

NEGOTIATED RESOLUTION¹

University of Indianapolis – Case No. 020133

February 28, 2023

I. CASE SYNOPSIS

The University of Indianapolis (UIndy); then head men's and women's swimming and diving coach (then head coach); and NCAA enforcement staff agree with the violations and penalties detailed below.

On December 15, 2021, then associate and now current head men's and women's swimming and diving coach (then associate head coach),² logged into the institutional email account of then head coach, in order to manage communications with prospective student-athletes. The then associate head coach saw emails requesting the then head coach's approval of time sheets for men's swimming and diving student-athlete (student-athlete) lifeguarding duties for the previous two weeks. Because the then associate head coach had not seen the student-athlete lifeguard since the beginning of the fall semester, he immediately reported this information to the director of athletics.

The institution: (1) promptly began an inquiry December 15, 2021; (2) terminated the then head coach December 17, 2021; and (3) self-reported the violations and sought restoration of the student-athlete's eligibility December 20, 2021.³

In February 2022, the enforcement staff began a joint inquiry with the institution. Two interviews each were conducted with the then head coach, the then associate and now current head coach and the involved student-athlete. Other student-athletes and coaches were interviewed, and a review of the institution's records regarding student-athlete employment was conducted.

Regarding Agreed-Upon Finding of Fact No. 1, the student-athlete reported that in July 2021, the then head coach told him that his athletics aid should be increased based on his performance at the 2021 NCAA National Championships; however, there were not enough scholarship funds available to increase the student-athlete's aid.⁴ As a solution, the then head coach suggested hiring the student-athlete as a lifeguard, and the student-athlete would submit 20 hours of work per week but did not have to perform the work. The student-athlete subsequently submitted time sheets every two weeks through the institution's normal processes for all student workers and the then head coach would approve the time sheets. The student-athlete also reported that the then head coach instructed him not to inform others about the plan. The student-athlete expressed his concerns

¹ 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.

² The then associate head men's and women's swimming and diving coach was eventually elevated to the head men's and women's swimming and diving coach after the institution terminated the then head coach.

³ The institution reviewed whether other student-athletes had been paid for work not performed and did not identify any additional student-athletes.

⁴ The student-athlete's athletics aid was slightly increased by \$2,500 for the 2021-22 academic year.

about the permissibility of the arrangement to the then head coach, who assured him it was permissible. The investigation found that from July 19 to December 10, 2021, the then head coach knowingly arranged for and approved the student-athlete's submission of 337 hours as a lifeguard when he did not perform the work, resulting in a \$2,696 impermissible benefit.⁵ As a result, the student-athlete received actual and necessary expenses and competed in six dates of competition while ineligible during the fall of 2021.

Regarding Agreed-Upon Finding of Fact No. 2, the then head coach did not rebut the presumption of responsibility required by NCAA Bylaw 11.1.2.1 due to his personal involvement in the violations.

Regarding Agreed-Upon Finding of Fact No. 3, during his first interview with the enforcement staff, the then head coach confirmed he offered to hire the student-athlete as a lifeguard but initially denied he told the student-athlete he would approve his time sheets without requiring him to complete any work. During the then head coach's second interview, he admitted he arranged the impermissible benefit and instructed the student-athlete not to share the arrangement with others.

II. PARTIES' AGREEMENTS

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

1. [NCAA Division II Manual Bylaws 10.01.1, 10.1, 10.1-(b), 12.4.1, 12.4.1-(a), 15.2.3 and 16.11.2.1 (2020-21 and 2021-22) and 14.12.1 and 16.8.1 (2021-22)] (Major)

The institution, then head coach and enforcement staff agree that during July through December 2021, the then head coach violated the NCAA principles of ethical conduct when he knowingly arranged for a student-athlete to receive compensation for work not performed as a lifeguard at the institution's pool. Specifically, the student-athlete logged 337 hours of work not performed, resulting in a total impermissible benefit of \$2,696. The then head coach was also the pool manager who supervised student employment at the facility and approved the student-athlete's erroneous time sheets. As a result of the impermissible benefit, the student-athlete competed in six dates of competition and received actual and necessary expenses while ineligible.

2. [NCAA Division II Manual Bylaw 11.1.2.1 (2020-21 and 2021-22)] (Major)

The institution, then head coach and enforcement staff agree that during July through December 2021, the then head coach is presumed responsible for the violations detailed in Agreed-Upon Finding of Fact No. 1 and did not rebut the presumption of responsibility. The then head

⁵ The student-athlete completed six hours of lifeguarding for which he was appropriately compensated.

coach did not demonstrate that he promoted an atmosphere for compliance within the men's and women's swimming and diving program because of his personal involvement in the violations.

3. [NCAA Division II Manual Bylaws 10.1, 10.1-(c) and 19.01.3 (2021-22)] (Major)

The institution, then head coach and enforcement staff agree that on June 15, 2022, after his separation from the institution, the then head coach violated the NCAA principles of ethical conduct and failed to cooperate when he knowingly provided false or misleading information to the enforcement staff regarding his involvement in arranging for the student-athlete to receive compensation for work not performed, as detailed in Agreed-Upon Finding of Fact No. 1. Specifically, the then head coach denied having any knowledge of or involvement in instructing the student-athlete to record erroneous time sheet hours as a lifeguard for work not performed. However, this is contrary to the factual information establishing that the then head coach informed the student-athlete to record approximately 20 hours of work per week on his time sheets, did not require him to perform comparable hours of work, did not confirm that the student-athlete worked the hours submitted and instructed the student-athlete to conceal that he was submitting hours for work not performed. Further, on September 15, 2022, the then head coach acknowledged his involvement in the violation.⁶

III. OTHER VIOLATIONS OF NCAA LEGISLATION SUBSTANTIATED; NOT ALLEGED

None.

IV. REVIEW OF OTHER ISSUES

The NCAA academic and membership affairs staff reinstated the student-athlete's eligibility, with a 20% withholding condition (next three regularly scheduled dates of competition) and a repayment of \$2,696. The student-athlete fulfilled his withholding conditions.

On the advice of his personal counsel, the then head coach declined to have his first interview recorded or allow the institution to participate. During his discussions with the enforcement staff about next steps in the process, the then head coach agreed to interview a second time. During his subsequent interview with the enforcement staff and institution, the then head coach was forthcoming about his involvement in the violations. The enforcement staff considered this when negotiating his show-cause penalties reflected in Section V.

⁶ The then head coach, who is participating in the case, provided false and misleading information when he was not employed at the institution.

The enforcement staff and institution reviewed whether a failure to monitor allegation should be alleged but agreed that because the violation was limited to only one student-athlete and institutional policies were appropriate, an allegation was not appropriate.

V. PARTIES' AGREED-UPON PENALTIES

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. One year of probation from February 28, 2023, through February 27, 2024.⁷
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 April 15, 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 January 15, 2024. Particular emphasis shall be placed on rules education and monitoring related to student-athlete employment, awards and benefits and financial aid awarding.
 - d. Inform prospects in the men's swimming and diving in writing that the institution is on probation for one year 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 programs and a direct, conspicuous link to the public infractions

⁷ Institutions must serve probation during the prescribed penalty period.

decision located on the athletics department's main webpage "landing page" and in the media guides for the men's swimming and diving 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.

4. 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 NCAA Division II Committee on Infractions (COI) affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.
5. Scholarship reduction: During the 2023-24 academic year, the institution shall reduce the athletics aid in the sport of men's swimming and diving by .04 from the four-year average of athletics aid in that sport. This reduction is a doubling of the amount of the overcompensation provided to the involved student-athlete.
6. Vacation of team and individual records: Ineligible participation in the men's swimming and diving program occurred over the 2021-22 academic year as a result of violations in this case. Therefore, pursuant to Bylaw 19.5.2-(g) and Executive Regulations 31.2.2.4 and 31.2.2.5, UIndy 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, UIndy's participation in the postseason contests in which the ineligible competition occurred shall be vacated. The individual records of the ineligible student-athlete shall also be vacated. However, the individual finishes and any awards for the eligible student-athlete shall be retained. Further, UIndy's records regarding its men's swimming and diving program, as well as the records of the then 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 men's swimming and diving 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 sports information director (or other designee as assigned by the director of athletics) must contact the NCAA media coordination and statistics office and appropriate conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the media coordination and statistics office with a written report detailing those discussions. This written report will be maintained in the permanent files of the media coordination and statistics office. The 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. The institution shall pay a fine of \$2,500 to the NCAA.
8. Show-cause order: The then head coach violated student-athlete employment and extra benefit legislation and engaged in unethical conduct when he knowingly arranged for a student-athlete to receive compensation for work not performed. Further, the then head coach violated the principles of ethical conduct and failed to cooperate when he knowingly provided false or misleading information to the enforcement staff and failed to promote an atmosphere for compliance due to his personal involvement in the violations. Therefore, the then head coach shall be subject to a four-year show-cause order from February 28, 2023, through February 27, 2027. In accordance with Bylaw 19.5.2.2.1 and Committee on Infractions Internal Operating Procedure 5-17-1-2, during the show-cause period:
 - a. Any employing member institution shall restrict the then head coach from any athletically related position during the first three years of the show-cause.
 - b. If the then head coach becomes employed during the fourth year of the show-cause, the head coach shall be:
 - Prohibited from supervising any student-athlete employment at the institution; and
 - Suspended from the first six dates of competition of the first season of his employment during the fourth year of the show-cause period. The provisions of the suspension require that the then head coach not be present in the facility where the meets are held and have no contact or communication with members of the swimming and diving coaching staff or student-athletes during the suspension period. The prohibition includes all coaching activities for the period of time which begins at 12:01 a.m. the day of each of the six meets and ends at 11:59 p.m. on the day of each meet. During each day of the suspension, the then head coach may not participate in any coaching activities, including but not limited to, team travel, practice, video study, recruiting and team meetings. If he is serving as a head coach

during the time of suspension, the results of those contests from which the then head coach is suspended shall not count in his coaching career record.

If the then head coach becomes employed by a member institution in an athletically related position during the four-year show-cause period, the employing institution shall abide by the terms of the show-cause order unless it contacts the OCOI to make arrangements to show cause why the terms of the order should not apply.

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 and the then head coach agree that they will take every precaution to ensure that the terms of the penalties are observed. The institution and the then head coach acknowledge 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 or the then head coach 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. Additionally, as required by NCAA legislation for any institution involved in a major infractions case, UIndy shall be subject to the provisions of Bylaw 19.5.2.3 concerning repeat violators for a five-year period beginning on the effective date of the penalties in this case, February 28, 2023.

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 UIndy and the then head coach that they should take every precaution to ensure that they observe 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 and/or the then head coach 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

UNIVERSITY OF INDIANAPOLIS' CORRECTIVE ACTIONS

1. The institution terminated the then head coach December 17, 2021.
2. Prohibit coaching staff members from the direct supervision and administration of student-athletes in their sport in all work study or other similar institutional employment. While the student-athlete is not prohibited from work study or institutional employment, the student-athlete must be supervised by an athletics department staff member other than the coaching staff member for that sport. (This prohibition does not apply to camps and clinics.)
3. Reassessed procedures utilized by athletics department staff in employment of student-athletes and made appropriate changes.
4. Enhanced education of athletics department staff regarding policies and procedures of student-athlete employment.
5. Modified the agenda items for its monthly all athletics department staff meetings to ensure that topics regarding student-athlete employment and awarding of institutional aid are regularly addressed.