

[August 30, 2021, Erratum: Pages 37 and 43 of this infractions decision contained typographical errors related to (1) the number of Level III violations self-reported by Baylor University during the five years prior to the issuance of the Notice of Allegations and (2) the sport program referenced in Penalty No. 7-(e). The decision has been amended to correct these non-substantive typographical errors.]



BAYLOR UNIVERSITY
PUBLIC INFRACTIONS DECISION
August 11, 2021

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 decides infractions cases involving member institutions and their staffs.¹ This case involved Level II and III impermissible benefits and drug testing violations in Baylor University's football program and Level II violations involving the institution's student host program.² But the allegations at the heart of this case centered on conduct never before presented to the COI—namely, that Baylor shielded football student-athletes from the institution's disciplinary process and failed to report allegations of abhorrent misconduct by football student-athletes, including instances of sexual and interpersonal violence. Baylor admitted to moral and ethical failings in its handling of sexual violence on campus but argued that those failings, however egregious, did not constitute violations of NCAA legislation. Ultimately, and with tremendous reluctance, this panel agrees.

Because the conduct at the heart of this case is like no other conduct ever presented to the COI, this decision reads like no other decision released by this peer-review membership body. Many may find the panel's decision insufficient. But to arrive at a different outcome would require the COI to ignore the rules the Association's membership has adopted—rules under which the COI is required to adjudicate. Such an outcome would be antithetical to the integrity of the infractions process.

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 12 Conference, Baylor has a total enrollment of approximately 19,000 students. It sponsors eight men's and 10 women's sports. This is the institution's eighth Level I, Level II or major infractions case. Baylor had previous cases in 2016 (football), 2012 (men's and women's basketball), 2005 (men's basketball and football), 2000 (men's tennis), 1995 (men's basketball), 1986 (men's basketball) and 1956 (unspecified).

Make no mistake, the conduct that occurred on Baylor's campus between 2010 and 2015 was unacceptable. Young people were hurt. They were hurt because the campus leaders they trusted to provide a safe campus community failed. At times, these failures heavily intersected with Baylor's football program and Baylor football student-athletes. At other times, they did not. And that is perhaps the most disturbing aspect of this case—that a campus-wide culture of sexual violence went unaddressed due to ignorance and leadership failings across campus. Baylor itself acknowledged moral and ethical failings. Even Baylor's former president described the institution's handling of campus sexual violence during this time as a "colossal operational failure."

In every infractions case, the COI must apply the legislation that existed at the time of the alleged violations. NCAA member institutions act collectively to adopt legislation and direct the enforcement of specific legislation through the membership's infractions process. The membership has not adopted legislation regulating how member institutions should respond to sexual and interpersonal violence involving student-athletes. In defining the NCAA's enforcement powers, member institutions have retained certain authority and responsibility for themselves (and government and law enforcement entities) to investigate and address allegations of sexual violence on campus. And when an institution fails to meet this responsibility, as Baylor did, it is accountable to multiple entities through multiple processes. Indeed, Baylor's response to sexual violence has been investigated by the United States Department of Education's Office of Civil Rights, the Texas Rangers and Baylor's accrediting body. The Big 12 Conference also conducted a review and levied significant financial penalties against the institution for reputational damage to the conference. Additionally, Baylor's response to sexual violence and Title IX issues has been the subject of multiple civil lawsuits, some of which are ongoing. In the absence of NCAA legislation, the COI does not have a role to play alongside these entities in investigating and sanctioning institutional responses to sexual and interpersonal violence.

Currently, the NCAA provides support and resources for member institutions in carrying out their responsibility to address campus sexual violence. If the NCAA membership decides it wants to *regulate* how institutions should respond to sexual and interpersonal violence involving student-athletes, it can enact specific legislation that would govern future infractions cases. But this expansion of the NCAA's authority would be a critical decision to be made by the *collective* membership of the Association, not by the seven individuals on this panel. Along those lines, if the membership finds the results of this case unsatisfactory, it can consider whether other options may be available under the NCAA constitution and bylaws for the collective membership to address the conduct that occurred at Baylor. But the conduct is not redressable by the application of existing legislation that is enforced through the infractions process.

This is not to say that Baylor has committed no NCAA violations. The panel does conclude that Baylor provided impermissible benefits to a football student-athlete when athletics administrators knew but did not report that he cheated on an exam and thereby failed to meet the conditions of his reinstatement. The panel also concludes that for four years, the institution operated a predominantly female student-host program that was not organized in accordance with NCAA legislation. The benefits and student-host violations are Level II. The panel also concludes that Level III benefits and drug-testing violations occurred.

In addition to these institutional violations, the panel concludes that the former assistant director of football operations engaged in violations following his separation from Baylor. Specifically, he failed to meet his obligation to cooperate and violated ethical conduct legislation when he repeatedly refused to participate in an interview with the enforcement staff. The assistant operations director's violations are Level I.

The panel cannot conclude, however, that the football program's failure to report incidents of alleged sexual and interpersonal violence constituted impermissible benefits to student-athletes when there was a campus-wide culture of non-reporting. Nor can the panel conclude that the institution gave football student-athletes special treatment within the student-conduct process when the record showed that non-athlete students were treated the same. And because the panel does not conclude that these underlying violations occurred, the panel does not conclude that the former head football coach failed to promote an atmosphere of compliance or that Baylor lacked institutional control.

The panel classifies this case as Level II-Standard for Baylor. Utilizing the NCAA membership's current penalty guidelines and bylaws authorizing additional penalties, the panel adopts and prescribes the following principal penalties: four years of probation; a \$5,000 fine; recruiting restrictions; vacation of records for ineligible competition; and a five-year show-cause order for the assistant operations director.

II. CASE HISTORY

Due to several unique factors, this case has had a longer procedural history than most. Among others, these factors include: (1) the intersection of this case with outside processes and the need to ensure that all pertinent information stemming from those processes was included in the case record; (2) the potential intersection of this case with a new NCAA adjudicative process; and (3) delays caused by the COVID-19 pandemic.

The case began in May 2016 when Baylor representatives traveled to the NCAA national office to discuss potential violations uncovered as part of an independent Title IX review commissioned by the institution. Thereafter, Baylor and the enforcement staff began a cooperative investigation. On September 6, 2018, the enforcement staff issued a notice of allegations (NOA) to Baylor and the institution's former head football coach (head coach) and a separate NOA to the former assistant director of football operations (assistant operations director) related to his conduct following his separation from the institution.³

³ Although the NOA to the institution and head coach referenced the names of 11 other individuals who had some connection to the alleged violations, they were not named as "involved individuals" pursuant to Bylaw 19.02.1 and therefore are not parties to this case.

Over the year that followed, multiple procedural requests—both from the parties and the then-chair of the COI—were submitted in this case. Acting under his legislated authority to address pre-hearing matters, *see* Bylaw 19.3.7-(j), the chair asked the parties to remain mindful of ongoing outside legal and administrative proceedings that intersected the facts of this case and to supplement the record with any pertinent information stemming from those proceedings.⁴ Baylor and the head coach submitted their responses to the NOA in January 2019, and the enforcement staff submitted its reply in April 2019. Following these submissions, the parties continued to supplement the record and provide updates on the status of outside proceedings. At times, the parties provided this information in response to the chair's requests and at other times on their own initiative. The head coach, in particular, introduced a substantial amount of new information into the record.

On August 1, 2019, as the procedural submissions continued, a new NCAA adjudicative process went into effect: the Independent Accountability Resolution Process. The COI chair determined that this case appeared to meet several of the legislated factors that support referral to the independent process. *See* Bylaw 19.11.3.1.1. Thus, on October 1, 2019, pursuant to Bylaw 19.11.3.2.1, the chair submitted a petition to the Infractions Referral Committee requesting referral of this case to the independent process. The enforcement staff, Baylor, the head coach and the assistant operations director each submitted responses to the referral request. On December 17, 2019, the Infractions Referral Committee denied the chair's request.

In January 2020, the COI assigned a panel to hear the case and scheduled a two-day in-person hearing for April 23 and 24, 2020. However, on March 17, 2020, the current chair and vice chair of the COI postponed all in-person hearings due to circumstances related to the COVID-19 pandemic. In August 2020, the COI chair and vice chair notified parties to all pending cases that although in-person hearings would remain suspended, the COI would move forward with scheduling videoconference hearings for all pending cases.

Baylor objected to having its case heard via videoconference but identified no unique circumstances that necessitated an in-person hearing. Accordingly, the COI proceeded to schedule the videoconference hearing for October 7 and 8, 2020. However, after the head coach's counsel identified a conflict with that date, the chief hearing officer held a scheduling conference with the parties and rescheduled the hearing for December 14 and 15, 2020. On December 7, 2020, the assistant operations director informed the chief hearing officer that he would not participate in the hearing. The panel held the hearing over two days on December 14 and 15 with all other parties participating remotely via video. In addition to the parties, six other current and former Baylor staff members—including the institution's former president and former director of athletics—and two former Baylor Board of Regents members participated in the hearing at the panel's request.

⁴ The chair's requests were consistent with the membership's newly adopted importation bylaw, which went into effect in August 2018. Specifically, Bylaw 19.7.8.3.1 permits the COI to accept as true any facts established by a decision or judgment of a court, agency, accrediting body or other administrative tribunal—so long as the decision or judgment is not under appeal—or by a commission or independent review commissioned by an institution. The bylaw also states that evidence submitted and positions taken in such matters may be considered in the infractions process.

III. FINDINGS OF FACT

Baylor's Failed Handling of Sexual and Interpersonal Violence on Campus

The early- to mid-2010s were a turbulent time for Baylor. During this period, Baylor's football program began to come under public and media scrutiny as allegations emerged of football student-athletes sexually and physically assaulting female students on campus. In some instances, these allegations led to criminal charges and convictions. In the backdrop of these events, the U.S. Department of Education began issuing guidance to colleges and universities to assist them in better investigating and adjudicating cases of sexual violence on campus—first, with the 2011 "Dear Colleague" letter, then with a Q&A document in 2014. It was within this context that Baylor began to take a closer look at its handling of sexual and interpersonal violence on campus.

In 2014, Baylor retained the firm Margolis Healy & Associates, LLC to conduct a review of Baylor's Title IX and Clery Act compliance program. In a report issued in September 2014, Margolis Healy identified several problems with Baylor's Title IX compliance efforts and noted a particular concern with the lack of education and training provided to employees. The report stated that Baylor had not "purposefully identified 'responsible employees' or introduced basic Title IX awareness programming for them" and "[d]id not have a plan for providing training to all faculty and staff regarding their reporting obligations." Margolis Healy also noted that athletics department staff members they spoke with "had received no training regarding Title IX or VAWA [Violence Against Women Act] requirements, or their responsibilities if a student-athlete or other member of the community were to report sexual harassment/violence or domestic violence, dating violence or stalking to them."

The same month Margolis Healy released its report, Baylor launched a search to hire its first full-time Title IX coordinator and conducted its first Title IX training for the athletics staff. Prior to this, Baylor had no Title IX office, no Title IX coordinator, no Title IX education and no policies or procedures on reporting sexual and interpersonal violence. Title IX matters were handled through the Office of Judicial Affairs. In November 2014, Baylor completed its hiring search and welcomed a full-time Title IX coordinator to campus.

Immediately upon arriving at Baylor, the Title IX coordinator began training faculty and staff regarding Title IX responsibilities and reporting requirements. Previously, Title IX training was not provided at Baylor unless it was specifically requested. For example, in January 2014, advisors in the School of Education sought assistance because they had questions regarding students who had been sexually assaulted, but they had no information about their reporting obligations. At the infractions hearing, the Title IX coordinator stated her belief that faculty and staff both within and outside the athletics department did not report information that they should have. She also noted that the number of Title IX reports on campus increased dramatically after she assumed her role and began providing training. In the five years before she arrived on campus, she estimated that Judicial Affairs received approximately 25 reports. Over the nearly two years she served as Title IX coordinator, she stated that she received approximately 416 reports. In 2015, the institution adopted its first-ever written Title IX policy, which included mandatory reporting requirements.

August 2015 brought a pivotal moment for the institution when a Texas jury found a Baylor football student-athlete guilty of sexually assaulting a female student. The same day the guilty verdict was announced, *Texas Monthly* published an article questioning Baylor's handling of the matter and tying it to an earlier sexual assault case involving another football student-athlete. The article suggested the existence of cultural issues and a pattern of obfuscation within Baylor's football program.

At this point, the institution's then president asked the then faculty athletics representative (FAR) to lead an internal inquiry into the institution's handling of the alleged assault involving the recently convicted football student-athlete. As his inquiry progressed, the FAR realized that the institution's Title IX issues went far beyond this case, and he recommended to the president that Baylor commence an independent investigation.

Thus, in August 2015, Baylor engaged the law firm Pepper Hamilton, LLP. The firm's charge was to conduct an independent external review of Baylor's response to Title IX and related compliance issues through the lens of specific cases. The firm reported to the Baylor Board of Regents. Pepper Hamilton did not review every allegation of assault at Baylor; rather, it identified and reviewed a subset of test cases. In April 2016, Pepper Hamilton informed the Board that it had enough information to provide findings of fact and make recommendations.

In May 2016, Pepper Hamilton met with the Board of Regents in person—first a subset of the Board and then the full Board—and delivered a detailed verbal report of its findings and recommendations. Regents who spoke out after these meetings stated that they were horrified by what they heard. According to Baylor, Pepper Hamilton did not provide a written report of its findings for the Board and has never prepared such a report.

Following the meetings with Pepper Hamilton, the Board of Regents issued its own written Findings of Fact and Recommendations based on the firm's verbal report. According to the Findings of Fact, Pepper Hamilton identified "institutional failures at every level of Baylor's administration" as well as specific failings within the football program and athletics department leadership. Pepper Hamilton also provided Baylor with a written document identifying 105 recommendations, touching on all aspects of campus, to help Baylor prevent, report and manage future incidents of sexual and interpersonal violence.

According to the Board's Findings of Fact, Pepper Hamilton found that Baylor's efforts to implement Title IX were "slow, ad hoc, and hindered by a lack of institutional support and engagement by senior leadership" and that "the University as a whole failed to prioritize Title IX implementation." The Board's Findings stated that Pepper Hamilton conducted a high-level audit of all known reports of sexual harassment and sexual assault reported through Baylor's student conduct process from the 2012-13 through 2014-15 academic years. According to the Board's Findings, the firm found that the overwhelming majority of cases did not move forward to an adjudicative hearing, and only an extremely limited number resulted in a finding of responsibility or a significant sanction. Moreover, many complainants did not move forward with the Title IX process, and Pepper Hamilton found that Baylor failed to properly weigh a complainant's request

not to move forward against the institution's Title IX obligation to investigate. The Board's Findings stated that Pepper Hamilton also found that a lack of clearly identified reporting mechanisms, combined with insufficient training and education, may have led to "significant underreporting by students and missed opportunities by administrators to respond appropriately to reports." At the infractions hearing, the institution's former president described the institutional deficiencies identified by Pepper Hamilton's review as "a colossal operational failure."

Within the football program, the Board's Findings stated that "choices made by football staff and athletics leadership, in some instances, posed a risk to campus safety and the integrity of the University." More specifically, the Board's Findings referenced certain instances where "athletics and football personnel affirmatively chose not to report sexual violence and dating violence to an appropriate administrator outside of athletics" and where "football coaches and staff took improper steps in response to disclosures of sexual assault or dating violence that precluded the University from fulfilling its legal obligations." According to the Board's Findings, Pepper Hamilton concluded that because reports were not shared outside of athletics, Baylor "missed critical opportunities to impose appropriate disciplinary action that would have removed offenders from campus and possibly precluded future acts of sexual violence against Baylor students." Additionally, according to the Board's Findings, Pepper Hamilton noted that the football program maintained an "internal system of discipline" that resulted in a "lack of parity vis-à-vis the broader student population . . . [and] reinforces the perception that rules applicable to other students are not applicable to football players, improperly insulates football players from appropriate disciplinary consequences, and puts the program and the institution at risk of future misconduct."

On May 26, 2016, based on the Pepper Hamilton review and subsequent Findings of Fact, Baylor's Board of Regents removed the president, suspended the director of athletics and suspended the head coach with the intent to terminate. Ultimately, both the president and the director of athletics resigned, and Baylor terminated the head coach's employment.

Additional fallout from the Pepper Hamilton investigation and its revelations followed. The institution's response to Title IX issues has been investigated by the U.S. Department of Education's Office of Civil Rights, Baylor's accrediting body (the Southern Association of Colleges and Schools Commission on Colleges) and the Texas Rangers. In addition, Baylor underwent two independent reviews—one by the law firm Cozen O'Connor and the other by the Big 12 Conference—to verify that the institution implemented each of Pepper Hamilton's 105 recommendations. Acting under its authority to sanction conference members, the Big 12 also levied significant financial penalties against Baylor. Specifically, the Big 12 imposed a \$2 million fine for reputational damage to the conference. It also withheld conference distributions of \$14,255,000 and required Baylor to reimburse the conference for \$1,651,000 in legal fees associated with its verification review.⁵ Finally, Baylor has been a party to multiple lawsuits, some of which are ongoing.

⁵ The financial sanctions imposed by the Big 12 Conference were not based on any determination by the conference that Baylor violated NCAA legislation. Rather, they were based on reputational damage to the conference and the Title IX and related institutional compliance issues identified by the Pepper Hamilton review.

In October 2016, the Title IX coordinator resigned from her job. At the infractions hearing, she explained that she decided to leave because she felt like she did not have the authority to do her job properly. She also stated that her decision was driven by the general chaos at Baylor following the Pepper Hamilton review and a "lack of overall institutional grassroots willingness to be compliant, but go beyond compliance . . . and just [] do the right thing in terms of culture, which is difficult."

Specific Instances of Non-Reporting Within the Football Program

Baylor's admitted failures related to Title IX education and implementation created an environment where faculty and staff did not know and/or understand their obligations to report allegations of sexual and interpersonal violence. Within this context, between 2012 and 2015, three allegations of actual or threatened violence by football student-athletes went unreported by members of the football staff.

Alleged Sexual Assault of a Women's Volleyball Student-Athlete

In spring 2012, the mother of a women's volleyball student-athlete met with the then associate athletics director for athletics performance (associate AD) and informed him that her daughter had been sexually assaulted by multiple football student-athletes at a party.⁶ In an interview with the enforcement staff, the associate AD stated that he repeatedly told the mother she should report the incident to the police. According to the associate AD, the young woman's mother was insistent that she did not want to go to the police.

After leaving the meeting, the associate AD met with the head coach. According to the associate AD, he informed the head coach that he had a very serious conversation with the mother of a volleyball student-athlete who had been "taken advantage of" by members of the football team. He also told the head coach that he should expect the police to come to campus. The head coach asked for more details, but the associate AD replied that he could not say anything further because he was not sure how valid the information was. The associate AD told the enforcement staff that he made a similar report to the then deputy director of athletics (deputy AD).

The head coach recalled the conversation differently. During his interview with the enforcement staff, he reported that the associate AD told him the volleyball student-athlete had sex with two football student-athletes and was embarrassed about it. He recalled that the young woman's mother came to the associate AD because she was concerned that the football student-athletes would talk about her daughter when she went into the weight room, and she wanted the associate AD to keep an eye on them. The head coach remembered the associate AD telling him to expect the police to come, but he did not recall the associate AD saying it was a serious incident. According to the head coach, the two football student-athletes, who the associate AD identified as being involved

⁶ The associate AD worked with all sport programs at Baylor but worked most closely with the football program. According to the associate AD, he was involved with the football program's training in a more hands-on way and worked closely with the football student-athletes.

in the incident, had already left the program.⁷ He did not do anything further with the information, and neither did the associate AD or the deputy AD.

In the spring of 2013, the volleyball student-athlete decided to transfer to another institution. Prior to leaving Baylor, she and her parents informed the then head women's volleyball coach (head volleyball coach) that she had been sexually assaulted by football student-athletes the previous year. The head volleyball coach reported this to the director of athletics and the head football coach. The head football coach advised the head volleyball coach to tell the young woman she should go to the police. According to the head volleyball coach, however, the young woman and her parents were adamant that they did not want to report the matter to the police. At the infractions hearing, the director of athletics stated that he also advised the head volleyball coach to report the matter to Judicial Affairs, which was the office responsible for Title IX enforcement at the time. The head volleyball coach did, in fact, go to Judicial Affairs, though he did not indicate during his interview whether it was the director of athletics who sent him there.

According to the head volleyball coach, Judicial Affairs told him there was not much that could be done if the young woman was unwilling to report the alleged assault. The associate AD expressed a similar understanding. He stated during his interview that he did not think he could go to the police or report conduct to Judicial Affairs on behalf of someone else. He stated that now, with proper training, he would respond differently and report the conduct.

Student-Athlete 1's Alleged Physical Assault of His Ex-Girlfriend

On January 10, 2013, the ex-girlfriend of a football student-athlete (student-athlete 1) filed a report with the City of Waco Police Department alleging that the football student-athlete physically assaulted her. The police report indicated that the ex-girlfriend, who was then a student at Baylor, did not wish to press charges. During an interview with the enforcement staff, the young woman explained that she feared for her physical safety if student-athlete 1 got in trouble. The police officer who took the report suggested she inform someone on the football coaching staff of what happened. Thus, the day after the alleged assault, she met with the then director of football operations (operations director) and two other football coaches, told them that student-athlete 1 physically assaulted her and provided them with a copy of the police report.⁸ According to the young woman, the football staff members told her they would take care of the matter and assured her that student-athlete 1 would leave her alone. Following the meeting, she emailed the operations director and requested that he send a copy of the police report to the football student-athlete's aunt and uncle along with a letter she wrote to them. The operations director told her that a then assistant football coach (assistant coach 1) would be in touch with the student-athlete's uncle.

When the enforcement staff interviewed the operations director, he stated that he did not remember meeting with the young woman and did not recall reporting any information about the alleged

⁷ Despite the head coach's assertions, only one of the student-athletes had left the program. The other student-athlete, who the associate AD identified to the head coach, went on to compete in fall 2012.

⁸ During her interview with the enforcement staff, the student could not recall the names of the two other coaches.

assault to the head coach or other members of the football or athletics staff. He maintained that he did not remember meeting the young woman even after the enforcement staff showed him a copy of his email exchange with her. He also stated that the first time he could recall reading the police report was on a sports blog. At the infractions hearing, Baylor's counsel, speaking on behalf of the institution, stated that the operations director's failure to recall the meeting was not credible. For his part, assistant coach 1 stated that he never received the police report or the letter and that he had no knowledge of the situation.

In his interview and at the infractions hearing, the head coach stated that he did not have a clear recollection of being told about the alleged assault at the time it happened. He thought he remembered one of his assistant coaches—he was not sure which one—telling him in 2013 that student-athlete 1 had an argument with his girlfriend and she was "unnerved" about the incident. But he did not recall being told that the police were called.

The young woman transferred to another school in spring 2014 but returned to Baylor after one semester. In January 2015, she and her mother met with an accommodation specialist in Baylor's Office of Access and Learning Accommodation because she was having a difficult time in school. In her conversation with the accommodation specialist, the young woman disclosed that she had been the victim of an assault. During an interview with the enforcement staff, the accommodation specialist stated that it was a very emotional conversation and he had "never seen anybody that distraught." Immediately following the meeting, the accommodation specialist contacted the Title IX office, Judicial Affairs, Student Life and the Office of General Counsel. According to the young woman, the Title IX coordinator contacted her right away and opened an inquiry into the matter. At the infractions hearing, the Title IX coordinator stated that she ultimately closed the inquiry because the young woman did not want to pursue it and was concerned for her own safety. The young woman left Baylor shortly after meeting with the Title IX coordinator.

As a result of the Title IX inquiry, other individuals at the institution became aware of the 2013 alleged assault. In 2015, a meeting was held with the then chair of the Board of Regents, the institution's president, general counsel, vice president for student life, chief of police, associate vice president for public safety and director of athletics to discuss the matter. Because the alleged assault had occurred two years prior, the information was "stale" and the young woman was no longer enrolled at Baylor, the group determined that it would be handled as an athletic department matter and directed the director of athletics to determine an appropriate punishment for student-athlete 1. The director of athletics determined that the student-athlete should be withheld from one game for a violation of team expectations.⁹ Following the meeting, the director of athletics informed the head coach of the punishment and directed him to withhold the student-athlete. According to the head coach, this is the first time he clearly remembers being made aware of the alleged assault.

⁹ At the infractions hearing, recollections varied as to the reason for this punishment. The director of athletics and president recalled that it stemmed from the alleged assault, whereas the general counsel, vice president for student life and Board of Regents chair stated that it stemmed primarily from a more recent incident where student-athlete 1 behaved disrespectfully during a Title IX training session.

Student-Athlete 2's Alleged Gun Threat

Approximately one month after student-athlete 1's alleged assault of his ex-girlfriend, the associate AD learned that another football student-athlete (student-athlete 2) had allegedly threatened violence against a female student, who was a Baylor equestrian student-athlete. In a text message dated February 11, 2013, the associate AD notified the head coach that a female student-athlete told him student-athlete 2 was "flashing hardware" the previous weekend. When the head coach asked whether the young woman would be reporting the incident to the authorities, the associate AD responded, "She's acting traumatized . . . Trying to talk her calm now . . . Doesn't seem to want to report though." The head coach then asked whether the associate AD planned to talk to student-athlete 2. The associate AD stated that he already had and that he "[s]queezed him pretty good."

During an interview with the enforcement staff, the associate AD explained what he meant by "flashing hardware." He stated, "[I]f [a gun's] in your hip, you flash it, if it's, you know, in your hand, you turn it; it's just, you know, street—when you flash hardware, you know, that's the last threat before you pull the trigger." According to the associate AD, the equestrian student-athlete approached him to report that student-athlete 2 flashed a gun at her in a parking lot. He was not sure what prompted this but thought it may have been a dispute over a parking space. The associate AD said that he immediately confronted student-athlete 2, who denied threatening anyone. He said that in addition to reporting the incident to the head coach, he also informed student-athlete 2's position coach.

The head coach stated during his interview that he understood "flashing hardware" to mean that the female student-athlete might have seen a gun or knife in student-athlete 2's apartment. He claimed that he did not know or understand that student-athlete 2 had threatened the young woman. The head coach stated that he did not know whether the associate AD punished student-athlete 2 or whether the incident was reported to Judicial Affairs. He did not do anything further with the information after receiving the associate AD's report. Both the head coach and the associate AD recalled that student-athlete 2 was dismissed from the team and his scholarship was revoked at the end of the spring 2013 semester for reasons unrelated to this incident.

The Football Program and the Student Conduct Process

In addition to identifying deficiencies in Baylor's handling of sexual and interpersonal violence on campus, the Pepper Hamilton review also identified more general issues within the institution's student conduct process. The allegations in this case involved four specific instances where football student-athletes within the student conduct process received some assistance or intervention from football and athletics staff or other institutional officials.

Payment of Parking Fines and Assistance with Summary Paper for Student-Athlete 3

In January 2011, a football student-athlete (student-athlete 3) had two registration holds on his student account that prevented him from registering for spring semester classes. One of the holds was due to unpaid institutional parking tickets and the other was caused by his failure to submit a written summary of community service hours he was required to perform in connection with a

student code of conduct violation. On January 5, while student-athlete 3 was out of the state, both issues were resolved by individuals associated with the football program.

With respect to the parking tickets, a then student assistant with the football program (student assistant) made a cash payment of \$310.25 on student-athlete 3's account. In an interview with the enforcement staff, the student assistant reported that a then assistant football coach (assistant coach 2) asked him to make the payment on student-athlete 3's behalf in order to release the hold. He used his own money and student-athlete 3 repaid him when he returned to campus.

On the same day the parking fines were paid, student-athlete 3's overdue community service summary was submitted to the Office of Judicial Affairs via email. The associate dean for judicial affairs (associate dean) suspected that student-athlete 3 did not write the summary himself. The associate dean viewed the document's properties, which showed that it was authored by assistant coach 2. Baylor's IT staff subsequently confirmed that student-athlete 3's email account had been accessed from the assistant coach's computer. Consistent with her usual practice in situations like this, the associate dean required student-athlete 3 to come to her office and rewrite the summary in her presence. When she discussed the matter with him, student-athlete 3 told her that he had dictated the original summary to the student assistant, who typed it up for him.

The associate dean notified other institutional staff—including the then senior associate athletics director for compliance (former compliance director)—of the issues surrounding the payment of the parking fines and completion of the community service summary. The former compliance director investigated the payment of the parking fines but did not look into the issue with the community service summary. During her interview with the enforcement staff, she did not specify why she did not probe that issue. With respect to the parking fines, she stated that she believed at the time of her investigation that the student assistant's payment could be a violation of NCAA extra benefits legislation. However, when she verbally briefed the director of athletics about her findings, he told her "it would be taken care of," and she did not pursue it any further. She told the enforcement staff that her impression at the time was that he did not want her to dig any further. The director of athletics strongly disputed that assertion during his interview and at the infractions hearing. He stated that he could not recall how the issue was ultimately resolved, but he maintained that it would have been within the former compliance director's authority to report any violations to the NCAA, and he would not have interfered with that. The conduct was never reported to the NCAA.

The payment of the parking fines and submission of the community service summary allowed student-athlete 3 to register for spring semester classes and maintain his eligibility. Ultimately, due to other student conduct issues, student-athlete 3 never again competed for Baylor following this incident.

Student-Athlete 3's Appeal

The second intersection of the football program with the student conduct process involved the same student-athlete. In February 2011, the associate dean suspended student-athlete 3 after he tested positive for marijuana use. The student-athlete appealed to the vice president for student

life, who upheld the suspension. Student-athlete 3 then submitted an appeal to the institution's president. Members of the football and athletics department staffs were involved in the appeal process in two ways: (1) by assisting student-athlete 3 in drafting his appeal statement and (2) by appearing with the student-athlete during his appeal meeting with the president. In June 2011, the president granted the appeal and overturned the suspension.

First, prior to the student-athlete's appearance before the president, the senior associate athletics director for internal affairs (senior associate AD) sent an email to the operations director, the head coach, the director of athletics and the deputy AD identifying themes for the student-athlete to discuss during his meeting with the president. He also sent a one-paragraph appeal statement to the operations director and head coach with a suggestion that student-athlete 3 cut and paste the statement into an email to the president. During an interview with the enforcement staff, the senior associate AD reported that student-athlete 3 initially put together the appeal statement, and he had merely helped edit the statement to make it more coherent.

Second, when it came time for student-athlete 3 to appear before the president for his appeal, the president also summoned the head coach and the director of athletics to his office. The director of athletics recalled that it was a hastily arranged meeting, and he did not know why he was being called to the president's office. He did not recall saying anything during the meeting; rather, he remembered the student-athlete speaking on his own behalf and answering the president's questions. The head coach stated that he had little independent recollection of the meeting and was not sure who had organized it.

At the infractions hearing, the president stated that he took a generous approach to student appeals. Data compiled by the institution showed that from 2010 through 2016, the president heard 48 appeals.¹⁰ Of those, seven involved student-athletes. The president explained at the hearing that he believed in a "restorative" model and was not interested in kicking students out of school. Thus, he had an open-door policy, and tried to gather as much information as possible when considering an appeal. He said that while he did not specifically recall student-athlete 3's appeal meeting, it made sense that he would have invited the head coach and the director of athletics in order to gather more facts. He also stated during his interview that any faculty or staff member at Baylor could communicate with him about a student.

Baylor was unable to identify other instances where the president invited additional individuals—*e.g.*, professors, department chairs, or advisors—to attend a student's appeal meeting. The president thought it might have happened but could not recall a specific example. However, the vice president for student life, who heard all appeals from the Office of Judicial Affairs, stated that it was his practice to permit students to have an individual with them when he heard their appeals.

¹⁰ Baylor's student conduct process gave students two opportunities to appeal punishments prescribed by Judicial Affairs. The vice president for student life reviewed all appeals in the first instance. If students were dissatisfied with his ruling, they had the opportunity to appeal to the president. The president heard all appeals that were submitted to him.

Five days after the president overturned student-athlete 3's suspension, the student-athlete was expelled due to another positive drug test. Student-athlete 3 appealed once again, but this time the president affirmed the expulsion.

Student-Athlete 4's Late Appeal and Subsequent Cheating

A third intersection with the student conduct process occurred in spring 2011 and once again involved an appeal to the president. Specifically, a freshman football student-athlete (student-athlete 4) submitted an untimely appeal. The president heard the appeal and granted relief subject to certain conditions. The student-athlete subsequently violated one of those conditions when he cheated on an exam. Two athletics administrators knew about the cheating but did not report it to the president.

As it relates to the timeliness issue, student-athlete 4 submitted his appeal to the president nearly four months after it was due. The provost had suspended the student-athlete on March 23, 2011, due to a plagiarism issue.¹¹ Pursuant to the honor code, he had five days to appeal this decision to the president. He did not submit an appeal within that time. In mid-July 2011, the head coach notified the president via email that student-athlete 4 had requested a meeting with the president and was available to meet at his convenience. Student-athlete 4 submitted his appeal approximately one week later, on July 18, 2011. At the infractions hearing, the head coach stated that the then associate athletic director for student services (associate AD for student services) asked him to email the president, and the head coach did not know at the time that student-athlete 4 was nearly four months late in submitting his appeal.

The president heard the untimely appeal and he overturned student-athlete 4's suspension on August 22, 2011. In granting relief, however, the president required that the student-athlete be subject to an academic improvement plan drafted by the associate AD for student services. The athletics department's Student-Athlete Services staff was responsible for overseeing student-athlete 4's completion of the academic improvement plan. The plan required 100 percent academic honesty for student-athlete 4 going forward.

In interviews with the enforcement staff, Baylor staff members from Judicial Affairs and the Office of Academic Integrity reported that no appeal had ever been heard so long after the deadline had passed. At the infractions hearing, the associate dean stated that sometimes appeals were accepted a few days past the deadline, but it was unusual to see one accepted months after the deadline. The institution also acknowledged the unusual nature of the arrangement whereby the athletics department was put in charge of monitoring the student-athlete's academic improvement plan.

The president agreed that he had never heard an appeal this late, but he also noted that no other appeal had ever been submitted to him this late. He characterized it as a "class of one." He stated, however, that he would have treated an appeal from a non-athlete student the same and reiterated that his decision in this matter was consistent with his redemptive and restorative approach to

¹¹ The plagiarism issue was not related to any underlying allegations in this case. Therefore, the panel did not review whether the conduct violated NCAA academic misconduct legislation.

student conduct issues. Although the institution did not identify any similar situations involving untimely appeals by non-athlete students, it did identify seven previous appeals in which the president modified or reversed a non-athlete student's punishment. In some of these cases, as here, the president attached certain conditions to the modification or reversal.

In October 2011, an academic advisor for football (academic advisor) notified the operations director, the associate AD for student services, and other football and academic staff that a professor caught student-athlete 4 cheating on an in-class quiz. The academic advisor informed these individuals that the professor was going to exercise his discretion not to charge the student-athlete with a violation of the honor code.¹² The associate AD for student services forwarded the email to the director of athletics with the message, "Wow, what is this kid thinking?" The director of athletics responded, "Unbelievable!" Although both the associate AD for student services and the director of athletics knew the conditions the president had placed on student-athlete 4's reinstatement, they did not notify the president that the student-athlete had failed to meet those conditions.

During his interview, the president acknowledged that student-athlete 4 would have been subject to severe sanctions had he known the student-athlete failed to meet the terms of his reinstatement plan. However, due to the failure to notify the president of this issue, student-athlete 4 suffered no consequences, remained eligible to compete and played in seven more football games that season.

Board of Regents Involvement in Student-Athlete 5's Appeal

The fourth incident involving a football student-athlete in the student conduct process once again revolved around an appeal. In this instance, the appeal was decided by an administrator other than the president, and the decision was made amidst some involvement by members of the Board of Regents.

In the fall of 2013, a freshman football student-athlete (student-athlete 5) was involved in three student conduct violations within his first three months of enrollment at Baylor. The third violation involved a positive drug test for marijuana and resulted in Judicial Affairs imposing a one-year disciplinary suspension on the student-athlete on October 29, 2013. The student-athlete then appealed to the vice president for student life. On October 30, 2013, the operations director sent a text to the head coach stating, "Bottom line. He has to meet with [the vice president for student life] tomorrow morning. If [the vice president for student life] does not reinstate President will." On October 31, 2013, the vice president for student life denied student-athlete 5's appeal of his suspension. That same day, the student-athlete submitted an appeal to the president.

Around this same time, the president's then chief of staff was becoming concerned that the president was overly involved in student conduct appeals. In order to relieve some strain on the president's office, she asked the then senior vice president of operations (senior vice president) to assist with student-athlete 5's appeal. Although there was nothing in Baylor's policies that

¹² The subsequent cheating was not part of an underlying allegation. Therefore, the panel did not review whether the conduct violated NCAA academic misconduct legislation.

prevented the president from delegating the review of appeals to another individual, he viewed this as a nondelegable duty. Thus, he stated in his interview that he thought the senior vice president was acting outside his authority. He acknowledged, however, that the chief of staff was managing the presidential appeal process during this time period.

Before he reviewed the appeal, the senior vice president issued an interim decision permitting student-athlete 5 to continue to attend class, reside on campus and continue football activities while the appeal was pending. The senior vice president also forwarded a notice of the appeal to the then chair of the Board of Regents (Board chair) with a message reading in part, "You called the other night about this young man." It also said that the appeal was "[n]ot coming at a good time as we negotiated with [the head football coach]."¹³ During his interview with the enforcement staff, the senior vice president stated that he was keeping the Board chair informed as to the status of the matter but did not receive any direction from him regarding the handling of the appeal.

Prior to the final decision on the appeal, the head coach and director of athletics were in contact with a second then Board of Regents member (Board member). On December 11, 2013, the head coach sent the director of athletics a text reading, "Chief – how'd it go yesterday with judicial – we can get [the Board member] involved early if we need to." The director of athletics responded, "I gave [the Board member] the background this morning and he thinks we have a good plan for [student-athlete 5.]" The following day, the head coach texted the Board member directly, stating that he knew the director of athletics had reached out regarding student-athlete 5 and "I think we give him every opportunity to make it – as a friend of mine says . . . 'I've seen sicker dogs get well' thanks for listening."

The head coach said he engaged the Board member because the Board member "is a guy that got things done." The Board member told the enforcement staff that he was unsure how he became involved in the appeal, but doubted he advocated on student-athlete 5's behalf. He also stated that it was "extraordinarily" unusual for the head coach or director of athletics to reach out to him regarding a disciplinary issue. At the infractions hearing, the head coach said "it was not uncommon" for him to talk to the Board member, as well as other members of the Board of Regents. He stated that reaching out to the Board member was no different to him than reaching out to the director of athletics. Additionally, the vice president for student life stated that Board of Regents members called him from time to time to give feedback on appeals involving non-athlete students.

On December 23, 2013, the senior vice president issued a decision under the president's signature overturning student-athlete 5's one-year suspension. The decision required the student-athlete to complete an alcohol and drug rehabilitation program and provide certification of his completion to Judicial Affairs. The decision also required that he vacate his on-campus apartment and comply with random drug testing. The senior vice president explained that he would have made the same decision for any student, athlete or not. He also noted that this decision was made in the context of ongoing policy discussions at Baylor regarding whether the institution's drug testing policy was

¹³ Baylor was in the process of negotiating a new contract with the head coach.

unreasonably harsh, particularly as it related to student-athletes who came from difficult socioeconomic backgrounds and struggled with drug addiction. Thus, he believed that his decision was the right thing for student-athlete 5 in that it gave him a second chance and an opportunity to get treatment.

Withholding Student-Athletes from Competition After Positive Drug Tests

When Baylor students tested positive for banned substances, they were subject to sanctions levied by Judicial Affairs, as described above. Student-athletes were also subject to game suspensions pursuant to the athletics department's drug testing policy. Specifically, the policy required game suspensions after the first and second positive tests and permanent removal from the sports team following a third positive test. All drug testing was conducted by the Office of Judicial Affairs. Within the athletics department, the senior associate AD was responsible for overseeing all drug testing matters, which included communicating the results of positive drug tests to head coaches. The individual head coaches were responsible for implementing any required game suspensions pursuant to the policy.

Baylor admitted that there were three instances between November 2010 and September 2014 where the football program did not implement required game suspensions in accordance with the strict letter of the policy. First, on November 1, 2010, Judicial Affairs notified the athletics department that student-athlete 3 had tested positive for marijuana use for the first time. The senior associate AD informed the head coach, director of athletics and other athletics department staff members that the student-athlete must be suspended for one contest *beginning with the next game*. However, because the head coach had withheld the student-athlete from the last quarter of the *previous* game, the athletics director determined that he only needed to be withheld from three quarters of the next game in order to satisfy the drug testing penalty.¹⁴ In accordance with this direction, the head coach permitted the student-athlete to travel to the next game, play in the first quarter and sit out the remainder of the game.

The second instance occurred in December 2012, when the senior associate AD received a second positive test for a different football student-athlete (student-athlete 6). The athletics department policy required the student-athlete to be suspended from the next full contest. However, the athletics department staff permitted student-athlete 6 to compete in at least some portion of that contest, which was a bowl game.¹⁵

Finally, in January 2014, the senior associate AD received a first positive test for another football student-athlete (student-athlete 7). The policy at that time required the student-athlete to be

¹⁴ The previous game occurred after the head coach learned that the student-athlete had been involved in a drug-related incident but before the results of the drug test were known. In anticipation of the test results, the head coach chose to proactively withhold the student-athlete from one quarter of that game.

¹⁵ During the investigation in this case, Baylor was unable to determine how much of the game student-athlete 6 competed in because he was one of two student-athletes participating in that contest who wore the same number.

withheld from one half of the "first regular season or post-season contest immediately following the receipt of the positive test."¹⁶ Believing he had discretion to implement the suspension in *either* half of the next game—which occurred in September 2014—the head coach permitted the student-athlete to compete in the first half of the game and then withheld him from the second half. Baylor now acknowledges that a strict reading of the policy would require any suspension to occur during the first half of the next contest.

The Student Host Program

From the 2012-13 through 2015-16 academic years, Baylor utilized a predominantly female student host group, the Baylor Bruins, for football recruiting events. The group was organized and run separately from Baylor's admissions office, which was the entity responsible for hosting and providing tours to all prospective students.

The admissions office, formerly known as Campus Visits, provided tours, hosted admissions recruitment events and generally provided customer service to all prospective students and their families. The admissions office employed Baylor students to assist in this work. These paid student employees went through a rigorous application, interview and training process.

The Baylor Bruins existed separately from Campus Visits. The Bruins were formed in 2010 as a student organization within the Division of University Development. They were directly supervised by the Baylor Sports Network—an alumni network housed within the Office of Constituent Engagement. Although two admissions counselors volunteered with the Bruins for a period of time, it was not related to their responsibilities within the admissions office. The admissions counselors told the enforcement staff that the Bruins did not receive formal admissions office or Campus Visits training, did not work admissions events and did not have any formal relationship to the admissions office or Campus Visits.

The Bruins were responsible for hosting some alumni events that were unrelated to recruiting football prospects. These included, among others, a hall of fame dinner, alumni tailgate tents, the homecoming parade and university move-in day. However, the Bruins also worked many football recruiting events, including camps, official visit weekends, junior days and the gameday recruiting room.¹⁷ During these events, their duties included escorting and talking with prospects and their families. Some student-athletes reported that their interactions with members of the Bruins during these events positively impacted their decisions to attend Baylor. The football program provided the Bruins with apparel for these events and sometimes provided meals. At times, the meals were

¹⁶ The athletics department revised the drug testing policy in June 2012. That revision included lowering the penalty for a first positive test from a one-game suspension to a half-game suspension.

¹⁷ Based on this information regarding the Bruins' organization, supervision and duties, the enforcement staff offered to obtain a joint interpretation with the institution to determine whether the group was a permissible student host group under NCAA legislation. The institution declined. Thus, the enforcement staff sought a solo interpretation, and the NCAA Academic and Membership Affairs (AMA) staff determined that the Bruins were not a permissible student host group and could therefore not receive benefits, including meals.

provided in the alumni tailgate tents, and at other times they were provided during football games while the Bruins were visiting with prospects and their families. Athletics compliance monitored the group and provided them with regular NCAA rules education.

The organizing documents for the Bruins stated that the group would consist of "[w]omen who will actively support the . . . Sports Network through public relations, service and engagement." Bruins were recruited and selected by their own members. Although the Bruins began as an all-female group, the institution eventually opened the group's membership to men. However, few men applied and it remained an overwhelmingly female group. The Bruins' dress code required them to wear a black dress and heels to "elegant events" and khaki shorts, a polo shirt or white button-down blouse, and cowboy boots to sporting events. The Game Day Guidelines circulated in the Bruins handbook included the talking point "[w]e ALL have boyfriends." Applicants to the Bruins were required to provide an 8x10 photo of themselves.

In her interview and during the infractions hearing, the Title IX coordinator spoke of her inquiries into the Bruins and stated that "the underlying culture was very upsetting." She stated that a Bruin once told her that members of the group were "kind of at the disposal of football players in a very inappropriate way." At the hearing, she also informed the panel of extremely troubling allegations she received from members of the Bruins and attempted to investigate. However, she explained that she had a difficult time learning more about the Bruins. She was not able to find a roster listing the membership of the Bruins and hit roadblocks when she attempted to talk to a Baylor staff member who had been involved with the group.

In 2016, the institution transferred the Bruins from Constituent Engagement to being fully supervised by the Admissions Visitors Center.

The Assistant Operations Director's Refusal to Interview

The assistant operations director served on Baylor's football staff from 2004 through 2015. In late 2017, as the investigation in this case was underway, the enforcement staff identified the assistant operations director as an individual who may have relevant information regarding student conduct issues in the football program. Indeed, multiple individuals interviewed by the enforcement staff referred the staff to the assistant operations director for further information. Over the next several months, the staff made multiple attempts to secure an interview with the assistant operations director, but to no avail.

The first such attempt was in November 2017, when the enforcement staff spoke with the assistant operations director and his wife by telephone and discussed the staff's interest in interviewing him. In subsequent email correspondence with the assistant operations director's then-attorney, the staff explained the infractions process and requested an in-person interview. His attorney indicated that the assistant operations director would participate in an interview but stated that she needed to confirm his schedule. After hearing nothing further from the attorney, the enforcement staff followed up in December 2017 and January 2018. On January 11, 2018, the attorney notified the enforcement staff that the assistant operations director was declining to interview on the advice of

counsel. She told the staff to direct all further communications to the assistant operations director's current representative.

In February 2018, the assistant operations director's representative informed the enforcement staff that he would not participate in an interview but may be willing to respond to written questions if given access to documents via a secure website. The staff considered but declined this request, concluding that there were no extenuating circumstances that warranted deviating from the enforcement staff's usual interview practices. In March 2018, the enforcement staff sent a letter to the assistant operations director and his representative again requesting an interview and asking that it be completed by May 1. The letter notified the assistant operations director that his continued refusal to interview may result in an allegation that he failed to cooperate in violation of Bylaws 10 and 19.

The enforcement staff and the assistant operations director's representative continued communicating in writing throughout March and April 2018, but the assistant operations director would not agree to an interview. The representative conveyed that the assistant operations director would not participate for the following reasons: (1) he believed he was under no obligation to cooperate because he was no longer employed by an NCAA member institution; (2) he was not in possession of information that would advance the enforcement staff's case; and (3) he believed that walking into an interview "blind" would put him at personal risk due to the propensity of those in the Baylor community to "scapegoat" others in an attempt to protect the Baylor brand.

In August 2018, the enforcement staff attempted to schedule a pre-NOA call with the representative to discuss the staff's decision to issue a post-separation NOA to his client. The representative declined to participate in a call. Following the issuance of the post-separation NOA in September 2018, the representative asked the enforcement staff if it would withdraw the allegation in exchange for his client's agreement to interview. The enforcement staff responded that this was not consistent with past practice or case guidance and declined to withdraw the allegation.¹⁸ The representative renewed this request during a February 15, 2019, prehearing conference. The enforcement staff once again declined.

On January 25, 2019, the assistant operations director responded in writing to the NOA. On December 7, 2020, he informed the hearing panel via his representative that he would not participate in the infractions hearing.

IV. ANALYSIS

The violations concluded by the panel fall into three categories: (A) an impermissible benefit in the football program related to non-reporting of a student conduct issue; (B) the impermissible

¹⁸ The enforcement staff advised the representative that in past cases, the COI has considered an individual's participation in an interview after the issuance of the NOA as mitigation for the violation level and/or penalties. However, the representative reiterated that the assistant operations director was willing to interview only if the allegation was withdrawn completely.

organization of the institution's student host group; and (C) the assistant operations director's failure to cooperate with the investigation following his separation from the institution. This case also involves two Level III violations related to impermissible benefits and drug-testing violations in the football program.

A. IMPERMISSIBLE BENEFIT IN CONNECTION WITH THE STUDENT CONDUCT PROCESS [NCAA Division I Manual Bylaws 14.11.1, 16.11.2.1 and 16.8.1.2 (2011-12)]

In October 2011, the institution provided an impermissible benefit to student-athlete 4 when the director of athletics and associate AD for student services did not disclose that the student-athlete did not meet the conditions of his reinstatement as established by the president. The staff members' failure to disclose this information to the president enabled the student-athlete to remain enrolled and compete on behalf of the institution. Baylor acknowledged that this conduct may constitute an impermissible benefit but argued that the allegation was barred by the statute of limitations. The panel concludes that a Level II violation occurred, and it is not time barred.

1. NCAA legislation relating to impermissible benefits.

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

2. Baylor provided an impermissible benefit to student-athlete 4 when members of the athletics staff did not report that the student-athlete failed to meet the conditions of his reinstatement.

In summer 2011, the president heard student-athlete 4's late appeal, overturned his suspension and reinstated him on the condition that the student-athlete complete an academic improvement plan.¹⁹ The plan required 100 percent academic honesty. In October 2011, the student-athlete did not meet the conditions of his reinstatement when he cheated on an in-class quiz. Although the director of athletics and the associate AD for student services were aware of student-athlete 4's cheating, they did not inform the president or the institution's Office of Academic Integrity. As a result, student-athlete 4 remained enrolled and went on to compete that season. The non-reporting of student-athlete 4's failure to meet the conditions of his reinstatement constituted an impermissible benefit under Bylaw 16. Additionally, the institution violated Bylaw 14 when it failed to withhold the ineligible student-athlete from competition.

Bylaws 16 and 14 govern benefits and eligibility, respectively. Bylaw 16.11.2.1 restricts student-athletes from receiving extra benefits. The bylaw defines extra benefits as special arrangements by an institutional employee to provide a student-athlete or his or her family or friends with a benefit not expressly authorized by NCAA legislation. Bylaw 16.8.1.2 permits institutions to

¹⁹ The panel did not conclude that a violation occurred when the president agreed to hear student-athlete 4's untimely appeal. The panel's analysis of this allegation can be found in Section VI, *Violations Not Demonstrated*.

provide actual and necessary expenses to student-athletes representing the institution in practice or competition but reserves those expenses for eligible student-athletes only.²⁰ Finally, institutions are obligated to withhold ineligible student-athletes from competition pursuant to Bylaw 14.11.1.²¹

When the director of athletics and associate AD for student services did not notify the president of student-athlete 4's cheating, the institution provided a benefit—*e.g.*, a special arrangement—that was not generally available to other students at the institution.²² In reinstating the student-athlete, the president required 100 percent academic honesty and charged the athletics department with monitoring compliance with the conditions of reinstatement. When the student-athlete cheated on a quiz, this plainly did not meet those conditions. Indeed, as the president later confirmed, severe penalties would have been warranted had he been informed of the incident. Instead, the student-athlete suffered no consequences and went on to compete in seven contests for the institution.

The COI has previously concluded that a coach who makes a special academic arrangement to ensure a student-athlete's eligibility provides an impermissible benefit in violation of Bylaw 16. *See University of Georgia* (2014) (concluding that the head swimming and diving coach provided an impermissible benefit when he asked a professor to add a pass/fail independent study to a student-athlete's fall schedule as a "safety net" in case the student-athlete did not pass all of his classes). As in *Georgia*, and consistent with Bylaw 19.1.2, the panel concludes that this violation is Level II because it provided more than a minimal but less than a substantial or extensive benefit. It also provided more than a minimal competitive advantage because it allowed the student-athlete to remain enrolled and compete in seven contests for the institution.

Although Baylor acknowledged that this conduct may constitute a violation, it argued that the allegation was barred by the Bylaw 19.5.11 statute of limitations because the conduct occurred more than four years prior to May 2016—the date the institution notified the enforcement staff of potential violations. The panel concludes that the allegation is not time barred because Baylor should have reported the violation at the time it occurred.

Bylaw 19.5.11 states in part:

Allegations included in a notice of allegations shall be limited to possible violations occurring not earlier than four years before the date the notice of inquiry is provided to the institution *or the date the institution notifies (or, if earlier, should have notified) the enforcement staff of its inquiries into the matter.* (Emphasis added)

Here, the institution should have notified the enforcement staff of the potential violation in October 2011, thus marking the correct date for the statute of limitations. Again, the student-athlete's

²⁰ Bylaw 16.8.1.2 was renumbered to 16.8.1 beginning with the 2013-14 Division I Manual.

²¹ Bylaw 14.11.1 was renumbered to 12.11.1 beginning with the 2014-15 Division I Manual.

²² Neither the director of athletics nor the associate AD for student services were named as involved individuals in the NOA. Accordingly, this violation is attributable only to the institution.

cheating clearly did not meet the conditions the president established for reinstatement. Both the director of athletics and the associate AD for student services—the individual charged with monitoring student-athlete 4's completion of the academic improvement plan—knew those conditions well. The failure to report such a clear violation related to the student-athlete's academics was an impermissible benefit that the institution should have investigated and reported to the enforcement staff at the time it occurred. Accordingly, this allegation is not untimely.

At the infractions hearing, Baylor asserted that this reading of Bylaw 19.5.11 would render the statute of limitations moot. It will not. Any other interpretation would establish a playbook for disingenuous institutions to sit on known violations and then claim that any allegations related to those violations are time barred. Such an outcome would severely jeopardize the infractions process. Accordingly, Bylaw 19.5.11 states that the statute of limitations begins to run from the date the institution notified "or, if earlier, *should have* notified" the enforcement staff of the potential violation. The "should have notified" date will not attach to all violations, as Baylor appears to suggest. But here, it is not a close call. In this case, the violation was clear, unambiguous and should have been recognizable to the institution at the time it occurred.

**B. IMPERMISSIBLE RECRUITING ACTIVITY BY STUDENT HOST GROUP
[NCAA Division I Manual Bylaws 13.6.7.5, 13.6.7.6 and 13.7.2.1.8 (2012-13 through 2015-16)]**

Over four academic years, Baylor utilized a predominantly female student host group that was not designated in a manner consistent with the institution's policy for providing campus visits and tours to prospective students generally. During this same time period, the football program provided the student hosts with impermissible meals on nearly 30 occasions. Baylor and the enforcement staff substantially agreed to the facts and agreed that those facts constituted violations of NCAA recruiting legislation. Baylor argued, however, that the violations were Level III. The panel concludes that Level II violations occurred.

1. NCAA legislation relating to student hosts.

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

2. For approximately four academic years, Baylor violated NCAA recruiting legislation when it utilized a student host group that was organized and run separately from Baylor's admissions office, provided the student hosts with impermissible meals and used them as impermissible recruiters during official and unofficial visits.

From the 2012-13 through 2015-16 academic years, Baylor utilized a predominantly female student host group, the Baylor Bruins, for football recruiting events on campus. The institution organized and operated the Bruins separately from the admissions office (Campus Visits), which was the entity responsible for hosting and providing tours to all prospective students. The Bruins served as highly visible recruiting hosts for football prospects during official and unofficial visits,

and the football program sometimes provided them with meals during these events. The manner in which Baylor used and operated the Bruins violated Bylaw 13 recruiting legislation.

Bylaw 13 governs recruiting, including the use of student host groups in recruiting activities. Bylaws 13.6.7.5 and 13.7.2.1.8 address the use of student hosts during official and unofficial visits, respectively. These bylaws require student hosts to be either current student-athletes or students who are designated in a manner consistent with the institution's policies for providing campus tours or visits to prospective students in general. The legislative rationale associated with these bylaws states that "[a] prohibition against gender-based groups being involved in recruiting activities on official and unofficial visits should assist institutions in establishing a more reasonable environment that is consistent with the recruitment of other prospective students who visit their campuses." Finally, pursuant to Bylaw 13.6.7.6, an institution may not provide a free meal to a member of a student host group during an official visit unless the student is designated as the one student host for the prospect.

The Bruins were essentially a recruiting tool for Baylor's football program. Although they worked at alumni events as well, a primary function of the Bruins was to work football events and serve as student hosts for football prospects and their families during official and unofficial visits. Housed within the Office of Constituent Engagement, the Bruins were organized and operated independently of Campus Visits. The Bruins were not supervised by Campus Visits, did not receive the same training, and did not participate in the same admissions recruitment events. Thus, the Bruins operated outside the institution's processes for recruiting prospective students generally and therefore operated in violation of Bylaws 13.6.7.5 and 13.7.2.1.8. Because the Bruins were not a permissible student host group, the institution's provision of free meals to them during official visits violated Bylaw 13.6.7.6.

In addition to the organizational issues, the panel was also very concerned with Baylor's continued use of a primarily gender-based host group. Member institutions have been on notice since 2004 that the use of gender-based groups is impermissible and compromises NCAA values. *See* NCAA Division I Proposal 2014-96 – Recruiting – Official and Unofficial Visits – Student Hosts. Although Baylor eventually opened the group to men, very few joined, and it remained an overwhelmingly female group. Furthermore, members appear to have been selected based at least partly on looks—applicants were required to submit an 8 x 10 photo—and the dress code was geared toward women. The gender-based nature of this group is especially concerning in light of the campus-wide cultural issues and Title IX deficiencies at Baylor during this time, as well as the extremely troubling assertions reported by the Title IX coordinator, including that the Bruins were "kind of at the disposal of football players in a very inappropriate way."

In view of these concerns, the panel gave serious consideration to designating this violation as Level I. Ultimately, however, the panel determined that the relevant case guidance involving student host program violations indicated that a Level II designation was more appropriate. *See Rutgers, the State University of New Jersey, New Brunswick* (2017) (concluding that Level II violations occurred where, over a five-year period, the institution's student host group engaged in impermissible recruiting activities on and off campus) and *Oklahoma State University* (2015)

(concluding that Level II violations occurred where the institution utilized a gender-based student host group that engaged in impermissible hosting activities during football prospects' official and unofficial visits). The violations are not Level III as Baylor argued. The violations occurred over a four-year period and therefore were not isolated or limited in nature, and they provided more than a minimal recruiting advantage to the institution. *See* Bylaw 19.1.3. Indeed, the Bruins were a highly visible group during football prospects' campus visits, and some prospects even stated that their interactions with the Bruins positively impacted their decision to choose Baylor. The violations are Level II.

C. POST-SEPARATION UNETHICAL CONDUCT AND FAILURE TO COOPERATE [NCAA Division I Manual Bylaws 10.1, 10.1-(a) and 19.2.3 (2017-18 and 2018-19)]

Following his separation from Baylor, the assistant operations director failed to meet legislated standards of ethical conduct and his responsibility to cooperate when he refused to participate in an interview with the enforcement staff. The assistant operations director disputed the allegation. The panel concludes the assistant operations director committed a Level I violation.

1. NCAA legislation relating to unethical conduct and failure to cooperate.

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

2. The assistant operations director violated ethical conduct legislation and failed to cooperate when, on multiple occasions, he refused to participate in an interview with the enforcement staff.

Beginning in the fall of 2017, the assistant operations director failed to meet his obligation under NCAA bylaws to cooperate with the investigation. He declined multiple requests to participate in an interview with the enforcement staff and insisted that he had no obligation to cooperate. The conduct of the assistant operations director hindered the investigation in this case and violated Bylaws 10 and 19.

Bylaw 10.1-(a) obligates current and former institutional staff members to make complete disclosure of information concerning possible violations when requested by the enforcement staff. Failure to do so may constitute unethical conduct under Bylaw 10.1. Along these lines, and to further the mission of the infractions process, Bylaw 19.2.3 requires current and former staff members to assist and cooperate fully with the enforcement staff.

The assistant operations director failed to meet his obligation under these bylaws. Beginning in November 2017 and continuing throughout the investigation and processing of this case, the assistant operations director repeatedly refused to interview with the enforcement staff. Through his representative, the assistant operations director insisted that he had no obligation to cooperate with the enforcement staff's investigation because he was no longer employed by an NCAA member institution. This is incorrect. By their plain language, Bylaws 10.1-(a) and 19.2.3 apply

to both current *and former* staff members of NCAA member institutions. There is simply no basis for asserting otherwise.

Indeed, if former staff members were not obligated to cooperate with the infractions process, the enforcement staff's ability to investigate potential violations would be significantly hindered, as it was here. As the enforcement staff conducted interviews in this case, multiple interviewees referred the staff to the assistant operations director for more complete information regarding specific student conduct issues involving football student-athletes. His representative suggests that these individuals were attempting to "scapegoat" his client. But if the assistant operations director was concerned that other individuals were potentially implicating him in violations, he had the opportunity to interview with the staff and set the record straight. He chose otherwise and violated Bylaws 10.1-(a) and 19.2.3 in doing so.

The assistant operations director's violation is not cured by his offer to respond to written questions. This is not the manner of cooperation the enforcement staff requested, and it is easy to understand why. Written questions do not provide the questioner with the opportunity to ask follow-up questions in the moment or to explore the details and context of an individual's response. The COI has routinely emphasized that the responsibility to cooperate means *full* cooperation. *See University of Connecticut* (2019) (concluding that the head men's basketball coach failed to cooperate when he declined to participate in a second interview); *University of Louisiana at Lafayette* (2016) (concluding that an assistant football coach failed to cooperate when he declined to participate in a third interview and furnish phone records after having participated in two interviews earlier in the investigation); and *Southern Methodist University (SMU)* (2015) (concluding that a men's basketball administrative assistant failed to cooperate in the later stages of the investigation after having participated in two interviews). Simply put, offering to respond to written questions when the enforcement staff has requested an in-person interview is not full cooperation.

Similarly, the assistant operations director's offer to sit for a post-NOA interview—in exchange for the enforcement staff's withdrawal of the allegation—does not meet the obligation to cooperate. In past cases, the COI has credited an individual for belated cooperation by designating the violation Level II rather than Level I. *See University of North Carolina, Chapel Hill* (2017) (concluding that a curriculum secretary committed Level II violations of Bylaws 10 and 19 when she refused to participate in an investigation for nearly three years but eventually responded to the allegations, interviewed and participated in the hearing) and *Syracuse University* (2015) (concluding that an academic coordinator's belated participation in an interview and in the infractions hearing constituted a Level II unethical conduct violation). But as these cases demonstrate, belated engagement with the infractions process does not erase the initial failure to cooperate. It is through full *and timely* cooperation that the enforcement staff—and, in turn, the COI—is able to obtain the most complete and accurate information.

In accordance with Bylaw 19.1.1, the panel concludes that the assistant operations coordinator's failure to cooperate and ethical conduct violations are Level I. *See* Bylaw 19.1.1-(c) and (d) (identifying failure to cooperate and individual unethical conduct as examples of Level I

violations). This designation is consistent with past case guidance, with the *North Carolina* decision being particularly instructive. There, the COI differentiated between the curriculum secretary, who attempted to cure her failure to cooperate by participating late in the process, and the department chair, who refused to cooperate throughout the duration of the case. The COI concluded that the curriculum secretary committed Level II violations whereas the department chair's violations were Level I. *See also Connecticut* (concluding the head coach committed Level I failure to cooperate and ethical conduct violations when he declined to participate in a second interview) and *University of Northern Colorado* (2017) (concluding an assistant men's basketball coach committed Level I failure to cooperate and ethical conduct violations when he would not interview with the enforcement staff). As in these cases, the assistant operations director's refusal to participate in an interview and assist the investigation in this case is a Level I violation.

V. LEVEL III VIOLATIONS

- 1. IMPERMISSIBLE BENEFITS [NCAA Division I Manual Bylaw 16.11.2.1 (2010-11)]** In January 2011, a football student assistant paid \$310.25 in institutional parking ticket fines on behalf of student-athlete 3.²³ The student assistant made the payment in order to release a "fine" hold on student-athlete 3's account that was preventing him from registering for spring semester classes and thereby being eligible to compete.
- 2. FAILURE TO COMPLY WITH THE INSTITUTION'S DRUG-TESTING POLICY [NCAA Division I Manual Bylaws 10.2 and 14.01.3 (2012-13)]** In December 2012, Judicial Affairs notified the athletics department that student-athlete 6 had tested positive for marijuana for the second time and was to be suspended from the next full contest. However, Baylor permitted the student-athlete to compete in a portion of the next contest—a bowl game—in violation of the institution's drug-testing policy. Baylor agreed that this constituted a Level III violation.

VI. VIOLATIONS NOT DEMONSTRATED

The NOA to the institution and head coach alleged five categories of violations: (1) impermissible benefits in the football program; (2) failure to comply with the institution's drug testing policy; (3) use of an impermissible student host program; (4) head coach responsibility failures; and (5) lack of institutional control. With the exception of the allegations involving the student host program and the limited benefits and drug testing violations described above—each of which were subparts of broader allegations—the panel concluded that the remainder of these allegations did not support violations of NCAA legislation.

²³ Although Baylor agreed that the payment constituted an impermissible benefit, it argued that the allegation was time-barred pursuant to Bylaw 19.5.11. The panel disagrees. This was a straightforward impermissible benefits violation that Baylor should have reported in January 2011 at the time the institution discovered it. Thus, consistent with the analysis set forth in section IV.A above, the panel determines that the statute of limitations for this violation tolled in January 2011 when Baylor should have notified the enforcement staff of the violation.

Impermissible Benefits in the Football Program

The enforcement staff alleged that from the 2010-11 through 2013-14 academic years, Baylor provided impermissible benefits to football student-athletes in two ways: (1) by failing to report student-athlete misconduct—including allegations of sexual assault and violence—in order to shield student-athletes from disciplinary and investigative processes and (2) by providing special arrangements for football student-athletes within the student conduct process. In determining whether the facts in this case supported these allegations, the panel considered both the nature of Bylaw 16 impermissible benefits legislation and the campus-wide culture and circumstances at Baylor at the time the alleged conduct occurred. The panel took its responsibility very seriously, bearing in mind that what it does here will impact not just Baylor but the entire NCAA membership. Ultimately, the panel does not conclude that this conduct violated NCAA legislation.

In every infractions case, the COI's authority is limited by the legislation itself. As discussed above, the NCAA's member institutions have not adopted legislation regulating how institutions must respond to allegations of sexual and interpersonal violence involving student-athletes. Because there is no legislation specifically addressing conduct in this area, the enforcement staff charged this case under Bylaw 16. Bylaw 16 governs benefits, with Bylaw 16.11.2.1 providing the general rule that a student-athlete shall not receive any extra benefit. The bylaw defines "extra benefit" as any special arrangement by an institutional employee or booster to provide a student-athlete or his or her family or friends with a benefit not expressly authorized by NCAA legislation. Along with the general prohibition, Bylaw 16.11.2.2 identifies specifically prohibited benefits: a loan of money, a guarantee of bond, an automobile or use of an automobile, transportation, and signing or co-signing for a student-athlete's loan. Pursuant to Bylaw 16.11.1.1, a benefit is *not* prohibited if it is generally available to the institution's students. The question presented to this panel was whether student-athletes at Baylor who were accused of sexual or interpersonal violence were given an "extra benefit" in the form of more lenient treatment than other non-athlete students at Baylor accused of similar wrongdoing.

Failure to Report Sexual Assault and Interpersonal Violence

In applying Bylaw 16 to the allegations involving alleged sexual assault, interpersonal violence and threats of violence, the panel considered two questions. First, is the non-reporting of allegations of sexual violence and the lack of adequate institutional response to such allegations within the scope of what the membership contemplated when it adopted Bylaw 16? Second, assuming such non-reporting constitutes a "benefit" within the meaning of Bylaw 16, was it limited solely to athletics, or did it occur across the wider campus community?

This seven-member volunteer panel is not the appropriate body to answer the first question on behalf of the entire NCAA membership. To be clear, this is not a punt. The members of this panel understand that our voluntary service on the COI requires us to make difficult decisions and we do not shy away from that responsibility. But a question of this magnitude, in an area where the membership has not expressly legislated, requires collective membership consideration.

Preventing campus sexual violence has been an area of focus for the NCAA membership over the past decade. In 2010, the NCAA Executive Committee (now the NCAA Board of Governors) directed the NCAA Committee on Sportsmanship and Ethical Conduct to support the membership in addressing sexual violence on campus. Various initiatives followed, and in 2016 an interdisciplinary task force produced the Sexual Violence Prevention Tool Kit, which was updated in August 2019. In August 2017, the Board of Governors adopted an Association-wide Policy on Campus Sexual Violence. In short, this is a major policy concern for the Association and its membership.

These efforts, however, have been focused on *preventing* sexual violence on campus and providing resources to member institutions so they can address this important issue locally. By not adopting legislation addressing campus sexual violence, the membership has decided that individual institutions should retain the responsibility and authority, along with law enforcement, to investigate and address allegations of sexual violence in the first instance. And when member institutions fail in this responsibility, the membership has signaled that law enforcement, government and other regulatory bodies are the appropriate entities to investigate and hold institutions accountable.

Baylor's written materials and presentation at the hearing identified multiple ways in which the institution has been (and continues to be) held accountable for its admitted failings in responding to sexual violence on campus. As described in the Findings of Fact, this has included investigations by the U.S. Department of Education's Office of Civil Rights, Baylor's accrediting body and the Texas Rangers. The institution also underwent two independent reviews by third-party law firms and the Big 12 Conference imposed significant financial penalties based on the reputational damage Baylor caused to the conference. Additionally, Baylor has been a party to multiple lawsuits related to its response to sexual violence, some of which are ongoing.

It is for the collective NCAA membership to decide if the NCAA has a role alongside these entities in addressing institutional responses to sexual violence—whether through Bylaw 16 extra benefits legislation or some other legislative vehicle. Any expansion of the NCAA's authority in this area is not a decision that should be made by the seven volunteer members of this panel on behalf of nearly 1,100 member institutions.

The panel also finds that the non-reporting and mishandling of sexual violence allegations at Baylor was not limited solely to athletics. Baylor admitted that failure to report sexual violence was a campus-wide problem. Both the Margolis Healy and Pepper Hamilton reviews found widespread institutional failings in Baylor's Title IX compliance, including a total failure to train faculty and staff on their reporting obligations. This was, in the words of Baylor's former president, "a colossal operational failure." And prior to 2015, Baylor had no institutional Title IX policy and no mandatory reporting requirements. Although some staff members sought guidance when they became aware of cases of sexual violence—such as the advisors in the School of Education—many did not. At the infractions hearing, the former Title IX coordinator stated unequivocally that she believed faculty and staff both within *and outside* the athletics department did not report information regarding sexual violence. The drastic increase in the number of reports the Title IX

coordinator received after she assumed her role and began providing training demonstrates campus-wide underreporting prior to 2015.

None of this excuses the failure of coaching and athletics staff to report allegations of sexual and interpersonal violence. Independent of potential NCAA violations, this panel expects more of campus leaders. As individuals responsible for the well-being and development of young people, they should have done more to report these allegations regardless of a lack of training or reporting policies. Simply put, *they should have known better*. But where these failures occurred campus-wide, the panel cannot conclude that an impermissible benefit occurred under Bylaw 16.

Special Arrangements Within the Student Conduct Process

The second type of impermissible benefit alleged by the enforcement staff consisted of special arrangements for football student-athletes within the student conduct process. Specifically, the enforcement staff alleged that coaching staff, athletics administrators and members of the Board of Regents intervened in the student conduct process in order to obtain favorable outcomes for football student-athletes and keep them eligible for competition. As the panel learned at the hearing, Baylor's student conduct process was, in many ways, idiosyncratic. This is especially true when it came to the president's involvement in that process. Ultimately, however, the record did not demonstrate that the benefits provided to student-athletes in this process were not also available to the general student population.

First, the enforcement staff alleged that student-athlete 3 received impermissible benefits when an assistant coach and the senior associate AD assisted him with drafting a community service summary and an appeal statement, respectively. The panel does not conclude that this type of assistance constitutes an impermissible benefit. The COI has previously concluded that assistance with a similar type of non-academic submission did not violate NCAA legislation. Specifically, in *Syracuse*, the COI concluded that no violation occurred when one or more athletics department staff members assisted a student-athlete with a personal statement submitted to the NCAA in connection with an eligibility waiver. By contrast, a violation *did* occur in *Syracuse* when athletics employees helped the same student-athlete convert the personal statement into a paper that was submitted for academic credit. Here, the panel concludes that the community service summary and appeal statement are analogous to the personal statement in *Syracuse*, and the athletics staff's assistance with these submissions did not constitute an impermissible benefit.²⁴ Because the panel concluded that no violations occurred, it did not consider whether these allegations were barred by the statute of limitations.

The enforcement staff also alleged that student-athletes 3 and 4 received impermissible benefits related to their appeals to the president's office. With respect to student-athlete 3, the alleged benefit was the presence of the head coach and director of athletics during the student-athlete's

²⁴ With respect to the community service summary, the panel also notes that the associate dean followed her usual process when she suspected student-athlete 3 did not write the summary himself. Specifically, she called him to her office and asked him to rewrite the summary in her presence. In that way, he was treated the same as any other Baylor student, and his satisfaction of the summary requirement was ultimately the result of his own work rather than assistance from the student assistant or assistant coach.

appeal meeting with the president. For student-athlete 4, the alleged benefit occurred when the president granted his appeal nearly four months after the appeal deadline. The panel concludes that neither of these circumstances constituted an impermissible benefit because they were generally available to all students.

By his own admission, the president was highly involved in student appeals and took a generous approach aimed at keeping students in school. This was true with respect to all appeals—not only those involving student-athletes. Indeed, the institution identified seven previous appeals in which the president modified or reversed the punishment of a non-athlete student. With respect to student-athlete 3, the president stated that the presence of the director of athletics and head coach at the appeal meeting did not influence his decision in any way and that he likely invited them in order to gather more facts before making a decision.²⁵ He also stated that any faculty or staff member at Baylor was welcome to communicate with him about a student. The vice president for student life stated that it was his own practice to permit students to have an individual with them when he heard their appeals. Thus, it does not appear that the inclusion of additional individuals during an appeal meeting was a benefit uniquely available to student-athletes.

Similarly, with respect to student-athlete 4's late appeal, the president stated that he would have granted the appeal for a non-athlete student under the same circumstances. He also explained that he had never granted an appeal that late because no other appeal had ever been submitted to him that late—it was a "class of one." The COI has previously declined to conclude that a Bylaw 16 violation occurred where the individual who provided the alleged impermissible benefit represented that the same benefit would be available to any student. *See University of Oregon* (2018) (concluding that an adjunct instructor's grade change for a women's track and field student-athlete did not constitute an impermissible benefit where the instructor stated that he would have made the same accommodation for any student who came to him with a similar request). To be clear, however, a "class of one" does not automatically mean that no violation occurred. Such a conclusion would permit a one-time exception any time a benefit or accommodation was provided for the first time. The panel bases its decision on the fact that the president's involvement in all other student conduct issues appears to be indistinguishable from how he handled issues involving student-athletes. Thus, the panel concludes that granting the untimely appeal was not a deviation from the president's open-door approach to appeals and is an accommodation that would have been available to other students at Baylor.

Finally, the enforcement staff alleged that involvement in student-athlete 5's appeal by members of the Board of Regents, as well as the senior vice president's grant of that appeal, constituted an impermissible benefit. This was a closer call for the panel. The record suggests that members of the Board of Regents were overly involved in student conduct matters, and the head coach, director of athletics and senior vice president were overly comfortable reaching out to them. However, while these facts demonstrate that there was a lack of sufficient oversight of the student conduct

²⁵ The director of athletics did not recall saying anything during the meeting and remembered the student-athlete advocating on his own behalf.

process and an irregular level of involvement by Board members, the panel concludes that the facts do not demonstrate an impermissible benefit.

First, the panel does not determine that the senior vice president's involvement in the appeal was an impermissible benefit. No Baylor policy prevented the president from delegating his duty to hear a student conduct appeal. The president acknowledged that his chief of staff was managing the presidential appeal process at this time, and she delegated this particular appeal to the senior vice president. Additionally, Baylor's counsel stated at the infractions hearing that the duty had been delegated to the general counsel's office on at least one previous occasion involving a non-athlete student's appeal. Accordingly, it was not outside of the institution's usual processes for the senior vice president to hear the appeal.

Second, conversations with Board of Regents members are not NCAA violations. It is not impermissible for coaches or administrators to speak with board members regarding individual students. The vice president for student life stated at the hearing that he sometimes received "feedback" from Board members regarding student appeals—for athletes and non-athletes alike. If the conversations here were intended to or did influence the outcome of the student conduct appeal, then an impermissible benefit violation would be demonstrated. But the conversations in the record are too vague for the panel to conclude that they were meant to influence an outcome.

Finally, the context of this appeal is important. It came at a time when the institution was evaluating its drug testing policy to determine whether it was unduly harsh. Within that context, the senior vice president stated that the right decision for student-athlete 5 was to give him a second chance and an opportunity to get treatment. This is consistent with the president's restorative approach to student conduct appeals. The senior vice president also said that he would have made the same decision for any other student regardless of student-athlete status. Thus, based on the facts and circumstances of this allegation, the panel does not conclude that an impermissible benefit violation occurred.

Drug Testing and Failure to Monitor

The NOA alleged three violations related to the football program's implementation of drug-testing penalties. The panel concluded that one of those allegations supported a Level III violation (*see* Part V. above). As for the other two allegations, however, the panel concludes that violations were not demonstrated. More specifically, the panel concludes that the facts underlying one allegation did not support a violation and the other allegation is barred by the statute of limitations. The enforcement staff also alleged that the institution failed to monitor its drug testing program. Because the panel concluded that only one Level III violation involving the drug testing program occurred, the panel does not conclude that Baylor failed to monitor its drug testing program.

First, the enforcement staff alleged that Baylor failed to follow its drug testing policy in January 2014 when the head coach withheld student-athlete 7 from the second half of the first game following his positive test rather than the first half of the game. The enforcement staff alleged that this violated Bylaws 10 and 14. The panel disagrees.

Bylaw 10.2 requires athletics personnel who have knowledge of a student-athlete's use of a banned substance to comply with their institution's drug testing policy. Relatedly, Bylaw 14.01.1 requires institutions to ensure that all student-athletes are in compliance with NCAA, conference and institutional rules and regulations. This includes the institution's drug testing policy.

The panel does not conclude that Baylor was out of compliance with its drug testing policy when it withheld student-athlete 7 from the second half of the game rather than the first because the institution's policy was ambiguous on this point. The policy required a half-game suspension that would take effect during the "first regular season . . . contest immediately following the receipt of the positive test." The head coach believed he had discretion to implement the suspension during either half of the game. The panel cannot say that this was a clear misreading of the policy, and therefore does not conclude that the institution acted inconsistently with its policy in this instance.

Second, the enforcement staff alleged that Baylor failed to follow its drug testing policy in November 2010 when it permitted student-athlete 3 to serve his one-game suspension over the course of two games. Although the institution's policy stated that the suspension was to be served during the next full contest immediately following the positive drug test, the football program credited the student-athlete for one quarter he sat out during a previous game and only withheld him from three quarters of the next game. Baylor admitted—and the panel concludes—that the implementation of the suspension was inconsistent with the institution's drug testing policy and therefore violated Bylaw 10 and 14. However, the panel concludes that this allegation is barred by the statute of limitations.

The enforcement staff argued that although this conduct occurred more than four years prior to May 2016—the date the institution notified the enforcement staff of potential violations—it is not untimely because it falls within an exception to the statute of limitations. Specifically, the enforcement staff relied on Bylaw 19.5.11-(c), which provides an exception when there is a pattern of willful violations on the part of the institution, which began before but continued into the four-year period. The enforcement staff maintained that athletics staff exhibited a pattern of compromising institutional accountability systems to ensure student-athlete 3 remained eligible, including by assisting with his community service summary, paying \$310.25 to release the hold on his student account, drafting his appeal statement and being present during his appeal meeting with the president. Of this conduct, the panel has concluded that only the \$310.25 payment constituted a violation, and that violation was Level III. Although it is concerning that student-athlete 3 was so often involved in student conduct matters, the panel does not agree that there was a pattern of willful violations by the institution. Thus, the panel concludes that the exception does not apply, and this allegation is untimely.

Finally, the enforcement staff alleged that Baylor failed to monitor compliance with its athletics drug testing policy because on three occasions athletics administrators and the head coach failed to ensure that football student-athletes were withheld from contests in accordance with the policy. Of the three improper withholdings cited by the enforcement staff, the panel has concluded that only one of these constituted a violation and was timely alleged. That violation was Level III. The panel declines to conclude that the institution failed to monitor based on one Level III violation.

Head Coach Responsibility and Lack of Institutional Control

The enforcement staff alleged that the head coach failed to promote an atmosphere of compliance within the football program and the institution lacked control over its athletics program. Both allegations were based solely on the underlying impermissible benefit allegations in the football program—both the non-reporting of student-athlete misconduct and the allegations of special arrangements within the student conduct process. Because the panel concluded that the facts supported only one Level II and one Level III impermissible benefit violation, the panel does not conclude that the head coach failed to promote an atmosphere of compliance pursuant to Bylaw 11 or that the institution lacked control under Constitution 2 and 6.

Bylaws 11.1.2.1 (2010-11 through 2012-13) and 11.1.1.1 (2013-14) place an affirmative responsibility on head coaches to promote an atmosphere of compliance within their programs and monitor the activities of all who report to them either directly or indirectly.²⁶ For institutions, the NCAA Constitution requires control and monitoring of their intercollegiate athletics programs to ensure those programs operate in compliance with NCAA legislation. Constitution sections 2.1.1, 2.8.1 and 6.01.1 all state the responsibility of institutions to control their athletics programs in compliance with NCAA legislation and to report instances of non-compliance.

The starting point for head coach responsibility is the presumption that head coaches are responsible for the conduct of staff who report directly and indirectly to them. Here, the panel has concluded that two impermissible benefit violations occurred in the football program: (1) the Level II violation that occurred when the director of athletics and associate AD failed to report student-athlete 4's violation of the terms of his reinstatement and (2) the Level III violation that occurred when the student assistant made a \$310.25 payment on student-athlete 3's account at the direction of assistant coach 2. The head coach cannot be presumed responsible for the first violation as it did not involve staff who reported to him—rather, it involved the person he reported to. That leaves one Level III violation, which the panel concludes is insufficient in this case to support a head coach responsibility violation.

The panel's analysis did not end there, however. The panel also considered whether the head coach's own conduct—not the conduct of his staff—demonstrated that he failed to meet his responsibilities as a head coach. In particular, the panel gave careful scrutiny to the head coach's handling of the specific instances of alleged sexual assault, interpersonal violence and threats of violence that are at the center of this case. In each instance, when the head coach received information from a staff member regarding potential criminal conduct by a football student-athlete, he did not report the information and did not personally look any further into the matter. He generally relied on the information provided to him by his staff and likewise relied on them to handle problems. His incurious attitude toward potential criminal conduct by his student-athletes was deeply troubling to the panel. As one panel member observed at the hearing when questioning

²⁶ Because the head coach responsibility allegation spans from the 2010-11 through 2013-14 academic years, both versions of the bylaw apply. Although the language of these bylaws is slightly different, the change is immaterial in practice and application. The modifications in 2013-14 merely clarified the legislation.

the head coach's lack of response to this information, "a lot of these things that we're talking about, they're not NCAA rules violations . . . [or] university policy violations. They're felonies. [W]e're talking about rapes and physical assaults."

The head coach failed to meet even the most basic expectations of how a person should react to the kind of conduct at issue in this case. Furthermore, as a campus leader, the head coach is held to an even higher standard. He completely failed to meet this standard. However, there is no linkage between this conduct and Level I or II NCAA violations. The COI has never before concluded that a head coach responsibility violation occurred where there were no underlying NCAA violations. The panel makes no determination as to whether such an allegation or conclusion would be appropriate in a future case. But under the specific facts and circumstances of this case, the panel does not conclude that a head coach responsibility violation occurred.

The panel's analysis of the institutional control allegation started from the same point, *i.e.*, the absence of underlying NCAA violations. As with the head coach responsibility allegation, however, the analysis did not end there. The panel considered whether the violations related to the student host program, in conjunction with the Level II and III impermissible benefit and drug testing violations, supported a conclusion that the institution lacked control. As alleged in the NOA, however, the lack of institutional control allegation was based solely on the underlying impermissible benefits allegations. It was not tied to the allegations related to drug testing or the student host program. Accordingly, the panel defers to the enforcement staff's charging decision and will not look to other violations to support a lack of institutional control violation.

The panel also considered whether Baylor's admitted failures in handling campus sexual violence, standing alone, demonstrated that the institution lacked control. Baylor's failures in this regard are well documented throughout this decision. As identified by the Board of Regents' summary of the Pepper Hamilton review, those failures occurred campus-wide "at every level of Baylor's administration." In the most literal sense, therefore, it appears that Baylor lacked institutional control. But Constitution 2 and 6 address the control of an institution's *athletics program*. Thus, it is not clear to the panel that these constitutional provisions are intended to reach the kind of widespread institutional failings that are at issue in this case, even when some of those failings occurred within the institution's athletics department.

As the panel has stated previously in this decision, whether the NCAA infractions process has a role to play in addressing its member institutions' responses to campus sexual violence is a vital philosophical decision that must be made by the Association's membership. And if there is a role for the NCAA, the membership must determine the appropriate legislative vehicle to adjudicate such conduct. If the membership collectively decides that vehicle is Bylaw 16 benefits legislation, the institutional control principles of Constitution 2 and 6, or a new legislative scheme altogether, the COI will adjudicate future cases accordingly. But in applying the membership's current legislation to the facts of this case, the panel does not conclude that Baylor lacked institutional control as contemplated by Constitution 2 and 6.

VII. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the panel concludes that this case involved Level II and III violations of NCAA legislation for the institution and Level I violations for the assistant operations director. Level I violations are severe breaches of conduct that undermine or threaten the integrity of the Collegiate Model and provide substantial or extensive advantages or benefits. Level II violations are significant breaches of conduct that may compromise the integrity of the Collegiate Model and provide more than a minimal but less than a substantial advantage or benefit. Finally, Level III violations are breaches of conduct that are isolated or limited and provide no more than a minimal advantage.

Because the violations in this case straddled the implementation of the current penalty structure on October 30, 2012, the panel conducted an analysis to determine when the violations predominantly occurred. The panel determines that the violations predominated after October 30, 2012. Thus, pursuant to Bylaw 19.9.1, the current penalty structure applies.

In considering penalties under the current structure, 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.

The panel determined that the below-listed factors applied and assessed the factors by weight and number. Based on its assessment, the panel classifies this case as Level II-Standard for Baylor and Level I-Standard for the assistant operations director.

Aggravating Factors for Baylor

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

19.9.4-(g): Multiple Level II violations by the institution; and

19.9.3-(h): Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct.

Baylor only partially agreed that Bylaw 19.9.3-(b) should apply. Although Baylor acknowledged that it has been involved in seven previous Level I, II or major cases, it noted that five of those cases occurred over 10 years ago. The panel determines that the factor applies and should be given normal weight. In determining the weight to assign to this factor, the COI regularly evaluates the number of prior cases, the amount of time between cases, and the similarities of prior cases. The COI has not minimized the weight of the factor when prior cases occur shortly before the case at issue and involve the same program and/or violations of the same nature. *See Connecticut* (applying normal weight to the factor where Connecticut's only prior case was in 2011, just a few years before the events of the 2019 case, and it involved the same program and similar violations). Here, Baylor's most recent case was in 2016 and, like this case, involved recruiting violations in the football program. Furthermore, Baylor had another recruiting case in 2012 involving the men's and women's basketball programs. Because the institution has had two cases within the past ten

years that involved recruiting violations—and in one case, within the same program—the panel determines that Bylaw 19.9.3-(b) applies and should be given normal weight.

The panel applies minimal weight, however, to Bylaw 19.9.3-(g), *Multiple Level II violations by the institution*. Although the panel concluded that two Level II violations occurred in this case, the impermissible benefit violation was a limited, one-time occurrence. It rises to a Level II violation, but the panel determines that it does not support applying full weight to this aggravating factor.

Baylor also partially agreed with Bylaw 19.9.3-(h), *Persons of authority condoned, participated in or negligently disregarded the violations*. The institution acknowledged that it held the president, director of athletics and head coach responsible for their leadership failures but noted that it was not certain each individual allegation identified within the NOA constituted a violation of NCAA rules. The panel determines that this factor applies because the director of athletics was aware that student-athlete 4 had failed to meet the conditions of his reinstatement by the president, but he did not provide this information to the president. The panel has concluded that this was an impermissible benefit, which resulted in student-athlete 4's competition in seven contests while ineligible. Thus, the director of athletics—unquestionably a person of authority—participated in and negligently disregarded the violation.

The enforcement staff also proposed Bylaws 19.9.3-(k), *A pattern of noncompliance within the sport program involved*, and 19.9.3-(m), *Intentional, willful or blatant disregard for the NCAA constitution and bylaws*. The panel determines that neither factor applies. With respect to Bylaw 19.9.3-(k), the panel concluded that only one Level II violation and two Level III violations occurred within the football program. The conduct in the football program is disturbing, but the violations ultimately concluded by the panel are not sufficient to constitute a pattern of noncompliance. Nor do these violations rise to the level of intentional, willful or blatant disregard of NCAA legislation. As stated above, the individuals overseeing the student host program and the institution's compliance administrators should have known that the Bruins were impermissibly organized. However, the record does not demonstrate that these individuals acted with willful intent to violate NCAA rules. Accordingly, neither of these factors apply.²⁷

Mitigating Factor for Baylor

19.9.4-(d): An established history of self-reporting Level III or secondary violations.²⁸

Baylor proposed three additional mitigating factors with which the enforcement staff did not agree: Bylaws 19.9.4-(b), *Prompt acknowledgment of the violations, acceptance of responsibility and*

²⁷ The enforcement staff also identified Bylaws 19.9.3-(a), *Multiple Level I violations by the institution*, and 19.9.3-(c), *Lack of institutional control*, as applicable aggravating factors. Because the panel did not conclude that Level I violations occurred or the institution lacked control, these factors do not apply.

²⁸ In the five years prior to the issuance of the NOA, Baylor self-reported 245 Level III violations, an average of 49 violations per year.

imposition of meaningful corrective measures and/or penalties, 19.9.4-(c), Affirmative steps to expedite final resolution of the matter, and 19.9.4-(i), Other facts warranting a lower penalty range. The panel determines that these factors do not apply.

The panel does not apply Bylaw 19.9.4-(b) because Baylor did not promptly acknowledge and accept responsibility for the violations in the student host program. The institution permitted those violations to occur over a span of four years. And although Baylor admitted that the student host program violated NCAA legislation, it minimized the violations by arguing that they were Level III and ignored the substantive nature of the conduct in the context of broader institutional failings and culture. The COI has previously concluded that this factor does not apply where an institution minimizes the significance of an admitted violation. *See California Polytechnic State University (2019)* (determining the factor did not apply where the institution acknowledged that it made mistakes but diminished the seriousness of the violation by arguing it was Level III). For these reasons, Bylaw 19.9.4-(b) does not apply.

With respect to Bylaw 19.9.4-(c), Baylor argues that the factor should apply because the institution initiated the May 2016 meeting to alert the enforcement staff to the Pepper Hamilton findings, it cooperated with the investigation, and it collaborated with the enforcement staff to produce documents and schedule interviews. Although these actions demonstrate that Baylor met its legislated obligation to cooperate, they do not support the application of Bylaw 19.9.4-(c). As the enforcement staff noted in its written materials and at the hearing, Baylor was sometimes slow in producing documents and scheduling certain interviews. In particular, it took eight months from the May 2016 meeting until January 2017 for Baylor to produce a portion of the documents it believed to be pertinent. Although the staff does not suggest that these delays were intentional or constitute an aggravating factor, they cut against additional mitigation.

The COI has previously determined that working collaboratively with the enforcement staff by producing documents and facilitating interviews demonstrates that an institution has met its obligation to cooperate but does not necessarily support application of Bylaw 19.9.4-(c). *See University of South Carolina, Columbia (2017)* (determining in a summary disposition decision that the factor did not apply where the institution promptly scheduled interviews, responded to document requests and otherwise worked collaboratively with the enforcement staff, but did not take any additional affirmative steps to expedite the case). Similarly, the factor does not apply here.

Finally, Baylor proposes Bylaw 19.9.4-(i), arguing that the significant financial penalties imposed by the Big 12 Conference should be viewed as a mitigating factor. The panel disagrees. Consequences and penalties imposed in outside proceedings do not operate as a set-off in the infractions process. The factor does not apply.

Aggravating Factor for the Assistant Operations Director

19.9.3-(e): Unethical conduct, compromising the integrity of an investigation, failing to cooperate during an investigation or refusing to provide all relevant or requested information.

The assistant operations director did not address the application of Bylaw 19.9.3-(e) in his NOA response, though he disputed the underlying unethical conduct and failure to cooperate allegations. Because the panel concluded that those underlying violations occurred, this aggravating factor also applies. The COI has routinely applied this factor in cases where individuals failed to cooperate with an investigation. *See Connecticut* (applying the factor to the head men's basketball coach, who refused to participate in a second interview with the enforcement staff) and *North Carolina* (applying the factor to both the secretary and department chair who failed to cooperate).²⁹

Mitigating Factor for the Assistant Operations Director

19.9.4-(h): The absence of prior conclusions of Level I, Level II or major violations by the assistant operations director.

The assistant operations director proposed an additional mitigating factor, Bylaw 19.9.4-(i), *Other facts warranting a lower penalty range*. Based on his written response to the NOA, he appeared to identify the following facts in support of this mitigating factor: (1) his lack of previous violations; (2) his belief that he was under no obligation to cooperate because he was not employed by an NCAA member institution; (3) his willingness to respond to questions in writing and/or potentially participate in an interview after the issuance of the NOA; (4) his belief that the enforcement staff did not need information from him in order to complete his investigation; and (5) his belief that the immediate penalties process is the appropriate procedural vehicle to address his situation. The panel does not determine that these facts warrant additional mitigation for the assistant operations director.

First, his lack of previous violations has been properly acknowledged and credited through the application of Bylaw 19.9.4-(h). Second, as discussed in Part IV.C. above, the assistant operations director is simply incorrect regarding his obligation to cooperate—Bylaws 10.1-(a) and 19.2.3 plainly apply to *former* institutional staff members. Third, his offers to answer questions in writing and to interview following the issuance of the NOA do not warrant additional mitigation because they do not constitute full and timely cooperation. Fourth, it is irrelevant whether the enforcement staff would have obtained useful information from the assistant operations director had he agreed to an interview. The obligation to cooperate is not contingent on the quantity or quality of relevant information the individual may provide. It is for the enforcement staff to determine the relevance of the information. Finally, the immediate penalties process is also irrelevant at this stage in the proceedings. By its very nature, that process is intended to be utilized during an investigation. *See* Bylaw 19.2.3.2.3 (establishing that the COI "may prescribe immediate penalties during the investigation if an institution or individual fails to satisfy the responsibility to cooperate").³⁰

²⁹ Because the secretary in *North Carolina* eventually participated in an interview and attended the infractions hearing, the COI gave the factor less weight when classifying her violations. Here, the panel applies normal weight to the factor because the assistant operations director made no such attempts to cure his non-cooperation.

³⁰ The immediate penalties process did not go into effect until February 1, 2019, after the NOA in this case was submitted. Thus, it was an available tool for the enforcement staff during this investigation.

Contrary to the assistant operations director's assertion, it does not give the COI chair the authority to withdraw a failure to cooperate allegation.

The COI does not commonly apply Bylaw 19.9.4-(i). In past cases, the COI has applied the factor only where unique circumstances warrant additional mitigation. *See Oregon* (applying the factor when the institution identified a potential issue with a grade change and acted quickly by rescinding the grade, revoking the diploma, self-reporting the potential violation and pulling the student-athlete from NCAA postseason competition moments before her scheduled event) and *University of Tennessee at Chattanooga* (2018) (applying the factor when the violations were committed by an atypical booster who provided student-athletes with reduced rent and the use of an automobile at a time when some of those student-athletes had exhausted their eligibility). There are no unique facts with respect to the assistant operations director that warrant additional mitigation. To the contrary, his violation is the kind of straightforward and typical failure to cooperate that the COI sees all too often. The factor does not apply.

All penalties prescribed in this case are independent 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 Baylor's cooperation in all parts of this case and determined it was consistent with the institution's obligation under Bylaw 19.2.3. The panel also considered Baylor's corrective actions, which are contained in Appendix One. The panel prescribes the following penalties:

Core Penalties for Level II-Standard Violations (Bylaw 19.9.5)³¹

1. Probation: Four years of probation from August 11, 2021, through August 10, 2025.
2. Financial penalty: Baylor shall pay a fine of \$5,000.
3. Recruiting restrictions:
 - a. Baylor shall reduce the number of official visits in football to 30 during the 2021-22 academic year (a reduction of four off the previous four-year average).³²
 - b. Baylor shall prohibit unofficial visits in football for three weeks during the 2021-22 academic year.
 - c. Baylor shall prohibit recruiting communication in football for a two-week period during the 2021-22 academic year.

³¹ If an opportunity to serve a penalty will not be available due to circumstances related to COVID-19, the penalty must be served at the next available opportunity. With the exception of postseason bans, probation and general show-cause orders, this methodology applies to all penalties, including institutional penalties, specific restrictions within show-cause orders and head coach restrictions, unless otherwise noted.

³² The panel used the four-year average provided in Baylor's January 25, 2019, response to the NOA.

- d. Baylor shall reduce the number of evaluation days in football by three during fall 2021 and by 10 during spring 2022.

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

4. Show-cause order: The assistant operations director acted unethically and violated his responsibility to cooperate when he repeatedly refused the enforcement staff's requests for an interview. Therefore, the assistant operations director shall be subject to a five-year show-cause order from August 11, 2021, through August 10, 2026. Pursuant to COI IOP 5-15-3-1, if the assistant operations director seeks employment or affiliation with any athletically related position at an NCAA member institution during the five-year show-cause period, any employing institution shall be required to contact the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why restrictions on all athletically related activity should not apply.

Although each case is unique, this penalty is consistent with the five-year show-cause order prescribed for the department chair in *North Carolina*, which the panel has identified as the most relevant case guidance.³³ Although the assistant operations director asserted that his case aligned more closely with that of the secretary in *North Carolina*, the panel disagrees. Although she initially refused to participate in the investigation, she eventually participated in an interview and attended the infractions hearing. As a result, the COI classified her violation as Level II-Mitigated and, consistent with the Figure 19-1 ranges, prescribed no show-cause order for her. Here, much like the department chair, the assistant operations director would not agree to an interview and declined to participate in the hearing. A five-year show-cause order is appropriate to address his conduct.

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

5. Public reprimand and censure through the release of the public infractions decision.
6. Vacation of team and individual records: Baylor acknowledged that student-athlete 4 competed while ineligible as a result of the impermissible benefit he received when the director of athletics and associate AD for student services did not report that he had cheated on a quiz and thereby violated the conditions of his reinstatement by the president. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3 and COI Internal Operating Procedure 5-15-7, Baylor shall vacate all regular season and conference tournament wins, records and participation in which the ineligible student-athlete competed from the time he became ineligible through the time he was reinstated as eligible for competition. Further, if the ineligible student-athlete participated in NCAA postseason competition at any time he was ineligible, Baylor's participation in the postseason contests in which the ineligible competition occurred shall be vacated. The

³³ In most cases involving a failure to cooperate, the individual has also committed some other underlying violation. Those cases are less instructive for purposes of prescribing penalties because the penalties are based on both the underlying violation and the failure to cooperate.

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, Baylor's records regarding its football program, as well as the records of its head coach, shall reflect the vacated records and be recorded in all publications in which such records are reported, including, but not limited to, institutional media guides, recruiting material, electronic and digital media, plus institutional, conference and NCAA archives. Any institution that may subsequently hire the 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. Any public reference to the vacated records shall be removed from the athletics department stationery, banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in the affected sport program shall be returned to the Association.

Finally, to aid in accurately reflecting all institutional and student-athlete vacations, statistics and records in official NCAA publications and archives, the institution's media relations 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 written report will be maintained in the permanent files of the NCAA Media Coordination and Statistics office. This written report must be delivered to the office no later than 14 days following the release of this decision or, if the institution appeals the vacation penalty, at the conclusion of the appeals process. A copy of the written report shall also be delivered to the OCOI at the same time.

7. During the period of probation, Baylor shall:
 - a. 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 recruiting and certification legislation.
 - b. Submit a preliminary report to the OCOI by September 30, 2021, 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 June 30 during each year of probation. Particular emphasis shall be placed on education and monitoring regarding the permissible use of student host groups.
 - d. Inform prospects in the football program in writing that Baylor is on probation for four years and detail the violations committed. If a prospect takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in

advance of the visit. Otherwise, the information must be provided before a prospect signs a National Letter of Intent.

- e. Publicize specific 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" and in the media guides for the football program. The institution's statement must: (i) clearly describe the infractions; (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.
8. Following the receipt of the final compliance report and prior to the conclusion of probation, Baylor's president shall provide a letter to the COI affirming that Baylor's current athletics policies and practices conform to all requirements of NCAA regulations.

The COI advises Baylor and the assistant operations director that they should take every precaution to ensure that they observe the terms of the penalties. The COI will monitor Baylor while it is on probation to ensure compliance with the penalties and terms of probation and may extend the probationary period, among other action, if Baylor does not comply or commits additional violations. Likewise, any action by Baylor or the assistant operations director contrary to the terms of any of the penalties or any additional violations shall be considered grounds for prescribing more severe penalties and/or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Melissa Conboy
Stephen Madva
Joel Maturi, chief hearing officer
Gary L. Miller
Vince Nicastro
Kay Norton
Sarah Wake

APPENDIX ONE

**BAYLOR'S CORRECTIVE ACTIONS IDENTIFIED IN ITS
RESPONSE TO THE NOTICE OF ALLEGATIONS**

1. On May 26, 2016, the institution removed the president, suspended the athletic director and suspended the head football coach with the intent to terminate. The institution's actions were based on findings from a review of institutional responses to Title IX and related institutional compliance through the lens of specific cases that identified, among other university-wide deficiencies, that the football program and athletics department leadership failed to appropriately respond to reports of serious misconduct including interpersonal violence involving football student-athletes. Ultimately, both the president and the athletic director resigned their employment.
2. None of the individuals identified in Allegation No. 1 of the NOA are still employed in leadership positions at the institution.³⁴
3. The institution disassociated those former student-athletes identified in Allegation No. 1 who did not agree to participate in the NCAA inquiry.
4. Thereafter, the institution implemented 105 recommendations provided by Pepper Hamilton following their review of the institution's response to Title IX and related institutional compliance issues through the lens of specific cases. *See* Cozen O'Connor, External Report re: Completion of 105 Recommendations; Big 12 Verification Report of Baylor Implementation of 105 Recommendations; and October 29, 2018, Resolutions for Acceptance of Baylor Verification Report.
5. Big 12 imposed a \$2,000,000 fine for reputational damage to the conference.
6. Big 12 withheld conference distributions of \$14,255,000, with Baylor required to reimburse the conference for its legal costs associated with Verification – \$1,651,000. The remaining approximately \$12.6 million will be invested for 48 months and the net earnings realized on the investments will be distributed in equal portions to the 10 members of the conference on an annual basis and will be used in funding campus-wide and athletics prevention efforts focused on sexual and gender-based harassment and violence, intimate partner violence, and stalking, included but not limited to programming addressing healthy relationships, LGBTQ+ discrimination and bystander awareness.

³⁴ The senior vice president of operations identified in Allegation No. 1-(g) is no longer in a leadership position at the institution but remains employed as a tenured faculty member. At the time of the institution's NOA response, he was on academic leave through fall 2020.

7. The corrective actions taken by the institution and penalties imposed by the Big 12 Conference were not premised on any NCAA rules violations. Rather, they were in response to Title IX and related institutional compliance issues identified by Pepper Hamilton.

APPENDIX TWO
Bylaw Citations

Division I 2010-11 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 relatives or friends with a benefit not expressly authorized by NCAA legislation.

Division I 2011-12 Manual

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.

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. Such competition includes:

- (a) Regularly scheduled intercollegiate athletics events;
- (b) NCAA championship events and national governing body championship events in an emerging sport;
- (c) A licensed postseason football game (see Bylaw 18.7) for conditions required for licensing);
- (d) Nonintercollegiate open, amateur competition;
- (e) Other institutional competition permissible under NCAA legislation, including postseason events; and
- (f) Fundraising activities that an institution counts against its maximum contest limitations per Bylaw 17.

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 2012-13 Manual

10.2 Knowledge of Use of Banned Drugs.

A member institution's athletics department staff members or others employed by the intercollegiate athletics program who have knowledge of a student-athlete's use at any time of a substance on the list of banned drugs as set forth in Bylaw 31.2.3.4, shall follow institutional procedures dealing with drug abuse or shall be subject to disciplinary or corrective action as set forth in Bylaw 19.5.

13.6.7.5 Student Host. The student host must be either a current student-athlete or a student designated in a manner consistent with the institution's policy for providing campus visits or tours to prospective students in general. The institution may provide the following to a student host entertaining a prospective student-athlete:

- (a) A maximum of \$40 for each day of the visit to cover all actual costs of entertaining the student host(s) and the prospective student-athlete (and the prospective student-athlete's parents, legal guardians or spouse), excluding the cost of meals and admission to campus athletics events. The cost of entertainment of the institution's athletics department staff members who accompany the prospective student-athlete is also excluded. If an athletics department staff member serves as the prospective student-athlete's host, his or her entertainment costs must be included in the entertainment allowance. The entertainment allowance may not be used for the purchase of souvenirs, such as T-shirts or other institutional mementos. It is permissible to provide the student host with an additional \$20 per day for each additional prospective student-athlete the host entertains;
- (b) Complimentary meals, provided the student host is accompanying the prospective student-athlete during the prospective student-athlete's official visit; and
- (c) Complimentary admissions to campus athletics events, provided the student host is accompanying the prospective student-athlete to the events during the prospective student-athlete's official visit.

13.6.7.6 Student Support Group Assisting in Recruiting. An institution may not provide a free meal or entertainment to a member of an institutional student support group that assists in the recruitment of a prospective student-athlete during an official visit unless the student is designated as the one student host for that prospective student-athlete. Any additional arrangement between the institution and members of such a support group (e.g., compensation, providing a uniform) is left to the discretion of the institution.

13.7.2.1.8 Student Host. A student host used during an unofficial visit must either be a current student-athlete or a student who is designated in a manner consistent with the institution's policies for providing campus visits or tours to prospective students in general.

14.01.3 Compliance with Other NCAA and Conference Legislation. To be eligible to represent an institution in intercollegiate athletics competition, a student-athlete shall be in compliance with all applicable provisions of the constitution and bylaws of the Association and all rules and

regulations of the institution and the conference, if any, of which the institution is a member. A violation of this bylaw that relates only to a violation of a conference rule shall be considered an institutional violation per Constitution 2.8.1; however, such a violation shall not affect the student-athlete's eligibility.

Division I 2013-14 Manual

13.6.7.5 Student Host. The student host must be either a current student-athlete or a student designated in a manner consistent with the institution's policy for providing campus visits or tours to prospective students in general. The institution may provide the following to a student host entertaining a prospective student-athlete:

- (a) A maximum of \$40 for each day of the visit to cover all actual costs of entertaining the student host(s) and the prospective student-athlete (and the prospective student-athlete's parents, legal guardians or spouse), excluding the cost of meals and admission to campus athletics events. The cost of entertainment of the institution's athletics department staff members who accompany the prospective student-athlete is also excluded. If an athletics department staff member serves as the prospective student-athlete's host, his or her entertainment costs must be included in the entertainment allowance. The entertainment allowance may not be used for the purchase of souvenirs, such as T-shirts or other institutional mementos. It is permissible to provide the student host with an additional \$20 per day for each additional prospective student-athlete the host entertains;
- (b) Complimentary meals, provided the student host is accompanying the prospective student-athlete during the prospective student-athlete's official visit; and
- (c) Complimentary admissions to campus athletics events, provided the student host is accompanying the prospective student-athlete to the events during the prospective student-athlete's official visit.

13.6.7.6 Student Support Group Assisting in Recruiting. An institution may not provide a free meal or entertainment to a member of an institutional student support group that assists in the recruitment of a prospective student-athlete during an official visit unless the student is designated as the one student host for that prospective student-athlete. Any additional arrangement between the institution and members of such a support group (e.g., compensation, providing a uniform) is left to the discretion of the institution.

13.7.2.1.8 Student Host. A student host used during an unofficial visit must either be a current student-athlete or a student who is designated in a manner consistent with the institution's policies for providing campus visits or tours to prospective students in general.

Division I 2014-15 Manual

13.6.7.5 Student Host. The student host must be either a current student-athlete or a student designated in a manner consistent with the institution's policy for providing campus visits or tours to prospective students in general. The institution may provide the following to a student host entertaining a prospective student-athlete:

- (a) A maximum of \$40 for each day of the visit to cover all actual costs of entertaining the student host(s) and the prospective student-athlete (and the prospective student-athlete's parents, legal guardians or spouse), excluding the cost of meals and admission to campus athletics events. The cost of entertainment of the institution's athletics department staff members who accompany the prospective student-athlete is also excluded. If an athletics department staff member serves as the prospective student-athlete's host, his or her entertainment costs must be included in the entertainment allowance. The entertainment allowance may not be used for the purchase of souvenirs, such as T-shirts or other institutional mementos. It is permissible to provide the student host with an additional \$20 per day for each additional prospective student-athlete the host entertains;
- (b) Complimentary meals, provided the student host is accompanying the prospective student-athlete during the prospective student-athlete's official visit; and
- (c) Complimentary admissions to campus athletics events, provided the student host is accompanying the prospective student-athlete to the events during the prospective student-athlete's official visit.

13.6.7.6 Student Support Group Assisting in Recruiting. An institution may not provide a free meal or entertainment to a member of an institutional student support group that assists in the recruitment of a prospective student-athlete during an official visit unless the student is designated as the one student host for that prospective student-athlete. Any additional arrangement between the institution and members of such a support group (e.g., compensation, providing a uniform) is left to the discretion of the institution.

13.7.2.1.8 Student Host. A student host used during an unofficial visit must either be a current student-athlete or a student who is designated in a manner consistent with the institution's policies for providing campus visits or tours to prospective students in general.

Division I 2015-16 Manual

13.6.7.5 Student Host. The student host must be either a current student-athlete or a student designated in a manner consistent with the institution's policy for providing campus visits or tours to prospective students in general. The institution may provide the following to a student host entertaining a prospective student-athlete:

- (a) A maximum of \$40 for each day (24-hour period) of the visit (maximum of \$80 for two 24-hour periods) to cover all actual costs of entertaining the student host(s) and the

prospective student-athlete (and the prospective student-athlete's parents, legal guardians or spouse), excluding the cost of meals and admission to campus athletics events. The cost of entertainment of the institution's athletics department staff members who accompany the prospective student-athlete is also excluded. If an athletics department staff member serves as the prospective student-athlete's host, his or her entertainment costs must be included in the entertainment allowance. The entertainment allowance may not be used for the purchase of souvenirs, such as T-shirts or other institutional mementos. It is permissible to provide the student host with an additional \$20 per day for each additional prospective student-athlete the host entertains;

- (b) Complimentary meals, provided the student host is accompanying the prospective student-athlete during the prospective student-athlete's official visit; and
- (c) Complimentary admissions to campus athletics events, provided the student host is accompanying the prospective student-athlete to the events during the prospective student-athlete's official visit.

13.6.7.6 Student Support Group Assisting in Recruiting. An institution may not provide a free meal or entertainment to a member of an institutional student support group that assists in the recruitment of a prospective student-athlete during an official visit unless the student is designated as the one student host for that prospective student-athlete. Any additional arrangement between the institution and members of such a support group (e.g., compensation, providing a uniform) is left to the discretion of the institution.

13.7.2.1.8 Student Host. A student host used during an unofficial visit must either be a current student-athlete or a student who is designated in a manner consistent with the institution's policies for providing campus visits or tours to prospective students in general.

Division I 2017-18 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;

19.2.3 Responsibility to Cooperate. Current and former institutional staff members or prospective or enrolled student-athletes of member institutions have an affirmative obligation to cooperate fully with and assist the NCAA enforcement staff, the Committee on Infractions and the Infractions Appeals Committee to further the objectives of the Association and its infractions program. The responsibility to cooperate requires institutions and individuals to protect the integrity of investigations and to make a full and complete disclosure of any relevant information,

including any information requested by the enforcement staff or relevant committees. Current and former institutional staff members or prospective or enrolled student-athletes of member institutions have an affirmative obligation to report instances of noncompliance to the Association in a timely manner and assist in developing full information to determine whether a possible violation has occurred and the details thereof.

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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;

19.2.3 Responsibility to Cooperate. Current and former institutional staff members or prospective or enrolled student-athletes of member institutions have an affirmative obligation to cooperate fully with and assist the NCAA enforcement staff, the Committee on Infractions, and the Infractions Appeals Committee to further the objectives of the Association and its infractions program. The responsibility to cooperate requires institutions and individuals to protect the integrity of investigations and to make a full and complete disclosure of any relevant information, including any information requested by the enforcement staff or relevant committees. Current and former institutional staff members or prospective or enrolled student-athletes of member institutions have an affirmative obligation to report instances of noncompliance to the Association in a timely manner and assist in developing full information to determine whether a possible violation has occurred and the details thereof.