



**ELMIRA COLLEGE**  
**PUBLIC INFRACTIONS DECISION**  
**August 20, 2021**

**I. INTRODUCTION**

The NCAA Division III Committee on Infractions (COI) is an independent administrative body comprised of individuals from the NCAA Division III membership and the public charged with deciding infractions cases involving member institutions and their staffs. This case involved Elmira College (Elmira) awarding financial aid to student-athletes in a pattern that was clearly distinguishable from the general pattern of all recipients.<sup>1</sup> The parties agreed that the financial aid violations demonstrated that Elmira failed to monitor its packaging and awarding of financial aid. This case also involved the former vice president of enrollment management's failure to cooperate with the NCAA enforcement staff's investigation.

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 COI accepted Elmira's self-imposed penalties and corrective measures without any additional penalties; therefore, Elmira has no opportunity to appeal. The COI proposed a show-cause order for the former vice president of enrollment management's failure to cooperate. After not participating in the processing of the SDR, the former vice president of enrollment management contested his show-cause order but, following an expedited hearing, the COI maintained the penalty. The former vice president of enrollment management has the opportunity to appeal his show-cause order.

This case demonstrates the importance of rules education for athletics staff members and institutional personnel because unintended violations can still occur despite an institution's best intentions. The agreed-upon violations center on Elmira awarding additional non-need-based scholarships to 36 student-athletes in a manner clearly distinguishable from the general pattern of all financial aid for all recipients during the 2018-19 and 2019-20 academic years. The institution provided the awards in order to increase enrollment as part of the financial aid packaging policy implemented by the former vice president of enrollment management. These awards were otherwise permissible, but a violation occurred because the pattern in which Elmira awarded them resulted in student-athletes receiving financial aid at a rate disproportionately higher rate when compared to non-student-athletes. In total, Elmira awarded approximately \$144,909 of otherwise permissible financial aid to 36 student-athletes across 13 sports. The financial aid violations are major.

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<sup>1</sup>A member of the Empire 8 Conference, Elmira's total enrollment is approximately 700. The institution sponsors eight men's sports, eight women's sports and two co-ed teams. This is the institution's first major infractions case.

The parties also agreed that the financial aid violations demonstrate that Elmira failed to monitor its packaging and awarding of financial aid. Specifically, Elmira did not provide comprehensive rules education to the financial aid office and coaching staff members, causing the violations to occur and go undetected. The COI concludes that the failure to monitor violation is major.

Lastly, the former vice president of enrollment management failed to cooperate in this case when he refused to participate in an interview and did not provide information relevant to the investigation. As the individual responsible for implementing the additional financial aid awards, the former vice president of enrollment management had key and relevant information. Similarly, as an institutional staff member, he had an affirmative obligation to further the membership's infractions program. He failed to meet this basic and fundamental requirement. His conduct resulted in violations of NCAA Bylaws 10 and 19. This violation is also major.

The COI accepts the parties' factual agreements and concludes that major violations occurred. Utilizing NCAA bylaws authorizing penalties, the COI adopts the following penalties: two years of probation, a review from the Division III Financial Aid Committee and a show-cause order for the former vice president of enrollment management. The penalties section of this decision details these and other penalties.

## **II. CASE HISTORY**

On November 20, 2019, the NCAA Division III Financial Aid Committee (Financial Aid Committee) contacted Elmira for a Level I review of the justification for the financial aid variance between student-athletes and non-student-athletes for the 2018-19 reporting cycle. After conducting its review, the Financial Aid Committee provided Elmira with correspondence detailing the outcome and referred the case to the NCAA enforcement staff on February 25, 2020. The Financial Aid Committee based its decision on the information Elmira provided to justify its newly implemented financial aid strategy. While the financial aid was otherwise permissible, the Financial Aid Committee concluded that the variance was a distinguishable pattern of awards, resulting in an advantage for student-athletes. Subsequently, the enforcement staff issued a written notice of inquiry to Elmira on July 9, 2020.

On September 18, 2020, the former vice president of enrollment management informed the enforcement staff that he would not participate in an interview. Following a cooperative investigation, Elmira and the enforcement staff submitted an SDR to the COI on March 25, 2021. The COI reviewed the SDR on May 28, 2021, and accepted the agreed-upon facts, violations and type of violations. The COI proposed additional penalties for the former vice president of enrollment management and adopted Elmira's proposed penalties. The former vice president of enrollment management notified the COI that he would contest his proposed show-cause order and requested an expedited hearing on June 7, 2021. Prior to the expedited hearing, the COI gave the former vice president of enrollment management the opportunity to provide a written submission setting forth any information, arguments and authority with respect to the challenged show-cause

order, and he declined to do so. The COI held an expedited penalty hearing via videoconference on July 12, 2021.

### **III. PARTIES' AGREEMENTS**

#### **PARTIES' AGREED-UPON FACTUAL BASIS AND VIOLATION OF NCAA LEGISLATION**

The parties jointly submitted an SDR that identified the agreed-upon factual basis, violations of NCAA legislation and types of violations.<sup>2</sup> The SDR identified:

##### **1. [NCAA Division III Manual Bylaw 15.4.1-(c) (2018-19 and 2019-20)] (Major)**

The institution and enforcement staff agree that during the 2018-19 and 2019-20 academic years, the institution improperly awarded approximately \$144,909 of otherwise permissible financial aid on 36 instances to 36 student-athletes across 13 sports, that was later determined to create disproportionate awards to student-athletes contrary to financial aid legislation. Specifically:

- a. During the 2018-19 academic year, student-athletes had 91% of their financial need met with institutional gift aid, on average, while other recipients had only 64% of their need met. Additionally, 40% of student-athletes received institutional gift aid that exceeded financial need as compared to 16% of other recipients. This demonstrates that financial aid packages for student-athletes were clearly distinguishable from the general pattern of all financial aid for all recipients at the institution. [NCAA Bylaw 15.4.1-(c) (2018-19)]
- b. During the 2019-20 academic year, student-athletes had 83% of their financial need met with institutional gift aid, on average, while other recipients had only 61% of their need met. Additionally, 38% of student-athletes received institutional gift aid that exceeded financial need as compared to 17% of other recipients. This demonstrates that financial aid packages for student-athletes were clearly distinguishable from the general pattern of all financial aid for all recipients at the institution. [NCAA Bylaw 15.4.1-(c) (2019-20)]

##### **2. [NCAA Division III Manual Constitution 2.8.1 (2018-19 and 2019-20)] (Major)**

The institution and enforcement staff agree that in the 2018-19 and 2019-20 academic years, the scope and nature of the violations detailed in Proposed Finding of Fact No. 1 demonstrate that the institution violated the NCAA principle of rules

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<sup>2</sup> This decision provides the agreed-upon factual basis, violations and type of violations exactly as stated in the SDR, except for shortening references to the parties.

compliance when it failed to adequately monitor and detect rules violations and did not provide adequate rules education to athletics and financial aid personnel on NCAA rules relevant to the packaging and awarding of financial aid.

**3. [NCAA Division III Manual Bylaws 10.1, 10.1-(a) and 19.01.3 (2020-21)] (Major)**

The institution and enforcement staff agree that from August 20, 2020, and continuing to the present, Coons violated the NCAA principles of ethical conduct and failed to cooperate with the enforcement staff when he refused to participate in an interview and provide information relevant to an investigation of possible violations.

#### **IV. REVIEW OF CASE**

##### **Agreed-Upon Violations**

The submitted SDR fully details the parties' positions and includes the agreed-upon primary facts, violations and type of violations. After reviewing the parties' principal factual agreements and the respective explanations surrounding those agreements, the COI accepts the parties' SDR and concludes that the facts constitute major violations of NCAA legislation. Specifically, the COI concludes that Elmira violated NCAA financial aid legislation when, over a two-year period, it provided financial aid to student-athletes at a disproportionate rate resulting in an advantage for student-athletes. The COI additionally concludes that the major violations were attributable to Elmira's failure to provide adequate rules education to financial aid personnel and its failure to monitor the packaging and awarding of financial aid. Finally, the COI concludes that a major violation occurred when the former vice president of enrollment management violated fundamental ethical conduct and cooperation legislation by refusing to participate in the investigation of the underlying violations.<sup>3</sup>

With respect to the underlying financial aid violations, Bylaw 15 governs the permissibility of Division III financial aid. Specifically, Bylaw 15.4.1-(c) prohibits institutions from providing student-athletes or teams financial aid in a manner clearly distinguishable from the general pattern of all financial aid for all recipients at the institution.

The Bylaw 15 financial aid violations in this case result from Elmira's efforts to increase enrollment during an enrollment decline. To address the decline, the former vice president of enrollment management instituted additional non-need-based aid awards for students. These awards included the Simeon Benjamin award, which awarded \$2,500 to first-time, full-time students and the Visit Award, which awarded \$2,000 to students who visited Elmira prior to enrollment. Though otherwise permissible, the administration of the awards caused student-

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<sup>3</sup> The full text of all bylaws violated in this case is at Appendix Two.

athletes to receive a disproportionate percentage of gift aid in comparison to other students. Specifically, in the 2018-19 academic year, student-athletes had 91 percent of their financial need met with institutional gift aid, on average, while other recipients had only 64 percent of their need met. Similar trends occurred during the 2019-20 academic year.

Consistent with this principle, as well as Bylaw 19.02.2, the COI has previously concluded that major violations of Bylaw 15 occur when institutions provide financial aid to student-athletes at a disproportionate rate when compared to non-student-athletes. See *Emmanuel College* (2020) (concluding that major Bylaw 15 financial aid violations occurred when 51 percent of incoming student-athletes who appealed their aid packages received the Advancement Grant while only 27 percent of incoming non-student-athletes who appealed their aid packages received the grant); *Methodist College* (2017) (concluding that major Bylaw 15.4.1-(c) violations occurred when the institution unintentionally awarded a Nordic grant exclusively to student-athletes over a two-year period); *Morrisville State College* (2012) (concluding that major financial aid violations occurred when, over two academic years, Morrisville awarded a disproportionate percentage of gift aid to student-athletes when compared to all students); and *Manhattanville College* (2012) (concluding that major financial aid violations occurred when, over two academic years, Manhattanville awarded financial aid packages to incoming international student-athletes at a disproportionate rate when compared to all students). Like these cases, Elmira violated core Division III financial aid legislation by providing student-athletes disproportionate awards of financial aid.

The parties also agreed that the financial aid violations demonstrate that Elmira failed to monitor its packaging and awarding of financial aid. Specifically, Elmira failed to provide comprehensive rules education to the financial aid office and coaching staff members. Most notably, no one monitored the former vice president of enrollment management's implementation of his enrollment strategies or the process of awarding financial aid to ensure compliance with financial aid legislation. These failures caused the violations to occur and go undetected for two academic years.

NCAA Constitution 2.8.1 requires institutions to monitor their athletic programs to assure compliance with NCAA rules and regulations. Constitution 2.8.1 also requires institutions to identify rules violations and report any violations to the Association.

An institution's responsibility to educate and monitor extends to all personnel who have a touchpoint on the financial aid process, including the financial aid office and coaching staff. Stated simply, there must be checks and balances to ensure that otherwise permissible aid does not result in impermissible distribution. That did not occur here. The COI has consistently concluded that an institution fails to monitor when it does not educate staff members on financial aid legislation and/or does not monitor the awarding of financial aid packages. See *Emmanuel* (concluding that the institution failed to monitor when it awarded \$51,612 of aid in a manner inconsistent with NCAA financial aid legislation); *Kalamazoo College* (2016) (finding that the institution failed to monitor when 567 student-athletes received financial aid based on athletics criteria); and *University of Wisconsin-La Crosse* (2012) (concluding that the institution failed to monitor when athletics staff was involved in the scholarship selection process). Like these cases, Elmira did not

meet its obligations under Article 2 of the NCAA Constitution. Consistent with Bylaw 19.02.2, the failure to monitor violation is major.

### **Contested Penalty**

After accepting the facts, violations, nature of violations, corrective actions and self-imposed penalties, the COI proposed a show-cause order as an additional penalty for the former vice president of enrollment management as a result of his failure to cooperate. After previously refusing to participate in the investigation and processing of the case, he contested this penalty and requested an expedited hearing before the COI. After considering information presented at the expedited hearing, the COI maintains the penalty. The show-cause order appropriately addresses the former vice president of enrollment management's failure to meet obligations of current and former institutional staff members. The show-cause order also aligns with past COI decisions.

The COI prescribed a two-year show-cause order for the former vice president of enrollment management, which requires him to attend NCAA Regional Rules Seminars during each year of the show-cause period. The COI specifically included the education component to ensure that the former vice president of enrollment management understands fundamental Division III financial aid legislation. The COI maintains the penalty following the expedited hearing.

At the expedited hearing, the former vice president of enrollment management argued that he failed to participate for two reasons. First, he claimed that he lacked clarity about the nature and scope of the enforcement staff's investigation. Second, he argued that because of his termination he no longer had access to records and data that he felt would have been helpful. Thus, he decided it was in his best interest to not participate.

While the COI appreciates his honesty, the committee is not persuaded by either of the former vice president of enrollment management's arguments. In such situations where an individual has outstanding questions about the scope of the enforcement staff's investigation or lacks access to certain documentation, the involved individual is not excused from their obligation to participate in the infractions process. Although the COI has no obligation to detail the numerous ways the former vice president of enrollment management could have met his obligation to cooperate, at the very least he could have participated in an interview and answered questions to the best of his recollection. The COI does not dismiss the former vice president of enrollment management's concerns stemming from the enforcement staff's interview request. But his concerns do not relieve him from his responsibility to cooperate. Failing to participate costs the infractions process the benefit of complete information for the enforcement staff's investigation and the COI's review of the case.

The cornerstone of the infractions process is the cooperative principle. When current or former institutional staff members fail to cooperate in the infractions process, including assisting the enforcement staff and the COI in developing information, they fail to meet fundamental standards of conduct established by the NCAA membership. The former vice president of enrollment management was the central figure of this case. He instituted the new additional financial aid awards in an effort to secure additional enrollments. As such, he had key information related to

the development, packaging and administration of the aid. Although there is no information in the record to suggest that he or any financial aid staff member knew if an enrollee intended to participate in athletics, the investigation appears to have been hindered by the former vice president of enrollment management's refusal to participate. When individuals refuse to cooperate, there are consequences.

Although each case is unique, the imposed show-cause order is consistent with those prescribed when institutional staff members engage in unethical conduct violations. *See University of Wisconsin-Stevens Point* (2019) (concluding that the athletics director engaged in unethical conduct when he knowingly furnished false or misleading information during his interviews with enforcement staff); *Baruch College* (2016) (prescribing a one-year show-cause order for a former vice president who knowingly influenced, directed and/or permitted the awarding of impermissible financial aid and benefits to student-athletes); and *Hunter College* (2016) (prescribing a five-year show-cause order for an information systems employee who improperly authorized the admission of several student-athletes, requested an administrative staff member to assist him in destroying relevant information related to the conduct and refused to participate in an interview with the enforcement staff). As in these cases, the former vice president of enrollment management's conduct seriously undermined and threatened the foundational principles of the membership's infractions process.

After fully considering the former vice president of enrollment management's position in conjunction with past decisions, the COI determines the two-year show-cause order is appropriate.

## V. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the COI concludes this case involved major violations of NCAA legislation. Major violations are not isolated or inadvertent, provide or are intended to provide more than a minimal advantage and include intentional violations of NCAA legislation.

In prescribing penalties, the COI evaluated relevant mitigating factors pursuant to Bylaw 32.7.1.3. As part of its evaluation, the COI also considered Elmira's corrective actions as set forth in Appendix One. After considering all information, the COI prescribes the following penalties (self-imposed penalties are so noted):

### **Penalties for Major Violations (Bylaw 19.5.2)**

1. Public reprimand and censure through the release of the public infractions decision.
2. Probation: Two years of probation from August 20, 2021, through August 19, 2023.<sup>4</sup>

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<sup>4</sup> Elmira proposed a two-year probationary period. Institutions may propose probationary periods, but the authority to prescribe probation rests solely with the COI. Periods of probation commence with the release of the COI infractions decision.

During this period of probation, the institution shall:

- a. Submit a preliminary report to the OCOI by September 30, 2021, setting forth a schedule for establishing this compliance and educational program;
  - b. File with the OCOI annual compliance reports indicating the progress made with this program by July 1 of each year during the probationary period. Particular emphasis should be placed on monitoring the institution's financial aid awarding process. The reports must also include documentation of the institution's compliance with the penalties adopted and prescribed by the COI;
  - c. Inform prospective student-athletes that the institution is on probation for two years and detail the violations committed. This information must be provided in writing and for the full term of probation. The institution must provide this information as soon as practicable after the prospective student-athlete is recruited pursuant to NCAA Bylaw 13.02.8 and, in all instances, before the prospective student-athlete signs a financial aid agreement or initially enrolls at the institution, whichever is earlier; and
  - d. For the full term of probation, publicize specific and understandable information concerning the nature of the infractions by providing, at a minimum, a statement to include the types of violations and the affected sport program and a direct, conspicuous link to the public infractions decision located on the athletic department's main webpage (landing page). The information shall also be included in institutional media guides and in an alumni publication. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the major infractions case; and (iii) give members of the general public a clear indication of what happened in the major infractions case to allow the public (particularly, prospective student-athletes and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient. The institution may meet its responsibility in a variety of ways;
  - e. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for certification of student-athletes' eligibility for admission, financial aid, practice or competition; and
  - f. During the period of probation, the institution shall request a Level II review from the NCAA Division III Financial Aid Committee and shall abide by any recommendations made by the reviewer. (Self-imposed). The results of the review and steps taken to implement and abide by the recommendations shall be included in the institution's annual compliance reports.
3. Show-Cause Order: The former vice president of enrollment management violated the principles of ethical conduct and failed to cooperate with the enforcement staff when he refused



to participate in an interview and provide information relevant to the investigation of possible violations. He elected to not cooperate even though he was the individual with the most pertinent information related to the investigation. The NCAA bylaws require all representatives of member institutions to cooperate fully with the NCAA enforcement staff, COI, Infractions Appeals Committee and Management Council to further the objectives of the Association and its infractions program. This is particularly true when individuals have pertinent information related to potential violations. That did not occur in this case and the parties identified that the former vice president of enrollment management's refusal to participate left many questions unanswered. Therefore, the former vice president of enrollment management shall be subject to a two-year show-cause order from August 20, 2021, through August 19, 2023. In accordance with Bylaw 19.5.2.2.1 and COI Internal Operating Procedure (IOP) 5-16-1-1, any employing member institution shall require the former vice president of enrollment management to attend at least one NCAA Regional Rules Seminar during each year of the show-cause period. If the former vice president of enrollment management becomes employed by a member institution during the term of the show-cause order, the employing institution shall abide by the terms of the show-cause order unless it contacts the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why the terms of the order should not apply.

4. The director of financial aid, the current vice president of enrollment management and the associate vice president of athletics shall attend NCAA Regional Rules Seminars in either 2021 or 2022. (Self-imposed.)
5. Following the receipt of the final compliance report and prior to the conclusion of probation, the institution's president shall provide a letter to the COI affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

As required by NCAA legislation for any institution involved in a major infractions case, Elmira shall be subject to the provisions of Bylaw 19.5.2.3, concerning repeat violators, for a five-year period beginning on the effective date of the penalties in this case. Further, the COI advises Elmira 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 Elmira contrary to the terms of any of the penalties or any additional violations will cause the COI to consider extending Elmira's probationary period, prescribing more severe penalties, or may result in additional allegations and violations.

#### NCAA COMMITTEE ON INFRACTIONS

Sarah Feyerherm, chair  
Richard Lapidus  
Donna Ledwin  
Jody Mooradian  
Angela Givens Williams

**APPENDIX ONE**

**CORRECTIVE ACTIONS AS IDENTIFIED IN THE MARCH 25, 2021,  
SUMMARY DISPOSITION REPORT (SDR)**

1. The college terminated the former vice president of enrollment management's employment at the College in May 2019.
2. The \$2,500 award provided to all first time, full time students has been eliminated and a similar transfer award has been reduced.
3. The institution implemented specific GPA criteria for all merit awards and revised the College's financial aid appeal process to require review by a financial aid committee.
4. The institution hired an independent third-party to evaluate enrollment strategies and evaluated financial aid awards.
5. The director of athletics now reports directly to the College president.
6. The college has increased regular meetings between the director of financial aid, vice president of enrollment management, vice president of finance and administration, associate vice president of athletics and the dean of admissions to discuss financial aid policy and procedures relating to NCAA rules.
7. The associate vice president of athletics, the senior woman administrator and the senior associate director for compliance meet biweekly with head coaches to discuss NCAA rules compliance issues, including Division III financial aid legislation.
8. The College will conduct an independent assessment of institutional financial assistance provided to student-athletes in comparison to all students during the Division III Financial Aid Reporting process.

**APPENDIX TWO**  
**Bylaw Citations**

**Division III 2018-19 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.

**15.4.1 Consistent Financial Aid Package.** The composition of the financial aid package offered to a student-athlete shall be consistent with the established policy of the institution's financial aid office, regular institutional agency, office or committee for all students and shall meet all of the following criteria:

(c) The financial aid package for a particular student-athlete, group of student-athletes or team of student-athletes cannot be clearly distinguishable from the general pattern of all financial aid for all recipients at the institution.

**Division III 2019-20 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 ensure 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.

**15.4.1 Consistent Financial Aid Package.** The composition of the financial aid package offered to a student-athlete shall be consistent with the established policy of the institution's financial aid office, regular institutional agency, office or committee for all students and shall meet all of the following criteria:

(c) The financial aid package for a particular student-athlete, group of student-athletes or team of student-athletes cannot be clearly distinguishable from the general pattern of all financial aid for all recipients at the institution.

**Division III 2020-21 Manual**

**10.1 Unethical Conduct.** Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member, which includes any individual who performs work for the institution or the athletics department even if he or she does not receive compensation for such work, may include, but is not limited to, the following:

(a) Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the individual's institution.

**19.01.3 Responsibility to Cooperate.** All representatives of member institutions shall cooperate fully with the NCAA enforcement staff, Committee on Infractions, Infractions Appeals Committee and Management Council to further the objectives of the Association and its infractions program. The enforcement policies and procedures are an essential part of the intercollegiate athletics program of each member institution and require full and complete disclosure by all institutional representatives of any relevant information requested by the NCAA enforcement staff, Committee on Infractions or Infractions Appeals Committee during the course of an inquiry.