

## NEGOTIATED RESOLUTION<sup>1</sup>

West Chester University of Pennsylvania– Case No. 020149.

December 9, 2022

### **I. CASE SYNOPSIS**

West Chester University of Pennsylvania (West Chester) and the NCAA enforcement staff agree with the violations and major penalties detailed below.

The case began when the current West Chester athletics administration, including the director of athletics and compliance administrator, began an informal review of its camps and clinics operating procedures in early spring of 2022. West Chester, like many NCAA Division II institutions, relies on camps and clinics funding to supplement coaches' salaries and support the needs of the sports programs.

Upon a cursory review of the Golden Rams Aquatics (GRA) program, both the director of athletics and compliance administrator believed that the program, traditionally labeled as a camp/clinic in past university financial audits, was a local sports club that violated NCAA Bylaw 13.11.2.4.1 because the athletics department had financial control over its profits and operating account. The institution consulted with the Pennsylvania State Athletic Conference (PSAC), which agreed with the institution's analysis. After the PSAC advised the institution to self-report the violation to the NCAA, it did so promptly in April 2022 and began a collaborative investigation with the enforcement staff. The investigation revealed the following information.

In the late 1980's, the former head men's and women's swimming and diving coach created GRA as a traditional local sports club. The program utilized the West Chester pool facilities and consisted of age group teams made up of students from the local area between the ages of four to 18. GRA employed mostly local coaches and paid them on an hourly basis. The teams competed in meets in the region against other local sports club teams.

Initially, the former head men's and women's swimming and diving coach managed GRA as the owner/operator and maintained the program's financial account at his local bank. However, after the former director of athletics joined the West Chester athletics department in 1995, he and university student services officials decided to house the GRA account with the university in line with the operating procedures for university camps/clinics.<sup>2</sup> Around this same time, the athletics department began annually transferring \$25,000 from the GRA year-end proceeds to the athletics department budget in order to utilize those funds for men's and women's swimming and diving scholarships and equipment. Further, the former director of athletics and former men's and

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<sup>1</sup> In reviewing this agreement, the committee made editorial revisions pursuant to NCAA Division II Committee on Infractions (COI) Internal Operating Procedure (IOP) 4-7-1-2. These modifications did not affect the substance of the agreement.

<sup>2</sup> Specifically, the GRA account moved to West Chester's affiliated organization, Student Services Incorporated (SSI).

women's swimming and diving coach hired a head coach for the GRA, who also served as an assistant coach of the West Chester men's and women's swimming and diving teams.

The athletics department continued to manage GRA and permit its coach's participation in the same manner until early spring of 2022. However, per NCAA legislation, an institution may sponsor a local sports club that includes prospective student athletes if there is no athletics department or athletics booster group involvement. Coaches employed by an institution's athletics department may coach for a local sports club that includes prospective student athletes provided all rules and regulations are followed per Bylaws 13.11.2.4 and 13.11.2.4.1. Therefore, the institution violated the legislation in two distinct ways: (1) the athletics department maintained financial and managerial control over the club and (2) the athletics department allowed a coaching staff member to coach at the athletics sponsored local sports club.

In May 2022, the athletics department ceased management and sponsorship of GRA.

## **II. PARTIES' AGREEMENTS**

### **Agreed-upon findings of fact and violations of NCAA legislation.**

1. [NCAA Division II Manual Bylaws 13.11.2.4 and 13.11.2.4.1 (2017-18 through 2021-22)]

The institution and enforcement staff agree that from at least May 2018 through May 2022,<sup>3</sup> the institution's athletics department sponsored a local sports club that included prospective student-athletes in the sports of men's and women's swimming and diving in violation of NCAA legislation. Specifically, the athletics department maintained financial control of the local sports club and athletics department staff members engaged in coaching and managerial duties on an ongoing basis.

2. [NCAA Division II Manual Constitution 2.8.1 (2017-18 through 2021-22)]

The institution and enforcement staff agree that from at least May 2018 through May 2022, the scope and nature of the violations detailed in Agreed-Upon Finding of Fact No. 1 demonstrate that the institution violated the NCAA principle of rules compliance when it failed to adequately monitor and ensure that the structure and management of a local sports club that operated on the institution's campus continually complied with applicable NCAA legislation.

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<sup>3</sup> Due to the statute of limitations in Bylaw 32.7.3, violations included in this negotiated resolution are limited to violations occurring not earlier than four years before the date of the notice of inquiry (May 2022).

**III. OTHER VIOLATIONS OF NCAA LEGISLATION SUBSTANTIATED; NOT ALLEGED**

None.

**IV. REVIEW OF OTHER ISSUES**

None.

**V. PARTIES' AGREED-UPON PENALTIES<sup>4</sup>**

Pursuant to Bylaw 32.6.2.3-(e), the parties agree to the following penalties:

Penalties for Major Violations (Bylaw 19.5.2)

1. Public reprimand and censure through the public release of the negotiated resolution agreement.
2. Probation: Two years of probation from December 9, 2022, through December 8, 2024.
3. During this period of probation, the institution 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 Office of the Committees on Infractions (OCOI) by January 31, 2023, 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 October 31, 2023, during each year of probation. Particular emphasis shall be placed on rules education and monitoring related to local sports clubs.
  - d. Inform prospects in the men's and women's swimming and diving in writing that the institution is on probation for two years and detail the violations committed. If a prospect takes an official paid visit, the information regarding violations, penalties and

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<sup>4</sup> All penalties must be completed during the time periods identified in this decision. If completion of a penalty is impossible during the prescribed period, the institution shall make the COI aware of the impossibility and must complete the penalty at the next available opportunity.

- 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 programs and a direct, conspicuous link to the public infractions decision located on the athletics department's main webpage "landing page" and in the media guides for the men's and women's swimming and diving. 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.
4. Financial penalty: The institution shall pay a fine of \$25,000 to the NCAA.
  5. Recruiting restrictions: The institution shall delay the recruitment of prospective student-athletes in men's and women's swimming and diving by one year to June 15 preceding the prospective student-athletes' senior year of high school and delay recruiting transfer prospective student-athletes until six months prior to start of the year of their anticipated transfer for the 2023-24 and 2024-25 academic years.
  6. Other penalties, disciplinary measures and corrective actions, as appropriate: The institution shall not rent its swimming and diving facilities to local sports clubs for two years from December 9, 2022, through December 8, 2024.
  7. Following the receipt of the final compliance report and prior to the conclusion of probation, the institution's president shall provide a letter to the Committee on Infractions (COI) affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

## **VI. OTHER AGREEMENTS**

The parties agree that this case will be processed through the NCAA negotiated resolution process as outlined in Bylaw 32.6 and the COI will review the negotiated resolution. The parties acknowledge that the negotiated resolution contains agreed-upon findings of fact of NCAA violations based on information available at this time. Nothing in this resolution precludes the enforcement staff from investigating additional information about potential rules violations. The parties agree that the violations identified in this agreement occurred and should be classified as major.

If the COI approves the negotiated resolution, the institution agrees that they will take every precaution to ensure that the terms of the penalties are observed. The institution acknowledges that they have or will impose and follow the penalties contained within the negotiated resolution, and these penalties are in accordance with those prescribed in Bylaw 19.5.

The OCOI will monitor the penalties during their effective periods. Any action by the institution contrary to the terms of any of the penalties or any additional violations may be considered grounds for prescribing more severe penalties or may result in additional allegations and violations.

The parties acknowledge that this negotiated resolution may be voidable by the COI if any of the parties were aware or become aware of information that materially alters the factual information on which this negotiated resolution is based.

The parties further acknowledge that the COI, subsequent to its review of the negotiated resolution, may reject the negotiated resolution. Should the COI reject the negotiated resolution, the parties understand that the case may be submitted through a summary disposition report (Bylaw 32.8) or notice of allegations (Bylaw 32.7) and prior agreed-upon terms of the rejected negotiated resolution will not be binding.

Should the COI approve the negotiated resolution, the parties agree that they waive NCAA hearing and appellate opportunities.

## **VII. DIVISION II COMMITTEE ON INFRACTIONS APPROVAL**

Pursuant to Bylaw 32.6.5, the COI approves the parties' negotiated resolution agreement. The COI's review of this agreement is limited. The COI may only reject a negotiated resolution agreement if the agreement is not in the best interests of the Association or if the agreed-upon penalties are manifestly unreasonable. See Bylaw 32.6.3. In this case, the COI determines that the agreed-upon facts, violations, and type of violations are appropriate for this process. The agreed-upon penalties align with the penalties available under Bylaw 19.5 and with past case guidance. Pursuant to Bylaw 32.6.5, this negotiated resolution has no precedential value.

The COI advises West Chester that they should take every precaution to ensure that it observes the terms of the penalties. The COI will monitor the institution 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 the institution does not comply or commits additional violations. Likewise, any action by the institution 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 DIVISION II COMMITTEE ON INFRACTIONS

Jessica Chapin  
David Hansburg  
John David Lackey, Chair  
Richard Loosbrock  
Melissa Reilly  
Leslie Schuemann  
Jason Sobolik

**APPENDIX**

**WEST CHESTER UNIVERSITY OF PENNSYLVANIA'S CORRECTIVE ACTIONS**

West Chester University of Pennsylvania agrees to self-impose the following corrective actions in the sports of men's and women's swimming and diving for the 2023-24 and 2024-25 academic years:

1. No employment of high school prospective student-athletes until they become enrolled (including, for example, swim lesson instructors).
2. No complimentary admission to football or basketball games for prospective student-athletes.
3. No practicing with the team during a visit for any prospective student-athlete.
4. No current student-athletes may have recruiting conversations with prospective student athletes, other than during an official visit, unless there is a prior relationship between the prospective student-athlete and enrolled student-athlete prior to initial recruitment by the Institution.
5. Delay National Letter of Intent signing by eight weeks.
6. Reduce recruitment budget by 25%.