

CLARK ATLANTA UNIVERSITY PUBLIC INFRACTIONS DECISION March 4, 2022

I. INTRODUCTION

The NCAA Division II Committee on Infractions (COI) is an independent administrative body of the NCAA comprised of individuals from the Division II membership and public. The COI is charged with deciding infractions cases involving member institutions and their staffs. This case involved impermissible benefit violations in the men's basketball program at Clark Atlanta University, as well as a head coach responsibility violation by the former head men's basketball coach (head coach). The COI considered this case through the cooperative summary disposition process in which Clark Atlanta, the head coach and the enforcement staff agreed to the primary facts and violations as fully set forth in the summary disposition report (SDR). The COI proposed additional penalties for Clark Atlanta and the head coach. Clark Atlanta and the head coach accepted the penalties. Therefore, neither party has the opportunity to appeal.

The head coach agreed that he provided impermissible benefits during the 2019-20 academic year in the form of one check each to the fathers of two men's basketball student-athletes. The impermissible benefits totaled \$1,066. Specifically, on October 28, 2019, the head coach provided student-athlete 1's father a check in the amount of \$591 as reimbursement for student-athlete 1's fall semester textbooks. Likewise, on February 9, 2020, the head coach provided student-athlete 2's father a check in the amount of \$475 as reimbursement for student-athlete 2's 2019-20 academic year enrollment fees. The head coach drew these checks from an off-campus nonprofit organization of which he is the founder and director. As a result of the impermissible benefits, the two student-athletes competed in a total of 24 contests and received actual and necessary expenses while ineligible. The head coach agreed that his direct involvement in the violations demonstrated that he failed to promote an atmosphere for compliance and violated head coach responsibility legislation. Clark Atlanta and the head coach agree that the violations occurred and that they are major.

The COI accepts the parties' factual agreements and concludes that major violations occurred. Utilizing NCAA bylaws authorizing penalties, the COI adopts and prescribes the following principal penalties: public reprimand and censure; one year of probation; a \$3,500 fine; vacation of records and a one-year show-cause order for the head coach.

¹ Clark Atlanta University is an NCAA Division II institution and is a member of the Southern Intercollegiate Athletic Conference. Clark Atlanta has an enrollment of approximately 4,000 students. It sponsors four men's and six women's sports. This is the institution's second major infractions case. Clark Atlanta's prior case occurred in 2014 and involved the men's basketball program.

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II. CASE HISTORY

In March 2020, Clark Atlanta's institutional advancement department forwarded a folder to the athletics office that contained receipts for which the head coach was seeking institutional reimbursement and copies of checks to the fathers of student-athlete 1 and student-athlete 2. Upon discovery, the institution investigated and determined that the head coach provided impermissible benefits to the fathers of student-athletes 1 and 2 during the 2019-20 academic year. As a result, Clark Atlanta self-reported the violations to the NCAA enforcement staff in July 2020. Subsequently, the institution and enforcement staff commenced a collaborative inquiry. On November 23, 2021, the parties submitted an SDR to the COI. The COI considered the case on a February 7, 2022, videoconference call, and proposed additional penalties two days later. The head coach accepted his additional penalties on the same day. Clark Atlanta accepted the penalties on February 17, 2022.

III. PARTIES' AGREEMENTS

The participating parties jointly submitted an SDR that identified an agreed-upon factual basis, violations of NCAA legislation and type of violations.² The SDR identified:

1. [NCAA Division II Manual Bylaws 14.12.1, 16.8.1 and 16.11.2.1 (2019-20)] (Major)

The institution, head coach and enforcement staff agree that during the 2019-20 academic year, the head coach provided impermissible benefits in the form of one check each to the fathers of student-athlete 2 and student-athlete 1. In both instances, the head coach drew the checks on an account of an off-campus charitable foundation of which the head coach is a founder and director. The combined value of the impermissible benefits was \$1,066. As a result of the impermissible benefits, student-athlete 1 and student-athlete 2 competed in a total of 24 contests and received actual and necessary expenses while ineligible. Specifically:

- a. On October 28, 2019, the head coach provided student-athlete 1's father a check in the amount of \$591 as reimbursement for student-athlete 1's 2019 fall semester textbooks. Due to the improper benefit, student-athlete 1 subsequently competed and received actual and necessary expenses while ineligible in 18 contests. [NCAA Bylaws 14.12.1, 16.8.1 and 16.11.2.1 (2019-20)]
- b. On February 9, 2020, the head coach provided student-athlete 2's father a check in the amount of \$475 as reimbursement for student-athlete 2's 2019-20 enrollment fees. Due to the improper benefit, student-athlete 2 subsequently competed and received actual and necessary expenses while ineligible in six contests. [NCAA

² 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.

Bylaws 14.12.1, 16.8.1 and 16.11.2.1 (2019-20)]

2. [NCAA Division II Manual Bylaw 11.1.2.1 (2019-20)] (Major)

The institution, the head coach and enforcement staff agree that the head coach failed to rebut the presumption of responsibility for the violations outlined in Proposed Finding of Fact No. 1 and did not rebut the presumption of responsibility. Specifically, the head coach did not demonstrate that he promoted an atmosphere for compliance due to his personal involvement in the violations.

IV. REVIEW OF CASE

The SDR fully detailed the parties' positions and included the agreed-upon primary facts, violations and type of violations. After reviewing the parties' principal factual agreements and respective explanations surrounding those agreements, the COI accepts the SDR and concludes that major violations occurred. Specifically, the head coach was directly involved in the provision of impermissible benefits and his direct involvement demonstrated that he failed to promote an atmosphere for compliance in his program. The COI concludes that the head coach's provision of impermissible benefits resulted in violations of Bylaws 14 and 16.³ It also failed to meet the specific responsibilities of head coaches under Bylaw 11.

Bylaw 14 governs eligibility requirements for aid and competition, generally, and the scope of permissible participation prior to being certified for competition. Bylaw 14.12.1 places an affirmative obligation on institutions to withhold ineligible student-athletes from competition. Additionally, Bylaw 16 governs benefits. Bylaw 16.11.2.1 prohibits student-athletes from receiving extra benefits, which are special arrangements by a staff member to provide a student-athlete or the student-athlete's relative or friend with a benefit not expressly authorized by NCAA legislation. Finally, Bylaw 16.8.1 only permits institutions to provide actual and necessary expenses to eligible student-athletes.

Prior to being hired by Clark Atlanta, the head coach established a nonprofit organization with a primary purpose of funding youth basketball camps and clinics. The head coach donated personal funds to the nonprofit's efforts. Shortly after Clark Atlanta hired the head coach in April 2018, he started a foundation to raise funds to promote athletics and academic opportunities for students at historically black colleges and universities, including support for the institution's men's basketball program. The head coach helped direct some of the foundation's fundraising dollars into Clark Atlanta's institutional advancement department account and others into his nonprofit organization.

Clark Atlanta knew that the head coach had a foundation and informed the head coach he could not use the institution's name in conjunction with any fundraising activities for his personal foundation. Additionally, the institution had ongoing conversations with the head coach

³ The full text of all bylaws violated in this case is at Appendix Two.

emphasizing that all expenses for the basketball program should be expended through the funds of the athletics department or the institution's foundation. Both the institution's athletics and non-athletics staff were aware of the necessity to separate these activities.

In fall of 2019, the institution awarded student-athlete 1 with a partial athletics scholarship. As a partial scholarship student-athlete, he had the opportunity to purchase books through the institution's bookstore and have his scholarship adjusted accordingly. Instead, student-athlete 1 personally purchased required textbooks through his own financial means and told the head coach. The head coach incorrectly thought student-athlete 1's scholarship covered textbooks and felt student-athlete 1's family deserved reimbursement for the textbook expenses. Further, the head coach mistakenly believed that he could directly reimburse student-athlete 1's father from his nonprofit organization as long as he submitted the reimbursement as a recorded donation from the nonprofit to the institution. As a result, on October 28, 2019, the head coach provided a check from the nonprofit organization to student-athlete 1's father in the amount of \$591.

Further, in fall 2019, the head coach was actively recruiting student-athlete 2. During this time, student-athlete 2's father inquired about waiving the enrollment fee for the spring semester. In January 2020, student-athlete 2 enrolled at the institution and his family paid the \$475 enrollment fee. The head coach mistakenly believed it was permissible to use funds from his nonprofit organization to reimburse the cost. Subsequently, on February 9, 2020, the head coach provided student-athlete 2's father with a \$475 check from his nonprofit organization as reimbursement for student-athlete 2's spring of 2020 enrollment fees.

With respect to student-athlete 1, Clark Atlanta could have used funds donated to the institution by the nonprofit organization to permissibly increase student-athlete 1's athletics aid by \$591. As it relates to student-athlete 2, the institution could have structured student-athlete 2's financial aid package in a manner that would have permissibly allowed the institution to waive or pay for student-athlete 2's enrollment fee consistent with institutional policies for all students. In both instances, the head coach's failure to consult with institutional and/or athletics staff about permissible avenues to provide these funds resulted in impermissible payments to the fathers of both student-athletes.

The head coach's impermissible payments violated benefit legislation under Bylaw 16. These payments were not expressly authorized by NCAA legislation. Accordingly, the head coach's actions violated Bylaw 16.11.2.1. Because of the impermissible benefits, student-athletes 1 and 2 competed in a total of 24 contests and received actual and necessary expenses while ineligible. The competition and expenses violated Bylaws 14.12.1 and 16.8.1.

The COI regularly concludes that major Bylaw 16 violations occur when institutions or their representatives give student-athletes impermissible benefits, even when those benefits are related to education expenses. *See Wilmington University* (2020) (concluding impermissible benefit violations occurred when the head coach provided \$2,893 to eight women's tennis student-athletes); *West Liberty University* (2019) (concluding a Bylaw 16.11.2.1 violation occurred where the head men's soccer coach provided impermissible benefits in the form of tuition payments to two men's soccer student-athletes); *Fayetteville State University* (2017) (concluding impermissible

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benefit violations occurred when a booster paid institutional expenses for two student-athletes totaling approximately \$12,500); and *Clark Atlanta University* (2014) (concluding Bylaw 16 violations occurred when an assistant coach and volunteer coach arranged and/or provided several men's basketball student-athletes extra benefits). Consistent with these cases, the head coach's provision of impermissible benefits is a major violation.

The head coach admitted that his direct involvement in the violations failed to meet his legislated responsibilities as a head coach. Stated directly, he failed to promote an atmosphere for compliance in his program.

Bylaw 11.1.2.1 establishes an affirmative duty for head coaches to promote an atmosphere of rules compliance.⁴ 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.

The head coach admitted that he provided impermissible benefits to the fathers of student-athletes 1 and 2. In doing so, he agreed that his personal involvement in the violations fell short of his legislated requirement to promote an atmosphere of compliance within his program, thus violating Bylaw 11.1.2.1. The head coach mistakenly believed he could reimburse the student-athletes' fathers. Ignorance of the rules, however, is not an excuse. Other athletics and non-athletics staff had a clear understanding of the necessity to separate personal foundations and nonprofit organizations from institutional fundraising. Thus, the head coach should have known such payments were contrary to NCAA legislation or, at the very least, the head coach should have sought guidance prior to acting. Had he done so, he would have learned that there were permissible avenues to provide these funds to student-athletes 1 and 2.

The COI regularly concludes that head coaches fail to rebut the presumption of responsibility when they are personally involved in violations. *See Clarion University of Pennsylvania* (2021) (concluding a Bylaw 11.1.2.1 head coach responsibility violation occurred where the head women's soccer coach was personally involved in financial aid violations); *King University* (2020) (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 *Millersville University of Pennsylvania* (2020) (concluding a head coach responsibility violation occurred where the head women's swimming coach was directly involved in making an impermissible payment to a prospect). Like these cases, the head coach personally committed impermissible benefit violations and failed to rebut his presumed responsibility. Pursuant to Bylaw 19.02.2.2, the violation is major.

⁴Though not at issue in this case, Bylaw 11.1.2.1 also establishes an affirmative duty for head coaches to monitor the activities of all institutional staff members with the program who report, directly or indirectly, to the coach.

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V. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the COI concludes that this case involved major violations of NCAA legislation. Major violations are not isolated or inadvertent and provide an extensive advantage. Because Clark Atlanta and the head coach agreed to the facts, violations and additional proposed penalties, neither has the opportunity to appeal.

In prescribing penalties, the COI evaluated relevant mitigating factors pursuant to Bylaw 32.7.1.3. The COI specifically noted the fact that Clark Atlanta's systems identified the potential issue, and Clark Atlanta swiftly investigated the matter and discovered NCAA violations. Moreover, and in response to the admitted violations, Clark Atlanta self-imposed meaningful penalties that align with recent COI decisions.

As part of its evaluation, the COI also considered Clark Atlanta's cooperation in all parts of the case and determines it was consistent with the institution's obligation under Bylaw 32.1.3. Likewise, the COI considered Clark Atlanta's corrective action as set forth in Appendix One. After considering all information relevant to the case, 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: One year of probation from March 4, 2022, through March 3, 2023.⁵
- 3. During this period of probation, Clark Atlanta 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 April 30, 2022, setting forth a schedule for establishing this compliance and educational program;
 - c. File with the OCOI a final compliance report indicating the progress made with this program by January 31 during each year of probation. Particular emphasis shall be placed on the institution's rules education and monitoring efforts related to impermissible benefits for men's basketball coaches, staff and student-athletes.

⁵ Clark Atlanta proposed a one-year probationary period. 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.

Moreover, Clark Atlanta must include specific examples of benefit-related education provided to Clark Atlanta coaching staff members regarding external foundation funds;

- d. Inform prospects in the men's basketball program in writing that Clark Atlanta is on probation for one year and detail the violations committed. If a prospect takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospect signs a National Letter of Intent; 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 programs. 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. Clark Atlanta shall pay a \$3,500 fine.⁶
- 5. Show-cause order: The head coach violated well-established rules around extra benefits when he paid a total of \$1,066 in impermissible benefits to the fathers of two men's basketball student-athletes. Despite robust education surrounding fundraising activities for his personal foundation, the head coach admitted that he drew checks from his off-campus charitable foundation to reimburse book and application fees for the two men's basketball student-athletes during the 2019-20 academic year. His actions demonstrated his failure to promote an atmosphere for compliance due to his personal involvement in the violations.

Therefore, the head coach shall be subjected to a one-year show-cause order from March 4, 2022, through March 3, 2023. In accordance with Bylaw 19.5.2.2 and COI IOP 5-16-1, during the show-cause period, any employing institution of the head coach shall require the following:

- The head coach shall complete the rules educational modules reference in Bylaw 11.6 within the thirty days of the beginning of such employment;
- The head coach shall meet with the institution's athletics compliance staff on a monthly basis for rules education related to financial aid and extra benefits;

⁶ Clark Atlanta proposed a \$2,500 fine. The COI adds an additional \$1,000 to address the significance of the competitive advantage gained after two student-athletes competed in a total of 24 games while ineligible. Although the COI has the authority to prescribe a fine of \$250 per ineligible student-athlete per competition up to a maximum of \$5,000, the COI declines to do so based on the facts and circumstances of this case. Instead, the COI increases the self-imposed fine by \$1,000 and addresses the ineligible competition through the vacation of records penalty.

• The head coach shall attend the next scheduled NCAA Regional Rules Seminar at his own expense;

- The head coach should not make any representations, whether oral or in writing (including via electronic communication) to prospective student-athletes, student-athletes, or their families about the amount of institutional financial aid available for the relevant prospective student-athlete or student-athlete unless a member of the institution's financial aid staff or athletics compliance staff is party to the communication; and
- Because his violations were contrary to core NCAA principles, and pursuant to Bylaw 19.5.2-(p), any employing institution shall suspend the head coach for one contest, specifically the next-occurring regular season contest of the relevant sport program during the show-cause period, if any. The provisions of any such suspension require the head coach not to be present in the facility where the contest is played and have no contact or communication with the specific sport's program's coaching staff members or student-athletes during the contest-suspension. The prohibition includes all program activities for the period of time that begins at 12:01 a.m. on the day of the contest and ends at 11:59 p.m. that day. If the head coach is employed as a head coach at that time, the results of any contest from which he is suspended shall not count toward his career coaching record.⁷

Any NCAA member institution employing the head coach during the one-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 violations. *See King* (prescribing a one-year show-cause order to a head coach who failed to ensure arrangements for a prospect complied with NCAA legislation and as a result violated head coach responsibility legislation) and *Christian Brothers University* (2019) (prescribing a one-year show-cause order for the head men's and women's tennis coach who provided impermissible inducements valued at approximately \$461 to a prospect and violated head coach responsibility legislation). Like these cases, the head coach in this case provided impermissible benefits in violation of NCAA legislation. As such, a one-year show-cause order is appropriate.

6. Vacation of records. Clark Atlanta acknowledged that ineligible participation occurred 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, Clark Atlanta shall vacate all regular season and conference tournament records and participation in which ineligible student-athletes detailed in this case competed from the time they became ineligible through the time they were reinstated as eligible for competition. This order of vacation includes all regular season competition and

⁷ The head coach proposed the one-year show-cause order with these specific restrictions, which the COI adopted. The COI appreciates the head coach's proposal of meaningful penalties that align with past COI decisions involving similar violations.

conference tournaments. Further, if the ineligible student-athletes participated in NCAA postseason competition at any time they were ineligible, the institution's participation in the

postseason shall be vacated. (Self-imposed.) The individual records of the ineligible student-athletes shall also be vacated.⁸ However, the individual finishes and any awards for all eligible student-athletes shall be retained. Further, the institution's records regarding its athletics programs, 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 their 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 stationary, 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 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 Office of the Committees on Infractions (OCOI) of this submission to the NCAA Media Coordination and Statistics office.

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

⁸ Among other examples, the COI has indicated that a vacation of records is particularly appropriate when cases involve ineligible competition. Further, the COI has consistently prescribed a vacation of records in cases that involved student-athletes competing when they failed to meet eligibility requirements. *See Saginaw Valley State University* (2019), *Central State University* (2016), *Cheney University of Pennsylvania* (2014) and *University of the District of Columbia* (2008).

As required by NCAA legislation for any institution involved in a major infractions case, Clark Atlanta 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, March 4, 2022. The COI further advises Clark Atlanta that it should take every precaution to ensure that it observes the terms of the penalties. The COI will monitor Clark Atlanta 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 Clark Atlanta does not comply or commits additional violations. Likewise, any action by Clark Atlanta contrary to the terms of the penalties or any additional violations shall be considered grounds for prescribing more severe penalties and/or may result in additional allegations and violations.

NCAA DIVISION II COMMITTEE ON INFRACTIONS

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

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APPENDIX ONE

<u>CLARK ATLANTA'S CORRECTIVE ACTIONS AS IDENTIFIED IN THE NOVEMBER 23, 2021, SUMMARY DISPOSITION REPORT</u>

The institution has taken the following corrective actions:

- 1. Continued to insert rules education into all athletics staff meetings (bi-monthly).
- 2. Mandate that one representative from each coaching staff attend the NCAA Regional Rules Compliance Seminar.
- 3. Require each coach to sign a document at the beginning of each year acknowledging that they understand NCAA Bylaw 16.02.3 (extra benefits). The signed document will remain on file in the Compliance Office.
- 4. Require each student-athlete to sign a document at the beginning of each year acknowledging that they understand NCAA Bylaw 16.02.3 (extra benefits). The signed document will remain on file in the Compliance Office.
- 5. Inquire each year whether coaches have external foundation funds under their management and educate coaches on the rules and possible conflicts of interest when these funds are used to benefit their sport.
- 6. Collaborate with General Counsel's Office to stay abreast of University compliance regulations.

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APPENDIX TWO Bylaw Citations

Division II 2019-20 Manual

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.

14.12.1 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.

16.11.2 Nonpermissible.

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 relatives or friends with a benefit not expressly authorized by NCAA legislation.