletes used these stipends only for books and course-related supplies. As seen in this case, some student-athletes used the cash stipends for items such as food, rent, utilities and car repairs, resulting in the receipt of impermissible benefits. This case underscores the risk of directly providing cash to student-athletes as part of a financial aid package without a means to account for the use of the cash.

The COI has previously concluded that book-related financial aid violations and associated education failures alone (i.e. not combined with other violations) reflected that institutions failed to monitor. *See Alabama State* (concluding Alabama State failed to monitor when it did not fully implement a previously established compliance system for in-store monitoring of student-athletes' bookstore purchases and failed to provide related rules education); *University of Nebraska, Lincoln* (2012) (concluding Nebraska failed to monitor when it did not have sufficient procedures in place

to monitor and review the bookstore processes for distribution of text books and course supplies); and *University of Alabama, Tuscaloosa* (2009) (concluding Alabama failed to monitor effectively the student-athlete textbook distribution system, and failed to assure compliance by not providing adequate NCAA rules education pertaining to athletics book aid to student-athletes and book store personnel). Thus, contrary to an argument Cal Poly made at the infractions hearing—that there are no previous cases which included a failure to monitor with underlying violations similar to this case—book-related financial aid violations alone have supported failure to monitor violations in previous cases. Likewise, the book-related financial aid violations in this case—which stemmed from a misunderstanding of the legislation, failure to provide adequate rules education and a lack of targeted policies and procedures—demonstrate that Cal Poly failed to monitor the provision of cash stipends for books.

The panel concludes that the failure to monitor book-related financial aid is Level II. Pursuant to Bylaw 19.1.2-(b), a failure to monitor is presumed to be Level II unless the failure is substantial or egregious. In such cases, the failure to monitor can be Level I. See *California State University, Sacramento* (2018) (concluding that the failure to monitor was Level I as the result of underlying egregious Level I violations). The COI has previously concluded that Level II failure to monitor violations occur when the underlying financial aid violations are Level II. See *Indiana University-Purdue University, Fort Wayne* (2015) (concluding that, when the institution failed to monitor its financial aid processes resulting in Level II violations, the failure to monitor was also Level II). Like the underlying violations, Cal Poly's failure to monitor its book-related financial aid program is also Level II.

V. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the panel concludes that this case involved Level II violations. Level II violations are significant breaches of conduct that may compromise the integrity of the collegiate model, including violations that provide more than a minimal benefit.

In considering penalties, the panel 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 revised effective January 23, 2019 (Division I Manual Figure 19-1) and Bylaws 19.9.5 and 19.9.7 to prescribe penalties.

The panel determines the below-listed factors apply and assesses the factors by weight and number. Based on its assessment, the panel classifies this case as Level II-Mitigated.

Aggravating Factors

- 19.9.3-(b): A history of Level I, Level II or major violations by the institution; and
- 19.9.3-(g): Multiple Level II violations by the institution.

Cal Poly disagreed with both aggravating factors. With respect to Bylaw 19.9.3-(b), *A history of Level I, Level II or major violations*, the factor applies because Cal Poly had previous infractions cases in 1987 and 1995. Cal Poly acknowledged this history but asserted that the factor should not apply because the previous cases occurred decades earlier and the facts of those cases were significantly different from the current matter. The COI has often considered the number of cases, their similarity and the amount of time between cases when determining how much weight to give this factor. *See University of Louisiana at Monroe* (2018) (concluding that a 2004 case established this factor but should be accorded minimal weight in part because it involved a different sports program); and *East Tennessee State University* (2018) (determining the factor applied, but giving it little weight, because the institution's previous infractions cases were in 1961 and 1986). The institution's overall history of infractions cases warrants application of this aggravating factor. However, the panel gives it little weight based on the factual differences between the two past cases and the current case, in addition to the amount of time that has elapsed since the previous cases.

Cal Poly argued that Bylaw 19.9.3-(g), *Multiple Level II violations by the institution* did not apply. Specifically, the institution contended that Violation No. 1 was a Level III violation, rather than Level II, and Violation No. 2, a failure to monitor, normally a Level II violation, did not apply. As previously set forth, the panel concludes that the book-related financial aid violations comprising Violation No. 1 are Level II. Therefore, the failure to monitor is Level II. The COI has often determined that this factor applies when there are multiple Level II violations. *See University of Arizona* (2019) (determining that this factor applied when the diving coach committed multiple Level II recruiting violations and the head swimming coach committed a Level II head coach responsibility violation); *Charleston Southern* (concluding that this factor applied when the institution committed multiple Level II eligibility, financial aid violations and failed to monitor); and *East Tennessee* (determining that this factor applied when the institution committed multiple Level II eligibility and benefit violations). Accordingly, because the two violations in this case are Level II, Bylaw 19.9.3-(g), *Multiple Level II violations* applies.

Mitigating Factors

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

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

The enforcement staff and institution agreed on one mitigating factor; 19.9.4-(d): *An established history of self-reporting Level III or secondary violations*. The institution believed all other legislated mitigating factors should apply. The panel determines that, Bylaw 19.9.4-(c) *Affirmative steps to expedite final resolution of the case* also applies. With regard to this mitigator, the panel agrees with the institution that it acted swiftly to address the cash stipend violation upon being notified of its impermissibility, including a sport-by-sport process of declaring ineligible all then current student-athletes who had received the stipends. The institution also took an affirmative step to expedite the resolution of the case by securing the services of an outside agency to assist with its investigation and the production of a self-report. The panel determines that the mitigating

factors set forth in Bylaws 19.9.4-(a), 19.9.4-(b), 19.9.4-(e) 19.9.4-(f), 19.9.4-(g) and 19.9.4-(h) do not apply.

Bylaw 19.9.4-(a), *prompt self-detection and self-disclosure of the violation* requires both prompt self-detection and self-disclosure of the violations. While the panel agreed that the institution promptly disclosed the book stipend violation upon being informed of a potential issue with these stipends in 2015, it did not promptly self-detect the violation. By its own admission, Cal Poly provided the impermissible cash stipend for multiple years. Therefore, this mitigator does not apply. The COI made the same determination in two recent cases with similar circumstances. *See St. John's* (determining that the mitigating factor did not apply because institutional personnel failed to recognize potential compliance issues in a timely fashion, which led to the violations continuing for over five months undetected) and *Appalachian State University* (2016) (determining that this factor did not apply because, although Appalachian State promptly self-reported impermissible text messages, the institution did not detect the text messages until approximately three years after the conduct occurred).

Likewise, the panel determines that Bylaw 19.9.4-(b), *Prompt acknowledgment of the violation and acceptance of responsibility* does not apply. In making this determination, the panel notes that, although Cal Poly ultimately agreed that it "misapplied" book-related financial aid legislation, it attempted to diminish the seriousness of the violation, arguing that it was relatively insignificant, i.e., a Level III violation. In this case, the panel determined that the violation was Level II because it occurred over multiple years and involved a significant extra benefit. Beyond simply misapplying the legislation relating to cash stipends for books, Cal Poly overlooked this legislation – legislation that had been "on the books" for over 25 years.⁷

The panel also determines that Bylaw 19.9.4-(e), *Implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional control standards* does not apply. The COI has consistently determined that the system of compliance must be in place at the time the violations occurred and should lead to the detection of the violations. *See University of Tennessee at Chattanooga* (2018); *Rutgers University* (2017); and *University of Missouri, Columbia* (2016). Although Cal Poly had a compliance program that was adequate in most respects, Cal Poly violated book-related financial aid legislation for multiple years. It was not until 2015, when this issue was discussed at a conference-sponsored financial aid summit, that the violation came to light. Moreover, the panel's conclusion that the institution failed to monitor its book-related financial aid program is further indication that this factor is not applicable. The panel acknowledges the recent improvements implemented by Cal Poly, but determines that the mitigating factor does not apply.

⁷ The COI encourages institutions to contest allegations that they believe are unsupported by the record. But the question here is whether Cal Poly should receive credit for acceptance of responsibility for the violation. In this case, the panel concludes that, although Cal Poly admitted that it violated book-related financial aid legislation, it minimized its responsibility for the violation; a violation that involved 265 student-athletes, occurred over many years and resulted in over \$16,000 in impermissible benefits. Therefore, the panel determines that this mitigating factor does not apply.

Regarding Bylaw 19.9.4-(f), *Exemplary cooperation*, the panel concludes Cal Poly met its obligations under Bylaw 19, but its cooperation did not rise to exemplary. To support its position, Cal Poly asserted that its approach to this case was "collegial, helpful and transparent." It also contended that it "was prompt and responsive to all requests for provision of documentation and records." While this conduct satisfies the membership's general expectation of cooperation under Bylaw 19, it does not go above and beyond to meet the high standard required for this mitigator to apply. See *University of Northern Colorado* (2017) (determining that exemplary cooperation applied when an institution searched coaches' offices, inventoried the items found, imaged computer drives and email accounts and obtained its student-athletes' coursework submitted to other institutions when investigating potential academic violations) and *Oklahoma State University* (2015) (determining that exemplary cooperation applied when, over the course of 11 months, the institution assisted the enforcement staff in reviewing over 50,000 emails and other records and conducting approximately 90 interviews). The panel concludes that Cal Poly met its legislated obligation to cooperate, but it did not exceed that obligation. Therefore, the panel determines that exemplary cooperation does not apply in this case.

Cal Poly also claimed Bylaw 19.9.4-(g), *The violations were unintentional, limited in scope and represent a deviation from otherwise compliant practices by the institution* should apply. While the panel agrees that Cal Poly did not deliberately violate financial aid legislation, and that the institution's compliance program is adequate, the violations were not limited in scope. All three factors must be present for this mitigator to apply. For the purposes of this case, the enforcement staff and the institution agreed that the violations occurred during a period of almost three-and-a-half years, although Cal Poly acknowledged that it had provided the impermissible book stipends for a much longer time. Furthermore, the institution agreed that it provided the impermissible stipends to 265 student-athletes, 72 of whom received funds that exceeded the cost of books and 30 of whom exceeded their individual financial aid limits as a result of receiving the impermissible stipends. Based on the multiple years in which the violations occurred, combined with the number of involved student-athletes, the panel concludes that the violations were not limited in scope. Therefore, Bylaw 19.9.4-(g) does not apply. The COI made a similar determination regarding this mitigating factor in recent cases. See *Monmouth University* (2017) (concluding that the factor was not present even though violations were unintentional, because they were not limited in scope and did not represent a deviation from otherwise compliant practices when the offending coach did not consult with the compliance office regarding the situation that led to the violations); and *Tennessee, Chattanooga* (determining that this mitigating factor did not apply because the four-year span of violations does not support that they were limited in scope). When violations are broad in scope, whether it be the time over which they occurred, number of involved student-athletes or other factors, Bylaw 19.9.4-(g) does not apply.

Finally, Cal Poly asserted Bylaw 19.9.4-(h), *The absence of prior conclusions of Level I, Level II or major violations* applies. While the institution acknowledged that it had past major infractions cases in 1987 and 1995, it argued that these cases occurred many years previously and involved different violations than the current case. Therefore, in the institution's view, they are of little, if any, significance. As with the panel's determination that the aggravating factor of *A history of*

Level I, Level II or major violations applies in this case because of Cal Poly's two prior cases, likewise, the panel makes the concomitant determination that Bylaw 19.9.4-(h) does not apply.

In light of the aggravating and mitigating factors, the panel considers whether this case was a Level II-Standard or Level II-Mitigated case. The panel determines that the facts, violations and factors support a Level II-Mitigated classification.

All of the penalties prescribed in this case are independent of and supplemental to any action the NCAA Division I Committee on Academics has taken or may take through its assessment of postseason ineligibility, historical penalties or other penalties. In prescribing penalties, the panel considered Cal Poly's corrective actions, which are contained in Appendix One. The panel prescribes the following penalties (self-imposed penalties are so noted):

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

1. Probation: Two years of probation from April 18, 2019, through April 17, 2021.⁸
2. Financial Penalty: (a) Cal Poly shall pay to the NCAA a fine of \$5,000. (Self-imposed.);⁹

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

3. Public reprimand and censure.
4. Vacation of records: Cal Poly acknowledged that student-athletes in most of its sports programs competed while ineligible as a result of the financial aid violations.¹⁰ Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3, Cal Poly 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.¹¹ Further, if ineligible student-athletes participated in NCAA postseason competition, the institution's 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,

⁸ Periods of probation always commence with the release of the infractions decision.

⁹ The fine shall be paid consistent with COI Internal Operating Procedures 5-15-2 and 5-15-2-1.

¹⁰ Cal Poly took the position that the book-related financial aid legislation violations were Level III and because of that, the vacation of records should not apply. The panel determines that the violations were Level II. However, even if the financial aid violations were Level III, pursuant to Bylaw 19.9.8 **Penalties for Level III Violations**, a vacation of records could be prescribed (See Bylaw 19.9.8-(b)).

¹¹ Among other examples, the COI has indicated that a vacation of records is particularly appropriate when cases involve ineligible competition and a failure to monitor. See COI IOP 5-15-4. The COI has consistently applied vacation of records penalties when student-athletes have competed while ineligible and there was an attendant failure to monitor. See *Charleston Southern*; *Alabama A&M University* (2018); *Grambling State University* (2017); *Mississippi Valley State University*, *Alcorn State University* (2016); and *Campbell*.

the institution's records regarding the affected sports, as well as the records of the respective head coaches, shall reflect the vacated records and shall 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 affected head coaches shall similarly reflect the vacated wins in their 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 contests 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 the affected sports shall be returned to the Association.

Finally, to ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected in official NCAA publications and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA Media Coordination and Statistics office and appropriate 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 office with a written report detailing those discussions. This document 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 or, if the vacation penalty is appealed, at the conclusion of the appeals process. The sports information director (or designee) must also inform the Office of the Committees on Infractions (OCOI) of this submission to the NCAA Media Coordination and Statistics office.

5. During this period of probation, Cal Poly shall:
 - a. Continue to develop and implement a comprehensive compliance and educational program on NCAA legislation to instruct 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 May 31, 2019, 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 March 15 during each year of probation. Particular emphasis shall be placed on Cal Poly's compliance measures taken to ensure adherence with NCAA financial aid legislation and related rules education and;
 - d. Inform prospects in all affected sports programs in writing that Cal Poly is on probation for two 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 an NLI; and
- e. Publicize specific and understandable information concerning the nature of the violations by providing, at a minimum, a statement to include the types of violations and the affected sports programs and a direct, conspicuous link to the public infractions decision located on the athletic department's main webpage "landing page" and in the media guides for the men's basketball program. Cal Poly's statement must: (i) clearly describe the violations; (ii) include the length of the probationary period associated with the case; and (iii) give members of the general public a clear indication of what happened in the case to allow the public (particularly prospects and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.
6. Following the receipt of the compliance report and prior to the conclusion of probation, the institution's president 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 Cal Poly that it should take every precaution to ensure that it observes the terms of the penalties. The COI will monitor the penalties during their effective periods. Any action by Cal Poly contrary to the terms of any of the penalties or any additional violations shall be considered grounds for extending Cal Poly's probationary period, prescribing more severe penalties or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Norman Bay
Jason Leonard
Joyce McConnell
Vince Nicastro, Chief Hearing Officer
Roderick Perry

APPENDIX ONE
CORRECTIVE ACTIONS AS IDENTIFIED IN CAL POLY'S
AUGUST 22, 2017, SELF-REPORT TO THE ENFORCEMENT STAFF

Cal Poly has taken, or will take, the following actions:

1. All financial aid tenders have been corrected to specify how books and supplies awards are made.
2. The University and athletics financial aid officials have attended additional compliance/financial aid seminars conducted by the NCAA and Big West Conference to insure understanding of how all aspects of financial aid are to be administered within the rules. In addition, those officials will continue to attend such seminars once per year from this time forward).
3. The University has put in place the following procedures regarding books:
 - All books are identified, purchased and picked up by the compliance office in concert with the bookstore, utilizing each student-athlete's finalized class schedule.
 - Student-athletes are required to then pick up their books at the compliance office, with specific inventory and receipt verification from the compliance office.
 - All books are then returned to the compliance office at the end of each term. For those books not returned, there is a charge to the student-athlete at an amount determined by the book store in the same manner and amount as all students.
4. Even though this practice had been ongoing for a considerable time before her arrival, the associate athletic director/SWA received a reprimand for failing to audit and discover this misapplication of the rules. That reprimand will be noted in her personnel file.

APPENDIX TWO
Constitution and Bylaw Citations

Division I 2012-13 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.

14.11.1 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 14.12 if it concludes that the circumstances warrant restoration.

15.01.2 Improper Financial Aid. Any student-athlete who receives financial aid other than that permitted by the Association shall not be eligible for intercollegiate athletics.

15.01.6 Maximum Institutional Financial Aid to Individual. An institution shall not award financial aid to a student-athlete that exceeds the cost of attendance that normally is incurred by students enrolled in a comparable program at that institution (see Bylaw 15.1).

15.2.3 Books. A member institution may provide a student-athlete financial aid that covers the actual cost of required course-related books.

15.2.3.1 Dollar Limit. There is no dollar limit for books a student-athlete may receive, provided each book is required for a course in which the student-athlete is enrolled. The institution may provide the student-athlete with cash to purchase books, as long as the amount of cash provided is equal to the actual cost of the books purchased.

16.8.1.2 Competition While Representing Institution. An institution may provide actual and necessary travel expenses (e.g., transportation, lodging and meals) to a student-athlete for participation in athletics competition, provided the student-athlete is representing the institution (competes in the uniform of the institution) and is eligible for intercollegiate 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 2013-14 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.

14.10.1 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 14.11 if it concludes that the circumstances warrant restoration.

15.01.2 Improper Financial Aid. Any student-athlete who receives financial aid other than that permitted by the Association shall not be eligible for intercollegiate athletics.

15.01.6 Maximum Institutional Financial Aid to Individual. An institution shall not award financial aid to a student-athlete that exceeds the cost of attendance that normally is incurred by students enrolled in a comparable program at that institution (see Bylaw 15.1).

15.2.3 Books. A member institution may provide a student-athlete financial aid that covers the actual cost of required course-related books.

15.2.3.1 Dollar Limit. There is no dollar limit for books a student-athlete may receive, provided each book is required for a course in which the student-athlete is enrolled. The institution may provide the student-athlete with cash to purchase books, as long as the amount of cash provided is equal to the actual cost of the books purchased.

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 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.

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.

15.01.2 Improper Financial Aid. Any student-athlete who receives financial aid other than that permitted by the Association shall not be eligible for intercollegiate athletics.

15.01.6 Maximum Institutional Financial Aid to Individual. An institution shall not award financial aid to a student-athlete that exceeds the cost of attendance that normally is incurred by students enrolled in a comparable program at that institution (see Bylaw 15.1).

15.2.3 Books. A member institution may provide a student-athlete financial aid that covers the actual cost of required course-related books.

15.2.3.1 Dollar Limit. There is no dollar limit for books a student-athlete may receive, provided each book is required for a course in which the student-athlete is enrolled. The institution may provide the student-athlete with cash to purchase books, as long as the amount of cash provided is equal to the actual cost of the books purchased.

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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 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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