



**SIENA COLLEGE**  
**PUBLIC INFRACTIONS DECISION**  
**March 9, 2020**

**I. INTRODUCTION**

The NCAA Division I Committee on Infractions (COI) is an independent administrative body of the NCAA comprised of individuals from the Division I membership and public. The COI decides infractions cases involving member institutions and their staffs.<sup>1</sup> This case involved benefits, competition and expenses, and coaching activity violations in the men's basketball program at Siena College.<sup>2</sup> The former head men's basketball coach (head coach) failed to promote an atmosphere of compliance based on his involvement in these violations. Violations continued to occur during the investigation when the head coach knowingly provided false or misleading information about one of the violations and a booster interfered with the investigation.

The violations in the program center on the head coach's conduct and span the last three years of his tenure at Siena. Over three academic years, the head coach gave impermissible cash payments—referred to within the program as "ice cream money"—to student-athletes in the locker room after games. Similarly, on one occasion, he gave a separate impermissible cash payment to a student-athlete in a weight room during team activities. He also arranged for his staff members to impermissibly drive student-athletes hundreds of miles from time to time when student-athletes needed a ride for personal reasons. These extra benefits resulted in student-athletes competing and receiving expenses while ineligible during three seasons. Over one of these seasons, the head coach directed and permitted a noncoaching staff member to provide impermissible coaching instruction. This instruction caused the program to exceed the limit on countable coaches.

While he contended that he misunderstood the legislation, the head coach violated fundamental and well-known rules. Had he consulted with the compliance staff, he would have learned that his conduct was not permissible. Instead, he acted independently to substitute his own judgment as to what was permissible, and the violations continued for multiple years. The head coach failed to promote an atmosphere of compliance because of his personal knowledge of and involvement in the violations. The violations are Level II.

Additional violations occurred during the investigation. After he resigned from Siena, the head coach violated ethical conduct legislation when he knowingly provided false or misleading information during an interview with the NCAA enforcement staff about the cash payment he gave

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

<sup>2</sup> A member of the Metro Atlantic Athletic Conference, Siena has a total enrollment of approximately 3,300 students. It sponsors seven men's and 10 women's sports. This is the institution's first Level I, Level II or major infractions case.

to a student-athlete in a weight room. A prominent booster interfered in the investigation when he attempted to influence the former assistant strength and conditioning coach (assistant strength coach) to recant information about his eyewitness account of the same cash payment. Siena was responsible for but failed to control the booster's conduct. These violations are also Level II.

The panel classifies this case as Level II-Standard for Siena and Level II-Aggravated for the head coach's violations. Utilizing the current penalty guidelines and NCAA bylaws authorizing additional penalties, the panel prescribes the following principal penalties: three years of probation, a \$5,000 fine, vacation of records, disassociation of the booster for three years and a three-year show-cause order for the head coach.

## **II. CASE HISTORY**

In March 2018, Siena began an internal investigation into the conduct of the head coach and his staff on matters unrelated to compliance with NCAA legislation. During that investigation, the institution learned of potential violations in the men's basketball program. On April 4, 2018, Siena notified the enforcement staff about the potential violations and the head coach resigned five days later. From April until the early fall of 2018, the institution and enforcement staff conducted additional fact-gathering of the issues. In November 2018, as the parties were transitioning the case from the investigative to processing phase, Siena informed the enforcement staff that a booster had initiated contact with the assistant strength coach, seemingly in an attempt to influence him to recant information he had reported to the enforcement staff about the head coach. This caused the institution and enforcement staff to extend the investigation to gather information about the booster's conduct.

In conjunction with this additional investigation, the enforcement staff had difficulty obtaining phone records from the head coach. The COI chair conducted a telephone status conference with the parties on February 11, 2019, to discuss the request for records. During the status conference, the head coach agreed on a February 22, 2019, deadline to provide the records. On May 13, 2019, the enforcement staff advised the COI chair that the head coach made meaningful progress on fulfilling the request and that it expected to receive all requested information. The enforcement staff concluded the investigation shortly thereafter.

On July 1, 2019, the enforcement staff issued a notice of allegations to Siena and a post-separation notice of allegations involving the head coach's alleged misconduct after his separation from the institution. Siena and the head coach responded to the allegations on September 26, 2019, and September 29, 2019, respectively. On November 20, 2019, the enforcement staff submitted its written reply and statement of the case. The panel held the hearing on January 16, 2020. With the chief hearing officer's approval, Siena participated in the hearing via videoconference. The other parties participated in person.

### III. FINDINGS OF FACT

The events in this case occurred during the head coach's final three years at Siena and the enforcement staff's investigation. The parties largely agreed to the core facts, except for one cash payment to a student-athlete that the head coach disputed.

The matters involving the men's basketball program began during the 2015-16 academic year and continued until shortly before the head coach resigned on April 9, 2018. They center on the personal conduct of the head coach, who: (1) provided cash payments to men's basketball student-athletes; (2) directed his staff members to provide long-distance transportation to men's basketball student-athletes and (3) directed and permitted a noncoaching staff member to provide coaching instruction to the team during one season.

On multiple occasions during the 2015-16 through 2017-18 academic years, the head coach gave cash payments to student-athletes in the team locker room after games to share with the team. He made these payments at least once per semester. Several staff members and student-athletes referred to the payments as "ice cream money." The student-athletes who received the payments shared the money with their teammates. Several staff members and student-athletes reported that the head coach gave the payments as a type of reward and intended the money to be used toward team parties. The head coach denied this characterization and submitted that he intended the student-athletes to use the money on food as a permissible "occasional meal" under NCAA legislation. Regardless of his intent, he did not seek guidance from the compliance staff regarding the permissibility of the payments.

Although the parties agree that the payments were made, the investigation did not confirm the exact number of payments, the dollar amounts of the payments or the identity of every student-athlete who ultimately benefitted from the payments. Nonetheless, the head coach made at least two payments each academic year. He stated that the payments were \$60 to \$80 each. Others indicated that the amounts were \$100 or more. The panel finds that the amounts of the payments were within the general ranges of \$60 to \$80 and \$100 or more.

Separate from this "ice cream money," the head coach gave a cash payment of approximately \$100 to a student-athlete in a weight room on campus during team strength and conditioning activities. While the head coach also provided the student-athlete "ice cream money," this payment occurred in the fall of 2017 before the start of the season. During his April 20, 2018, interview, the head coach denied that the payment occurred. The student-athlete, however, acknowledged receiving cash from the head coach in a weight room. The student-athlete also stated that the amount was "like a hundred[,] tops." The assistant strength coach provided an eyewitness account of the payment. He recalled that the bills were rolled or folded in a "wad of cash" and delivered to the student-athlete in a handshake-like manner. He verified when the payment occurred. He also noted that typically coaches—particularly the head coach—did not appear in the weight room for team strength and conditioning activities. The assistant strength coach explained that he did not report the incident because he thought that the payment may have been related to the student-athlete's participation in a camp.

In addition to giving student-athletes cash, the head coach arranged for his staff members to provide long-distance ground transportation to several student-athletes. In November 2016, the head coach arranged for a former assistant men's basketball coach to drive the student-athlete who received the weight room-cash payment from Siena's campus to Charlottesville, Virginia, for a court appearance and then from Charlottesville to the New York City area for an away contest. The trip covered more than 830 miles. Less than one year later, in August 2017, the head coach arranged for a men's basketball student manager to provide another long-distance ride for three different student-athletes. The student manager drove the student-athletes more than 220 miles one way from Siena's campus to Rochester, New York, which was near their hometowns, after they had finished working a summer camp at Siena. Finally, after the Thanksgiving holiday break in November 2017, the head coach arranged for the former men's basketball director of operations (DOBO) to pick up two of these student-athletes in Rochester and drive them back to campus. The monetary value of these trips totaled approximately \$365. The head coach claimed that he believed that the transportation was permissible as an "occasional ride" under NCAA legislation and because the student-athletes needed the rides due to unique circumstances. Nonetheless, he did not consult with the compliance staff regarding the permissibility of the transportation.

The parties agreed that a total of 28 student-athletes competed after receiving the cash payments or transportation over three academic years—specifically, 14 in 2015-16, 13 in 2016-17 and 15 in 2017-18.<sup>3</sup> Siena provided these student-athletes with expenses in conjunction with the competition. While the parties could not identify the specific dates in which many of the student-athletes competed after receiving the cash payments, they agreed that student-athletes competed after receiving the payments or transportation in every game from at least the second semester of the 2015-16 academic year through the next two academic years.

The parties initially did not identify *any* specific dates during the 2015-16 academic year in which student-athletes competed after receiving cash payments. When questioned by the panel during the hearing why they did not identify these dates, the parties agreed that student-athletes began competing after receiving cash payments from the head coach by the 2016 spring term because he made at least one payment during the 2015 fall term. The parties explained, however, that they could not identify any earlier dates because they could not determine the first date that the head coach gave cash to student-athletes in 2015. The panel notes its concern that the parties could not identify earlier dates but acknowledges the unique circumstances associated with the investigation.

During his final season at Siena in 2017-18, the head coach also directed and permitted the DOBO to provide basketball instruction to the team. Siena hired the DOBO prior to the start of the season. At times in practice, the DOBO was on the court participating in drills or coaching the scout team. He also provided instruction during practices while standing off the court. Likewise, at times in film review, the DOBO provided an overview of the scouting reports of upcoming opponents that he had prepared, addressing the opponents, plays and tendencies. Finally, although this occurred less frequently than his coaching in practice and film review, the DOBO coached in games. He gave instruction from the bench to the players on the court during live play and occasionally ran

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<sup>3</sup> Many of the 28 student-athletes competed for more than one year after receiving the cash payments or transportation.

the whiteboard, which is used to show plays. These activities occurred in the head coach's presence.

The head coach did not consult with the compliance staff about the permissibility of the DOBO's activities. Instead, he wanted to turn the DOBO into a coach and asked the former compliance coordinator (compliance coordinator) whether the DOBO could change places with a coach during the season. After observing the DOBO standing and pointing from the bench during a game in early-January 2018, the former senior associate athletics director/senior woman administrator reminded the DOBO that he could not coach the team. The compliance coordinator became aware of these concerns and provided the DOBO with a written list of the activities in which he could and could not engage. The head coach reported that he only stopped the DOBO from providing coaching instruction after the compliance coordinator personally observed some of the DOBO's conduct and warned him that the DOBO's conduct was too close to becoming a violation.

As the enforcement staff prepared to conclude its investigation into these matters, a prominent booster initiated contact with the assistant strength coach to attempt to influence him to recant information he had reported about the head coach during the investigation. The assistant strength coach had first-hand knowledge of the head coach's cash payment to a student-athlete in a weight room. The booster's conduct extended the investigation.

The booster was well-known on campus. He is the president and former owner of a company with its headquarters located near the institution. The booster made multiple donations to the athletics department over the years and was a men's basketball season ticketholder. He was typically on campus three-to-four times per week to work out at the athletics complex. The booster was initially presented to the head coach as an important individual to the Siena family and the men's basketball program. The booster and head coach became very good friends. Over the course of their friendship, the two remained in regular contact and socialized when given the opportunity.

In October 2018, the enforcement staff gave the head coach access to the case file that contained information supporting the allegation pertaining to the cash payment in the weight room. Shortly thereafter, on October 29, 2018, the booster had two exchanges with the assistant strength coach regarding his eyewitness account of the payment. The assistant strength coach's interview statements and an incident report prepared contemporaneously by the assistant strength coach describe his exchanges with the booster. The booster first approached the assistant strength coach outside the athletics complex at around 4:30 p.m. The booster broached the topic of the assistant strength coach's report of witnessing this cash payment. The assistant strength coach believed that the booster was trying to help the head coach with the investigation. The former head strength and conditioning coach (head strength coach) approached the booster and assistant strength coach and interrupted their conversation. After talking as a group for a short while about another topic, they entered the athletics complex together. Shortly after the assistant strength coach arrived at his office inside the athletics complex, the booster unexpectedly entered and re-initiated their conversation about the payment.

During the exchanges, the booster made statements intended to intimidate and persuade the assistant strength coach into recanting what he had previously reported. In particular, the booster told the assistant strength coach that he did not believe the allegations. He advised the assistant strength coach that he should not want to be involved in the matter and to say—if asked—that he did not remember anything about the payment. The booster also talked about the assistant strength coach's future job prospects.

The assistant strength coach told the head strength coach about his conversations with the booster that same day. The head strength coach recalled that the assistant strength coach was upset about what had transpired. The following day, the assistant strength coach reported the matter to his supervisor. The enforcement staff extended its investigation to review this incident. Although the exchanges occurred shortly after the head coach received access to the case file, the panel does not find that the head coach knew of or encouraged the booster's attempt to influence the assistant strength coach to recant his statements about the payment.

#### **IV. ANALYSIS**

The violations occurred in the men's basketball program during the head coach's final three years at Siena, as well as during the investigation. The violations, all of which are Level II, fall into five areas: (A) the provision of extra benefits to men's basketball student-athletes, which resulted in ineligible competition and expenses; (B) impermissible coaching activity; (C) the head coach's failure to promote an atmosphere of compliance; (D) the head coach's knowing provision of false or misleading information to the enforcement staff and (E) booster interference during the investigation. The parties agreed with several of the violations.

##### **A. EXTRA BENEFITS, IMPERMISSIBLE EXPENSES AND INELIGIBLE COMPETITION [NCAA Division I Manual Bylaws 12.11.1, 16.8.1 and 16.11.2.1 (2015-16 through 2017-18) and 16.11.2.2-(d) (2016-17 and 2017-18)]**

From the 2015-16 through 2017-18 academic years, the head coach provided impermissible benefits to student-athletes. The benefits resulted in student-athletes competing and receiving expenses while ineligible. Siena and the head coach agree that the violations occurred except for one impermissible cash payment, which the head coach disputed. The panel concludes that Level II violations occurred.

##### **1. NCAA legislation relating to extra benefits, impermissible competition and ineligible expenses.**

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

**2. The head coach provided extra benefits to student-athletes in the form of cash payments and long-distance ground transportation over three academic years. The benefits caused student-athletes to compete and receive expenses while ineligible.**

The head coach gave cash payments to student-athletes from the 2015-16 through 2017-18 academic years. On occasion in 2016 and 2017, he also arranged for his staff members to provide long-distance ground transportation to student-athletes. As a result of the extra benefits, student-athletes competed and received expenses while ineligible over three years. The benefits and resulting competition and expenses violated Bylaws 16 and 12.

Bylaws 16 and 12 govern benefits and eligibility, respectively. Bylaw 16.11.2.1 restricts student-athletes from receiving extra benefits. The bylaw defines extra benefits as special arrangements by an institutional employee to provide a student-athlete or his or her family or friends with an impermissible benefit that is not generally available to other students and their families or friends. As set forth in Bylaw 16.11.2.2-(d), prohibited benefits include transportation. 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. Institutions must withhold ineligible student-athletes from competition pursuant to Bylaw 12.11.1.

During the 2015-16 through 2017-18 academic years, the head coach provided benefits to student-athletes. On multiple occasions during these years he gave cash payments—commonly referred to as "ice cream money"—to student-athletes in the locker room after games to share with the team. These payments ranged from \$60 to \$100 or more. Separate from this "ice cream money," during the fall of 2017 before the season started, the head coach gave one of these student-athletes approximately \$100 in a weight room on campus during team strength and conditioning activities. In addition, in November 2016, August 2017 and November 2017, the head coach arranged for his staff members to provide long-distance car transportation—totaling approximately \$365 in value—to several student-athletes. The payments and transportation violated Bylaws 16.11.2.1 and 16.11.2.2. These extra benefits rendered the student-athletes ineligible. As a result, 28 student-athletes competed and received actual and necessary expenses while ineligible over three academic years. The competition and expenses violated Bylaws 12.11.1 and 16.8.1.

The head coach acknowledged that the violations occurred but asserted that he misunderstood the legislation. He claimed that he intended the cash to be used by the student-athletes for food as an "occasional meal." He also stated that he believed that the transportation was permissible as an "occasional ride" and cited unique personal circumstances involving the student-athletes to justify the rides.

Contrary to the head coach's explanation, the benefits legislation is well-known to the membership. The head coach did not provide an occasional meal to student-athletes, he gave them cash. Likewise, he arranged for rides covering hundreds of miles, not reasonable local transportation on an occasional basis as permitted under the legislation. The COI has routinely concluded that benefits violations occur when institutions or their representatives give student-athletes

impermissible benefits, including cash payments. *See University of Tennessee at Chattanooga* (2018) (concluding that Level II benefits violations occurred when a booster provided 12 student-athletes with reduced cost rent, free use of automobiles, meals and transportation over a four-year period) and *Florida International University* (2017) (concluding, via summary disposition, that a Level II benefits violation occurred when the head women's basketball coach provided a student-athlete with a \$600 cash payment to register for a winter-term course needed to maintain eligibility).<sup>4</sup> The COI has also regularly concluded that impermissible benefits result in eligibility violations when student-athletes compete and receive expenses while ineligible. *See Florida International* (concluding that Level II competition and expenses violations occurred when a student-athlete competed and received expenses while ineligible). As in these cases, and in accordance with Bylaw 19.1.2, the panel concludes that the violations are Level II. The violations were not isolated or limited, provided more than a minimal but less than substantial impermissible benefit and involved conduct that may impact the integrity of the NCAA Collegiate Model.

**B. IMPERMISSIBLE COACHING ACTIVITY [NCAA Division I Manual Bylaws 11.7.3 and 11.7.6 (2017-18)]**

During the 2017-18 academic year, the head coach directed and permitted a noncoaching staff member to engage in impermissible coaching activity, which caused the program to exceed the limit on countable coaches. Siena and the head coach agreed that the violations occurred. The panel concludes that Level II violations occurred.

**1. NCAA legislation relating to impermissible coaching activity.**

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

**2. The men's basketball program exceeded the number of countable coaches when the DOBO provided impermissible coaching instruction to student-athletes.**

The head coach directed and permitted the DOBO to provide coaching instruction to student-athletes throughout the 2017-18 academic year. His conduct constituted impermissible coaching activity under Bylaw 11, causing the program to exceed the limit on countable coaches by one for that year.

Bylaw 11 regulates aspects of the conduct of athletics personnel. Bylaw 11.7.3 prohibits a noncoaching staff member with sport-specific responsibilities—such as an operations director—from participating in on-court activities. In addition, Bylaw 11.7.6 limits a men's basketball team to no more than four coaches.

On several occasions throughout the 2017-18 academic year, the head coach directed and permitted the DOBO to provide coaching instruction to student-athletes. The DOBO was a

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<sup>4</sup> Pursuant to COI Internal Operating Procedure (IOP) 4-10-2-2, summary disposition decisions are less instructive than a decision reached after a contested hearing because violations established through the summary disposition process constitute the parties' agreement. Nonetheless, *Florida International* provides guidance for this case.



noncoaching staff member. The instruction ranged from preparing and presenting scouting reports during film review to coaching in practices and games, resulting in a Bylaw 11.7.3 violation. The impermissible coaching activity caused the program to effectively have five countable coaches for the 2017-18 season, which violated Bylaw 11.7.6.

Although he agreed that the violations occurred, the head coach characterized the DOBO's activities as being in a "gray area" under the legislation. He explained that he thought the DOBO could present scouting reports as long as he did not put in plays. He also contended that everyone on the sidelines—even noncoaching staff members—coaches during games.

The legislation, however, is not gray as the coach contended. It is fundamental that an operations director—who is a noncoaching staff member—cannot present scouting reports, let alone coach in practice and games. The COI has consistently concluded that coaching activity violations occur when noncoaching staff members participate in on-court activities with student-athletes. *See University of Oregon* (2018) (concluding that Level II coaching activity violations occurred when, over four years, an operations director and assistant strength coach in the basketball programs collectively participated in student-athletes' voluntary workouts, provided instruction during drills and refereed during practices, which caused their programs to exceed the limit on countable coaches); *University of Northern Colorado* (2017) (concluding that Level II coaching activity violations occurred when, a few times per week over several weeks, the operations director participated in practice sessions with an academic non-qualifier, which caused the men's basketball program to exceed the limit on countable coaches) and *University of Hawaii at Manoa* (2015) (concluding that Level II coaching activity violations occurred when, over one year, the operations director presented information during scouting sessions, rebounded for post players and offered them on-court instruction during practice, which caused the men's basketball program to exceed the limit on countable coaches). Consistent with these cases, and in accordance with Bylaw 19.1.2, the violations are Level II because they were not isolated or limited and gave Siena more than a minimal competitive advantage by having an extra men's basketball coach for much of the year.

### **C. HEAD COACH RESPONSIBILITY [NCAA Division I Manual Bylaw 11.1.1.1 (2015-16 through 2017-18)]**

The head coach did not meet his legislated responsibility to promote an atmosphere of compliance due to his personal knowledge of and involvement in violations. Siena and the head coach agreed that the violation occurred. The panel concludes that a Level II violation occurred.

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

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

#### **2. The head coach violated head coach responsibility legislation when he personally involved himself in the violations and directed and permitted his staff members to also violate legislation.**

From the 2015-16 through 2017-18 academic years, the head coach failed to meet his legislated responsibility to promote an atmosphere of compliance. He provided impermissible benefits in the form of cash payments and long-distance ground transportation to student-athletes. He also directed and permitted a noncoaching staff member to engage in impermissible coaching activity. The violations could have been avoided or stopped had he consulted with the compliance staff. The head coach's conduct violated Bylaw 11.

Bylaw 11.1.1.1 establishes two affirmative duties for head coaches: (1) to promote an atmosphere of rules compliance and (2) to monitor individuals in their program who report to them. The bylaw presumes that head coaches are responsible for violations in their programs. Head coaches may rebut this presumption by demonstrating that they promoted an atmosphere of compliance and monitored their staff.

Here, the head coach could not rebut the presumption due to his personal knowledge of and involvement in the violations. During the 2015-16 through 2017-18 academic years, he gave impermissible cash payments to student-athletes. He also arranged for the DOBO, a student manager and an assistant coach to provide impermissible long-distance transportation to student-athletes. The extra benefits caused student-athletes to compete and receive expenses while ineligible over three years. Similarly, during his final year at Siena, he directed and permitted the DOBO to engage in impermissible coaching instruction. This caused the program to exceed the limit on countable coaches.

The head coach's active role in these violations demonstrate that his efforts to promote an atmosphere of compliance fell short of his Bylaw 11.1.1.1 responsibility. The activities that he conducted, directed or permitted clearly triggered NCAA legislation and should have been vetted by the compliance staff. But the head coach never sought guidance from compliance or otherwise took any meaningful action to ascertain what was permissible. Instead, he operated under his own assumptions of what the legislation permitted and his assessment of what was best for his student-athletes.

In light of the head coach's conduct, this case is not like those in which the COI concluded that a head coach rebutted his or her presumed responsibility. See *University of the Pacific* (2017) (concluding that the head baseball coach rebutted his presumption when the underlying benefits violation resulted from a legitimate misunderstanding between the coach and an associate athletics director and the coach followed proper procedures by seeking the associate athletics director's input and approval) and *Wichita State University* (2015) (concluding that the head baseball coach rebutted his presumption when he failed one time to ask follow-up questions regarding his administrative assistant's benefits violation and had properly monitored the assistant and set a tone of compliance for decades). Unlike in *Pacific* and *Wichita State*, the head coach personally involved himself and others in violations over three academic years. There was no legitimate misunderstanding on procedures or decades of monitoring as head coach. He simply did not run a compliant program.

The COI has regularly concluded that head coach responsibility violations occur when head coaches are personally involved in violations or direct and permit staff members to engage in violations, as well as fail to consult with the compliance staff. *See University of California, Santa Barbara (UCSB) (2019)* (concluding that a Level II head coach responsibility violation occurred when the head cross country and track coach failed to promote compliance by personally involving himself in countable athletically related activity violations and not consulting with compliance staff); *Oregon* (concluding that a Level II head coach responsibility violation occurred when the head women's basketball coach failed to promote compliance by inviting and permitting an assistant strength coach to participate in impermissible coaching activity); *Northern Colorado* (concluding that a Level II head coach responsibility violation occurred when the head men's basketball coach failed to promote compliance by violating academic and recruiting legislation and creating an environment in which his staff felt pressured to do the same) and *Monmouth University (2017)* (concluding that a Level II head coach responsibility violation occurred when the head men's tennis coach failed to promote compliance by personally involving himself in recruiting inducements and practice prior to enrollment violations and not consulting with compliance staff).<sup>5</sup> The head coach's conduct aligns with these cases. Additionally, consistent with these cases and Bylaw 19.1.2-(e), the head coach responsibility violation is Level II because it resulted from underlying Level II violations.

**D. UNETHICAL CONDUCT [NCAA Division I Manual Bylaws 10.01.1, 10.1 and 10.1-(c) (2017-18)]**

The head coach violated ethical conduct legislation when he knowingly provided false or misleading information during the investigation about his involvement in a benefits violation. The head coach disputed the allegation. The panel concludes that the head coach committed a Level II violation.

**1. NCAA legislation relating to unethical conduct.**

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

**2. The head coach violated ethical conduct legislation when he knowingly provided false or misleading information during the investigation about his personal involvement in a violation.**

During his interview with the enforcement staff, the head coach knowingly provided false or misleading information when he denied giving an impermissible cash payment to a student-athlete. His conduct was contrary to the standards of ethical conduct that the membership expects of athletics staff members. His conduct violated Bylaw 10.

Bylaw 10 requires current and former staff members to conduct themselves in an ethical manner. As set forth in Bylaw 10.01.1, staff members must always act with honesty and sportsmanship. In

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<sup>5</sup> In *UCSB*, the COI also concluded that the head men's water polo coach failed to promote compliance due to his personal involvement in violations and failure to consult with compliance staff but he has appealed the violation.

particular, they must not knowingly furnish false or misleading information concerning their involvement in or knowledge of violations in accordance with Bylaw 10.1-(c).

The head coach violated ethical conduct legislation when he denied during his April 20, 2018, interview that he provided a cash payment to a student-athlete in a weight room on Siena's campus during team strength and conditioning activities. Substantial information in the record contradicted this denial and demonstrated that the head coach made the payment. The student-athlete admitted that he received the payment. In addition, the assistant strength coach provided a detailed eyewitness account of the exchange of money.

The head coach argued that the student-athlete's and assistant strength coach's accounts were not reliable. He contended that the student-athlete did not recall and provided vague and contradictory information about the exchange, confusing the alleged payment in the weight room with "ice cream money" that he received from the head coach. He also submitted that the assistant strength coach was not credible because he did not report the incident and could not verify the amount of the payment.

The record does not support these arguments. While the student-athlete may not have recalled every detail, he nonetheless acknowledged that the head coach gave him cash in a weight room and knew the amount of the payment. Considering that the assistant strength coach recalled that the exchange occurred in the fall *prior* to the 2017 season, the payment is clearly distinct from post-game "ice cream money." The panel also finds the assistant strength coach to be credible. As the assistant strength coach explained, he did not report the payment because he thought that it may have been related to the student-athlete's participation in a camp. In addition, although he did not know the exact amount of the payment, he reported that the bills were rolled or folded and delivered in a handshake-like manner. The booster's attempt to influence the assistant strength coach to recant this information bolsters the assistant strength coach's credibility. He had no incentive to be untruthful.

Being forthcoming during an investigation is critical to the infractions process. The COI has consistently concluded that the knowing provision of false or misleading information violates ethical conduct legislation. See *Georgia Institute of Technology* (2019) (concluding that an assistant men's basketball coach engaged in unethical conduct when he knowingly provided false and misleading information about his involvement in recruiting violations); *Northern Colorado* (concluding that two assistant men's basketball coaches engaged in unethical conduct when they knowingly provided false or misleading information about their involvement in completing or arranging for the completion of coursework for ineligible prospects) and *University of Mississippi* (2017) (concluding that athletics staff members engaged in unethical conduct when they knowingly provided false or misleading information about their involvement in helping prospects obtain fraudulent ACT exam scores, arranging for impermissible meals, lodging and transportation for prospects, and arranging for boosters to have contact and communication with a student-athlete

for the purpose of providing him cash payments).<sup>6</sup> The head coach fell short of his obligation to provide truthful information during an investigation.

The panel concludes that the ethical conduct violation is Level II pursuant to Bylaw 19.1.2. Even though the head coach knowingly provided false or misleading information, his denial concerned a single \$100 cash payment that was part of a multi-faceted Level II violation. In addition, the enforcement staff indicated that the denials did not substantially impede the investigation because the enforcement staff had already established the information to substantiate the violation. The panel recognizes that most ethical conduct violations are Level I in accordance with Bylaw 19.1.1, which identifies unethical conduct as an example of a Level I violation. *See Georgia Tech, Northern Colorado and Mississippi (2017)*. This case, however, is different.

The COI has previously concluded that ethical conduct violations for knowingly providing false or misleading information were Level II when unique circumstances did not warrant Level I violations. *See Rutgers, The State University of New Jersey, New Brunswick (2017)* (concluding that a Level II ethical conduct violation occurred when an assistant football coach knowingly provided false or misleading information about his impermissible contact with a prospect during his visit to the prospect's high school); *University of Mississippi (2016)* (concluding that level II ethical conduct violations occurred when the head track coach knowingly provided false or misleading information about his awareness of assistant track coaches' impermissible recruiting activities and an assistant track coach knowingly provided false or misleading information about taking precautions to avoid having prospects impermissibly run with enrolled student-athletes) and *San Jose State University (2016)* (concluding that a Level II ethical conduct violation occurred when the head women's basketball coach knowingly provided false or misleading information about a nonqualifier's participation in some team activities during her year in residence). This case also involves unique circumstances. In this case, as in the others, the nature of the false or misleading information—one of many cash payments—was more limited in scope than cases in which Level I violations occurred. The enforcement staff also asserted that it could substantiate the violation despite the head coach's failure to provide truthful information.

#### **E. BOOSTER INTERFERENCE DURING INVESTIGATION [NCAA Division I Manual Constitution 6.4.2 and Bylaw 19.2.1 (2018-19)]**

A Siena booster interfered during the investigation by attempting to influence an athletics staff member to recant first-hand information he had reported about the head coach's improper conduct. Siena agreed that the interference occurred but denied that it was accountable for the booster's conduct. The panel concludes that Level II violations occurred.

##### **1. NCAA legislation relating to booster interference during the investigation.**

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

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<sup>6</sup> In *Georgia Tech*, the COI also concluded that the assistant men's basketball coach engaged in unethical conduct when he attempted to influence another to provide false and misleading information as a cover-up but the coach has appealed that violation.

**2. A booster initiated in-person contact with the assistant strength coach to influence him to retract information he had reported about the cash payment to a student-athlete in a weight room.**

A booster interfered during the investigation when he initiated contact with the assistant strength coach to influence him to recant information he had reported about the head coach during the investigation. The assistant strength coach told the enforcement staff that he witnessed the head coach provide cash to a student-athlete in a weight room. Siena agreed that the booster interfered but disputed that it was accountable for the violation. The panel concludes that Siena is responsible for the booster's conduct and violated Constitution 6 and Bylaw 19.

Constitution 6 addresses institutional control. In accordance with Constitution 6.4.2, institutions are responsible for the conduct of their boosters. Bylaw 19.2.1 specifies that institutions must monitor and control their boosters to assure compliance with the legislation.

A prominent booster twice initiated contact with the assistant strength coach to influence him to recant his interview statements about the head coach's impermissible cash payment to a student-athlete in a weight room during team strength and conditioning activities. The contact occurred on October 29, 2018, shortly after the enforcement staff gave the head coach access to its case file with information about the payment. The booster approached the assistant strength coach outside of the athletics complex and then—after their conversation was interrupted—inside the assistant strength coach's office in the athletics complex. During these conversations, the booster attempted to intimidate and persuade the assistant strength coach into recanting what he previously reported to the enforcement staff about the payment. This conduct undermined the infractions process and threatened the integrity of the investigation. Siena is responsible for the conduct and thus violated Constitution 6.4.2 and Bylaw 19.2.1.

Although Siena agreed that the events occurred as alleged, it argued that it should not be held accountable for the booster's conduct. The institution pointed toward the booster's relationship with the head coach and contended that the head coach likely knew of or encouraged the booster's conduct. Siena submitted that the booster's conduct was contrary to Siena's position and interests and the booster intended to help the head coach, who was no longer employed by Siena when he violated ethical conduct legislation.

Institutions are accountable for their boosters, who act on behalf of the institutions that they represent. The COI has consistently concluded that institutions violate Constitution 6.4.2 when they fail to control their boosters' conduct. *See Mississippi* (2017) (concluding that the institution failed to exercise control over several boosters, many of whom knowingly violated recruiting and benefits legislation) and *University of Central Florida* (2012) (concluding that the institution lacked control by failing to monitor the conduct, interaction and communication between athletics staff members and a booster and persons associated with the booster). The NCAA Division I Infractions Appeals Committee (IAC) recently reaffirmed this accountability, stating that an institution cannot be absolved from a penalty even if it was not directly involved in and unaware of violations by a booster. *See Brigham Young University*, IAC Report No. 506 (2019). This case

is no different. The panel acknowledges the relationship between the head coach and booster but does not find, nor was it alleged, that the head coach knew of or encouraged the booster's interference. Even if the booster acted contrary to Siena's position and interests and tried to help the head coach, Siena must still control the booster and is responsible for his conduct.

In accordance with Bylaw 19.1.2, the violation is Level II because it may compromise the integrity of the Collegiate Model. At the hearing, Siena agreed that if a violation occurred it should be Level II.

## **V. PENALTIES**

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

In considering penalties, the panel first reviewed aggravating and mitigating factors pursuant to Bylaws 19.9.2, 19.9.3 and 19.9.4 to determine the appropriate classifications for Siena and the head coach. The panel then used the current penalty guidelines (Figure 19-1) and Bylaws 19.9.5 and 19.9.7 to prescribe penalties.

The panel determined that the below-listed factors applied and assessed the factors by weight and number. Based on its assessment, the panel classifies this case as Level II-Standard for Siena and Level II-Aggravated for the head coach's violations.

### **Aggravating Factors for Siena**

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

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

19.9.3-(i): One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospect; and

19.9.3-(k): A pattern of noncompliance within the sport program involved.

Siena agreed with all aggravating factors except Bylaw 19.9.3-(i), *One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospect*. Siena contended that the factor should not apply because the impermissible cash payments that resulted in the ineligibility were minimal in value. The value of the payments, however, does not make the extent of ineligible participation any less significant. The COI has regularly applied the factor when multiple student-athletes compete while ineligible over multiple years. *See Georgia Tech* (applying the factor to the institution and an assistant men's basketball coach when three student-

athletes competed while ineligible over two years); *University of Missouri, Columbia* (2019) (applying the factor to the institution and a tutor when multiple student-athletes in three programs competed while ineligible over two years); *Tennessee-Chattanooga* (applying the factor to the institution when multiple student-athletes competed while ineligible over four years) and *Pacific* (applying the factor to the institution, head men's basketball coach, an assistant men's basketball coach and the special assistant to the men's basketball coach when one student-athlete competed while ineligible over one year and three student-athletes competed while ineligible over another year).<sup>7</sup> In this case, 28 student-athletes competed while ineligible over three academic years. The panel thus applies the factor to Siena because the violations caused significant ineligibility.

### **Mitigating Factors for Siena**

19.9.4-(b): Prompt acknowledgement of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties;

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

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

Siena identified two additional mitigating factors: Bylaws 19.9.4-(d), *An established history of self-reporting Level III or secondary violations*, and 19.9.4-(i), *Other facts warranting a lower penalty range*. The panel determines that neither factor applies.

Siena argued that the panel should apply Bylaw 19.9.4-(d) because unique institutional factors caused the institution to report fewer violations. Specifically, Siena submitted that it has relatively fewer student-athletes and a smaller athletics budget than most other Division I institutions.

The panel does not apply Bylaw 19.9.4-(d) because Siena reported fewer than five Level III violations per year. Although it is not a formal test, the COI has consistently declined to apply the factor when the institution self-reports an average of less than five violations per year. See *North Carolina Central University* (2018) (declining to apply the factor, via summary disposition, when the institution reported an average of 3.25 violations per year) and *Samford University* (2016) (declining to apply the factor, via summary disposition, when the institution reported an average of 4.5 violations per year). Siena self-reported just 22 Level III violations over the past five years for an average of 4.4 per year. This is a small number, even considering Siena's enrollment. In addition, the size of an athletics budget should not justify self-reporting Level III violations with less frequency. The panel thus declines to apply the factor to the institution.

Siena also requested that the panel apply Bylaw 19.9.4-(i) as a mitigating factor. Siena argued that it acted swiftly and aggressively to uncover violations, and decisively to address the problems, including quickly replacing the head coach and his staff. Siena also submitted that the booster was motivated to help the head coach—who was his very good friend—avoid the ethical conduct violation, the head coach likely knew of or encouraged the booster's conduct and that the booster's conduct was contrary to Siena's position and interests. Finally, Siena noted that the enforcement

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<sup>7</sup> In *Georgia Tech*, the institution and assistant men's basketball coach have appealed portions of the decision but not the COI's determination to apply Bylaw 19.9.3-(i).



staff had difficulty obtaining phone records from the head coach after the booster interfered in the investigation, which resulted in a delay in case processing.

The panel declines to apply Bylaw 19.9.4-(i) because no other facts warrant a lower penalty range. The COI does not frequently apply the factor and has only applied it when a case involved unique circumstances. *See Oregon* (applying the factor to the institution when its robust monitoring detected an impermissible grade change and it acted quickly to prevent ineligible competition); *San Jose State* (applying the factor to the institution when it self-reported violations and took meaningful corrective action but the enforcement staff did not act on information for over 16 months); *Hawaii* (applying the factor to the institution on remand from the IAC when a full year elapsed from the time the institution filed its appeal to the time that the IAC issued its final directive to the panel) and *University of New Hampshire* (2014) (applying the factor, via summary disposition, to the institution when many of the impermissible benefits were small and given to student-athletes after they exhausted their eligibility, the benefits provided no significant advantage and at least one coach reported a potential violation promptly to compliance staff). Similar unique circumstances were not present in this case. The panel takes into consideration the institution's actions to expedite resolution of the case and address the violations in applying Bylaws 19.9.4-(b) and 19.9.4-(c), respectively, as mitigating factors. The panel also does not find, nor did the enforcement staff allege, that the head coach knew of or encouraged the booster's conduct. Lastly, the enforcement staff's difficulty in obtaining phone records from the head coach only delayed the processing of the case by a few months. The delays in *San Jose State* and *Hawaii*, however, were much more prolonged and for reasons less typical than the reason for delay in this case. Bylaw 19.9.4-(i) thus does not apply to the institution.

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

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

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

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

19.9.3-(i): One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospect; and

19.9.3-(k): A pattern of noncompliance within the sport program involved.

The head coach disagreed that Bylaws 19.9.3-(e), *Unethical conduct, compromising the integrity of an investigation, failing to cooperate during an investigation or refusing to provide all relevant or requested information*, and 19.9.3-(i), *One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospect*, applied. The panel, however, determines that both apply to the head coach.

With respect to Bylaw 19.9.3-(e), the head coach disputed that he engaged in unethical conduct. The panel, however, concludes that the head coach violated ethical conduct legislation when he

knowingly provided false or misleading information during the investigation. Accordingly, the factor applies.

Like Siena, the head coach contended that Bylaw 19.9.3-(i) should not apply because of circumstances associated with the violations that resulted in the ineligibility. He echoed Siena's argument that the impermissible cash payments that resulted in the ineligibility were minimal in value. He also argued that he arranged the impermissible transportation to help student-athletes because they were in a bind and needed the transportation.

The panel, however, applies the factor. The head coach's characterization of the benefits violations does not change the fact that 28 student-athletes competed while ineligible over three years because of the violations. The COI has consistently applied the factor to both institutions and the involved individual whose conduct caused the violations that resulted in the significant ineligibility. *See Georgia Tech; Missouri; Tennessee-Chattanooga and Pacific.*

The enforcement staff identified Bylaw 19.9.3-(m), *Intentional, willful or blatant disregard for the NCAA constitution and bylaws*, as an aggravating factor for the head coach. The panel, however, declines to apply the factor. In most cases in which the COI has applied the factor to an involved individual, the COI concluded that the individual knowingly violated the legislation. *See DePaul University (2019)* (applying the factor to the associate head men's basketball coach when he engaged in unethical conduct by knowingly arranging for an assistant operations director to violate recruiting and coaching activity legislation). The panel did not conclude, nor did the enforcement staff allege, such a violation. In addition, although the head coach should have consulted the compliance staff, the panel does not find that his conduct constitutes a blatant disregard for the legislation.

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

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

The head coach identified three additional mitigating factors: Bylaws 19.9.4-(b), *Prompt acknowledgement of the violation, acceptance of responsibility and meaningful corrective measures and/or penalties*, 19.9.4-(f), *Exemplary cooperation*, and 19.9.4-(g), *The violations were unintentional, limited in scope and represent a deviation from otherwise compliant practices by the involved individual*, as mitigating factors. The panel determines that none applies.

The head coach argued that the panel should apply Bylaw 19.9.4-(b) as a mitigating factor. In support, he contended that he both promptly acknowledged the violation and accepted responsibility.

The panel does not apply Bylaw 19.9.4-(b) because the head coach did not promptly acknowledge and accept responsibility for all violations. The panel recognizes that the COI has applied the factor in prior cases when a party contests some allegations but acknowledges its shortcomings

that resulted in the violations. *See Tennessee-Chattanooga* (applying the factor to the head men's tennis coach when he contested violations but repeatedly acknowledged his shortcomings and accepted responsibility for not asking follow-up questions that could have stopped violations). In this case, the head coach contests one of the benefits violations and that he violated ethical conduct responsibility legislation but agrees with the other violations. Unlike in *Tennessee-Chattanooga*, however, the head coach never fully acknowledged his shortcomings that resulted in the violations. Likewise, he was personally involved in the violations that spanned three years. Further, his knowing provision of false or misleading information during the investigation harmed the infractions process. Bylaw 19.9.4-(b) thus does not apply.

The head coach requested that the panel apply Bylaw 19.9.4-(f) because he asserted that his cooperation was exemplary. He contended that he expended significant resources to provide his phone records and allowed the enforcement staff to obtain a mirror-image of his phone. He also noted that he participated in two interviews with the enforcement staff.

While the panel acknowledges that the head coach cooperated, his cooperation was not exemplary and Bylaw 19.9.4-(f) does not apply. The COI uses a high standard to assess exemplary cooperation and has determined that the factor applies in a limited number of cases. *See Northern Colorado* (applying the factor to the institution when it searched coaches' offices, inventoried the items found, imaged computer drives and email accounts, and obtained its student-athletes' coursework submitted to other institutions when investigating potential academic violations) and *Oklahoma State University* (2015) (applying the factor, via summary disposition, to the institution when it assisted the enforcement staff in reviewing over 50,000 emails and other records and conducting roughly 90 interviews). In this case, the head coach knowingly provided false or misleading information during the investigation. In addition, although he ultimately produced phone records, the enforcement staff's difficulty in obtaining these records from the head coach necessitated the involvement of the COI chair to facilitate completion of the investigation. The head coach's cooperation was not exemplary.

With regard to Bylaw 19.9.4-(g), the head coach contended that the factor should apply because the violations were a deviation from an otherwise compliant twenty-seven years in coaching. A party, however, must show all three prongs of the bylaw—unintentional violations, limited violations and a deviation from compliant practices—for the factor to apply. The COI has declined to apply the factor when the violations occurred over multiple months or years. *See UCSB* (determining that the factor did not apply to the head men's water polo coach when violations spanned two years); *Oregon* (determining that the factor did not apply to the head men's basketball coach when the violations spanned three-and-a-half years and involved multiple instances of the same impermissible conduct) and *Monmouth* (determining that the factor did not apply to the head men's tennis coach when the violations occurred during an entire semester).<sup>8</sup> As in these cases, the violations were not limited because they spanned the head coach's final three years at Siena. The panel thus does not apply the factor to the head coach.

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<sup>8</sup> In *UCSB*, the head men's water polo coach has appealed portions of the decision but not the COI's determination to not apply Bylaw 19.9.4-(g).

All the penalties prescribed in this case are independent and supplemental to any action the NCAA Division I Committee on Academics has taken or may take through its assessment of postseason ineligibility, historical penalties or other penalties. In prescribing penalties, the panel considered Siena's cooperation in all parts of this case and determines it was consistent with Siena's obligation under Bylaw 19.2.3. The panel also considered Siena's corrective actions, which are contained in Appendix One. The panel prescribes the following penalties:

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

1. Probation: Three years of probation from March 9, 2020, through March 8, 2023.
2. Financial penalty: Siena shall pay a fine of \$5,000.

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

3. Show-cause order: The head coach provided impermissible benefits in the form of cash payments to student-athletes from the 2015-16 through 2017-18 academic years. He also arranged for his staff members to provide impermissible long-distance ground transportation to student-athletes on multiple occasions. These benefits resulted in student-athletes competing and receiving expenses while ineligible during this time period. The head coach also directed and permitted the DOBO to provide impermissible basketball instruction to student-athletes throughout the 2017-18 academic year, which caused the program to exceed the permissible number of countable coaches. In addition, after he resigned from Siena, the head coach knowingly provided false or misleading information during the investigation. Therefore, he shall be subject to a three-year show-cause order from March 9, 2020, to March 8, 2023. Pursuant to COI IOP 5-15-3-1, if the head coach seeks employment or affiliation with any athletically related position at an NCAA member institution during the three-year show-cause period, any employing institution shall be required to contact the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why restrictions on all athletically related activity should not apply.

Head coach restriction: The head coach violated head coach responsibility legislation when he failed to promote an atmosphere of compliance. Bylaw 19.9.5.5 and the Figure 19-1 penalty guidelines contemplate head coach suspensions to address head coach responsibility violations. Therefore, should the head coach become employed in an athletically related position at an NCAA member institution during the three-year show-cause period, he shall be suspended from 30 percent of the first season of his employment. The suspension shall run concurrently with the first year of the show-cause order. Because the show-cause order restricts the head coach from all athletically related activity, the suspension is subsumed within the show-cause order.

Although each case is unique, the show-cause order is consistent with those prescribed in prior cases involving Level-II Aggravated violations that include ethical conduct and head coach responsibility violations. *See Sam Houston State University* (concluding, via summary

disposition, that Level II-Aggravated violations occurred when the head women's tennis coach engaged in unethical conduct for knowingly providing and arranging for impermissible recruiting inducements and benefits, violated contact legislation and failed to promote compliance, and prescribing a three-year show-cause order with a suspension of 30 percent of his first season of employment subsumed within the order) and *Florida International* (concluding, via summary disposition, that the head women's basketball coach committed Level II-Aggravated violations when he engaged in unethical conduct and failed to promote compliance by intentionally violating benefits legislation, and prescribing a two-year show-cause order with a suspension of 50 percent of his first season of employment following the show-cause period). As in these cases, the show-cause order falls within the membership-approved penalty guidelines.

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

4. Public reprimand and censure through the release of the public infractions decision.
5. Vacation of team and individual records: Ineligible participation in the men's basketball program occurred over three academic years as a result of violations in this case.<sup>9</sup> Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3 and COI IOP 5-15-7, Siena shall vacate all regular season and conference tournament wins, records and participation in which the ineligible student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition.<sup>10</sup> 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 they were ineligible, Siena's participation in the postseason contests in which the ineligible competition occurred shall be vacated. The individual records of the ineligible student-athletes shall also be vacated. However, the individual finishes and any awards for all eligible student-athletes shall be retained. Further, Siena's records regarding its athletics programs, as well as the records of head coaches, shall reflect the vacated records and be recorded in all publications in which such records are reported, including, but not limited to, institutional media guides, recruiting material, electronic and digital media plus institutional, conference and NCAA archives. Any institution that may subsequently hire the affected head coach shall similarly reflect the vacated wins in his career records documented in media guides and other publications cited above. Head

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<sup>9</sup> The parties agreed that ineligible competition occurred from 2015-16 through 2017-18. The parties initially did not identify any specific dates of ineligible competition in the 2015-16 academic year. The panel asked the parties at the hearing why they did not identify these dates. In response, the parties agreed that student-athletes competed while ineligible during the 2016 spring term but could not identify any earlier dates because they could not determine when the head coach first gave an impermissible cash payment to student-athletes during the 2015 fall term. While the panel is concerned that the parties could not identify all specific dates of ineligible competition, it recognizes that the parties agreed upon nearly all dates of ineligible competition over three years and that unique circumstances prevented the parties from identifying specific dates in the fall of 2015. The vacation penalty applies to all the agreed-upon dates of ineligible competition (i.e., from the 2016 spring term through the 2017-18 academic year).

<sup>10</sup> Pursuant to Bylaw 19.9.7-(g), the COI may prescribe vacation of records when a student-athlete competes while ineligible. Among other examples, vacation is particularly appropriate when a case involves the direct involvement of a coach. See COI IOP 5-15-7. None of these factors, however, is necessary for the COI to prescribe the penalty. See *North Carolina Central University*, IAC Report No. 499 (2018). The COI has consistently prescribed vacation of records in cases in which the institution provided impermissible benefits that resulted in ineligible competition. See *Tennessee-Chattanooga*; *Mississippi* (2017) and *Pacific*.

coaches with vacated wins on their records may not count the vacated wins toward specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to the vacated records shall be removed from the athletics department stationary, banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in men's basketball shall be returned to the Association.

Finally, to aid in accurately reflecting all institutional and student-athlete vacations, statistics and records in official NCAA publications and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA Media Coordination and Statistics office and appropriate conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the NCAA Media Coordination and Statistics office with a written report detailing those discussions. This written report will be maintained in the permanent files of the NCAA Media Coordination and Statistics office. This written report must be delivered to the office no later than 14 days following the release of this decision or, if the institution appeals the vacation penalty, at the conclusion of the appeals process. A copy of the written report shall also be delivered to the OCOI at the same time.

6. Disassociation: As a corrective action, Siena notified the booster on May 23, 2019, that Siena disassociated him for three years. The panel extends this institutionally-imposed disassociation through three years from the release of the decision, incorporates the conditions of disassociation identified by Siena and includes an additional condition pursuant to Bylaw 19.9.7-(i). Specifically, disassociation shall last through March 8, 2023, and include:
  - a. Refraining from accepting any assistance from the booster that would aid in the recruitment of prospects or the support of enrolled student-athletes;
  - b. Refusing financial assistance for Siena's athletics program from the booster;
  - c. Ensuring that no athletics benefit or privilege is provided to the booster, either directly or indirectly, that is not generally available to the public at large;
  - d. Restricting the booster from having contact with prospects or enrolled student-athletes;
  - e. Not permitting the booster to utilize Siena workout facilities without a paid membership that is available to the general public;
  - f. Restricting the booster from access to athletics department staff members regarding any athletics matter; and
  - g. Taking other actions that Siena determines to be within its authority to eliminate the involvement of the booster in the institution's athletics program.<sup>11</sup>

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<sup>11</sup> Siena identified conditions a through f in its institutionally-imposed disassociation.

7. During the period of probation, Siena shall:
    - a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for recruiting and certification legislation;
    - b. Submit a preliminary report to the OCOI by April 30, 2020, 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 February 1 during each year of probation. Particular emphasis shall be placed on rules education and monitoring related to benefits, coaching activity, head coach responsibility, institutional control of boosters and ethical conduct legislation;
    - d. Inform prospects in the men's basketball program in writing that Siena is on probation for three years and detail the violations committed. If a prospect takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospect signs 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 programs and a direct, conspicuous link to the public infractions decision located on the athletic department's main webpage "landing page" and in the media guides for men's basketball. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the case; and (iii) give members of the general public a clear indication of what happened in the case to allow the public (particularly prospects and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.
  8. Following the receipt of the final compliance report and prior to the conclusion of probation, Siena's president shall provide a letter to the COI affirming that Siena's current athletics policies and practices conform to all requirements of NCAA regulations.
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The COI advises Siena and the head coach and that they should take every precaution to ensure that they observe the terms of the penalties. The COI will monitor Siena while it is on probation to ensure compliance with the penalties and terms of probation and may extend the probationary period, among other action, if Siena does not comply or commits additional violations. Likewise, any action by Siena or the head coach contrary to the terms of any of the penalties or any additional violations shall be considered grounds for prescribing more severe penalties and/or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Norman Bay  
Carol Cartwright  
Jody Conradt  
Joel Maturi, Chief Hearing Officer  
Gary L. Miller  
Kay Norton  
Roderick Perry



## **APPENDIX ONE**

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

Siena ended its employment relationships with the head coach, three assistant men's basketball coaches and the DOBO. Siena negotiated the resignation of the head coach, which was effective April 9, 2018, and announced on April 12, 2018, as a result of the information it had obtained at that point regarding the conduct that forms the basis of Allegations 1-(a)(1), 1-(a)(2), 2-(b)(2), 2, and 3, as well as other conduct that did not constitute a violation of legislation. Siena initially suspended the DOBO on March 13, 2018, as a result of failure to adhere to Siena's counsel's direction not to contact any witnesses during the investigation. The DOBO's employment was terminated on May 8, 2018, and the termination was confirmed in a letter dated May 9, 2018. Two assistant coaches were notified orally on May 21, 2018, that their employment was terminated effective June 20, 2018. The third assistant coach resigned his employment on April 23, 2018, prior to Siena terminating his employment. His last day of work was April 30, 2018. Siena ended its employment relationships with the DOBO and two assistant coaches and would have terminated its relationship with the third assistant coach as a result of their involvement, knowledge of, or failure to report the violations set forth in Allegations 1 and 2, as well as their involvement, knowledge of, or failure to report other conduct that did not violation NCAA legislation.

In addition to those actions, during late 2018 and early 2019, Siena took the following actions to address the tracking of expense and per diem reimbursement policies, procedures and operations that led to the violations underlying Allegation 1, to reinforce the limitation on instructional activities that noncoaching staff are barred from engaging in to avoid the conduct that resulted in the violation underlying Allegation 2, to reinforce head coach control responsibilities in connections with Allegation 3, and to remove from the program an athletics representative who engaged in the conduct relating to Allegation 4.

- The athletics' per diem policy was reviewed with finance and athletics department staff. The per diem policy was clarified and modified. The policy manual was updated with clarified policy. Each team has been supplied with individual credit cards to use for the provision of permissible travel and meals in order to more easily track these expenses.

For men's basketball, a cash per diem is no longer distributed after a game. Food is purchased and distributed to team and staff members post-game. (Allegation 1)

- A separate position of business manager was created within athletics (duties were previously managed by an associate athletic director) to better monitor and track day-to-day business processes and expenses, and to allow the associate director more time to educate coaches and staff, work with compliance and finance, and to spot issues. The business manager is also working with compliance to utilize ARMS to streamline and bring greater consistency into the business processes and operations. (Allegation 1)

- The athletics compliance officer was reclassified to assistant athletic director for compliance. The changed status was done to more clearly indicate his authority and his responsibilities as compliance officer.

The assistant athletic director for compliance now reports to the senior associate athletic director/senior woman administrator on matters related to NCAA, MAAC and college compliance matters, and reports to college counsel for matters of higher risk such as major NCAA violations. As necessary and appropriate, the assistant athletic director for compliance will also report matters of concern to the Title IX-VII officer. (Allegations 1-4)

- The college finance office's director of accounting has been designated as the primary liaison to the athletics department on day-to-day business operations. The athletic department's associate director/operations works directly with this person on process, approvals and identifying where potential issues may lie relating to finance-related issues. (Allegation 1)
- The college disassociated the booster for a period of three years. Appropriate staff members were informed of this action by the college counsel. (Allegation 4).
- Training sessions to educate all coaches on business operations protocols are held each fall (started in 2018). (Allegation 1)
- Continuing education is done on an ongoing basis at monthly coaches and staff meetings on relevant compliance topics, including head coach control responsibility. (Allegations 1-4)
- Continuing education is done on an ongoing basis at monthly coaches and staff meetings on different Department and Campus policy matters. (Allegations 1-4)
- An additional agreement was developed that compliments the college's credit card authorization form that details what expenses are permissible, includes deadlines for reconciliation of the holder credit card statement and outlines consequences when deadlines are not met. (Allegation 1)
- The assistant athletic director for compliance developed a list of activities that are permissible for noncoaching staff members (e.g., director of operations) to perform. That list is reviewed with the coaching staff. In addition, a form has been developed that the noncoaching staff members must read and sign indicating they understand what is not permissible and are in compliance. This attestation will be distributed via ARMS and requires an electronic signature, including from noncoaching men's basketball and women's basketball staff members. (Allegation 2)
- The department's policy manual went through an annual review. Along with being available online, a hard copy has been distributed to each team's coaching staff and to all administrative areas. (Allegations 1-4)

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

**Division I 2015-16 Manual**

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

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

**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.

**16.11.2.1 General Rule.** The student-athlete shall not receive any extra benefit. The term "extra benefit" refers to any special arrangement by an institutional employee or representative of the institution's athletics interests to provide the student-athlete or his or her family members or friends with a benefit not expressly authorized by NCAA legislation.

**Division I 2016-17 Manual**

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

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

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**16.11.2.1 General Rule.** The student-athlete shall not receive any extra benefit. The term "extra benefit" refers to any special arrangement by an institutional employee or representative of the institution's athletics interests to provide the student-athlete or his or her family members or friends with a benefit not expressly authorized by NCAA legislation.

**16.11.2.2 Other Prohibited Benefits.** An institutional employee or representative of the institution's athletics interests may not provide a student-athlete with extra benefits or services, including, but not limited to:

(d) Transportation (e.g., a ride home with a coach), except as permitted in Bylaw 16.9.1, even if the student-athlete reimburses the institution or the staff member for the appropriate amount of the gas or expense; or

### **Division I 2017-18 Manual**

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

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

(c) Knowingly furnishing or knowingly influencing others to furnish the NCAA or the individual's institution false or misleading information concerning an individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation;

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

**11.7.3 Noncoaching Staff Member with Sport-Specific Responsibilities.** A noncoaching staff member with sport-specific responsibilities (e.g., director of operations, administrative assistant) is prohibited from participating in on-court or on-field activities (e.g., assist with drills, throw

batting practice, signal plays) and is prohibited from participating with or observing student-athletes in the staff member's sport who are engaged in nonorganized voluntary athletically related activities.

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

Basketball, Men's.....4

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

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

**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.

**16.11.2.1 General Rule.** The student-athlete shall not receive any extra benefit. The term "extra benefit" refers to any special arrangement by an institutional employee or representative of the institution's athletics interests to provide the student-athlete or his or her family members or friends with a benefit not expressly authorized by NCAA legislation.

**16.11.2.2 Other Prohibited Benefits.** An institutional employee or representative of the institution's athletics interests may not provide a student-athlete with extra benefits or services, including, but not limited to:

(d) Transportation (e.g., a ride home with a coach), except as permitted in Bylaw 16.9.1, even if the student-athlete reimburses the institution or the staff member for the appropriate amount of the gas or expense; or

**Division I 2018-19 Manual**

**6.4.2 Representatives of Athletics Interests.** An institution's "responsibility" for the conduct of its intercollegiate athletics program shall include responsibility for the acts of individuals, a corporate entity (e.g., apparel or equipment manufacturer) or other organization when a member of the institution's executive or athletics administration or an athletics department staff member

has knowledge or should have knowledge that such an individual, corporate entity or other organization:

- (a) Has participated in or is a member of an agency or organization as described in Constitution 6.4.1;
- (b) Has made financial contributions to the athletics department or to an athletics booster organization of that institution;
- (c) Has been requested by the athletics department staff to assist in the recruitment of prospective student-athletes or is assisting in the recruitment of prospective student-athletes;
- (d) Has assisted or is assisting in providing benefits to enrolled student-athletes; or
- (e) Is otherwise involved in promoting the institution's athletics program.

**19.2.1 Member Responsibility for Compliance.** Each institution has an affirmative obligation to monitor and control its athletics programs, its representatives and its student-athletes to assure compliance with the constitution and bylaws of the Association.