



**BRIGHAM YOUNG UNIVERSITY
PUBLIC INFRACTIONS DECISION
November 9, 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 public. The COI is charged with deciding infractions cases involving member institutions and their staffs.¹ This case involved boosters providing a Brigham Young University (BYU) men's basketball student-athlete with extra benefits over a two-year period.² The benefits ranged from free rounds of golf to international vacations. One of the student-athlete's family members also enjoyed some of those benefits. A panel of the COI 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). The panel accepted the self-imposed penalties for BYU but proposed additional penalties. BYU contested the panel's proposed vacation of records at an expedited penalty hearing. After the expedited hearing, the panel maintains the penalty because the vacation of records addresses the advantage gained by BYU when it permitted a student-athlete to participate while ineligible over the course of two basketball seasons. BYU has the opportunity to appeal only the vacation of records penalty.

BYU and the enforcement staff agreed that four boosters provided a prominent high school and college men's basketball student-athlete with over \$12,000 in benefits over a two-year period. From a monetary standpoint, the benefits fell into two general categories: (1) lower dollar benefits such as complimentary golf, free meals and cash; and (2) higher dollar benefits including all-inclusive vacations and the use of a car. The less expensive benefits began after the student-athlete enrolled in BYU in Summer 2015. At that point, two boosters began providing the student-athlete with free golf and meals at a country club where they belonged. On one occasion, one of those boosters also left cash for the student-athlete in his basketball locker while he practiced. The country club benefits occurred periodically over a two-year period.

Two other boosters provided more expensive benefits—mainly, vacations and the use of a car. One booster arranged for a free weekend at a resort lodge for the student-athlete and his then-wife. The other booster provided expense-paid trips to New York, Germany, California, Toronto and Texas. The trips included transportation, lodging, meals, and tickets to a Broadway show,

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 West Coast Conference, BYU has a total enrollment of approximately 33,000 and sponsors 10 men's sports and 11 women's sports. This is BYU's second major, Level I or Level II infractions case. Its previous case occurred in 2008.

an amusement park and concerts. That booster also provided the student-athlete with the use of a car and paid for his car insurance.

The panel accepts the parties' factual agreements and concludes that Level II violations occurred. After considering applicable aggravating and mitigating factors, the panel classifies BYU's case as Level II-Standard. Utilizing the current penalty guidelines and NCAA bylaws authorizing additional penalties, the panel adopts and prescribes the following penalties: a two-year probationary period; reduction of one men's basketball scholarship; recruiting restrictions; disassociation of a booster; vacation of records and reporting requirements.

II. CASE HISTORY

The case began in late July 2017 when the institution received information regarding potential violations involving one of its men's basketball student-athletes (student-athlete). On August 1, 2017, BYU hired outside counsel and within a week reported extra benefit violations to the enforcement staff. From August through early November 2017, the parties jointly investigated the matter. Based on the investigation, the enforcement staff provided BYU with a draft notice of allegations on February 20, 2018. One week later, BYU agreed to process the case through summary disposition.

The parties submitted the SDR to the COI on May 18, 2018, and on June 18, 2018, a panel considered the case.³ On June 20, 2018, the panel proposed additional penalties to BYU. On June 26, 2018, BYU notified the panel that it would contest the panel's proposed vacation of records and requested an in-person expedited hearing. The panel attempted to schedule the in-person hearing during the summer. However, given scheduling logistics associated with representatives from BYU, the panel and the ongoing case docket, the panel could not conduct an in-person hearing until mid-October. As an efficient alternative, the panel offered, but BYU opposed, resolving the case via videoconference. Therefore, the panel held an in-person expedited hearing on October 18, 2018.

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.

III. PARTIES' AGREEMENTS

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

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

[NCAA Division I Manual Bylaws 12.11.1 and 16.8.1 (2015-16 and 2016-17); 16.11.2.1 (2015-16 through 2017-18); 16.11.2.2-(c) (2016-17 and 2017-18); and 16.11.2.2-(d) (2016-17)] (Level II)

The institution and enforcement staff agree that from approximately August 2015 to August 2017, four representatives of the institution's athletics interests provided impermissible benefits in the form of all-expense paid trips, use of an automobile, automobile insurance, golf fees, meals, cash and hotel lodging to the student-athlete. The approximate value of the impermissible extra benefits was at least \$12,222. As a result of the impermissible benefits, the student-athlete competed in at most 70 contests and received actual and necessary expenses while ineligible. Specifically:

- a. From April 26 to August 21, 2017, Booster 1, a representative of the institution's athletics interests, provided the student-athlete all-expense paid trips, use of an automobile and automobile insurance totaling at least \$10,262. Specifically:
 - (1) In April and May 2017, Booster 1 paid expenses for the student-athlete and his then-wife to travel to New York and Frankfurt and Munich, Germany. The expenses included airfare, hotel lodging, cash, car rental, transportation to and from Salt Lake City airport, Broadway theatre tickets and use of a corporate credit card to pay for miscellaneous expenses. The total value of impermissible benefits was approximately \$7,156. [NCAA Division I Manual Bylaws 16.11.2.1 and 16.11.2.2-(d) (2016-17)]

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

- (2) In May and June 2017, Booster 1 paid expenses for the student-athlete to travel to Los Angeles; Austin, Texas; and Toronto, Canada. The expenses included airfare, hotel lodging, concert tickets, amusement park tickets and transportation to and from airports. The total value of the impermissible benefits was at least \$1,154. [NCAA Division I Manual Bylaws 16.11.2.1 and 16.11.2.2-(d) (2016-17)]
 - (3) From May 22 through August 21, 2017, Booster 1 provided the student-athlete with the use of a new 2017 Volkswagen Jetta and paid for the automobile insurance. The total value of the impermissible benefits was approximately \$1,952. [NCAA Division I Manual Bylaws 16.11.2.1 and 16.11.2.2-(c) (2016-17 and 2017-18)]
- b. Between approximately August 2015 and May 2017, Booster 2, a representative of the institution's athletics interests, provided the student-athlete golf fees, a meal and cash totaling at least \$440. Specifically:
- (1) On at least three occasions between August 2015 and August 2017, Booster 2 invited the student-athlete to play golf with him at a local country club in Provo, Utah. Booster 2 paid for the student-athlete's golf fees and a meal using his country club account. The total value of the impermissible benefits was at least \$240. [NCAA Division I Manual Bylaw 16.11.2.1 (2015-16 and 2016-17)]
 - (2) On one occasion around October 2016, Booster 2 left \$200 cash in the student athlete's locker while he was at a men's basketball practice. [NCAA Division I Manual Bylaw 16.11.2.1 (2016-17)]
- c. In December 2016, Booster 3, a representative of the institution's athletics interests, arranged for the student-athlete and his then-wife to stay two nights (December 23 through 25, 2016) at a lodge in Park City, Utah. Neither the student-athlete nor his

then-wife paid for the lodging valued at \$360 per night.⁵
[NCAA Division I Manual Bylaw 16.11.2.1 (2016-17)]

- d. On at least 10 occasions between approximately August 2015 and August 2017, Booster 4, a representative of the institution's athletics interests, invited the student-athlete to golf with him at a local country club in Provo, Utah. Booster 4 paid for the student-athlete's golf fees and meals using his country club account. The total value of the impermissible benefits was at least \$800. [NCAA Division I Manual Bylaw 16.11.2.1 (2015-16 through 2017-18)]

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:

1. Aggravating factors. [Bylaw 19.9.3]

- (a) A history of major violations at the institution. [Bylaw 19.9.3-(b)]
- (b) One or more violations caused significant ineligibility to student-athlete. [Bylaw 19.9.3-(i)]

2. Mitigating factors. [Bylaw 19.9.4]

- (a) Prompt acknowledgment, 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)]⁶

IV. REVIEW OF CASE

Agreed-upon Violations

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

⁵ Total does not include applicable taxes or resort fee. Total is based on the lowest room rate available for the same dates of stay (December 23 through 25) for the following year (2017).

⁶ Over the past five years, BYU has self-reported 52 Level III violations.

agreements, the panel accepts the parties' SDR and concludes that the facts constitute Level II extra benefit violations. Over a two-year period, four different boosters provided impermissible benefits to a men's basketball student-athlete. The benefits varied, ranging from free golf and meals to international vacations and the use of a car, and totaled more than \$12,000. From a monetary standpoint, most of the benefits stemmed from one booster, who claimed he was trying to help the student-athlete through a difficult time. Regardless of individual circumstances and intent, the benefits were impermissible and violated Bylaw 16. Further, after receiving the benefits, the student-athlete became ineligible and competed, resulting in a Bylaw 12 violation.⁷ The violations are Level II.

Bylaw 16 governs awards and benefits. Bylaw 16.8.1 permits institutions to provide actual and necessary benefits to eligible student-athletes who represent the institution in practice and competition. Bylaw 16.11.2.1 prohibits institutional staff members and boosters from providing any extra benefits to student-athletes or their family and friends if those benefits are not expressly authorized by NCAA legislation. Among other prohibited benefits, Bylaw 16.11.2.2 prohibits boosters from providing the use of an automobile (Bylaw 16.11.2.2-(c)) or transportation (Bylaw 16.11.2.2-(d)). Bylaw 12.11.1 requires that institutions withhold ineligible student-athletes, including those who are ineligible due to receiving extra benefits, from competition until the student-athlete is reinstated.

Beginning in summer 2015 and continuing through summer 2017, the student-athlete received over \$12,000 worth of impermissible benefits from four different boosters. One booster provided most of the benefits: roughly \$10,000 worth of all-expense paid trips, the use of a car and paid for the student-athlete's car insurance.⁸ The trips included domestic and international airfare; transportation and car rentals; hotel lodging; concert, amusement park and Broadway tickets; as well as cash and miscellaneous expenses.

The other three boosters also provided extra benefits. Albeit of a lesser dollar value, those benefits were also significant. One of those boosters arranged for a free weekend stay at a resort, while the other two boosters treated the student-athlete to complimentary golf outings and meals at a country club where they were members. Additionally, while the student-athlete was at basketball practice, one of those boosters gained access to the men's basketball locker room and provided or left \$200 cash in the locker room.⁹ All four of the boosters provided the student-athlete extra benefits in violation of Bylaw 16.11.2.1. Likewise, some of the benefits (i.e., use of a car and transportation) are specifically prohibited under Bylaw 16.11.2.2.

⁷ The full text of the specific bylaws violated in this case is set forth in Appendix Two.

⁸ Eventually, the student-athlete's brother repaid nearly all of the \$10,000 associated with the trips, car use and car insurance.

⁹ At the expedited hearing, the enforcement staff identified that there was some discrepancy as to whether the booster provided the cash directly to the student-athlete or left it in his locker. Regardless of how the transaction took place, the parties agreed that the booster had access to the men's basketball locker room and the transaction occurred there.

Throughout the time the student-athlete received the benefits, he continued to play for BYU's men's basketball team. BYU also provided him with actual and necessary expenses. Because, however, the student-athlete was ineligible as a result of the extra benefits and had not gone through the NCAA student-athlete reinstatement (SAR) process, BYU failed to meet its fundamental obligation to withhold him from competition under Bylaw 12.11.1. BYU also violated Bylaw 16.8.1 when it provided him with actual and necessary expenses when he was not eligible to receive them.

The COI has routinely concluded that Level II violations occur when enrolled or prospective student-athletes receive impermissible benefits from boosters or institutional staff members. *See University of Tennessee at Chattanooga (UTC)* (2018) (concluding that Level II extra benefit violations occurred when a booster provided student-athletes with reduced cost rent, free use of automobiles, meals and transportation over a four-year period); *University of San Francisco* (2018) (concluding that Level II violations occurred when head coaches and/or boosters provided prospects and the father of a prospect with free rounds of golf ranging from \$50 to \$500); *University of the Pacific* (2017) (concluding that a former head baseball coach's arrangement for the sister of a baseball student-athlete to receive \$16,000 as payment as a student trainer to offset housing costs for her and her brother constituted a Level II extra benefit); and *University of Missouri, Columbia* (2016) (concluding that a booster's provision of over \$10,000 of impermissible inducements and benefits to prospective and enrolled student-athletes supported Level II violations). Like these cases, the panel concludes that the extra benefits in this case are Level II because they provided the student-athlete with a more than minimal but less than substantial impermissible benefit.

The panel considered whether the value of benefits in this case could have aligned with recently decided Level I violations. *See University of Mississippi* (2017) (concluding, among other Level I, Level II and Level III violations, that \$2,000 of free lodging provided by a booster to a student-athlete's mother and her boyfriend, a \$800 payment from another booster to the boyfriend and the free use of loaner automobiles, and a deferred non-interest loan from a local car dealership that also triggered booster status, supported Level I extra benefit violations). However, the COI has previously stated that value of a benefit is not in and of itself the sole determinative factor for the level of a violation. *See University of Louisville* (2017). Each case's facts and circumstances, however, are unique. Based on the facts and circumstances associated with this case and consistent with Bylaw 19.1.2, the panel concludes that the extra benefits are Level II.

Although this case only involved one student-athlete, the panel was concerned about the level of unmonitored access the four different boosters had with the prominent student-athlete. The panel was particularly troubled that one of the boosters had access to the men's basketball locker room and used that access to provide the student-athlete with \$200. Similarly, the panel notes that through a mentor/mentee program, BYU served as the origin for the student-athlete's relationship with one of the boosters. Although this case was limited to boosters' involvement with one student-athlete, it does not alleviate institutions' responsibility to educate and monitor boosters and detect inappropriate relationships. Circumstances unrelated to BYU's compliance systems brought the violations to light. But for those circumstances, boosters may have continued

providing the student-athlete, and potentially others, with impermissible benefits. Likewise, and as discussed below, the student-athlete may have continued to compete while ineligible. The parties agreed, however, that this case did not involve a failure to monitor violation because BYU's compliance program consisted of booster education and monitoring practices and BYU immediately took action and reported the conduct to the enforcement staff.

Contested Penalty

After accepting the facts, violations and self-imposed penalties set forth in the SDR, the panel proposed additional penalties to BYU. The panel proposed a two-year probationary period, expansion of the self-imposed recruiting restrictions and a vacation of records. BYU did not agree to the vacation of records for three primary reasons: (1) authority and guidance; (2) timing and circumstances; and (3) fundamental fairness. After considering BYU's positions and the agreed-upon violations, the panel maintains the vacation of records penalty. The vacation penalty appropriately addresses the advantage gained by BYU's men's basketball program through the participation of an ineligible student-athlete and holds BYU accountable for failing to withhold an ineligible student-athlete from competition—a basic and fundamental principle of college athletics.

Authority and Guidance

Authority and past cases support a vacation of records. Although BYU acknowledged that the panel has the authority to prescribe a vacation of records, it claimed that the absence of factors that make a vacation penalty "more appropriate" and a select minority of cases should persuade the panel to deviate from its normal precedent and decline to prescribe a vacation of records. The panel is unpersuaded because the fundamental principle of its guiding IOP and the overwhelming majority of past cases supports a vacation of records.

With respect to the factors that the COI considers when prescribing a vacation of records, the COI has expressly stated that the *starting point for a vacation of records is ineligible participation*. See COI IOP 5-15-4.¹⁰ Therefore, and as an overarching principle, a vacation of records is appropriate anytime an ineligible student-athlete competes. In its IOP, the COI has also identified six case-specific factors where vacation of records is more appropriate: (1) academic violations; (2) serious intentional violations; (3) direct involvement of a coach or a high-ranking school administrator; (4) a large number of violations; (5) a recent history of Level I, Level II or major violations; and (6) when a case involves a failure to monitor or lack of institutional control. None of these factors, however, are necessary for a vacation of records penalty, and the COI has previously prescribed a vacation of records when none are present. See *Arkansas State University* (2016) (prescribing a vacation of records to address ineligible participation after a director of operations provided a student-athlete with the institution's apparel login account and the student-athlete ordered \$5,165 worth of apparel). Notwithstanding the

¹⁰ The IOP memorializes factors developed in collaboration with the Division I Infractions Appeals Committee (IAC) and identified in *Southeast Missouri State University* (2008).

COI's authority to prescribe a vacation penalty absent these factors, this case involved four boosters who, on multiple occasions, provided impermissible benefits to the student-athlete. These benefits occurred over a two-year period and exceeded \$12,000 in value. These undisputed facts align with the second and fourth factors. The panel determines that the agreed-upon facts of this case align with COI IOP 5-15-4 and support a vacation of records to address ineligible competition.

Similarly, the overwhelming majority of past cases supports a vacation of records when ineligible participation has occurred. Since the implementation of the new infractions model in 2014, the COI has prescribed a vacation of records in 36 cases. In these cases, the COI has consistently prescribed a vacation of records to preserve a basic and fundamental principle of collegiate athletics—fair play and competition. Therefore, of primary importance is whether ineligible participation provided an institution with an unfair competitive advantage. Contrary to the COI's principle-based approach, BYU narrowed the scope of potentially applicable past cases at the expedited hearing by focusing on three impermissible benefits cases over the past eleven years where the COI did not prescribe a vacation of records: *University of Colorado Boulder* (2007); *University of Miami* (2013); and *Stanford University* (2016). Each of those cases carry little, if any, weight.

The COI decided all three cases prior to the effective date of COI IOP 5-15-4. Further, *Colorado* and *Miami* were processed under the former infractions and penalty structures. And while the vacation of records penalty is not currently part of the penalty guidelines, the COI has generally determined that cases prior to the new infractions and penalty structures (e.g., level and panel system and Bylaws 19.9.5 and 19.9.7 and the penalty guidelines, respectively) have limited, if any, precedential value.¹¹ The COI decided *Stanford* under the current infractions and penalty structure, but *Stanford* is distinguishable for three reasons. First, *Stanford* involved one set of boosters (a husband and wife) as compared to four different boosters who interacted with and provided the student-athlete with impermissible benefits. Additionally, *Stanford* involved impermissible benefits totaling roughly one-third of the benefits present in BYU. Finally, *Stanford* was processed as an SDR, which may be viewed as less instructive than decisions reached after a contested process. See COI IOP 5-14-4, *Decisions*. The panel determines that three cases cited by BYU do not outweigh the majority of past cases supporting a vacation of records to address ineligible competition.

Timing and Circumstances

The timing and circumstances of the agreed-upon facts and violations of this case support a vacation of records. BYU agreed that the student-athlete received impermissible benefits rendering him ineligible in fall 2015 and that the student-athlete subsequently participated while ineligible in the 2015-16 and 2016-17 men's basketball seasons. BYU revisited the agreed-upon facts and violations and attempted to disaggregate those facts and violations into distinct time

¹¹ The NCAA Division I Infractions Appeals Committee (IAC) has also generally supported this position related to core penalties. See *Southern Mississippi University, former head men's basketball coach, IAC Report No. 437* (2017) and *Southern Methodist University, former head men's golf coach, IAC Report No. 425* (2016).

periods, suggesting that the initial violations leading to the student-athletes ineligibility were "less severe" and therefore should not result in a vacation of records. The panel disagrees. While the panel acknowledges that ineligible competition did not occur after the student-athlete received the "most significant" benefits, the complete picture of violations demonstrates a pattern of impermissible activity from four different boosters that went undetected and increased in severity over a two-year period. Similarly, the initial violations, standing alone, support a vacation of records simply because the student-athlete participated while ineligible.

BYU claimed that the vacation penalty was inappropriate because the violations that led to the student-athlete's initial ineligibility were "less significant" cost-free golf and meals provided by a non-traditional booster. BYU asserted that Booster 4 was only a booster because of a single \$650 donation made roughly 10 years prior to the violation and that neither he nor the student-athlete believed that he was a booster. The bylaw, however, does not associate booster status with the value of a monetary donation nor whether one considers themselves a booster. Among other triggers, Bylaw 13.02.15 identifies an individual making (any) financial contribution to the athletics department and assisting in providing benefits to enrolled student-athletes as activating booster status. *See* Bylaw 13.02.15-(b) and (d).

BYU agreed that Booster 4 was, in fact, a booster. Recently, the COI concluded that distant, even unknowing, payments to an athletics department triggers booster status under Bylaw 13.02.15. *See UTC* (concluding that an individual triggered booster status four years prior to providing impermissible benefits to student-athletes when she paid \$100 entry fee to participate in a charity tennis event and the entry fee supported the institution's men's and women's tennis programs); *University of Hawaii at Manoa* (2017) (concluding that an individual triggered booster status when he purchased tickets to a men's basketball banquet and the proceeds went to the men's basketball program). Like *UTC* and *Hawaii*, Booster 4 triggered booster status when he made the \$650 donation. Further, and regardless of the initial payment, an individual triggers booster status the first time that they provide impermissible benefits to a student-athlete. The parties agree that Booster 4 provided impermissible cost-free golf and meals to the student-athlete in fall 2015.

The panel is also not persuaded that it is appropriate to disaggregate the agreed-upon violations down to discrete time periods when considering potential penalties. Further, even accepting BYU's discrete time periods, the limited cost-free golf and meals, standing alone, support a vacation of records. As a matter of practice, the COI does not disaggregate institutional violations when prescribing institutional penalties. Rather, the panel reviews the case in its entirety. Likewise, the parties presented the agreed-upon facts as a joint violation that demonstrated the direct involvement of four boosters over a two-year period with the provided benefits increasing in severity with the addition of each new booster and only now tries to disaggregate those violations into three time periods. Even if the panel trifurcated the time periods of booster activity in the manner in which BYU presented at the expedited hearing, the COI has recently vacated records when student-athletes competed while ineligible after receiving free or reduced cost golf and the use of an automobile. *See University of San Francisco* (2018) (prescribing, among other penalties, a vacation of records when head coaches and/or a booster provided prospects and a

prospect's father with free rounds of golf ranging from \$50 to over \$500 and the prospect later enrolled and competed); and *Hawaii* (prescribing, among other penalties, a vacation of records when a booster allowed a student-athlete to use his vehicle over two days valued at \$560 and the student-athlete later competed). Although *San Francisco* involved impermissible inducements under Bylaw 13, the underlying conduct is analogous, as is the appropriateness of the subsequent vacation of records penalty, because the inducements caused the student-athlete to compete while ineligible.

Fundamental Fairness

Vacation of records addresses the competitive advantage gained by the ineligible competition irrespective of the number of games that may be affected. BYU asserted that the large number of victories that would require vacation would be fundamentally unfair when compared to other men's basketball cases and the withholding penalty imposed on the student-athlete through the SAR process. While the COI is not indifferent to the impact the vacation of records penalty will have on BYU and its men's basketball coach, BYU's arguments are misplaced and misunderstand the rationale of the vacation penalty.

Vacation is appropriate because BYU had the advantage of an ineligible player for two seasons. BYU identified that the vacation penalty would result in the vacation of 47 victories, placing it in the top 10 of largest men's basketball vacation penalties. BYU asserted that its violations were distinguishable from the other nine schools and that the penalty was unfair to its men's basketball coach.¹² This position misconstrues the membership's intention behind a vacation penalty and to whom the penalty applies.

The fact that the vacation penalty places BYU in the top 10 for most men's basketball games vacated derives from BYU permitting an ineligible student-athlete to participate in two years of competition after failing to discover the violations, self-report them and seek reinstatement for the student-athlete. In that way, BYU is not distinguishable from those other cases. When violations go undetected, the number of potentially applicable victories increases. Vacation is an important penalty in that, at its core, it addresses the competitive advantage gained over institutions playing only eligible student-athletes. But the penalty also serves to motivate institutions to ensure that compliance systems are operating proactively to deter, detect and address violations immediately, with the understanding that a failure to do so could result in a significant vacation penalty. Without this important consequence, compliance departments may be less diligent in investigating and addressing potential violations. The panel appreciates that BYU self-reported the violations once it became aware of them, consistent with obligations under NCAA legislation. However, the panel also specifically notes that the BYU compliance program did not uncover the violations in this case—including the cost-free international travel—but only became aware of them after an outside individual with personal knowledge of the conduct informed the institution.

¹² BYU informed the panel that its head men's basketball coach recently celebrated his 300th victory.

Similarly, a vacation of records is an institutional, not individual penalty. The panel is sympathetic to the tangential impact the institutional penalty will have on the head coach's record and acknowledges that the SDR specifically identified that the head coach promoted an atmosphere of compliance and monitored his program. Nonetheless, one of his student-athletes knowingly received impermissible benefits from four different boosters and competed while ineligible.¹³ As a result, the BYU men's basketball program and all those affiliated with the program—including the head coach—received a competitive advantage not experienced by compliant programs.

Finally, it is inappropriate to compare the institution's vacation penalty to the distinct and separate SAR process. BYU claimed that the 47-game vacation penalty was unfair when compared to the nine-game withholding imposed as a condition of the student-athlete's reinstatement. Although the two processes both address the impermissible benefits violations, they carry out different duties. The SAR process specifically addresses student-athletes' eligibility and conditions related to reinstatement prior to competition. *See* Bylaw 21.7.6.5.3.3. SAR's duties do not extend to institutions and institutional employees. To the contrary, the infractions process addresses institutional culpability and conduct associated with institutional actors. *See* Bylaw 19.01.1.

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 of NCAA legislation. Level II violations are significant breaches of conduct that provide or are intended to provide more than a minimal, but less than an extensive, advantage.

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.¹⁴

Because the parties did not agree on all aggravating and mitigating factors, the panel had to resolve additional factors. BYU and the enforcement staff did not agree on two mitigating factors: (1) Bylaw 19.9.4-(f) *Exemplary cooperation* and (2) Bylaw 19.9.4-(i) *Other factors*. The panel determines that neither applies to BYU's case.

With respect to Bylaw 19.9.4-(f), the panel determines that BYU met its obligations under Bylaw 19. The panel appreciates the institution's collaboration with the enforcement staff but determines

¹³ At the expedited hearing, BYU acknowledged that the student-athlete received rules education, recognized that what he was doing was wrong and was fully aware of what was appropriate and what was not.

¹⁴ Because the panel proposed additional penalties on June 20, 2018, the panel prescribes penalties under the penalty guidelines and Bylaws 19.9.5 and 19.9.7 as they existed at the time.

that the circumstances of this case have not met the high threshold previously applied for exemplary cooperation. *See University of Northern Colorado* (2017) (concluding 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) (concluding that the institution demonstrated exemplary cooperation when, over 11 months, the institution assisted the enforcement staff in reviewing over 50,000 emails and other records and conducting roughly 90 interviews). Once notified of potential issues, BYU conducted and arranged for case interviews, initiated contact with outside individuals and entities and dedicated personnel to the investigation. However, the scope and nature of the conduct at issue in this case did not rise to the level of cases where the factor has previously applied.

Regarding Bylaw 19.9.4-(i), BYU claimed that the isolated and non-systemic nature of the violations coupled with the personal circumstances of the student-athlete at issue supported other factors that warranted a lower penalty range. The panel determines that the factor does not apply. The panel considers the isolated and non-systemic nature pertinent to its Level II assignment—particularly when the value of the benefits and presence of multiple boosters could align with recent Level I violations. Further, the panel is sympathetic to the student-athlete's personal circumstances. Those circumstances in this case, however, do not absolve or mitigate BYU's accountability for violations that occurred when multiple boosters engaged with and provided impermissible benefits to its student-athlete.

The parties also proposed Bylaw 19.9.4-(h) *the absence of prior conclusions of Level I, Level II or major violations in the sport program*. BYU acknowledged that the institution has had past cases, however, asserted that the factor should apply because none of those cases involved the men's basketball program. Pursuant to Bylaw 19.9.2, the panel determines that the factor does not apply to this case. Previously, the COI has only applied this mitigating factor to an institution or involved individual that has never had a previous Level I, Level II or major infractions case.¹⁵ The panel has not previously applied the factor to individual sport programs.

BYU agreed to the facts and violations but contested the vacation of records penalty. The panel held an expedited hearing and retained that penalty. Therefore, BYU may appeal the vacation of records. 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 BYU'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 BYU'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):

¹⁵ The panel notes that Bylaws 19.9.3-(b) and 19.9.4-(h) were recently amended to remove the reference to "sport program."

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

1. Probation: Two years of probation from November 9, 2018, through November 8, 2020.¹⁶
2. Financial penalty: BYU shall pay a fine of \$5,000 to the NCAA. (Self-imposed.)
3. Scholarship reductions: The men's basketball program shall reduce by one the total number of permissible grants-in-aid. (Self-imposed.) This reduction shall be served during the earliest possible academic year. If BYU has already executed the maximum number of grant-in-aid agreements to prospective student-athletes for the 2018-19 academic year that would prevent BYU from complying with this penalty, BYU may serve the penalty during the 2019-20 academic year.
4. Recruiting restrictions:
 - a. BYU's men's basketball program shall be limited to a total of 14 official visits over the 2017-18, 2018-19 and 2019-20 academic years. Further, the men's basketball program shall not be permitted to exceed more than seven official visits in any given year;¹⁷
 - b. BYU's men's basketball program prohibited unofficial visits for a three-week period during the 2017-18 academic year. (Self-imposed.) Additionally, the men's basketball program shall be prohibited from any unofficial visits during a two-week period between September 1, 2018, and November 30, 2018;¹⁸
 - c. BYU's men's basketball program prohibited recruiting communications for a two-week period during the 2017-18 academic year. (Self-imposed.) Additionally, the men's basketball program shall be prohibited from all recruiting communication for a two-week period during the 2018-19 academic year;¹⁹ and
 - d. BYU's men's basketball program reduced the number of recruiting person days by 10 days in the 2017-18 academic year and shall reduce the number of recruiting person days by 10 in the 2018-19 academic year. (Self-imposed.)

¹⁶ Periods of probation always commence with the release of the infractions decision.

¹⁷ BYU self-imposed a limit of nine total official visits over the 2017-18 and 2018-19 academic year. The panel originally proposed that BYU could not exceed five official visits in each of the 2017-18, 2018-19 and 2019-20 academic years. At the expedited hearing, BYU informed the panel that it had only used one official visit during the 2017-18 academic year. Consistent with the overall limit of 14 official visits over the three-year span, the panel modifies the yearly limit to seven official visits for each of the 2018-19 and 2019-20 academic years.

¹⁸ BYU shall be required to identify the two-week period in its preliminary compliance report.

¹⁹ BYU shall be required to identify the two-week period in its preliminary compliance report.

Additional Penalties for Level II Violations (Bylaw 19.9.7)

5. Public reprimand and censure.
6. BYU disassociated Booster 1. As part of the disassociation, BYU will not:
 - a. Accept any assistance that will aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes;
 - b. Accept financial contributions for BYU's athletics program;
 - c. Permit prospective or enrolled student-athletes to interact with the booster during any BYU or athletic department sponsored events or activities; and
 - d. Provide the booster with, or permit to be provided to the booster any athletics benefit or privilege that is not normally available to the general public, including complimentary tickets from student-athletes or staff members, access to student-athletes and/or coaches, etc.

Additionally, BYU will prohibit all athletics department staff members from communicating with the booster regarding any athletics matter. (Self-imposed.)²⁰

7. Vacation of records: BYU acknowledged that the student-athlete participated in the 2015-16 and 2016-17 men's basketball seasons while ineligible. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3, BYU shall vacate all regular season and conference tournament records and participation in which the ineligible student-athlete detailed in Violation No. 1 competed from the time he became ineligible through the time he was reinstated as eligible for competition. This order of vacation includes all regular season competition and conference tournaments. Further, if the ineligible student-athlete participated in NCAA postseason competition at any time he was ineligible, the institution's participation in the postseason shall be vacated. The individual records of the ineligible student-athlete shall also be vacated. However, the individual finishes and any awards for all eligible student-athletes shall be retained. Further, the institution's records regarding its men's basketball program, as well as the records of the head coach, 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 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.

¹⁵ Pursuant to COI IOPs the COI does not prescribe periods of disassociation for longer than 10 years but does not prohibit institutions from self-imposing a period of disassociation longer than 10 years.

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 men's basketball 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.

8. During this period of probation, BYU 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 December 21, 2018, setting forth a schedule for establishing this compliance and educational program and identifying the future dates in which the institution will implement the recruiting restrictions identified in Penalty No. 4;
 - c. File with the OCOI annual compliance reports indicating the progress made with this program by October 15 during each year of probation. Particular emphasis shall be placed on BYU's rules education provided to student-athletes, coaches, staff and boosters regarding appropriate booster interactions. The annual report should also document BYU's booster monitoring efforts;
 - d. Inform men's basketball prospects in writing that BYU 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. BYU'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.

9. 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.
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The COI advises BYU 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 BYU contrary to the terms of any of the penalties or any additional violations may be considered grounds for prescribing more severe penalties or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL
Carol Cartwright, Chief Hearing Officer
Jody Conratt
Alberto Gonzales
Thomas Hill
Joyce McConnell
Gary L. Miller
Dave Roberts

APPENDIX ONE

**BRIGHAM YOUNG UNIVERSITY CORRECTIVE ACTIONS AS IDENTIFIED IN THE
MAY 18, 2018, SUMMARY DISPOSITION REPORT**

1. Issue letters of warning to representatives of the institution's athletics interests Booster 2 and Booster 4. The letters will caution that future actions in violation of NCAA rules may result in permanent disassociation. The letters will specifically include parameters and approval process for future interaction with student-athletes.
2. Booster 3 will be provided a letter advising him that he is considered a representative of the institution's athletics interests under NCAA rules. Educational materials will accompany the letter.
3. The institution will increase its NCAA rules education for boosters, including season ticket holders, scholarship donors, local businesses and corporate sponsors. Scholarship donors will also be required to sign statements indicating understanding of NCAA rules regarding interactions with student-athletes.
4. At the outset of the 2018-19 academic year, the compliance staff will conduct a special educational session with all student-athletes addressing contact with, and the receipt of benefits from, representatives of the institution's athletics interests.

APPENDIX TWO
Bylaw Citations

Division I 2015-16 Manual

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.

16.8.1 Permissible. An institution, conference or the NCAA 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 family members or friends with a benefit not expressly authorized by NCAA legislation.

Division I 2016-17 Manual

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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16.11.2.2 Other Prohibited Benefits. An institutional employee or representative of the institution's athletics interests may not provide a student-athlete with extra benefits or services, including, but not limited to:

- (c) An automobile or the use of an automobile;
- (d) Transportation (e.g., a ride home with a coach), except as permitted in Bylaw 16.9.1, even if the student-athlete reimburses the institution or the staff member for the appropriate amount of the gas or expense.

Division I 2017-18 Manual

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

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