



**DEPAUL UNIVERSITY**  
**PUBLIC INFRACTIONS DECISION**  
**July 23, 2019**

## **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.<sup>1</sup> This case involved recruiting and coaching activity violations in the men's basketball program at DePaul University that stemmed from the former associate head men's basketball coach's (associate head coach's) ethical conduct violation.<sup>2</sup> The head men's basketball coach also violated head coach responsibility legislation.

In need of size on the team, the associate head coach knowingly violated recruiting legislation to ensure a top prospective student-athlete and National Letter of Intent (NLI) signee would meet initial-eligibility requirements. The associate head coach arranged for the former assistant director of men's basketball operations (assistant DOBO) to travel to the prospect's home and live with him for nearly two weeks. Although he did not complete coursework for the prospect, the assistant DOBO identified and planned for completion of his coursework, monitored his progress, limited his extracurricular activities and made sure he took tests. This assistance crossed the line into impermissible benefits. Because of the impermissible benefits, the prospect competed and received expenses while ineligible. In addition, the assistant DOBO's impermissible off-campus contact with the prospect caused the assistant DOBO to become a countable coach and DePaul to exceed the limit on men's basketball coaches. These violations are Level II.

The head coach could have stopped or prevented the violations if he promoted an atmosphere of compliance or monitored his staff. Instead, he fostered a culture of silence where multiple staff members did not report or question violations because they feared doing so would hurt their careers. The head coach also did not track on the assistant DOBO's prolonged absence from the office at the time of the violations. The membership requires proactive engagement from head coaches as leaders of programs. The head coach was detached from his program and failed in this regard. His head coach responsibility violation is Level II.

The panel classifies this case as Level II-Standard for DePaul, Level II-Mitigated for the head coach's violation and Level II-Aggravated for the associate head coach's violation. Utilizing the current penalty guidelines and NCAA bylaws authorizing additional penalties, the panel adopts

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<sup>1</sup> Infractions cases are decided by hearing panels comprised of COI members. Decisions issued by hearing panels are made on behalf of the COI.

<sup>2</sup> A member of the Big East Conference, DePaul has a total enrollment of approximately 22,000 students. It sponsors 15 sports. This is the institution's third Level I, Level II or major infractions case. DePaul had prior major infractions cases in 1994 (men's basketball) and 1974 (same).

and prescribes the following penalties: three years of probation, a fine of \$5,000 plus one percent of the budget of the men's basketball program, recruiting restrictions, vacation of records, a three-contest suspension for the head coach and a three-year show-cause order for the associate head coach. The penalties section of this decision details these and other penalties.

## **II. CASE HISTORY**

The investigation that led to this case began shortly after the prospect announced in November 2017 that he would transfer to another institution. Prior to transferring, the prospect informed the athletics director that the assistant DOBO stayed at his home in the spring of 2016 to monitor the completion of his coursework. After investigating the matter, DePaul submitted a Level III violation report regarding impermissible off-campus contact. The enforcement staff issued a notice of inquiry on April 5, 2018, following its interview of the prospect.

The enforcement staff and institution conducted interviews from May through October 2018. The enforcement staff issued the notice of allegations (NOA) on October 26, 2018. DePaul, the head coach and the associate head coach submitted their responses on January 24, 2019.<sup>3</sup> The enforcement staff issued its written reply and statement of the case on March 25, 2019. The panel held the hearing via videoconference on May 16, 2019.<sup>4</sup>

## **III. FINDINGS OF FACT**

The events that form the basis of the underlying violations occurred during a roughly two-week period in April and May 2016. At the associate head coach's direction, the assistant DOBO traveled out of state to live with the prospect to ensure that he completed NCAA core courses and became immediately eligible to compete. The facts relating to this arrangement are largely not in dispute.

The prospect was a top high school recruit. He received interest from several NCAA institutions but injured his knee during his final basketball season in high school. Because he believed the injury would negatively impact his ability to compete immediately in college, he attended a sport institute after he graduated to rehab his injury and assess his options.<sup>5</sup> He then played his postgraduate year at the sport institute where he was ranked as a four-star recruit and top center.

Although the prospect graduated from high school, he needed to complete three core courses successfully to become a qualifier. Therefore, while he trained at the sport institute, he enrolled

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<sup>3</sup> The head coach adopted DePaul's response as his own.

<sup>4</sup> The chief hearing officer requested the assistant DOBO, former director of men's basketball operations (DOBO) and a former assistant men's basketball coach (assistant coach) participate in the hearing via videoconference.

<sup>5</sup> The sport institute is a nonscholastic training academy. Its basketball team competes against scholastic and nonscholastic teams during the traditional basketball season.

in the necessary courses online. Once the 2015-16 basketball season ended, the sport institute and its dormitories closed. The prospect spent the remainder of the spring 2016 semester at home finishing his online courses.

DePaul began recruiting the prospect in the spring of 2016 and intensely recruited him due to a need "in the worst way possible" for size on the team. Prior to his official visit, the former associate athletics director for compliance (associate compliance director) evaluated the prospect's transcripts. On February 17, 2016, he sent an email to the head coach and associate head coach regarding the prospect's academic profile. In this email, the associate compliance director informed them of his serious concern that the prospect would not meet NCAA academic requirements to be immediately eligible to compete. He described the prospect's transcripts as particularly problematic. Nonetheless, DePaul continued to recruit the prospect. The prospect signed his NLI with DePaul on April 13, 2016.

Shortly after the prospect signed his NLI, the associate head coach became worried that the prospect would not successfully complete the online coursework required to be immediately eligible to compete. The prospect needed to complete between 16 and 20 assignments and prepare for the midterm and final exams in just one month. At the time, he had completed only one or two assignments and experienced several distractions in or around his home that prevented him from completing coursework. The associate head coach thought the distractions would not allow the prospect to finish his assignments. He thus sent the assistant DOBO to live with the prospect to remove the distractions and ensure that the prospect successfully completed the work. The associate head coach knew that the arrangement was impermissible.

The associate head coach directed the assistant DOBO to use the assistant coach's car to travel to the prospect's home and live with him. He cautioned the assistant DOBO that he would have to be a parental figure because the prospect's grandmother—who was living with and taking care of the prospect—could not do so. He also told the assistant DOBO that the arrangement needed to remain confidential. The associate head coach assumed that the visit would last a week but acknowledged it could take longer.

The assistant DOBO arrived at the prospect's home on April 23, 2016. The assistant DOBO lived with the prospect until May 4, 2016—a total of 12 days. During this stay, the assistant DOBO identified and planned for completion of the coursework necessary for the prospect to be immediately eligible to compete. He monitored the prospect's progress and limited the prospect's extracurricular activities until he completed the work. Finally, he made sure that the prospect took proctored tests, setting up a favorable time to take the tests and ensuring that the prospect completed the tests via webcam in his home. The assistant DOBO consistently reported back to the associate head coach.

The assistant coach and DOBO knew of the arrangement but did not report it to the head coach or compliance staff. The assistant DOBO—who was part of the arrangement—also did not report a violation.

The assistant coach became aware of the arrangement while the assistant DOBO was living with the prospect. When he returned from a recruiting trip, the assistant coach noticed that his car and the assistant DOBO were gone. He then spoke with the assistant DOBO by phone. During the call, the assistant DOBO told the assistant coach that the associate head coach sent him to stay at the prospect's home to monitor the prospect.

To make the assistant DOBO aware that the arrangement may not have been permissible, the assistant coach told the assistant DOBO that he needed to check with the head coach and associate head coach about the permissibility of the arrangement. The assistant coach stated during the investigation and at the hearing that the assistant DOBO advised him that he checked with both and that the arrangement was permissible. The assistant DOBO, however, never spoke with the head coach regarding the arrangement. The assistant coach acknowledged that he was not sure if the arrangement was a violation but did not raise the issue with the head coach or compliance staff because he accepted that the assistant DOBO told him it was permissible. He also did not speak with the associate head coach. The assistant coach reported to both the head coach and associate head coach.

The DOBO became aware of the arrangement when the assistant DOBO called him on his way to live with the prospect. The assistant DOBO, who reported to both the DOBO and head coach, expressed concern to the DOBO about going to the prospect's home. The DOBO, like the assistant coach, stated during the investigation and at the hearing that he told the assistant DOBO to speak with the head coach about the arrangement. After the call, the DOBO confirmed the details of the arrangement with the associate head coach. The DOBO, however, did not follow up with the assistant DOBO to verify that he spoke with the head coach.

The DOBO acknowledged that he was aware that the assistant DOBO's off-campus contact with the prospect was not permissible. But he did not inform the head coach, whom he reported to, or the compliance staff about the arrangement because he was worried that doing so would hurt his career, including future job opportunities. He further explained at the hearing that he did not want to be considered disloyal, put staff members at odds with each other or get in the way of a decision made by the associate head coach. Relatedly, the DOBO did not understand the process for reporting violations and indicated that the head coach never made sure that he knew the process.

Like the other two staff members, the assistant DOBO did not check with the head coach or compliance staff about the permissibility of the arrangement. The assistant DOBO thought the arrangement was permissible, as the associate head coach had advised him. But the associate head coach's desire to keep the arrangement confidential should have alerted the assistant DOBO to tell the head coach or compliance staff about the arrangement. Nonetheless, as was the case for the DOBO, the assistant DOBO chose not to raise the issue because he thought doing so would hurt him professionally. The assistant DOBO clarified at the hearing that he wanted to "stay in his lane." He also explained that his career would be in jeopardy if he undermined the associate head coach and feared that the associate head coach would find out if he talked with the head coach.

The assistant DOBO—as well as the DOBO and assistant coach—knew that the associate head coach wielded significant authority in the program. The assistant DOBO stated that the associate head coach "called the shots." The DOBO described this as unchecked power. The assistant coach explained how the associate head coach used his power to demand things his way and intimidate other staff members, including the assistant DOBO. In accordance with statements by the assistant DOBO, DOBO and assistant coach, the associate head coach's conduct caused division among the staff and staff members to be fearful of him. The head coach, however, did not recognize this or the culture of silence in his program.

The head coach also did not track on the assistant DOBO's prolonged absence from the office to stay at the prospect's home. He did not confer with his staff, look for red flags or otherwise ask questions about the absence. Instead, the head coach explained that he did not micromanage and trusted that if the assistant DOBO was absent, he was absent for the right reasons. Having worked with the assistant DOBO at another institution, the head coach claimed that it was typical for the assistant DOBO to be away for periods of time to visit family. The head coach maintained that he did not become aware of the arrangement until after the prospect reported it in November 2017.

Because of the assistant DOBO's presence at his home, the prospect successfully completed his coursework and was certified as a qualifier. The prospect enrolled at DePaul in the fall of 2016. He played in 25 games during the 2016-17 season.

#### **IV. ANALYSIS**

The violations occurred in the men's basketball program during the spring of 2016. The violations are Level II and fall into two areas: (A) knowing arrangement for a noncoaching staff member to provide impermissible benefits to a prospect, which resulted in impermissible contact, impermissible coaching activity, and ineligible competition and expenses; and (B) the head coach's failure to promote an atmosphere of compliance and monitor his program.

##### **A. UNETHICAL CONDUCT, IMPERMISSIBLE RECRUITING BENEFITS, IMPERMISSIBLE PRECOLLEGE EXPENSES, IMPERMISSIBLE RECRUITING CONTACT, IMPERMISSIBLE COACHING ACTIVITY, AND INELIGIBLE COMPETITION AND EXPENSES [NCAA Division I Manual Bylaws 10.01.1, 10.1, 10.1-(c), 11.7.6, 12.11.1, 13.1.2.1, 13.1.2.5, 13.2.1, 13.2.1.1-(k), 13.15.1.9 and 16.8.1 (2015-16)]<sup>6</sup>**

In the spring of 2016, the associate head coach knowingly arranged for the assistant DOBO to monitor the prospect to ensure that he met initial-eligibility requirements. The arrangement resulted in recruiting, coaching activity, and competition and expenses violations. DePaul only disputed the recruiting benefits allegation. The associate head coach agreed that he violated ethical

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<sup>6</sup> The enforcement staff could have cited Bylaw 11.7.1.1-(c) in the 2015-16 Manual but did not. The bylaws cited in this decision are the bylaws included in the NOA.

conduct legislation. The panel concludes that DePaul and the associate head coach committed Level II violations.

- 1. NCAA legislation relating to unethical conduct, impermissible recruiting benefits, impermissible precollege expenses, impermissible recruiting contact, impermissible coaching activity, and ineligible competition and expenses.**

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

- 2. The associate head coach knowingly arranged for the assistant DOBO to provide impermissible recruiting benefits to the prospect, which resulted in impermissible recruiting contact that caused DePaul to exceed countable coach limits and led to ineligible competition and expenses.**

The associate head coach directed the assistant DOBO to travel to and live with the prospect to monitor his completion of coursework. While living with the prospect in late-April and early-May of 2016, the assistant DOBO had impermissible recruiting contact that caused him to become a countable coach. The prospect also competed and received expenses while ineligible. The associate head coach's conduct violated Bylaw 10 while the recruiting benefits and contact violated Bylaw 13. The additional countable coach, provision of expenses to the prospect after his enrollment at DePaul, and ineligible competition violated Bylaws 11, 16 and 12, respectively.

Bylaw 10 requires staff members to conduct themselves in an ethical manner. In accordance with Bylaw 10.1-(c), staff members must not knowingly involve themselves in offering or providing a prospect with an improper inducement. Bylaw 13 governs recruiting and, through Bylaw 13.2.1, prohibits staff members from giving benefits to a prospect that are not generally available to other prospects. Bylaws 13.2.1.1-(k) and 13.15.1.9 specifically prohibit expenses for academic services to assist a prospect in completing initial-eligibility requirements. Bylaws 13.1.2.1 and 13.1.2.5 also provide that only authorized staff members may recruit off campus. Related to these bylaws, Bylaw 11.7.6 limits men's basketball programs to four coaches. Bylaw 16.8.1 permits institutions to provide expenses to eligible student-athletes who represent the institution in practice and competition. Institutions, however, must withhold ineligible student-athletes from competition pursuant to Bylaw 12.11.1.

In need of size on the team, the associate head coach was concerned that the prospect—who had just signed an NLI—would not meet initial-eligibility requirements. He thus knowingly arranged for the assistant DOBO to travel to the prospect's home and live with him to monitor the completion of his core coursework. The assistant DOBO helped the prospect for 12 days by identifying and planning for completion of his coursework, monitoring his progress, limiting extracurricular activities and ensuring he took tests. This assistance allowed the prospect to dedicate the appropriate time for coursework. As a result, the prospect met initial-eligibility requirements. The prospect then competed and received expenses while ineligible because of the benefits. The associate head coach's intentional conduct violated Bylaws 10.01.1, 10.1 and 10.1-(c). The benefits provided by the assistant DOBO violated Bylaws 13.2.1, 13.2.1.1-(k) and 13.15.1.9. The

ineligible competition and expenses resulting from the benefits violated Bylaws 12.11.1 and 16.8.1.1.

The assistant DOBO impermissibly contacted the prospect during his stay with the prospect because he was a noncoaching staff member with sport-specific responsibilities and not certified to recruit off campus. As a result of the contact, the assistant DOBO became a countable coach and DePaul exceeded the limitation of four men's basketball coaches. DePaul thus also violated Bylaws 13.1.2.1, 13.1.2.5 and 11.7.6.

DePaul only disputed that impermissible recruiting benefits occurred. The institution argued that the assistant DOBO did not give the prospect impermissible benefits because he did not actually complete the prospect's coursework. This, however, is irrelevant. The completion of coursework is not necessary for impermissible benefits to occur when an institution—as a recruiting inducement—provides expenses for academic services to help a prospect meet initial-eligibility requirements. See *St. John's University (New York)* (2018) (concluding that an impermissible recruiting benefit occurred when the head women's volleyball coach provided round-trip transportation for a prospect to take the SAT); *University of Mississippi* (2017) (concluding that impermissible recruiting benefits occurred when the football operations coordinator and assistant football coach arranged for a booster to provide housing, meals and transportation for prospects so that they could attend classes); and *Radford University* (2012) (concluding that impermissible recruiting benefits occurred when the head men's basketball coach indirectly arranged round-trip transportation for a prospect to take the SAT and ACT). Like in these cases, consistent with the bylaws, recruiting benefits violations occurred when the assistant DOBO monitored the prospect to ensure that he completed coursework necessary to be eligible to compete.

In accordance with Bylaw 19.1.2, the violations are Level II because they provided more than minimal but less than substantial or extensive advantages and benefits. The benefits occurred for nearly two weeks and allowed the prospect to be immediately eligible to compete. Likewise, had the prospect paid for the assistance he received from the assistant DOBO, the significant number of hours the assistant DOBO spent with the prospect would have resulted in more than a minimal expense. The assistant DOBO's time with the prospect also allowed DePaul's countable coaches to engage in other coaching activities, such as on- or off-campus recruiting.

The panel considered whether the violations rose to Level I. The circumstances in this case, however, more closely follow recent cases in which the COI concluded that Level II violations occurred when coaches knowingly violated legislation to help a student-athlete meet eligibility requirements. See *Prairie View A&M University* (2017) (concluding that an assistant men's basketball coach violated ethical conduct legislation when he knowingly arranged for a friend to pay approximately \$500 for an online course a student-athlete needed to regain eligibility, which resulted in ineligible competition and expenses) and *Florida International University* (2017) (concluding that the head women's basketball coach violated ethical conduct legislation when he knowingly provided \$600 in cash to a student-athlete to enroll in a course needed for continuing eligibility, which resulted in ineligible competition and expenses). Like in these cases, the violations resulted in more than minimal but less than substantial advantages and benefits.

**B. HEAD COACH RESPONSIBILITY [NCAA Division I Manual Bylaw 11.1.1.1 (2015-16)]**

The head coach failed to promote an atmosphere of compliance and monitor his staff. DePaul and the head coach disputed the allegation. The panel concludes that the head coach committed a Level II violation.

**1. NCAA legislation relating to head coach responsibility.**

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

**2. The head coach violated head coach responsibility legislation through his failure to promote an atmosphere of compliance and monitor his staff.**

The head coach did not meet his legislated head coach responsibilities. He did not promote an atmosphere of compliance when multiple men's basketball staff members failed to report the arrangement for the assistant DOBO to live with the prospect. The head coach also failed to monitor his staff when he did not track on the assistant DOBO's prolonged absence. The head coach's conduct violated Bylaw 11.

Bylaw 11.1.1.1 establishes two affirmative duties for head coaches: (1) to promote an atmosphere of compliance; and (2) to monitor individuals in their program who report to them. The bylaw presumes that head coaches are responsible for the actions of their staff members. A head coach may rebut this presumption by demonstrating that he or she promoted an atmosphere of compliance and monitored his or her staff.

The head coach failed to promote an atmosphere of compliance because three staff members knew that the associate head coach sent the assistant DOBO to live with the prospect but did not report the violation or question its permissibility. Although he was not sure whether the arrangement was permissible, the assistant coach took no action beyond telling the assistant DOBO to check with the head coach and associate head coach. Even more troubling, the DOBO *knew* that the contact was a violation but did not report it because he did not want to be disloyal, cause tension, get in the way of the associate head coach or otherwise hurt his career. He also did not know the process for reporting violations. Finally, the associate head coach's desire to keep the arrangement confidential should have alerted the assistant DOBO to report the arrangement. But he did nothing because he was concerned for his future, wanted to "stay in his lane" and was afraid of the associate head coach. This culture of silence pervaded the program.

Ensuring that staff members are comfortable reporting, or know how to report, violations is fundamental to any compliance program. Even with a staff member—a determined wrongdoer as described by DePaul—intentionally violating legislation and exercising his authority to demand things his way, there were numerous opportunities for other staff members to stop or prevent the violations. But the head coach was detached. He was unaware that staff members were afraid to



report violations or ask questions and did not recognize the associate head coach's undue influence over staff members. This in and of itself demonstrates a lack of head coach control.

The head coach also failed to monitor his staff. He did not confer with staff members, actively look for red flags or otherwise ask questions about the assistant DOBO's roughly two-week absence. Instead, the head coach trusted that the assistant DOBO's unannounced absence was for the right reasons. Head coaches must verify—not just trust—that staff members comply with legislation. See *University of Oregon* (2018) (concluding that the head men's basketball coach failed to monitor the director of operations who impermissibly involved himself in student-athletes' workouts while the head coach was away) and *California State University, Sacramento* (2018) (concluding that the head men's tennis coach did not meet his monitoring responsibility when he failed to supervise his assistant coach's recruiting efforts and involvement in arranging housing for student-athletes). Lack of knowledge is not an excuse. See *Southern Methodist University* (2015) (concluding that the head men's basketball coach violated head coach responsibility legislation, in part, when he did not ask questions about his administrative assistant's relationship with a student-athlete despite multiple red flags). Here, had the head coach checked in with the assistant DOBO or asked appropriate questions, he may have stopped or prevented the violations.

The head coach largely relied on his track record to argue that he rebutted the presumption. At the hearing, he pointed to several examples of how he purported to promote compliance. These included his participation in an NCAA ethics coalition, required staff attendance at compliance meetings and communication with the compliance staff to report violations or ask for advice. The panel recognizes these and other efforts but the head coach needed to do more. He created an environment where staff members did not report violations or consult with the compliance staff but chose to remain silent. The head coach did not ensure that one of these staff members knew the process for reporting violations. Likewise, the head coach did not track on the assistant DOBO's prolonged absence from the office. He thus failed to meet his responsibility to promote an atmosphere of compliance and monitor staff in accordance with Bylaw 11.1.1.1.

This case is different than those in which the COI concluded that the head coach rebutted his presumed responsibility. In *University of the Pacific* (2017), a legitimate misunderstanding between the head baseball coach and an associate athletics director caused the violation at issue. The COI concluded that the head coach rebutted his presumed responsibility because he promoted an atmosphere of compliance. Likewise, in *Wichita State University* (2015), the head baseball coach's administrative assistant provided impermissible benefits to student-athletes when she allowed them to purchase apparel at discounted prices through an institutional account with an apparel provider. The head baseball coach knew that student-athletes were ordering from the account but failed to ask follow-up questions after his administrative assistant misinformed him that the student-athletes were not purchasing the items at a discount. The COI concluded that the head coach's failure to follow up did not negate decades of monitoring his assistant and setting the proper atmosphere for compliance. Unlike in *Pacific* and *Wichita State*, three staff members failed to report violations. In addition, the head coach did not monitor his staff when he did not track on the assistant DOBO's absence to stay at the prospect's home. There was no legitimate

misunderstanding or decades of monitoring—the head coach simply did not ensure a compliant program.

In accordance with Bylaw 19.1.2-(e), head coach responsibility violations can be Level II when the underlying violations are Level II. The COI has regularly applied the bylaw to Level II head coach responsibility violations. *See Oregon* (concluding that Level II head coach responsibility violations occurred when the head men's basketball coach failed to monitor the director of operations' interactions with student-athletes and the head women's basketball coach failed to monitor his staff and was personally involved in violations) and *University of Utah* (2018) (concluding that a Level II head coach responsibility violation occurred when the head baseball coach instructed and permitted his director of operations to engage in impermissible coaching activity). Like in these cases, the head coach responsibility violation is Level II because the underlying violations are Level II.

## V. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the panel concludes that this case involved Level II violations of NCAA legislation. Level II violations are significant breaches of conduct that provide or are intended to provide more than a minimal but less than a substantial or extensive advantage, including violations that involve more than a minimal but less than a substantial or extensive impermissible benefit.

In considering penalties, the panel first reviewed aggravating and mitigating factors pursuant to Bylaws 19.9.2, 19.9.3 and 19.9.4 to determine the appropriate classifications for DePaul, the head coach and the associate head coach. 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 DePaul, Level II-Mitigated for the head coach's violation and Level-II Aggravated for the associate head coach's violation.

### **Aggravating Factors for DePaul**

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

19.9.3-(f): Violations were premeditated, deliberate or committed after substantial planning;

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

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

19.9.3-(j): Conduct or circumstances demonstrating an abuse of a position of trust.

DePaul agreed with Bylaw 19.9.3-(f), *Violations were premeditated, deliberate or committed after substantial planning*, disagreed with Bylaw 19.9.3-(g), *Multiple Level II violations by the*

*institution*, and argued that the panel should not give the other factors full weight. DePaul acknowledged that Bylaw 19.9.3-(b), *A history of Level I, Level II or major violations by the institution*, applied but argued that the panel should give the factor minimal weight because of the length of time between cases. DePaul disagreed with Bylaw 19.9.3-(g) because it contended that multiple Level II violations did not occur. In the alternative, DePaul argued that the panel should give the factor minimal weight because the same conduct caused the violations. Likewise, DePaul submitted that Bylaws 19.9.3-(h), *Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct*, and 19.9.3-(j), *Conduct or circumstances demonstrating an abuse of a position of trust*, should be given the weight of only one factor because the factors resulted from the same conduct by the associate head coach.

The panel assigns Bylaw 19.9.3-(b), *A history of Level I, Level II or major violations by the institution*, minimal weight. DePaul's prior major cases occurred in 1994 and 1974. Both cases involved the men's basketball program but largely different violations. In determining the weight to assign the factor, the COI regularly evaluates the number of prior cases, years between cases and similarities of the violations in prior cases to the case at issue. The COI often gives the factor minimal weight when several years pass between cases. *See Alabama A&M University* (2018) (giving the factor minimal weight because of the amount of time since the prior cases in 1996 and 1986) and *University of San Francisco* (2018) (giving the factor minimal weight because only one prior case occurred in the previous 25 years). Like in these cases, the panel assigns the factor minimal weight because 25 years passed since the most recent case.

The panel also determines that Bylaw 19.9.3-(g), *Multiple Level II violations by the institution*, applies. The panel recognizes that many of the violations resulted from the unethical arrangement by the associate head coach. Nonetheless, multiple Level II violations—unethical conduct, impermissible recruiting benefits, impermissible precollege expenses, impermissible recruiting contact, impermissible coaching activity, ineligible competition and expenses, and head coach responsibility—occurred in this case. In addition, the head coach's failure to promote an atmosphere of compliance and monitor his staff did not result from the arrangement—it allowed the arrangement to continue undetected. The panel thus gives the factor more than minimal weight.

The panel also does not assign Bylaws 19.9.3-(h), *Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct*, and 19.9.3-(j), *Conduct or circumstances demonstrating an abuse of a position of trust*, the weight of one factor as requested by DePaul. While the bylaws may involve similar underlying conduct, the factors are separate and distinct as defined by the membership. *See University of Hawaii at Manoa* (2015) (applying both factors to the institution). The panel applies both factors because the associate head coach was a person of authority who condoned, participated in or negligently disregarded the violation *and* his conduct demonstrated an abuse of a position of trust. With respect to Bylaw 19.9.3-(h), the panel emphasizes that institutions are responsible for their employees, particularly coaches. Although the associate head coach condoned, participated in or negligently disregarded the violation, the COI has regularly applied the factor to both institutions and involved individuals. *See Oregon* (determining that the factor applied to the institution and the involved individuals whose conduct

resulted in the factor) and *Hawaii* (same). Like in these cases, the associate head coach acted on behalf of DePaul when he knowingly violated the legislation.

### **Mitigating Factors for DePaul**

19.9.4-(c): Affirmative steps to expedite final resolution of the matter; and

19.9.4-(d): An established history of self-reporting Level III or secondary violations.<sup>7</sup>

DePaul identified two additional mitigating factors: Bylaw 19.9.4-(b), *Prompt acknowledgement of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties*, and Bylaw 19.9.4-(e), *Implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches' control standards (e.g., National Association of Athletics Compliance Reasonable Standards)*. The panel determines that neither factor applies.

The panel does not apply Bylaw 19.9.4-(b) because DePaul did not promptly acknowledge and accept responsibility for all violations. Although DePaul contested the recruiting benefits and head coach responsibility violations, the COI has applied the factor in prior cases in which a party contests some allegations. *See University of Tennessee at Chattanooga* (2018) (determining that the factor applied when the head men's tennis coach contested violations but repeatedly acknowledged his shortcomings and accepted responsibility). The panel recognizes that DePaul took some corrective action to address head coach control. However, unlike in *Tennessee at Chattanooga*, DePaul never accepted full responsibility for the head coach responsibility violation. DePaul continued to contend through the hearing that the associate head coach acted to undermine the head coach and that the head coach was not at fault. The head coach, however, could have stopped or prevented the violations if he promoted an atmosphere of compliance or monitored his staff. Bylaw 19.9.4-(b) does not apply.

With respect to Bylaw 19.9.4-(e), DePaul did not demonstrate that it implemented a system of compliance methods designed to ensure rules compliance and satisfaction of control standards. The COI has regularly applied the mitigating factor when the compliance system was in place at the time of the violations *and* detected the violations. *See North Carolina Central University* (2018) (determining that the factor did not apply because the institution implemented compliance improvements after the violations); *Rutgers, The State University of New Jersey, New Brunswick* (2017) (determining that the factor did not apply because the violations went undetected over many years); and *University of Missouri, Columbia* (2016) (determining that the factor did not apply because improvements and enhancements made to the system should have been in place prior to the violations). The panel acknowledges that DePaul has emphasized rules education, monitoring and accessibility of the associate compliance director, and other elements of its compliance program. DePaul did not show, however, that the compliance methods were in place at the time of the violations and detected the violations. Bylaw 19.9.4-(e) thus does not apply.

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<sup>7</sup> DePaul self-reported 33 Level III violations from the 2013-14 through 2017-18 academic years.

### **Aggravating Factors for the Head Coach**

None.

### **Mitigating Factor for the Head Coach**

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

Like DePaul, the head coach argued that Bylaw 19.9.4-(b), *Prompt acknowledgement of the violation, acceptance of responsibility and meaningful corrective measures and/or penalties*, applied as a mitigating factor. He contended that he immediately acknowledged that a violation occurred and took corrective measures.

The panel, however, does not apply Bylaw 19.9.4-(b) to the head coach. Although he acknowledged that some violations occurred, he disputed the head coach responsibility violation. He did not acknowledge his shortcomings or accept responsibility in either his response to the NOA or at the hearing. Instead, he assigned all the fault to the associate head coach. Even with the associate head coach intentionally violating legislation, the head coach ran a program where staff members were afraid to report violations or ask questions. The head coach did not recognize this culture of silence. Like with DePaul, the factor does not apply to the head coach.

### **Aggravating Factors for the Associate Head Coach**

19.9.3-(e): Unethical conduct;

19.9.3-(f): Violations were premeditated, deliberate or committed after substantial planning;

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

19.9.3-(j): Conduct or circumstances demonstrating an abuse of a position of trust; and

19.9.3-(m): Intentional, willful or blatant disregard for the NCAA constitution and bylaws.

The associate head coach disagreed that Bylaw 19.9.3-(h), *Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct*, applied. The panel, however, applies the factor. As a person of authority, the associate head coach condoned, participated in and negligently disregarded the violation.

### **Mitigating Factors for the Associate Head Coach**

19.9.4-(b): Prompt acknowledgment of the violation and acceptance of responsibility; and

19.9.4-(h): The absence of prior conclusions of Level I, Level II or major violations committed by the associate head coach.<sup>8</sup>

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<sup>8</sup> The enforcement staff and associate head coach agreed on the mitigating factors.

All the 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 DePaul's cooperation in all parts of this case and determines it was consistent with DePaul's obligation under Bylaw 19.2.3. The panel also considered DePaul's corrective actions, which are contained in Appendix One. The panel prescribes the following penalties (self-imposed penalties are so noted):

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

1. Probation: Three years of probation from July 23, 2019, through July 22, 2022.
2. Financial penalty: DePaul shall pay a fine of \$5,000 plus one percent of the budget for the men's basketball program.<sup>9</sup>
3. Recruiting restrictions:
  - a. A reduction of six recruiting-person days from the permissible number of recruiting-person days in men's basketball during the 2017-18 academic year. (Self-imposed.)
  - b. A reduction of six recruiting-person days from the available number of recruiting-person days in men's basketball in April 2019. (Self-imposed.)

**Core Penalty for Level II-Mitigated Violation (Bylaw 19.9.5)**

4. Head coach restriction: Although not directly participating in the impermissible recruiting benefits, the head coach violated head coach responsibility legislation when he failed to promote an atmosphere of compliance and monitor his staff. Bylaw 19.9.5.5 and the Figure 19-1 penalty guidelines contemplate head coach suspensions to address head coach responsibility violations. Therefore, the head coach shall be suspended from the first three regular season contests of the 2019-20 season.<sup>10</sup> The provisions of this suspension require that the head coach not be present in the facility where games are played and have no contact or communication with men's basketball coaching staff members or student-athletes during the three-contest suspension period. The prohibition includes all coaching activities for the period of time that begins at 12:01 a.m. on the day of the contest and ends at 11:59 p.m. that day. During that period, the head coach may not participate in any coaching activities, including, but not limited to, team travel, practice, video study, recruiting and team meetings. The results of those contests from which the head coach is suspended shall not count toward the head coach's career coaching record.

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<sup>9</sup> The fine from the budget for the program must be calculated in accordance with COI Internal Operating Procedures (IOPs) 5-15-5-4 and 5-15-4-1.

<sup>10</sup> The three-contest suspension is 10 percent of the typical men's basketball season in accordance with Bylaw 17.3.5.1.

Although each case is unique, the duration and nature of the suspension are consistent with suspensions prescribed in prior cases. *See The Ohio State University* (2017) (concluding that a Level II-Mitigated head coach responsibility violation occurred and prescribing a two-contest suspension for the head men's swimming coach who failed to promote an atmosphere of compliance). Like in prior cases, the circumstances of this case warrant a three-contest suspension with prohibition of coaching activities on the dates of the contests. The suspension falls within the range for Level II-Mitigated head coach responsibility violations in the membership-approved penalty guidelines.

#### **Core Penalty for Level II-Aggravated Violation (Bylaw 19.9.5)**

5. Show-cause order: The associate head coach violated the principle of ethical conduct when he knowingly violated recruiting legislation. Therefore, he shall be subject to a three-year show-cause order from July 23, 2019, to July 22, 2022. Pursuant to COI IOP 5-15-3-1, if the associate head coach seeks employment or affiliation with any athletically related position at an NCAA member institution during the three-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, the show-cause order is consistent with those prescribed in prior cases. *See Prairie View A&M* (concluding that a Level II-Aggravated ethical conduct violation occurred and prescribing a two-year show order for an assistant men's basketball coach who knowingly arranged payment for an online course a student-athlete needed to regain eligibility) and *University of California, Los Angeles* (2016) (concluding that a Level II-Aggravated ethical conduct violation occurred and prescribing a two-year show-cause order and required attendance at an NCAA Regional Rules Seminar for an associate head football coach who arranged for and provided impermissible expenses for prospects). Like in these cases, the show-cause order falls within the membership-approved penalty guidelines.

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

6. Public reprimand and censure through the release of the public infractions decision.
7. Vacation of team and individual records: Ineligible participation in the men's basketball program occurred as a result of violations in this case. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3 and COI IOP 5-15-6, DePaul shall vacate all regular season and conference tournament 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.<sup>11</sup> This

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<sup>11</sup> Pursuant to Bylaw 19.9.7-(g), the COI may prescribe vacation of records when a student-athlete competes while ineligible. Among other examples, vacation is particularly appropriate when a case involves serious intentional violations or the direct involvement of a coach. *See* COI IOP 5-15-6. None of these factors, however, are necessary for the COI to prescribe the penalty. *See North Carolina Central University*, NCAA Division I Infractions Appeals Committee Report No. 499 (2018). The COI has consistently prescribed vacation in cases in which the institution provided impermissible recruiting benefits that resulted in ineligible competition. *See San Francisco; University of Louisville* (2017) and *Radford*.

order of vacation includes all regular season competition and conference tournaments. Further, if the ineligible student-athlete participated in NCAA postseason competition at any time he was ineligible, DePaul'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 all eligible student-athletes shall be retained. Further, DePaul's records regarding its athletics programs, as well as the records of head coaches, 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 stationary, banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in men's basketball shall be returned to the Association.

Finally, to 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 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 45 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.

8. During the period of probation, DePaul 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 15, 2019, 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 1 during each year of probation. Particular emphasis shall be placed on rules education related to recruiting, coaching activity, ethical conduct and head coach responsibility.



- d. Inform prospects in the men's basketball program in writing that DePaul is on probation for three years and detail the violations committed. If a prospect takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospect signs an NLI; and
  - e. Publicize specific and understandable information concerning the nature of the 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 athletic department's main webpage "landing page" and in the media guides for men's basketball. 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.
9. Following the receipt of the final compliance report and prior to the conclusion of probation, DePaul's president shall provide a letter to the COI affirming that DePaul's current athletics policies and practices conform to all requirements of NCAA regulations.
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The COI advises DePaul, the head coach and the associate head coach that they should take every precaution to ensure that they observe the terms of the penalties. The COI will monitor DePaul 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 DePaul does not comply or commits additional violations. Likewise, any action by DePaul, the head coach or the associate 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 COMMITTEE ON INFRACTIONS PANEL

Norman Bay  
Jody Conradt  
Jason Leonard  
Joel Maturi  
Joseph Novak  
Dave Roberts, Chief Hearing Officer  
Sarah Wake

**APPENDIX ONE**

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

1. The athletics department and the men's basketball program implemented a variety of new policies to assist in the area of head coach control as well as sport administrator oversight:
  - a. Recruiting and University Business Travel: Per existing university policy, head coaches are responsible for preapproval of all university-related travel. In this revised policy, head coaches will also be responsible for auditing of all university-related travel for all individuals who report to the head coach. Head coaches are to conduct reviews of expense reports at intervals determined appropriate by the coach and the sport administrator. This policy has been expanded so that head coaches will work more closely with their assistants to know when, where and why they are traveling on behalf of DePaul, with confirmation after the fact to verify that the staff member has gone where he/she had been approved to go. This policy clarifies specific reporting requirements that enhance the existing policy to add an additional layer of oversight in addition to existing policy. This revised policy has been added to the athletics staff handbook. This policy was effective December 1, 2018.
  - b. Vacation/Sick Requests: Head coaches are required to document their preapproval of all vacation requests to include the assistant director of business when approval has been granted. The previous athletics department policy did not specify how head coaches were to communicate absences, and the update has clarified the specific process to include use of DePaul email and inclusion of the assistant director of business. This policy was effective December 1, 2018.
  - c. Men's Basketball Specific Items: The title "associate head coach" is no longer used by the men's basketball program. The head coach, in an effort to clarify the scope of his own position, made the choice to eliminate any element of confusion regarding who is ultimately responsible for the operations of the men's basketball program. Additionally, the assistant coaching staff underwent a complete change as did the makeup of three members of the operations staff. This was effective beginning the 2018-19 academic year.
2. Rules Education: The current associate athletics director for compliance conducted a rules-education session for all DePaul head coaches on December 10, 2018. The meeting started with a statement from the athletics director, where she clearly stated DePaul's commitment to NCAA compliance and reiterated the president's desire for the same. In this meeting, the new policies were discussed at length. The purpose of the session was to provide guidance on best practices for creating, maintaining and documenting a culture of compliance within each head coach's program. All head coaches were required to attend, and the session was videotaped for those not in attendance. In addition, sports administrators were required to attend. The

session was also attended by the athletics director and the interim associate athletics director for compliance. During the meeting, the head coach shared his experience in implementing the policies. Head coach responsibility also was discussed at an October 2018 all-staff compliance meeting.

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

**Division I 2015-16 Manual**

**10.01.1 Honesty and Sportsmanship.** Individuals employed by (or associated with) a member institution to administer, conduct or coach intercollegiate athletics and all participating student-athletes shall act with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, shall represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports.

**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:

(c) Knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid;

**11.1.1.1 Responsibility of Head Coach.** An institution's head coach is presumed to be responsible for the actions of all institutional staff members who report, directly or indirectly, to the head coach. An institution's head coach shall promote an atmosphere of compliance within his or her program and shall monitor the activities of all institutional staff members involved with the program who report, directly or indirectly, to the coach.

**11.7.6 Limitations on Number of Coaches and Off-Campus Recruiters.** There shall be a limit on the number of coaches (other than graduate assistant coaches per Bylaws 11.01.3 and 11.01.4, undergraduate assistant coaches per Bylaw 11.01.5 and volunteer coaches per Bylaw 11.01.6) who may be employed by an institution and who may contact or evaluate prospective student-athletes off campus in each sport as follows:

**Sport Limit**

Basketball, Men's..... 4

**12.11.1 Obligation of Member Institution to Withhold Student-Athlete From Competition.** If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Committee on Student- Athlete Reinstatement for restoration of the student-athlete's eligibility as provided in Bylaw 12.12 if it concludes that the circumstances warrant restoration.

**13.1.2.1 General Rule.** All in-person, on- and off-campus recruiting contacts with a prospective student-athlete or the prospective student-athlete's relatives or legal guardians shall be made only by authorized institutional staff members. Such contact, as well as correspondence and telephone

calls, by representatives of an institution's athletics interests is prohibited except as otherwise permitted in this section.

**13.1.2.5 Off-Campus Contacts or Evaluations.** Only those coaches who are identified by the institution, in accordance with Bylaws 11.7.4.2, 11.7.5.2 and 11.7.6, may contact or evaluate prospective student-athletes off campus. Institutional staff members (e.g., faculty members) may contact prospective student-athletes for recruiting purposes in all sports, on campus, or within 30 miles of campus during the prospective student-athlete's official visit.

**13.2.1 General Regulation.** An institution's staff member or any representative of its athletics interests shall not be involved, directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to a prospective student-athlete or his or her relatives or friends, other than expressly permitted by NCAA regulations. Receipt of a benefit by a prospective student-athlete or his or her relatives or friends is not a violation of NCAA legislation if it is determined that the same benefit is generally available to the institution's prospective students or their relatives or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability.

**13.2.1.1 Specific Prohibitions.** Specifically prohibited financial aid, benefits and arrangements include, but are not limited to, the following:

(k) Expenses for academic services (e.g., tutoring, test preparation) to assist in the completion of initial-eligibility or transfer-eligibility requirements or improvement of the prospective student-athlete's academic profile in conjunction with a waiver request.

**13.15.1.9 Academic Services.** An institution shall not provide academic expenses or services (e.g., tutoring, test preparation) to assist a prospective student-athlete in completing initial-eligibility or transfer-eligibility requirements or in improving his or her academic profile in conjunction with a waiver request.

**16.8.1 Permissible.** An institution, conference or the NCAA may provide actual and necessary expenses to a student-athlete to represent the institution in practice and competition (including expenses for activities/travel that are incidental to practice or competition). In order to receive competition-related expenses, the student-athlete must be eligible for competition.