



SHAW UNIVERSITY  
PUBLIC INFRACTIONS DECISION  
July 13, 2022

## I. INTRODUCTION

The NCAA Division II Committee on Infractions (COI) is an independent administrative body comprised of individuals from the NCAA Division II membership and the public charged with deciding infractions cases involving member institutions and their staffs. This case centered on academic misconduct in the men's basketball program at Shaw University (Shaw).<sup>1</sup> Stemming from the academic misconduct, the case also involved eight other agreed-upon or uncontested violations including Shaw's failure to withhold an ineligible student-athlete, head coach responsibility and Shaw's failure to monitor. Finally, five members of the men's basketball staff also violated the principles of ethical conduct and cooperation when they refused to participate in interviews with the NCAA enforcement staff.

The COI considered this case through the cooperative summary disposition process in which all parties agreed to the primary facts and violations, as fully set forth in the Summary Disposition Report (SDR). The COI accepted Shaw's self-imposed penalties and corrective measures and proposed additional penalties for the institution, as well as show-cause orders for all five involved individuals. The institution contested the COI's proposed five-year probationary period and the requirement that the institution undergo two outside audits during the probationary period. The head coach and the assistant coach also contested their four-year and three-year show-cause orders, respectively. The associate head coach, volunteer coach and manager did not respond to their proposed penalties, therefore they have no opportunity to appeal.

After the expedited penalty hearing, the COI modified the institution's five-year probationary period to a four-year probationary period and maintained the requirement that Shaw undergo two outside audits during the probationary period. These audits are to be conducted in the first and third year of the probationary period. As it relates to the head coach and assistant coach, the COI modified the head coach's show-cause order from a four-year general show-cause order to a three-year general show-cause order and maintained the assistant coach's three-year general show-cause order. Shaw, the head coach and the assistant coach have the opportunity to appeal these penalties.

The agreed-upon academic misconduct violations involved a men's basketball manager arranging for the completion of coursework for six then men's basketball student-athletes over the 2018-19 academic year. First, during the fall 2018 semester, the manager arranged for a then women's

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<sup>1</sup>A member of the Central Intercollegiate Athletic Association, Shaw's total enrollment is approximately 1,300 students. The institution sponsors six men's sports and eight women's sports. This is the institution's first major infractions case.

basketball student-athlete to complete at least one assignment for a men's basketball student-athlete (student-athlete 1). This arrangement resulted in an erroneous declaration of student-athlete 1's eligibility. Second, in the spring 2019 semester, the manager arranged for the same women's basketball student-athlete to complete at least 14 assignments for six then men's basketball student-athletes, including student-athlete 1. As a result of the academic misconduct, the six student-athletes competed in a total of 31 contests and received actual and necessary expenses while ineligible. The academic misconduct violations are major.

Shaw and the enforcement staff also agreed that the institution failed to withhold student-athlete 1 despite knowing he was ineligible as a result of the academic misconduct. Specifically, after declaring student-athlete 1 ineligible, and while awaiting his reinstatement request, Shaw knowingly permitted him to practice, compete in eight contests and receive actual and necessary expenses during January and February 2020. The failure to withhold violation is major.

The institution, the enforcement staff and the head coach agreed that the head coach is presumed responsible for the academic misconduct violations and did not rebut his presumption of responsibility. The head coach did not establish clear expectations regarding compliance with academic legislation and institutional policies. Additionally, the head coach failed to monitor his staff because he permitted the manager to engage with men's basketball student-athletes' academics without oversight. Stated directly, the culture of the head coach's program was one where academic misconduct was widespread and went unchecked and undeterred. The head coach admitted he is ultimately responsible, and that the violation is major.

Further, Shaw agreed that it failed to monitor its men's basketball program. It permitted the manager to operate without proper oversight. More relevantly, Shaw's response to the conduct exacerbated the underlying academic misconduct. Shaw's inquiry was inadequate because it failed to develop critical and complete information. Further, Shaw knowingly failed to withhold student-athlete 1, which fell well short of fundamental compliance-related obligations of NCAA members. Shaw's failure to monitor violation is major.

Lastly, the case involved five individual failure to cooperate violations. Three of those violations are agreed-upon and involve the head coach, associate head coach and assistant coach's untimely cooperation after initially refusing to cooperate for roughly one year. The other two violations involved the volunteer coach and manager, who declined to participate at all stages of the investigation and processing of this case. As institutional staff members, these five individuals had an affirmative obligation to further the membership's infractions program. Their violations are major.

The COI accepts the parties' factual agreements and concludes that major violations occurred. Utilizing NCAA bylaws authorizing penalties, the COI adopts the following penalties: four years of probation; a fine of \$3,500; two outside audits; vacation of records; required attendance at NCAA Regional Rules Seminars; and three-year show-cause orders for the head coach, associate head coach, assistant coach, volunteer coach and manager. The penalties section of this decision details these and other penalties.

## II. CASE HISTORY

In April 2019, a Shaw student-trainer reported potential academic misconduct involving the men's basketball program to the athletics compliance office. As a result, Shaw began an investigation of potential violations of NCAA legislation as well as separate investigations related to Shaw student and employee policies. In total, Shaw conducted three separate and uncoordinated inquiries. In August 2019, Shaw submitted its investigative findings to the NCAA enforcement staff. The enforcement staff issued a notice of inquiry on October 2, 2019. Approximately 11 months later, on September 24, 2020, the enforcement staff issued a notice of allegations (NOA). The NOA alleged that the head men's basketball coach (head coach), associate head men's basketball coach (associate head coach) and the assistant men's basketball coach (assistant coach) were directly involved in or arranged for the completion of men's basketball student-athletes' coursework. The NOA made no reference to the manager and alleged that the volunteer coach failed to cooperate. At that time, none of those individuals had cooperated in the investigation. Further, and consistent with Bylaw 32.7.4, the enforcement staff also provided Shaw, the head, associate and assistant coaches with all pertinent factual information that supported its allegations.<sup>2</sup>

Prior to the deadline to submit responses to the NOA, the head coach notified the enforcement staff that he would participate in an interview. The interview occurred on February 23, 2021. Soon thereafter, both the associate head coach and assistant coach also notified the enforcement staff of their desire to participate in interviews. Those interviews occurred on April 7 and April 29, 2021, respectively. All three coaches denied any involvement in the underlying academic misconduct. Approximately three months later, the enforcement staff withdrew the NOA and informed the COI that information gathered from the interviews materially affected the allegations and the enforcement staff intended to amend the allegations and pursue an SDR.

On January 26, 2022, the parties submitted an SDR to the COI. The COI reviewed the SDR on March 3, 2022. A day later, on March 4, 2022, the COI requested clarification on a number of issues, including rationale associated with the substantive amendments made in the SDR—namely, the COI requested the parties clarify what new information they developed that refuted the original allegations and substantiated that the manager, rather than the coaches, organized the academic misconduct.<sup>3</sup> The enforcement staff, Shaw and the head coach responded to the COI's request on

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<sup>2</sup> In later procedural correspondence, the enforcement staff asserted that it believed the provision of this information adversely impacted the integrity of the investigation.

<sup>3</sup> The NOA issued on September 24, 2020, alleged that the head coach, associate head coach and assistant coach were involved in arranging for or personally committing academic misconduct, whereas the January 26, 2022, SDR identified the manager as the individual who orchestrated the agreed-upon academic misconduct.

March 21, 2022. As part of the responses, the parties also included post-NOA interviews. Among those interviews was an interview with a former women's basketball student-athlete who originally reported that men's basketball coaching staff members had been involved in offering money in exchange for the completion of academic coursework. In her later post-NOA interview, which occurred after she was contacted by the head coach and his counsel, the student-athlete changed her story and indicated that she was not truthful when interviewed during Shaw's internal investigation.

The COI reconvened to review the SDR and additional information on April 13, 2022. The COI reluctantly accepted the agreed-upon facts, violations and type of violations.<sup>4</sup> The COI proposed additional penalties to all parties on April 18, 2022. In early May, Shaw, the head coach and the assistant coach requested an expedited penalty hearing to contest their proposed penalties. The associate head coach, manager and the volunteer coach did not respond to the proposed penalties. The COI held an expedited penalty hearing via videoconference on June 13, 2022.

### III. PARTIES' AGREEMENTS

The parties jointly submitted an SDR that identified the agreed-upon factual basis, violations of NCAA legislation and types of violations.<sup>5</sup> The SDR identified:

1. **[[NCAA Division II Manual Bylaws 14.9.2.1-(a), 14.9.2.1-(b), 14.9.2.2-(a), 14.12.1 and 16.8.1 (2018-19)] (Major)**

The institution and enforcement staff agree that during the 2018-19 academic year, the manager engaged in academic misconduct when he arranged for the completion of coursework for six then men's basketball student-athletes. As a result of the academic misconduct, the six then men's basketball student-athletes competed in 31 contests and received actual and necessary expenses while ineligible. Specifically:

- a. In the fall 2018 semester, the manager arranged for a then women's basketball student-athlete to complete at least one assignment for student-athlete 1 resulting in an erroneous declaration of eligibility and student-athlete 1 competing while ineligible. [NCAA Bylaw 14.9.2.1-(b)]<sup>6</sup>

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<sup>4</sup> In accepting the SDR, the COI informed the parties that the additional information added confusion and suggestions of party interference and that any further effort to develop clarifying information would likely be futile.

<sup>5</sup> This decision provides the agreed-upon factual basis, violations and type of violations exactly as stated in the SDR, except for shortening references to the parties and the order of violations 2 and 3.

<sup>6</sup> The specific subsection of the Bylaw that is implicated is Bylaw 14.9.2.1-(b)-(1).

- b. In the spring 2019 semester, the manager arranged for a then women's basketball student-athlete to complete at least 14 assignments for six then men's basketball student athletes. [NCAA Bylaws 14.9.2.1-(a), 14.9.2.2-(a)]
2. **[NCAA Division II Manual Bylaws 14.12.1 and 16.8.1 (2019-20)] (Major)**

The institution and enforcement staff agree that during January and February 2020, the institution permitted student-athlete 1 to practice, compete in eight contests and receive actual and necessary expenses while ineligible. The institution had declared student-athlete 1 ineligible due to his involvement in the violations detailed in Violation No. 1 but permitted his participation before the NCAA student-athlete reinstatement staff reinstated his eligibility.

3. **[NCAA Division II Manual Bylaw 11.1.2.1 (2018-19)] (Major)**

The institution, the head coach and enforcement staff agree that during the 2018-19 academic year, the head coach is presumed responsible for the violations detailed in Violation No. 1 and did not rebut the presumption of responsibility. Specifically, the head coach did not demonstrate that he promoted an atmosphere for compliance because the head coach did not establish clear expectations regarding compliance with academic legislation and institution policies. Further, the head coach did not demonstrate that he monitored his staff because the manager, as both a men's basketball student-manager and non-student, volunteer manager, engaged with men's basketball student-athlete academics without oversight.

4. **[NCAA Division II Manual Bylaw 2.8.1 (2018-19 through 2019-20)] (Major)**

The institution and enforcement staff agree that during the 2018-19 and 2019-20 academic years, the scope and nature of the violations set forth in Violation Nos. 1 and 2 demonstrate that the institution violated the NCAA principle of rules compliance when it failed to adequately monitor its men's basketball program, including its response to a reported potential violation and failure to withhold an ineligible student-athlete from competition. Specifically:

- a. In April 2019, after an individual reported potential academic misconduct violations to the institution, it attempted to secure interviews with then current student-athletes without success and the same student-athletes later refused to cooperate with the enforcement staff's investigation. Also, while interviewing the men's basketball staff, the institution failed to collect sufficient information to complete an adequate investigation. Additionally, the manager, as both a men's basketball student-manager and non-student, volunteer manager, engaged with men's basketball student-athletes about their academics with limited oversight from the institution and the men's basketball program, leading to the occurrence of academic misconduct violations. [NCAA Bylaw 2.8.1 (2018-19 through 2019-20)]

- b. In February 2020, the institution declared student-athlete 1 ineligible and requested that the NCAA student-athlete reinstatement staff restore his eligibility. However, the institution failed to withhold student-athlete 1 from competition prior to receiving the staff's decision, as detailed in Violation No. 2. [NCAA Bylaw 2.8.1 (2019-20)]
5. **[NCAA Division II Manual Bylaws 10.1, 10.1-(a) and 19.01.3 (2019-20 and 2020-21)] (Major)**

The institution, the head coach and enforcement staff agree that from March 2020 until February 23, 2021, the head coach violated the NCAA principles of ethical conduct and failed to cooperate with the enforcement staff when he refused to participate in an interview despite being requested to do so on multiple occasions.

6. **[NCAA Division II Manual Bylaws 10.1, 10.1-(a) and 19.01.3 (2019-20 and 2020-21)] (Major)**

The institution, the assistant coach and enforcement staff agree that from March 2020 until April 7, 2021, the assistant coach violated the NCAA principles of ethical conduct and failed to cooperate with the enforcement staff when he refused to participate in an interview despite being requested to do so on multiple occasions.

7. **[NCAA Division II Manual Bylaws 10.1, 10.1-(a) and 19.01.3 (2019-20 and 2020-21)] (Major)**

The institution, the associate head coach and enforcement staff agree that from March 2020 until April 29, 2021, the associate head coach violated the NCAA principles of ethical conduct and failed to cooperate with the enforcement staff when he refused to participate in an interview despite being requested to do so on multiple occasions.

8. **[NCAA Division II Manual Bylaws 10.1, 10.1-(a) and 19.01.3 (2019-20 and 2020-21)] (Major)**

The institution and enforcement staff agree that from March 2020 and continuing to the present, the volunteer coach violated the NCAA principles of ethical conduct and failed to cooperate with the enforcement staff when he refused to participate in an interview despite being requested to do so on multiple occasions.

9. **[NCAA Division II Manual Bylaws 10.1, 10.1-(a) and 19.01.3 (2019-20 and 2020-21)] (Major)**

The institution and enforcement staff agree that from March 2020 and continuing to the present, the manager violated the NCAA principles of ethical conduct and failed to cooperate with the enforcement staff when he refused to participate in an interview despite being requested to do so on multiple occasions.

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

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

The submitted SDR fully details the parties' positions and includes the agreed-upon primary facts, violations and type of violations. After reviewing the parties' principal factual agreements and the respective explanations surrounding those agreements, the COI accepts the parties' SDR and concludes that the facts constitute major violations of NCAA legislation. Specifically, the COI concludes that major academic misconduct violations occurred. Subsequent major violations stemmed from the underlying misconduct including Shaw's failure to withhold an ineligible student-athlete, head coach responsibility, failure to monitor and unethical conduct for refusing to cooperate in part or in whole. The conduct at issue in this case violated multiple bylaws across the Division II manual including Constitution 2 and Bylaws 10, 11, 14, 16 and 19.<sup>7</sup>

##### *Academic Misconduct and Failure to Withhold an Ineligible Student-Athlete*

The institution and enforcement staff agreed that the manager engaged in academic misconduct when he arranged for the completion of coursework for six then men's basketball student-athletes.

With respect to the underlying academic misconduct violations, Bylaw 14 governs academic and other requirements for eligibility, with Bylaw 14.9 addressing post-enrollment academic misconduct. Pursuant to Bylaws 14.9.2.1-(a) and 14.9.2.2-(a), student-athletes are prohibited from being involved in academic misconduct involving current or former institutional staff members, and vice versa. Further, Bylaw 14.9.2.1-(b) prohibits academic misconduct, without the involvement of a current or former institutional staff member or representative, that results in an erroneous declaration of eligibility to participate in intercollegiate athletics and the student-athlete subsequently competes for the institution while ineligible. Bylaw 14.12.1 permits only student-athletes eligible for competition to receive actual and necessary expenses. Relatedly, Bylaw 16 governs benefits. Pursuant to Bylaw 16.8.1, an institution may provide actual and necessary expenses only to eligible student-athletes to represent the institution in practice and competition.

The participating parties agreed that two instances of academic misconduct occurred during the 2018-19 academic year. The manager's employment status during fall 2018 and spring 2019 is

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<sup>7</sup> The full text of all bylaws violated in this case is at Appendix Two.

critical to the NCAA's regulation of the conduct. In fall 2018, the manager served as student-manager for the men's basketball team. Due to his student status at the time, the manager did not trigger institutional employee status under NCAA bylaws. However, the manager's arrangement for a women's basketball student-athlete to complete at least one assignment for student-athlete 1 violated Bylaw 14.9.2.1-(b), because it resulted in an erroneous declaration of student-athlete 1's eligibility, and he subsequently competed while ineligible.<sup>8</sup>

Later, in spring 2019, the manager became a non-student volunteer manager for the men's basketball team. As such, he transitioned from a student employee to an institutional staff member under the applicable definitions in Bylaw 14. As an institutional staff member, the manager's arrangement for the same women's basketball student-athlete to complete at least 14 assignments for six then men's basketball student-athletes violated Bylaws 14.9.2.1-(a) and 14.9.2.2-(a). These violations also resulted in six student-athletes competing in 31 contests and receiving actual and necessary expenses while ineligible, which violated Bylaws 14.12.1 and 16.8.1.

The COI has previously concluded that academic misconduct violations occur when individuals arrange for or complete academic coursework on behalf of student-athletes. *See Augusta University (2022)* (concluding via SDR that the head and assistant men's basketball coaches' involvement in a student-athlete's academic work resulted in major violations); *King University (2020)* (concluding a major academic misconduct violation occurred when the head men's basketball coach substantially edited an enrolled student-athlete's take-home test, which the student-athlete then submitted for credit in the course); and *University of Southern Indiana (2011)* (concluding a major academic misconduct violation occurred when an assistant men's basketball coach arranged for a booster to complete academic work for an enrolled student-athlete).<sup>9</sup> Consistent with these cases, the manager's arrangement for the completion of coursework for Shaw men's basketball student-athletes is a major violation.

The parties also agreed that the institution knowingly permitted student-athlete 1 to practice, compete in eight contests, and receive actual and necessary expenses while ineligible. Shaw deemed student-athlete 1 ineligible to begin the 2018-19 academic year due to his involvement in the academic misconduct that occurred in the fall 2018 semester. Sometime after a January 22, 2020, interview with the enforcement staff, the institution mistakenly certified student-athlete 1 as academically eligible prior to submitting a reinstatement request to the NCAA student-athlete reinstatement staff. More troubling, once the institution realized the error, Shaw began the reinstatement process but *did not withhold student-athlete 1 from competition* while the request was pending. Accordingly, the institution's failure to withhold student-athlete 1 violated Bylaw 14.12.1., and his receipt of actual and necessary expenses while ineligible violated Bylaw 16.8.1. Although knowledge is not required for a Bylaw 14.12.1 violation to occur, it is particularly concerning when an institution knows a student-athlete is ineligible and plays the student-athlete

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<sup>8</sup> The parties detailed other troubling academic conduct in the SDR; however, due to the manager's status as a student-manager, the conduct did not violate NCAA bylaws.

<sup>9</sup> Although *Augusta* was decided through the summary disposition process and may be viewed as less instructive under COI IOP 4-8-2-1, the COI cites to it and other SDR decisions because they involve violations of a similar nature.



anyway. Fair competition is a core tenant of intercollegiate competition, and such indifference threatens the fundamental principles of the collegiate model.

The COI has routinely concluded that major violations occur when institutions fail to withhold ineligible student-athletes from competition and those student-athletes receive actual and necessary expenses while ineligible. See *Bluefield State College* (2021) (concluding via SDR that major violations occurred when 21 student-athletes across eight sports programs competed in 225 contests and received actual and necessary expenses while ineligible); *King* (concluding that major violations occurred when 22 men's basketball student-athletes competed in 158 contests and received actual and necessary benefits related to those contests while ineligible); and *Wilmington University (Delaware)* (2020) (concluding via SDR that major violations occurred when eight women's tennis student-athletes competed in 52 contests and received actual and necessary expenses while ineligible). As in these cases, Shaw failed to withhold student-athlete 1 during January and February 2020, which allowed him to practice, compete and receive expenses while ineligible. Notably, the failure to withhold violations in these cases were packaged with the underlying violations that caused the ineligibility. Here, however, Shaw's intentional decision to play an ineligible student-athlete warrants a separate major violation.

#### *Head Coach Responsibility*

The head coach admitted that he failed to promote an atmosphere for compliance and monitor his staff. As such, the head coach failed to meet his legislated responsibilities under Bylaw 11.

Bylaw 11.1.2.1 places special responsibilities on head coaches. Specifically, an institution's head coach is presumed to be responsible for the actions of all institutional staff members who report to them directly or indirectly. A head coach may rebut the presumption of responsibility by showing that they promoted an atmosphere for compliance within their program and monitored their staff.

In 2018 and continuing into 2019, the head coach received permission from the institution's president and director of athletics to spend time away from the men's basketball program to tend to difficult personal circumstances that required his attention and care. As a result, the head coach only attended games while the associate head coach and assistant coach ran practice during portions of the 2018-19 season. The associate head coach and assistant coach were generally responsible for tracking student-athlete academic progress during this time. However, there were no formal changes to reporting structures or job duties for the coaching staff. In their joint response to the COI's request for additional information, Shaw and the head coach stated that the institution expected the men's basketball team and coaching staff to follow established policies and procedures and continue monitoring the program. Although not expressly stated, inherent in that obligation was for the head coach to continue meeting the head coach responsibility standards of promoting an atmosphere for compliance and monitoring his staff. The head coach agreed that he failed to meet these standards.

While away from campus, the head coach did not establish clear expectations regarding compliance with NCAA academic legislation and related institutional policies. Further, the head

coach did not monitor his direct reports' involvement in men's basketball student-athletes' academics, which created risks for, and ultimately resulted in, noncompliance with NCAA academic legislation. Without oversight, the manager engaged in academic misconduct, when he arranged for the completion of coursework for six then men's basketball student-athletes.

Although the COI is sympathetic to the head coach's personal circumstances, his legislated responsibilities remained. The head coach agreed that he failed to meet them. In failing to meet his responsibilities, the head coach failed to rebut the presumption of head coach responsibility, thus violating Bylaw 11.1.2.1.

The COI has previously concluded that head coaches fail to rebut the presumption of responsibility when they fail to set the proper tone of compliance in their program and/or fail to monitor their staff members. *See Augusta* (concluding via SDR that a major head coach responsibility violation occurred when the head coach was personally involved in academic misconduct and also failed to ensure his assistant coach adhered to academic misconduct legislation); *King* (concluding a Bylaw 11.1.2.1 head coach responsibility violation occurred where the head coach was involved in arranging impermissible recruiting inducements, did not monitor a staff member who was hosting a prospect at his home and did not monitor his staff members' involvement with admissions essays); and *Clark Atlanta University* (2014) (concluding that a head coach did not monitor his assistant coaches when he did not track their actions, including their provision of impermissible benefits to student-athletes). In each of these cases, the head coach responsibility violations were major. As in these cases, a major head coach responsibility violation occurred due to the head coach's failure to promote an atmosphere for compliance and monitor his program.

#### *Failure to Monitor*

As a result of the academic misconduct and failure to withhold an ineligible student-athlete, the institution and the enforcement staff agreed that Shaw violated the NCAA principle of rules compliance when it failed to adequately monitor its men's basketball program over a two-year period. Shaw failed to meet core monitoring requirements outlined in Constitution 2.

NCAA Constitution 2.8.1 places specific compliance-related responsibilities on member institutions. The Constitution requires member institutions to comply with all rules and regulations of the Association, monitor their athletics programs to ensure compliance, and identify and report to the Association instances in which compliance has not been achieved. It also requires that institutions cooperate fully with the Association and take appropriate corrective actions and holds institutions responsible for the actions of their staff, student-athletes and other individuals and groups representing the institutions' athletics interest.

The institution failed to meet its monitoring obligations in two ways: (1) its insufficient oversight of, and investigation into, academics in the men's basketball program and (2) its knowing failure to withhold an ineligible student-athlete. First, Shaw permitted the manager to operate with limited oversight. In agreeing to additional flexibility for the head coach to tend to personal circumstances, Shaw did not change the coaching staff's job duties to account for the head coach's absence. As such, the manager inappropriately involved himself in student-athletes' academics. Neither the

head coach, other coaching staff members nor the institution monitored his conduct, which created an environment where he freely arranged for an individual to complete student-athletes' coursework. In that way, the institution's failure to monitor the manager's activities permitted the academic misconduct to occur and continue throughout the 2018-19 academic year.

Relatedly, once potential academic violations came to light, Shaw did not adequately investigate the conduct. Specifically, the institution engaged in three simultaneous but uncoordinated investigations which resulted in developing incomplete information regarding potential NCAA violations. The director of judicial services along with the vice president for student affairs conducted an investigation on behalf of student affairs. The then faculty athletics representative led an investigation concerning potential NCAA violations and the director of human resources conducted an investigation on behalf of human resources.

These investigations developed pockets of relevant information, but the institution did not coordinate its investigative efforts. Because pertinent information was not shared between the three investigations, certain vital inquiries did not occur. More importantly, critical information was not developed. As a result of the inadequate investigation, the case record, SDR and supplemental information contained an overwhelming degree of conflicting, confusing and incomplete information.

Further, Shaw failed to ensure compliance in its men's basketball program when it disregarded fundamental legislation regarding fair competition and knowingly permitted an ineligible student-athlete to compete while his reinstatement request was pending. The institution did not have established written policies and procedures regarding student-athlete reinstatement. If Shaw had such policies, the institution could have avoided the student-athlete's ineligible competition. Regardless of written policies and procedures, however, Shaw knew the student-athlete had yet to be reinstated and therefore knew he could not participate.

Shaw's actions failed to meet the fundamental compliance obligations for member institutions outlined in Constitution 2.8.1. The COI has concluded that a failure to monitor violation occurs when the nature of the underlying violations is particularly significant. *See Bluefield State* (concluding via SDR that Bluefield State failed to monitor their certification process over a three-year period resulting in improper certifications and ineligible student-athletes competing in 225 contests); *King* (concluding that the institution failed to monitor the operation of men's basketball student-athletes' work study positions resulting in 28 student-athletes receiving compensation for work not performed and competing while ineligible in 158 contests); and *Christian Brothers University* (2019) (concluding via SDR that the institution failed to monitor because it was aware a prospect was in the vicinity of campus but did not ensure in a timely fashion that the visits were consistent with recruiting legislation). Here, the institution's limited oversight over academics in men's basketball, failure to withhold an ineligible student-athlete and inadequate investigation into potential NCAA violations support a failure to monitor violation.

#### *Unethical Conduct and Failure to Cooperate*

Finally, five member of the men's basketball staff failed to meet the Association's standards of ethical conduct and their legislated responsibility to cooperate. The head coach, associate head coach and assistant coach agreed that they failed to cooperate for a nearly one-year period. Neither the volunteer coach nor the manager responded to the notice of allegations or have otherwise participated in the investigation or processing of this case. Their conduct violated Bylaws 10 and 19.

Bylaw 19.01.3 places an affirmative obligation on all representatives of member institutions to cooperate fully and further the objectives of the Association and its infractions program. The responsibility to cooperate requires *full and complete cooperation*. Moreover, Bylaw 10 regulates ethical conduct. Bylaw 10.1 outlines specific behaviors that the NCAA membership has identified as examples of unethical conduct, with Bylaw 10.1-(a) specifically identifying the refusal to furnish information relevant to an investigation of possible rules violations when requested to do so by the NCAA or the individual's institution.

The unethical conduct and failure to cooperate violations fall into two categories: (1) individuals whose cooperation was untimely and (2) individuals who refused to cooperate throughout the processing of the case.

The first category consists of the head coach, associate head coach and assistant coach. With respect to the head coach, the enforcement staff contacted the head coach at least six times between March and May 2020 in an effort to schedule an interview and secure pertinent records. The head coach did not respond to the record request or indicate that he would sit for an interview. It was only after the enforcement staff informed the head coach that its investigation substantiated his involvement in major violations that he opted to participate. The head coach contacted the enforcement staff in November of 2020 to begin participating, and on February 23, 2021, the enforcement staff conducted a video interview.

The facts and circumstances related to the associate head coach are similar. The enforcement staff also reached out to the associate head coach on multiple occasions between March and May 2020 to schedule an interview. The associate head coach did not respond to these communications. On November 30, 2020, after the enforcement staff issued the NOA but before party responses were due, the enforcement staff submitted a letter to the parties stating that the investigation would be reopened due to the head coach's desire to be interviewed. In accordance with applicable procedures, the enforcement staff asked the associate head coach whether he desired to participate in certain post-NOA interviews. The associate head coach indicated that he wished to participate in the interview of a former women's basketball student-athlete. After participating in her interview, the associate head coach informed the enforcement staff that he retained counsel and wished to be interviewed. The enforcement staff conducted a video interview of the associate head coach on April 29, 2021.

With regard to the assistant coach, the enforcement staff requested to interview the assistant coach on multiple occasions between March and May 2020. The assistant coach did not respond to any of the enforcement staff's communications. In fall 2020, the enforcement staff informed the

assistant coach that its investigation substantiated violations involving him. At that time, the assistant coach indicated he would consider participation, but he never did and did not respond to the enforcement staff's follow-up inquiry. Like the associate head coach, the assistant coach received a letter in November 2020 from the enforcement staff about the reopening of the investigation due to the head coach's desire to interview. On February 12, 2021, the assistant coach informed the enforcement staff that he retained counsel and on February 25, 2021, his counsel indicated that the assistant coach wished to participate in the investigation. The enforcement staff conducted a video interview of the assistant coach on April 7, 2021.

Any lack of cooperation threatens the integrity of the infractions process. When the head coach, associate head coach and assistant coach refused to participate in the investigation for a roughly one-year period, they violated the cooperative principle and acted unethically in contravention of Bylaws 10.1 and 19.01.3. Moreover, their timely cooperation was critical to the investigation, as they were individuals with pertinent knowledge of potential violations in the men's basketball program. It was only after they were informed that the investigation substantiated their involvement in academic misconduct violations that each decided to participate.<sup>10</sup>

Previously, the COI has reinforced the importance of cooperation—particularly from central actors who have the most pertinent knowledge of potential violations. *See Wilmington* (stating that the entire infractions process depends on the cooperative principle and that refusing to cooperate inhibits the enforcement staff's ability to conduct a thorough and timely investigation when concluding that a head coach's refusal to cooperate violated Bylaws 10.1 and 19.01.3); *Ohio Dominican University* (2019) (concluding that an assistant football coach committed unethical conduct and failed to cooperate when he refused to sit for a second interview with the enforcement staff); and *Lynn University* (2019) (concluding that a compliance officer engaged in unethical conduct and failed to cooperate when she refused to interview with the enforcement staff).

This case also involved two individuals, the volunteer coach and the manager, who refused to cooperate throughout the processing of the case. As it relates to the volunteer coach, the enforcement staff requested an interview on March 6, 2020. Following additional communications, the volunteer coach's counsel informed the enforcement staff that the volunteer coach declined to cooperate on May 15, 2020.

As to the manager, the enforcement staff first contacted the manager by letter sent via UPS about its desire to schedule an interview on March 6, 2020. The manager received the letter on March 9, 2020. After no response, the enforcement staff followed up on at least two occasions between March and May 2020 in connection with the manager's cooperation with the investigation. To date, the manager has not responded to the enforcement staff's requests for an interview and has otherwise failed to participate in the investigation and processing of this case.

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<sup>10</sup> The COI observes that the coaches' late participation added complexities and uncertainty into the case record—including a key witness recanting earlier statements regarding the coaches' involvement nearly one year later and after she was contacted by the head coach and his counsel.

Furthering the objectives of the NCAA's infractions program is a fundamental obligation of current and former institutional staff members. Furthermore, the membership has identified an individual's refusal to furnish information relevant to an investigation of possible rules violations when requested as an example of unethical conduct. An outright refusal to participate in the processing of a case is not acceptable. The volunteer coach and manager failed to meet their legislated responsibility to cooperate. Thus, the volunteer coach and the manager violated Bylaws 10.1 and 19.01.3. Consistent with the cases cited above, their violations are major.

### **Contested Penalties**

Following its review of the SDR, the COI proposed additional penalties to the institution, head coach and assistant coach pursuant to Bylaw 32.8.1.4. To address the breadth of admitted failures that culminated in NCAA violations, COI proposed, among other penalties, a five-year probationary period and two outside audits in the first and fourth years of the probationary period; a four-year general show-cause order for the head coach; and a three-year general show-cause order for the assistant coach. Shaw, the head coach and the assistant coach contested these penalties. Shaw argued that the length of probation was inconsistent with past COI cases and that the two outside audits were duplicative of a recently conducted academic program review. The head coach asserted that his four-year show-cause order was excessive. The assistant coach challenged his show-cause order, arguing for a shorter period because his only violation was a failure to cooperate.

The COI is persuaded by some arguments, but not others. The COI reduces Shaw's probationary period to four years but maintains the two audits to address the admitted gaps in Shaw's compliance and investigatory programs. Similarly, the COI reduces the head coach's show-cause order to three years given the unique circumstances surrounding the head coach at the time the violations occurred. Those circumstances, however, do not alleviate the fact that the head coach still failed to meet two of the most fundamental obligations of head coaches—head coach responsibility and the responsibility to cooperate. The COI does not reduce the assistant coach's show-cause order because he too failed to meet his fundamental obligation to cooperate, and no extenuating circumstances mitigated his violation.

### *Probation*

Based on the institution's written submissions and the information presented at the expedited penalty hearing, the COI modifies Shaw's five-year probationary period to a four-year probationary period. A four-year probationary period is appropriate because it addresses the significant violations that occurred in this case, is consistent with relevant case guidance and provides Shaw with the opportunity to enhance its compliance systems, monitoring and educational efforts.

Although the COI reduces the proposed probationary period, the five-year period is neither excessive, impermissible nor is it inconsistent with the COI's analysis in past cases. As a preliminary matter, the COI has the discretion under Bylaw 19.5.2 to prescribe up to five years of

probation for cases involving major violations. The institution asserted that COI has only prescribed a probationary period in excess of three years in cases that involved a lack of institutional control and/or had systemic violations that occurred in multiple sport programs. According to Shaw, because this case involved neither of those things, a two- or three-year probationary period would be more appropriate. The COI disagrees.

Contrary to Shaw's arguments, the NCAA bylaws do not require a lack of institutional control nor violations across multiple sport programs to prescribe a probationary period of more than three years. Moreover, the COI has never articulated any such requirement as a basis for its analysis in past decisions. To be sure, when cases involve significant violations like a lack of institutional control or when violations are widespread—either over extended periods of time or across multiple sport programs—longer probationary periods are likely more appropriate. The argument, however, disregards the significance of the violations in this case. This case involved serious violations of NCAA legislation including academic misconduct, failure to withhold an ineligible student-athlete, head coach responsibility, unethical conduct and failure to monitor violations. Within the failure to monitor violations, Shaw admitted that shortcomings in its investigatory efforts resulted in a failure to "collect sufficient information to complete an adequate investigation." Stated more directly, the violations in this case are among the most serious violations within the membership's infractions process. As such, these violations highlighted several areas for compliance-related, educational and monitoring improvements for Shaw.

In recent cases involving conduct that cuts to the core of the Collegiate Model, particularly academic misconduct, the COI has prescribed three-year probationary periods. *See Augusta* (prescribing a three-year probationary period where the head coach added content to a student-athlete's paper and the assistant coach sat with the student-athlete during an online exam and provided him with answers to multiple questions); *King* (prescribing a three-year probationary period where the associate head men's basketball coach substantially edited a student-athlete's take-home test, which the student-athlete then submitted for academic credit); and *West Texas A&M University* (2016) (prescribing a three-year probationary period in a case resolved via summary disposition, where a football student-athlete, along with his family, completed assignments for one of his teammates, and the assistant football coach who learned of the academic misconduct failed to report the violation). Like this case, *Augusta*, *King* and *West Texas A&M* involved head coach responsibility and unethical conduct violations in addition to the academic misconduct.

Though the institution had previously proposed a two-year probationary period, it acknowledged at the expedited penalty hearing that the COI could rely on *Augusta* and prescribe a three-year probationary period.<sup>11</sup> Shaw specifically argued that the facts of its case could be distinguished from the conduct at issue in *Augusta* because *Augusta* involved academic misconduct by a head and assistant coach and unethical conduct when the assistant coach provided false or misleading information to the enforcement staff.

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<sup>11</sup> The *Augusta* decision was released after Shaw's written submission to the COI.

While *Augusta* undoubtedly involved serious violations, the scope and scale of the violations at hand are more significant for four reasons: (1) the number of student-athletes impacted by the academic misconduct; (2) Shaw's decision to permit an ineligible student-athlete to compete; (3) Shaw's admitted failure to monitor; and; (4) Shaw's inadequate investigation into the matter. For these reasons, a longer probationary period is warranted.

First, the academic misconduct in *Augusta* involved only one student-athlete, who competed in 16 contests and received competition-related expenses while ineligible. In this case, the manager arranged for the completion of coursework for six then men's basketball student-athletes, which resulted in those student-athletes competing in 31 contests and receiving competition-related expenses while ineligible over two academic years. The COI has previously stated that the severity of a case involves assessing the nature and circumstances of violations, as well as involved individuals. *See Augusta*. Here, a manager under limited oversight arranged for a women's basketball student-athlete to complete multiple assignments for multiple men's basketball student-athletes. His violations were intentional, and the subsequent ineligible competition occurred as a direct result of the manager's academic misconduct. Shaw's assessment of *Augusta* is misplaced. The academic misconduct at issue in this case exceeded the scope and scale of the academic misconduct at issue in *Augusta*. For this reason, the institution can expect serious penalties to align with serious misconduct. Thus, a longer probationary period is appropriate.

Next, Shaw identified that student-athlete 1 was ineligible as a result of the academic misconduct and sought reinstatement. As previously explained, despite knowing that student-athlete 1's reinstatement request was pending, Shaw permitted him to compete on behalf of the institution. Shaw's error undermined one of the most basic and fundamental principles of the collegiate model—fair competition by eligible student-athletes. Shaw's failure to ensure that student-athlete 1's eligibility had been restored demonstrated yet another gap in the institution's compliance program and provides further support for a four-year probationary period.

The third and fourth reasons are intertwined under Shaw's admitted failure to monitor violations. Notably, *Augusta* did not involve a failure to monitor violation. This case does, and the failure to monitor is expansive. Specifically, the institution agreed that it provided limited oversight over academics in men's basketball and conducted an inadequate investigation into potential NCAA violations. Based on information presented at the expedited penalty hearing, the COI is concerned that Shaw continues to miss basic checks and balances in its compliance and investigatory programs. For instance, Shaw admitted that it still lacks an automated process whereby students on their campus are also identified as being student-athletes. As a result, departments are essentially operating in siloed vacuums without proper mechanisms in place to alert the athletics department when NCAA-compliance issues may arise. On a campus where approximately one quarter of the student body is comprised of student-athletes, the COI is particularly troubled by the disconnect between the institution and some fundamental NCAA compliance-related principles. In light of these violations and existing concerns, a four-year probationary period is appropriate.

The COI has previously stated that the primary purpose of probation is not to punish but rather to achieve prospective compliance. *See Millersville*. Further, probation serves as a crucial oversight



tool, whereby the COI can ensure that an institution is taking the necessary steps to fully abide by NCAA legislation, especially with respect to the violations in the case. *See also Millersville.*

Despite gaps in its compliance program, the COI acknowledges that the institution's detected and reported the violations in this case. Likewise, at the expedited penalty hearing, the institution informed the COI of enhancements made as a direct result of the violations including creating an Academic Misconduct Policy and Procedure Manual, updating investigative processes and enhancing software. The COI applauds the institution not only for its discovery and disclosure of the violations, but also for its continued cooperation throughout the processing of the case. These actions, however, do not change the institution's need for enhanced athletics compliance practices. The COI must consider the totality of the violations and the systems that the institution currently have in place. Based on the totality of the case, and the fact that the scope and scale exceed that of the COI's recent decision in *Augusta*, a four-year probationary period is appropriate.

#### *Outside Audits*

The COI maintains the penalty requiring the institution to undergo two outside audits during the probationary period. In modifying Shaw's five-year probationary period to a four-year probationary period, the COI also alters the timing requirements for the outside audits. The COI now requires that the institution undergo an outside audit in the first and third years of the probationary period. The audit in the first year of probation will be used as a baseline to identify areas of improvement and set a reasonable time period to implement recommendations. The second outside audit will occur in the third year of the probationary period. That audit will serve to assess Shaw's progress of implementing recommendations from the first audit as well as identify any further enhancements to better strengthen Shaw's compliance program for the future. The audits will also assist the COI in monitoring Shaw's implementation of penalties and strengthening of its compliance and investigative efforts during the four-year probationary period.

In its written submission and at the expedited penalty hearing, Shaw argued that two outside audits were unnecessary for two reasons. First, Shaw asserted that a second outside audit would be duplicative of the recent academic review of the institution's academic programs, including its academic misconduct policies, by its accrediting body. Second, the institution argued that the requirement for a second outside audit was inconsistent with case precedent. The COI is unpersuaded by the first argument as the substance of the audits and the academic review are different. Likewise, the COI has previously prescribed multiple audits during a probationary period. Thus, the COI retains the two required audits.

Regarding the first argument, Shaw claimed that it has already been reviewed by its accreditor and provided the COI with a copy of the accrediting body's final report. This report measured Shaw's compliance with the accrediting body's standards in areas including but not limited to academic misconduct prevention, detection and adjudication. While the review is thorough and provides detailed information about Shaw's academic policies and procedures, the review did not cover the institution's *athletics compliance* program. Stated directly, the academic review was academic in nature and was focused on the institution's accreditation status. The COI prescribes an athletics-

focused audit to be conducted by an independent, external agency or consultant experienced in NCAA compliance matters and investigations. Although there may be some overlap, their area(s) of focus are distinct.

Furthermore, the same substantive reasons that warrant a four-year probationary period—i.e., admitted and existing gaps in the institutions compliance and investigatory programs, policies and procedures—also support two audits. The COI has previously required institutions to undergo outside audits and/or reviews to address compliance shortfalls and implement and abide by all recommendations of the reviewer. *See Clarion University of Pennsylvania* (2021) (prescribing a Compliance Blueprint Review of the institution's athletics policies and procedures during the term of probation); *Saginaw Valley State University* (2019) (prescribing an independent audit of the compliance department operations during the 2018-19 academic year) and *Lane College* (2019) (prescribing a comprehensive audit of the institution's athletics compliance program during the 2019-20 academic year). In order to address the compliance deficiencies, the COI maintains the requirement that Shaw undergo two outside audits so that an outside reviewer can complete an independent review of Shaw's athletics policies, procedures and programs. The outside audit should identify gaps in Shaw's operations and make recommendations to improve any inadequacies. Thereafter, the second audit will serve to verify that the recommendations have been implemented and identify any remaining enhancements to be made prior to the completion of the four-year probationary period.

#### *Show-Cause Orders*

The COI proposed a four-year show-cause order for the head coach and a three-year show-cause order for the assistant coach, requiring any employing institution to restrict them from all athletically related duties during the respective show-cause periods. Both the head coach and the assistant coach contested their proposed show-cause order. The head coach argued that his proposed four-year show-cause order was excessive such that it constituted an abuse of discretion and failed to give adequate and appropriate weight to mitigating factors.<sup>12</sup> The assistant coach asserted that because the NCAA investigation uncovered no violations other than his failure to cooperate in a timely manner, the proposed three-year show-cause was unfair and biased. After considering their arguments and the information presented at the expedited penalty hearing, the COI modifies the head coach's penalty from a four-year show-cause order to a three-year show-cause order and maintains the assistant coach's three-year show-cause order. The head coach's three-year show-cause order appropriately addresses the agreed-upon head coach responsibility and ethical conduct violations. Likewise, the assistant coach's three-year show-cause order appropriately addresses his unethical conduct and failure to cooperate violation.

Originally, the COI proposed a four-year show-cause order to address the agreed-upon head coach responsibility and unethical conduct violations. At the expedited penalty hearing, the head coach argued that the COI's proposed four-year show-cause order did not account for certain family and

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<sup>12</sup> The COI notes that the head coach relies on abuse of discretion as the primary basis for the challenge to his show-cause order, which is the Infraction Appeals Committee's standard for granting an appeal. *See* Bylaw 32.11.4.1.

personal medical circumstances. Due to these circumstances, the head coach was absent from his program for extended periods of time and admitted that these circumstances later caused his mental health to decline.<sup>13</sup> The head coach's family and personal circumstances led him to fall short of his monitoring responsibilities and did not allow him to fully grasp the significance of failing to participate in the enforcement staff's investigation. Once his mental health improved, the head coach reached out to the enforcement staff and indicated that he wished to participate in the investigation.<sup>14</sup> Despite his challenging personal circumstances, the head coach accepted full responsibility for the violations that occurred in his program and for failing to cooperate with the enforcement staff for a roughly one-year period. The COI appreciates the head coach's transparency.

While the COI is sympathetic to the head coach's position, the charge of the COI—to decide infractions cases by assessing the severity of conduct and prescribing corresponding penalties—remains unchanged. After assessing the conduct at issue, the head coach failed to meet both the legislated responsibilities of a head coach and to cooperate. Upholding his responsibilities as a head coach and furthering the objectives of the NCAA's infractions program are fundamental obligations of current and former institutional staff members. Though the COI agrees that the head coach's specific circumstances do warrant some mitigation, the head coach's personal circumstances do not absolve him of the responsibility for the violations that occurred and his subsequent failure to cooperate.

The COI has previously prescribed show-cause orders for head coaches who have violated Bylaw 11.1.2.1. *See Augusta* (prescribing a two-year show-cause order for a head coach who added content to a student-athlete's paper and failed to meet his obligations under Bylaw 11.1.2.1). Likewise, the COI has prescribed show-cause orders for individuals who violate ethical conduct legislation. *See Fayetteville State* (2017) (prescribing a three-year show-cause order for the head women's basketball coach who arranged benefits for two student-athletes, allowed them to participate in impermissible practice activity, provided false or misleading information and violated head coach responsibility legislation) and *Gannon University* (2016) (prescribing a three-year show-cause order to a head coach who violated the NCAA principles of ethical conduct). Based upon the head coach responsibility and failure to cooperate violations, and consistent with the cases cited above, the violation is major. To account for the head coach's unique mitigating circumstances, the COI prescribes a three-year show-cause order to address the head coach's conduct.

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<sup>13</sup> As previously noted in the head coach responsibility sections, institutional leadership granted the head coach leave to be away from his program and return to coach games. Although that arrangement does not absolve the head coach of his responsibilities, it is relevant in the COI's consideration of the totality of circumstances around the violations and the head coach's decision making. The arrangement put in place by institutional leadership was not one in which the head coach could have met his legislated head coach responsibilities.

<sup>14</sup> Notably, this occurred after the head coach received his NOA, which individually named him as being involved in the academic misconduct.

With respect to the assistant coach, he argued in his written submission and at the expedited penalty hearing that the COI should reduce his proposed show-cause order because the institution and the enforcement staff's investigation proved no wrongdoings or violations other than a failure to cooperate in a timely manner. Further, the assistant coach asserted that he had already served a three-year show-cause order because no one in the industry would hire him due to the NCAA's investigation. With regard to the delay in interviewing with the enforcement staff, the assistant coach stated that relocating for a new coaching job and the COVID-19 pandemic largely impacted his lack of early participation in the processing of this case. The COI is sensitive to and appreciates the personal circumstances articulated by the assistant coach; however, they simply do not rise to the level of the unique circumstances faced by the head coach. The assistant coach failed to meet a fundamental obligation of current and former institutional staff members.

The COI is troubled by the fact that the assistant coach claimed in his written submission and at the expedited penalty hearing that the institution and the enforcement staff cleared him of all accusations or allegations. His assertions are misleading. Although the substantive allegations changed after some of the coaches—including the assistant coach—decided to begin participating, their failure to meet their basic fundamental requirements of cooperating in the infractions process is serious. The infractions process is founded on the cooperation and participation of those with the most pertinent knowledge. That did not occur here. The assistant coach's refusal to cooperate for nearly one-year drained valuable time, energy and resources and ultimately delayed final resolution of this case. While the COI may have been understanding of some delays due to the pandemic, the outright refusal to participate for any period of time is not acceptable. Here, the assistant coach had ample opportunity to communicate his personal circumstances with the enforcement staff. Instead, the assistant coach waited nearly a year to indicate that he would like to participate despite being an individual with pertinent information.

As previously mentioned, the COI has prescribed show-cause orders for individuals who violate ethical conduct legislation and fail to cooperate in the infractions process. *See Lynn* (prescribing a five-year show-cause order when a compliance officer knowingly represented that four individual student-athletes were eligible when they were not and then refused to participate in an interview during the investigation) and *Lenoir-Rhyne University (2016)* (prescribing a three-year show-cause order to an assistant coach who, among other things, violated NCAA ethical conduct legislation and failed to cooperate with the enforcement staff's investigation). As with this case, the COI maintains the three-year show-cause order for the assistant coach for failing to meet his obligation under ethical conduct and responsibility to cooperate legislation. With knowledge central to this case, the assistant coach's failure caused significant hardship for the enforcement staff as it tried to investigate and uncover the violations that occurred in this case.

## **V. PENALTIES**

For the reasons set forth in Sections III and IV of this decision, the COI concludes this case involved major violations of NCAA legislation. Major violations are not isolated or inadvertent,

provide or are intended to provide more than a minimal advantage and include intentional violations of NCAA legislation.

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

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

1. Public reprimand and censure through the release of the public infractions decision.
2. Probation: Four years of probation from July 13, 2022, through July 12, 2026.<sup>15</sup>
3. During this period of probation, Shaw shall:
  - a. Continue to develop and implement a comprehensive compliance and educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for ensuring compliance with NCAA legislation on certification and recruiting;
  - b. Submit a preliminary report to the Office of the Committees on Infractions (OCOI) by September 15, 2022, 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 May 31 during each year of probation. Particular emphasis shall be placed on rules education and monitoring related to academic integrity and enhancements made to its reporting and investigation of potential NCAA violations. Shaw must include in its annual reports specific examples of this education, including presentation materials and sign-up sheets, as well as any enhancements to its current investigative policies and procedures;
  - d. Inform prospects in the men's basketball program in writing that Shaw is on probation for five 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

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<sup>15</sup> Shaw proposed a two-year probationary period. The COI extends the probationary period to ensure the institution has time to undergo outside audits (*see* Penalty No. 8) and implement the recommendations over an appropriate period of time. Although institutions may recommend terms of probation, the authority to prescribe probation rests solely with the COI. Periods of probation always commence with the release of the infractions decision.

advance of the visit. Otherwise, the information must be provided before a prospect signs a National Letter of Intent; 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 program 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 affected sport 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. Vacation of records: Shaw acknowledged that six men's basketball student-athletes competed while ineligible as a result of the violations in this case. Therefore, pursuant to Bylaws 19.5.2-(g) and Executive Regulations 31.2.2.4 and 31.2.2.5, Shaw shall vacate all regular season and conference tournament records and participation in which the student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition. (Self-imposed.) This order of vacation includes all regular season competition and conference tournaments. Further, if the ineligible student-athletes participated in NCAA postseason competition at any time he was ineligible, the institution's participation in the postseason shall be vacated. The individual records of the ineligible student-athlete shall also be vacated.<sup>16</sup> However, the individual finishes and any awards for all eligible student-athletes shall be retained. Further, the institution's records regarding the men's basketball program, as well as the records of the head coach, shall reflect the vacated records and shall 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 contests 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 these sports shall be returned to the Association.

Finally, to ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected 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

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<sup>16</sup> The COI has consistently prescribed a vacation of records in cases that involved student-athletes competing while ineligible as a result of academic misconduct violations. See *Augusta, King*; *West Texas A&M*; and *Southern Indiana*.

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 document will be maintained in the permanent files of the NCAA Media Coordination and Statistics office. This written report must be delivered to the office no later than 14 days following the release of this decision or, if the vacation penalty is appealed, at the conclusion of the appeals process. The sports information director (or designee) must also inform the OCOI of this submission to the NCAA Media Coordination and Statistics office.

5. Shaw shall pay a \$3,500 fine to the NCAA.<sup>17</sup>
6. Outside Audit: During the first and third year of the probationary period, the institution shall have an independent, external agency or consultant experienced in NCAA compliance matters and investigations conduct a thorough review of the institution's athletics compliance program. Shaw is required to provide the COI with a copy of its outside audits in the annual report immediately following the completion of the audit. The first audit must be completed during the first year of probation and will be used as a baseline of the institution's compliance program during the probationary period. The first audit should set forth a list of recommendations and establish a reasonable time period for Shaw to implement those recommendations during the probationary period. In the third year of probation, the institution shall undergo a second outside audit. In addition to a review of the institution's compliance program, the auditor must also review the institution's first audit and progress made towards implementing all recommendations. As part of the annual reporting process, Shaw must include updates on the status of all audit recommendations.
7. Because this case involved academic misconduct, Shaw shall provide a copy of the infractions decision to its regional accrediting agency.
8. Individuals with a touchpoint on compliance shall attend NCAA Regional Rules Seminars in 2022 and 2023. At a minimum, the director of athletics, compliance officer(s), registrar and faculty athletics representative must attend. Shaw must include documentation of registration and the sessions attended in its annual compliance reports immediately following the representatives' attendance at the NCAA Regional Rules Seminars.
9. Show-cause order: The head coach violated fundamental NCAA responsibilities placed on head coaches and employees of NCAA member institutions. Specifically, the head coach agreed that he failed to promote an atmosphere for compliance when he did not establish clear expectations regarding compliance with academic legislation and institutional policies.

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<sup>17</sup> The institution proposed a \$2,500 fine. The COI adds an additional \$1,000 to address the significance of the competitive advantage after six men's basketball student-athletes competed in a total of 31 contests over two academic years while ineligible. Although the COI has the authority to prescribe a fine of \$250 per ineligible student-athlete per competition up to the maximum \$5,000 fine, the COI declines to do so. Instead, the COI increases the self-imposed fine by \$1,000 and addresses the ineligible competition through the vacation of records penalty. The COI also notes that its proposed additional penalty related to outside audits found at Penalty No. 8, *infra*, will necessitate costs to be borne by Shaw and also took these costs into account in setting the financial penalty at \$3,500.00. The COI assesses fines on a case-by-case basis.

Further, the head coach agreed that he failed to monitor his staff, resulting in academic misconduct in his program. The membership places special responsibilities upon head coaches to promote a culture for compliance and monitor their staff. The head coach agreed he failed to meet these responsibilities. The membership also places an affirmative obligation on employees of NCAA member institutions to further the objectives of the Association's infractions process by requiring them to cooperate fully in all phases of the infractions process. The head coach did not meet his obligation. Although the head coach decided to engage in the process approximately one year later, his untimely participation did not cure his earlier failures to meet fundamental and critical ethical conduct requirements and responsibility to cooperate.

Therefore, the head coach shall be subject to a three-year show-cause order from July 13, 2022, through July 12, 2025. In accordance with Bylaw 19.5.2.2 and COI Internal Operating Procedures (IOP) 5-16-1, any institution employing the head coach during the three-year show-cause period shall restrict the head coach from all athletically related activities. Additionally, the head coach shall be required to attend one NCAA Regional Rules Seminar at his own expense during that three-year period.<sup>18</sup> Any NCAA member institution employing the head coach during the three-year show-cause period 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.

Although each case is unique, this show-cause order is consistent with prior cases involving head coach responsibility and/or ethical conduct violations. *See Wilmington* (prescribing a five-year show-cause order for a head coach who provided women's tennis student-athletes with impermissible benefits, violated head coach responsibility and failed to cooperate after he resigned from the institution); *Lane* (prescribing a five-year show-cause order when a head coach knowingly directed a partial qualifier to compete under the name of an eligible student-athlete, failed to promote an atmosphere for compliance and provided false and misleading information during the investigation); and *Fayetteville State* (prescribing a three-year show-cause order for the head women's basketball coach who arranged benefits for two student-athletes, allowed them to participate in impermissible practice activity, provided false or misleading information during the investigation and violated head coach responsibility legislation).

10. Show-cause order: The associate head coach violated a fundamental NCAA responsibility of employees of NCAA member institutions. The membership places an affirmative obligation on employees of NCAA member institutions to further the objectives of the Association's infractions process by requiring them to cooperate fully in all phases of the infractions process. The associate head coach did not meet his obligation. Although the associate head coach decided to engage in the process approximately one-year later, his untimely participation did not cure his earlier failures to meet fundamental and critical ethical conduct requirements and the responsibility to cooperate. When individuals fail to cooperate, it threatens and undermines

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<sup>18</sup> Through the processing of the SDR, the head coach proposed that the COI require that he attend NCAA Regional Rules Seminars. The COI adopts the head coach's proposal and includes it as part of the four-year show-cause order.



the membership's infractions process. Therefore, the assistant coach shall be subject to a three-year show-cause order from July 13, 2022, through July 12, 2025. In accordance with Bylaw 19.5.2.2 and COI IOP 5-16-1, any institution employing the associate head coach during the three-year show-cause period shall restrict the associate head coach from all athletically related activities. Any NCAA member institution employing the associate head coach during the three-year show-cause period 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.

Although each case is unique, this show-cause order is consistent with prior cases involving coaching and athletics staff members who fail to meet their obligations to cooperate under ethical conduct and responsibility to cooperate legislation. *See Lynn* (prescribing a five-year show-cause order when a compliance officer knowingly represented that four individual student-athletes were eligible when they were not and then refused to participate in an interview during the investigation) and *Ohio Dominican* (prescribing a ten-year show-cause order for an assistant football coach who instructed student-athletes to take a banned substance, failed to follow procedures regarding his knowledge that student-athletes took a banned substance and failed to meet his legislated responsibility to cooperate). Although the associate head coach was not involved in the underlying violations, his failure to timely cooperate is significant. Thus, a three-year show-cause order is appropriate.

11. Show-cause order: The assistant coach violated a fundamental NCAA responsibility of employees of NCAA member institutions. The membership places an affirmative obligation on employees of NCAA member institutions to further the objectives of the Association's infractions process by requiring them to cooperate fully in all phases of the infractions process. The assistant coach did not meet his obligation. Although the assistant coach decided to engage in the process approximately one-year later, his untimely participation did not cure his earlier failures to meet fundamental and critical ethical conduct requirements and responsibility to cooperate. When individuals fail to cooperate, it threatens and undermines the membership's infractions process. Therefore, the assistant coach shall be subject to a three-year show-cause order from July 13, 2022, through July 12, 2025. In accordance with Bylaw 19.5.2.2 and COI IOP 5-16-1, any institution employing the assistant coach during the three-year show-cause period shall restrict the assistant coach from all athletically related activities. Any NCAA member institution employing the assistant coach during the three-year show-cause period 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.

Although each case is unique, this show-cause order is consistent with prior cases involving coaching and athletics staff members who fail to meet their obligations to cooperate under ethical conduct and responsibility to cooperate legislation. *See Lynn* and *Ohio Dominican*. Although the assistant coach was not involved in the underlying violations, his failure to timely cooperate is significant. Thus, a three-year show-cause order is appropriate.

12. Show-cause order: The volunteer coach violated a fundamental NCAA responsibility of employees of NCAA member institutions. The membership places an affirmative obligation on employees of NCAA member institutions to further the objectives of the Association's infractions process by requiring them to cooperate in all phases of the infractions process. The volunteer coach did not meet his obligation. When individuals fail to cooperate, it threatens and undermines the membership's infractions process. Therefore, the volunteer coach shall be subject to a three-year show-cause order from July 13, 2022, through July 12, 2025. In accordance with Bylaw 19.5.2.2 and COI IOP 5-16-1, any institution employing the volunteer coach during the three-year show-cause period shall restrict the volunteer coach from all athletically related activities. Any NCAA member institution employing the volunteer coach during the three-year show-cause period 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.

Although each case is unique, this show-cause order is consistent with prior cases involving coaching and athletics staff members who fail to meet their obligations to cooperate under ethical conduct and responsibility to cooperate legislation. *See Lynn* and *Ohio Dominican*. Although the volunteer coach was not involved in the underlying violations, his failure to cooperate is significant. Thus, a three-year show-cause order is appropriate.

13. Show-cause order: The manager violated fundamental NCAA academic integrity, ethical conduct and responsibility to cooperate legislation, when he arranged for the completion of coursework for six then men's basketball student-athletes and refused multiple interview requests from the enforcement staff. Academic misconduct is considered a severe violation of NCAA legislation. Moreover, the membership places an affirmative obligation on employees of NCAA member institutions to further the objectives of the Association's infractions process by requiring them to cooperate in all phases of the infractions process. The manager did not meet his obligation. When individuals engage in academic misconduct and fail to cooperate, it undermines fundamental NCAA principles. Therefore, the manager shall be subject to a three-year show-cause order from July 13, 2022, through July 12, 2025. In accordance with Bylaw 19.5.2.2 and COI IOP 5-16-1, any institution employing the manager during the three-year show-cause period shall restrict the manager from all athletically related activities. Any NCAA member institution employing the manager during the three-year show-cause period 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.

Although each case is unique, this show-cause order is consistent with prior cases involving coaching and athletics staff members who engage in academic misconduct and fail to meet their obligations to cooperate under ethical conduct and responsibility to cooperate legislation. *See Lynn*; *Ohio Dominican*; and *Southern Indiana* (prescribing a three-year show-cause order for an assistant basketball coach who, among other conduct, arranged for a booster to complete academic assignments for a student-athlete and provided false and misleading information

during the investigation). The manager's involvement in the underlying violations and his failure to cooperate are significant. Thus, a three-year show-cause order is appropriate.

14. Disassociation: Shaw shall disassociate the head coach, associate head coach, assistant coach, volunteer coach and manager for a period of five years beginning with the release of this infractions decision on July 13, 2022, through July 12, 2027.<sup>19</sup> Pursuant to Bylaw 19.9.7-(i), the disassociation shall include:

- a. Refraining from accepting any assistance from the head coach, associate head coach, assistant coach, volunteer coach and manager that would aid in the recruitment of prospective student-athletes or support enrolled student-athletes; and
- b. Ensuring that no athletics benefit or privilege is provided to the head coach, associate head coach, assistant coach, volunteer coach and manager, that is not generally available to the public at large or on a basis different from that provided to the public at large.

15. Following the receipt of the final compliance report and prior to the conclusion of probation, Shaw's president shall provide a letter to the COI affirming that Shaw's current athletics policies and practices conform to all requirements of NCAA regulations. ]

As required by NCAA legislation for any institution involved in a major infractions case, Shaw shall be subject to the provisions of Bylaw 19.5.2.3, concerning repeat violators, for a five-year period beginning on the effective date of the penalties in this case. Further, the COI advises Shaw that it should take every precaution to ensure that it observes the terms of the penalties. The COI will monitor the penalties during their effective periods. Any action by Shaw, the head coach, associate head coach, assistant coach, volunteer coach or the manager contrary to the terms of any of the penalties or any additional violations will cause the COI to consider extending Shaw's probationary period, prescribing more severe penalties, or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS

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

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<sup>19</sup> Shaw self-imposed a disassociation of the manager.

**APPENDIX ONE**

**CORRECTIVE ACTIONS AS IDENTIFIED IN THE JANUARY 26, 2022,  
SUMMARY DISPOSITION REPORT (SDR)**

1. The head men's basketball coach and assistant coaches are no longer with the institution.
2. The compliance director has provided ongoing education regarding academic misconduct and annually clearly communicated expectations to all student-athletes related to academic integrity.
3. The institution hired a new director of athletics and currently has an associate athletics director for compliance/SWA with a wealth of experience in NCAA matters.

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

**Division II 2018-19 Manual**

**2.8 The Principle of Rules Compliance.**

**2.8.1 Responsibility of Institution.** Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to assure compliance and to identify and report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions. Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.

**11.1.2.1 Responsibility of Head Coach.** It shall be the responsibility of an institution's head coach to promote an atmosphere for compliance within the program supervised by the coach and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach.

**14.9.2 Post-Enrollment Academic Misconduct.**

**14.9.2.1 Student-Athlete.** A student-athlete shall not be involved in:

- (a) Academic misconduct involving a current or former institutional staff member or representative of athletics interests;
- (b) Academic misconduct, without the involvement of a current or former institutional staff member or representative of athletics interests, that results in:
  - (1) An erroneous declaration of eligibility to participate in intercollegiate athletics and the student-athlete subsequently competes for the institution while ineligible;
  - (2) An erroneous declaration of eligibility to receive financial aid and the student-athlete subsequently receives financial aid while ineligible.

**14.9.2.2 Institutional Staff Member or Representative of Athletics Interests.** A current or former institutional staff member or a representative of an institution's athletics interests shall not be involved (with or without knowledge of the student-athlete) in:

- (a) Academic misconduct related to a student-athlete.

**14.12 Ineligibility.**

**14.12.1 Obligation of Member Institution to Withhold Student-Athlete From Competition.**

If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Committee on Student-Athlete Reinstatement for restoration of the student-athlete's eligibility as provided in Bylaw 14.13, if it concludes that the circumstances warrant restoration.

### **16.8 Expenses Provided by the Institution for Practice and Competition.**

**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.

## **Division II 2019-20 Manual**

### **2.8 The Principle of Rules Compliance.**

**2.8.1 Responsibility of Institution.** Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to ensure compliance and to identify and report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions. Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.

### **10.1 Unethical Conduct.**

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

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

### **14.12 Ineligibility.**

#### **14.12.1 Obligation of Member Institution to Withhold Student-Athlete From Competition.**

If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Committee on Student-Athlete Reinstatement for restoration of the student-athlete's eligibility as provided in Bylaw 14.13, if it concludes that the circumstances warrant restoration.

### **16.8 Expenses Provided by the Institution for Practice and Competition.**

**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.

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

### **Division II 2020-21 Manual**

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

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

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