



EMMANUEL COLLEGE (MASSACHUSETTS)
PUBLIC INFRACTIONS DECISION
November 24, 2020

I. INTRODUCTION

The NCAA Division III Committee on Infractions (COI) is an independent administrative body comprised of individuals from the Division III membership and the public. The COI decides infractions cases involving member institutions and their staffs. This case involved financial aid violations at Emmanuel College where, over one year, student-athletes received otherwise permissible financial aid at a rate disproportionate to the regular student body.¹ The case also involved the institution's failure to monitor the financial aid awarding process. The COI considered this case through the cooperative summary disposition process, in which all parties agreed to the primary facts and violations as fully set forth in the summary disposition report (SDR). Because the parties agreed to the violations and proposed penalties, there is no opportunity to appeal.

Emmanuel and the NCAA enforcement staff agreed that Emmanuel violated NCAA financial aid legislation when it awarded impermissible financial aid to 45 incoming student-athletes during the 2017-18 academic year. The student-athletes received the additional aid (known as an Advancement Grant) if they were successful in an unpublished financial aid appeals process. The financial aid appeals process was available to all students, however, coaches permissibly informed prospects about the additional financial aid opportunities, which resulted in a broader and larger group of student-athletes requesting and receiving financial aid. Specifically, 51% of incoming student-athletes used the unpublished appeal process to appeal their initial financial aid awards following the strategic inception of the Advancement Grant. In contrast, only 27% of incoming students appealed their initial award and received additional financial aid. Of the total amount of aid awarded through the Advancement Grant, \$51,612 was disproportionately awarded to the 45 student-athletes, of which \$36,995, was disproportionately awarded to the 13 student-athletes in the sports of men's and women's basketball. The impermissible financial aid violations are major.

The parties also agreed that impermissible financial aid distribution established Emmanuel's failure to monitor its financial aid awarding process. Emmanuel did not prevent, identify or detect the financial aid violations, in part, due to inadequate rules education. Although the financial aid office had a general awareness of the Division III financial aid legislation (i.e., no athletics scholarships or awards based on student-athletes status), no one from the athletics department educated the financial aid office on more specific rules. As a result, Emmanuel did not monitor

¹ A member of the Great Northeast Athletic Conference, Emmanuel's total enrollment is approximately 2,000. Emmanuel sponsors eight women's sports and eight men's sports. This is Emmanuel's first major infractions case.

the percentage of students versus student-athletes appealing and being awarded additional financial aid. The failure to monitor violation is 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: two years of probation and a Level II review from the NCAA Division III Financial Aid Committee.

II. CASE HISTORY

The violations in this case came to light in January 2019, when the Financial Aid Committee flagged concerns about Emmanuel's justification for the awarding of the Emmanuel Advancement Grant to student-athletes. The Financial Aid Committee observed potential issues involving a distinguishable pattern in Emmanuel's distribution of financial aid. As a result, on February 27, 2019, the Financial Aid Committee referred the matter to the enforcement staff, who issued a written notice of inquiry on May 10, 2019.

Following a cooperative investigation, the parties submitted an SDR to the COI on August 18, 2020.² The COI began its review of the SDR on September 17, 2020, but determined that it required additional information to fully assess the agreed-upon violations and prescribe appropriate penalties. Thus, on September 18, 2020, pursuant to NCAA Bylaw 32.7.1.4.4, the COI asked Emmanuel and the enforcement staff to provide additional information regarding the apparent disparity in the amount of aid awarded to the men's and women's basketball programs when compared to other programs.³ Emmanuel and the enforcement staff provided the requested information and confirmation on October 2, 2020, confirming that men's and women's basketball student-athletes demonstrated a greater need for additional financial aid when compared to other student-athletes. The COI completed its review of the SDR on October 9, 2020.

The COI accepted the agreed-upon facts, violations and type of violations. The COI adopted Emmanuel's self-imposed penalties but proposed the standard conditions of probation and a modification to Emmanuel's self-imposed penalty regarding a Level II review from the Financial Aid Committee. The COI proposed these additional penalties on October 12, 2020, and Emmanuel accepted them on October 15, 2020.

² Pursuant to COI Internal Operating Procedures (IOP) 4-8-2-1, the COI in future cases may view this decision as less instructive than a decision reached after a contested hearing because violations established through the summary disposition process constitute the parties' agreement.

³ The COI also identified a potential typographical error, which the parties corrected.

III. PARTIES' AGREEMENTS

PARTIES' AGREED-UPON FACTUAL BASIS, VIOLATIONS OF NCAA LEGISLATION AND TYPE OF VIOLATIONS

The parties jointly submitted an SDR that identified an agreed-upon factual basis, violations of NCAA legislation and type of violations.⁴ The SDR identified:

1. [NCAA Division III Manual Bylaw 15.4.1-(c) (2017-18)]

The institution and enforcement staff agree that during the 2017-18 academic year, Emmanuel violated financial aid legislation in that a group of student-athletes' financial aid packages were distinguishable from the general pattern of all financial aid for all recipients at Emmanuel. Specifically, this occurred when 45 of the 88 (51%) incoming student-athletes used an unpublished appeals process in appealing their initial financial aid package and received additional financial aid. This group included eight of 11 (73%) incoming men's basketball student-athletes and five of six (83%) incoming women's basketball student-athletes. In contrast, only 126 of the 474 (27%) incoming students appealed their initial award and received additional financial aid. Emmanuel increased the initial awards for the student-athletes and nonathletes using the Advancement Grant. Of the total amount of financial aid awarded through the Advancement Grant, \$51,612 was disproportionately awarded to the 45 student-athletes, of which \$36,995 was disproportionately awarded specifically to the 13 student-athletes in the sports of men's and women's basketball.

2. [NCAA Division III Manual Bylaw 2.8.1 (2017-18)]

The institution and enforcement staff agree that during the 2017-18 academic year, the scope and nature of the violations detailed in Violation No. 1 demonstrate that Emmanuel violated the NCAA principle of rules compliance when it failed to adequately monitor and detect rules violations. Further, Emmanuel did not provide adequate rules education to athletics and financial aid personnel on NCAA rules relevant to the packaging and awarding of financial aid.

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

⁴ 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.

that major violations occurred. Specifically, the COI concludes that Emmanuel violated NCAA financial aid legislation when, over a one-year period, incoming student-athletes received financial aid at a disproportionate rate in comparison to other students. Emmanuel agreed that the violations were attributable in part to its failure to provide adequate rules education to financial aid personnel and a failure to monitor. The conduct at issue in this case violated Bylaw 15 and Article 2 of the NCAA Constitution.

Bylaw 15 governs financial aid. Bylaw 15.4.1 addresses consistency in financial aid packages with specific subparts outlining individual requirements or prohibitions. Relevant to this case, subsection (c) does not permit financial aid packages for student-athletes to be clearly distinguishable from the general pattern for all financial aid for all recipients at the institution. With respect to institutional responsibility, Bylaw 2.8.1 obligates institutions to comply with all applicable rules and regulations of the NCAA and monitor their programs to assure compliance.

The Bylaw 15 financial aid violations in this case resulted from Emmanuel's efforts to increase enrollment. In a self-described "aggressive" effort to award more competitive financial aid packages, Emmanuel offered additional discounted aid packages to students who appealed their initial financial aid. Emmanuel discounted aid by awarding an Advancement Grant in the spring of 2017 to students who intended to enroll the following fall. While the inception of the Advancement Grant was originally intended to increase overall freshman student enrollment, the distribution of the financial aid package to student-athletes was distinguishable from the general pattern of all financial aid for all recipients at Emmanuel. Specifically, 51% of the incoming student-athletes who appealed their packages received the Advancement Grant while only 27% of incoming students who appealed their packages received the grant.

The disparity occurred, in part, because a larger number of incoming student-athletes took advantage of the appeals process. Like many institutions, Emmanuel does not publicize that families may appeal their initial financial aid packages. However, some families knew about the process and exercised that option. In fact, Emmanuel informed all students who had not submitted a deposit of the opportunity to request additional aid, which contributed to the increase of financial aid appeals. Some of Emmanuel's athletics coaches also knew about the process and informed prospects of the opportunity. The coaches' efforts unintentionally resulted in a larger number of prospects exercising the appeals process, which led to Emmanuel awarding student-athletes financial aid packages in a pattern distinguishable from all recipients. Thus, Emmanuel awarded financial aid in violation of Bylaw 15.4.1-(c). The parties agreed—and the COI concludes—that these violations are major because they were not isolated, provided or were intended to provide more than a minimal recruiting advantage, included more than a minimal impermissible financial aid benefit and are directly contrary to the fundamental Division III philosophy.

It is a core principle of Division III that financial aid may not be based in any way on athletics criteria. Consistent with this principle, as well as Bylaw 19.02.2, the COI has previously concluded that major violations of Bylaw 15 occur when institutions provide financial aid to student-athletes at a disproportionate rate when compared to other students. *See Methodist College (2017)* (concluding that major Bylaw 15.4.1-(c) violations occurred when the institution unintentionally awarded a Nordic grant exclusively to student-athletes over a two-year period); *Morrisville State*

College (2012) (concluding that major financial aid violations occurred when, over two academic years, Morrisville awarded a disproportionate percentage of gift aid to student-athletes when compared to all students); and *Manhattanville College* (2012) (concluding that major financial aid violations occurred when over two academic years, Manhattanville awarded financial aid packages to incoming international student-athletes at a disproportionate rate when compared to the all students). Like in these cases, Emmanuel violated core Division III financial aid legislation by providing incoming student-athletes with financial aid at a disproportionate rate when compared to all students.

The parties also agreed that the scope and nature of the financial aid violations demonstrated that Emmanuel failed to monitor the disbursement of financial aid to incoming student-athletes during the Spring of 2017. This institutional failure manifested in two ways: (1) failure to provide adequate NCAA rules education to admissions and financial aid personnel and (2) failure to monitor the percentage of students versus student-athletes appealing and being awarded additional financial aid.

With respect to rules education, Emmanuel agreed that appropriate financial aid personnel did not receive formal education regarding NCAA financial aid legislation. Financial aid personnel were only generally aware that Division III rules prohibit institutions from awarding athletic scholarships. However, financial aid personnel believed that the financial aid packaging for student-athletes was permissible as long as "student-athlete status" was not taken into account during the financial aid awarding process. Although Emmanuel staff members were tracking on student-athletes' status when awarding financial aid, they were not tracking on the rate at which student-athletes received the Advancement Grant when compared to all students who received the Advancement Grant.

As it relates to monitoring and detecting violations, Emmanuel agreed that it did not adequately monitor the percentage of student-athletes appealing and being awarded additional financial aid when compared to other students. Emmanuel acknowledged that it did not have the necessary monitoring mechanisms in place to detect the disproportionate packaging and awarding of the Advancement Grant to student-athletes.

By failing to provide adequate rules education, monitor and detect violations, Emmanuel did not meet its obligations under Article 2 of the NCAA Constitution. It is incumbent on Division III institutions to thoroughly educate and monitor *all* personnel who have a touchpoint on the financial aid process. Furthermore, Emmanuel should have had mechanisms in place to detect irregularities in the financial aid awarding process. As a result of these failures, Emmanuel awarded \$51,612 in a manner inconsistent with NCAA financial aid legislation and fundamental Division III principles.

Where institutions have had similar failures and financial aid violations resulted, the COI has regularly concluded that an institution fails to monitor when it does not educate appropriate staff members on financial aid legislation and/or does not monitor the awarding of financial aid packages. See *Kalamazoo College* (2016) (concluding that the institution failed to monitor when approximately 567 student-athletes received financial aid packages based on athletics criteria) and

University of Wisconsin, La Crosse (2012) (concluding that the institution failed to monitor when athletics staff members maintained involvement in the determination of financial aid packages awarded to student-athletes). Here, the parties agreed that Emmanuel did not educate financial aid staff members on specific Division III financial aid legislation nor did anyone monitor the financial aid awarding process.

Pursuant to Bylaw 19.02.2, the COI concludes that Emmanuel's violations were major. By allowing otherwise permissible aid to be awarded at a disproportionate rate over a one-year period, Emmanuel gained an advantage over institutions that followed the rules and monitored their financial aid awarding process. In reviewing the case, the COI was concerned with the undocumented nature of the appeals process when proper monitoring protocols are not present to ensure that an institution's financial aid awards comply Division III financial aid legislation. The distribution of permissible financial aid is a core tenet of Division III philosophy and obligation of Division III membership. The use of unpublished processes, even when well-intended, increases the risk of violations that run contrary to foundational principles of Division III membership.

V. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the COI concludes this case involved major violations of NCAA legislation. Major violations are not isolated or inadvertent, provide or are intended to provide more than a minimal advantage and include a significant impermissible financial aid benefit.

In prescribing penalties, the COI evaluated relevant mitigating factors pursuant to Bylaw 32.7.1.3. Although the violations came to light as a result of the Division III Financial Aid Committee's review, the COI noted Emmanuel's subsequent efforts to immediately discontinue the aid for affected student-athletes.

The COI also considered Emmanuel'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 Emmanuel's corrective actions as set forth in Appendix One.

Finally, the COI reviewed past cases for guidance. The COI's decisions in *Methodist* and *Manhattanville* were particularly relevant because they involved the consideration of student-athletes receiving financial aid at a disproportionate rate when compared to other students. The penalties in these cases generally included probationary periods ranging from one to three years, maximum \$1,000 fines, required attendance at NCAA Regional Rules Seminars and Level II reviews. Because the Advancement Grant is no longer awarded and the financial aid violations were unintentional, resulted in part from Emmanuel's admitted failure to provide adequate rules education and did not support an unethical conduct violation, the COI determined that a postseason ban was not warranted for the affected athletic programs.

Because Emmanuel agreed to the facts and violations and agreed to all penalties, neither party has an opportunity to appeal pursuant to Bylaw 32.7.1.4.1. After considering all information, the COI prescribes the following penalties (self-imposed penalties are so noted):

Penalties for Major Violations (Bylaw 19.5.2)

1. Public reprimand and censure through the release of the public infractions decision.
2. Probation: Two years of probation from November 24, 2020, through November 23, 2022.⁵ During the period of probation, the institution 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 January 15, 2021, 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 October 1 of each year of probation. Particular emphasis shall be placed on compliance with all Bylaw 15 legislation, including documentation on the institution's monitoring of the appeals process for financial aid awards;⁶
 - d. Inform prospective student-athletes in affected sport programs in writing that the institution is on probation for two years and detail the violations committed. The information shall be provided as soon as practicable after the prospect is recruited pursuant to Bylaw 13.02.8 and, in all instances, before the prospect signs a financial aid agreement or initially enrolls at the institution, whichever is earlier; 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 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 the affected sports. 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

⁵ Emmanuel proposed a one-year probationary period. Institutions may propose probationary periods, but the authority to prescribe probation rests solely with the COI. Periods of probation always commence with the release of the infractions decision.

⁶ Emmanuel self-imposed a requirement that within the first two weeks of the start of each semester over the period of probation, the institution shall submit a written report to the COI. In the report the institution shall set forth (a) the percentage of students on campus who are student-athletes; (b) the number of students who are receiving the Emmanuel Advancement Grant; and (c) the number of students receiving the Emmanuel Advancement Grant who are involved in intercollegiate athletics. The COI accepts this self-imposed penalty but requires the information to be included in the annual compliance reports.

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.

3. During the period of probation, the institution shall request a Level II review from the NCAA Division III Committee on Financial Aid and shall abide by any recommendations made by the reviewer. The results of the review and steps taken to implement and abide by the recommendations shall be included in the institution's annual compliance reports.
 4. Prior to the conclusion of probation, the institution'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.
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As required by NCAA legislation for any institution involved in a major infractions case, Emmanuel 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, November 24, 2020. The COI further advises Emmanuel that it should take every precaution to ensure that it observes the terms of the penalties. The COI will monitor Emmanuel 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 Emmanuel does not comply or commits additional violations. Likewise, any action by Emmanuel 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 III COMMITTEE ON INFRACTIONS

Sarah Feyerherm
Effel Harper
Gerald Houlihan, Chair
Richard Lapidus
Jody Mooradian

APPENDIX ONE

**EMMANUEL COLLEGE'S CORRECTIVE ACTIONS AS IDENTIFIED IN THE
AUGUST 18, 2020, SUMMARY DISPOSITION REPORT**

Emmanuel College has already taken the following steps:

1. Of the 45 student-athletes who were part of the distinguishable pattern of those receiving Emmanuel Advancement Grant, only 14 are still enrolled at the institution. None of those 14 student-athletes will continue to receive the Emmanuel Advancement Grant.
2. The college will schedule [an] annual meeting with NCAA compliance staff to ensure current understanding of NCAA Bylaws.
3. Quarterly meetings have been scheduled between athletics department personnel (recruitment coordinator and compliance coordinator) and student financial services personnel (financial services counselors and director of student financial services) to ensure all are aware of NCAA Division III Bylaws related to the awarding of financial aid and communication between athletics staff and student financial services staff.
4. The College understands and appreciates the guiding principles outlined in the bylaws governing NCAA Division III athletics. To ensure compliance, we have improved our monitoring procedures, especially related to the financial aid appeal process.

APPENDIX TWO
Bylaw Citations

Division III 2017-18 Manual

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

15.4.1 Consistent Financial Aid Package. The composition of the financial aid package offered to a student-athlete shall be consistent with the established policy of the institution's financial aid office, regular institutional agency, office or committee for all students and shall meet all of the following criteria:

(c) The financial aid package for a particular student-athlete, group of student-athletes or team of student-athletes cannot be clearly distinguishable from the general pattern of all financial aid for all recipients at the institution;