

**UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL**

**RESPONSE**

**TO**

**NCAA AMENDED NOTICE OF ALLEGATIONS**

**AUGUST 1, 2016**

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## I. INTRODUCTION

The Amended Notice of Allegations (ANOA) explores a painful chapter in the history of the University of North Carolina at Chapel Hill (the University or UNC–Chapel Hill). As the nation’s first public university, UNC–Chapel Hill strives to honor the trust of the people of North Carolina by challenging, inspiring, and supporting students as they work to improve their lives and contribute to the common good. The events that prompted the ANOA represent a failure to honor this solemn trust—an episode where the University met neither its own expectations nor those of the people it serves. The University acknowledges, with profound regret, that it is ultimately responsible for the loss of this trust.

To restore this trust, the University’s new academic administration, led by Chancellor Carol Folt and Provost James Dean, and its athletics leadership team, under Athletics Director Lawrence “Bubba” Cunningham, has worked diligently to learn all of the facts, disclose them fully, and make significant institutional changes that limit the possibility these events could ever recur.

The University has commissioned multiple internal and external investigations into these events, and it has made their findings public. The final independent investigation, conducted by Kenneth Wainstein of Cadwalader, Wickersham & Taft LLP, concluded with a report in October 2014 (the Cadwalader Report). The University released not only the Cadwalader Report, but also more than one million pages of documents gathered for that investigation, with more to come – a serious commitment to disclosing the truth, and to transparency in higher education.

The University has honored its obligations to its accrediting agency, the Southern Association of Colleges and Schools Committee on Colleges (SACSCOC), and respected its commitments as a member of the NCAA. The institution has cooperated fully with the NCAA and kept it thoroughly apprised of developments over the course of six years. It embraces the NCAA principle that the enforcement program is a cooperative undertaking, with members and conferences working together with the enforcement staff in a unified effort to regulate intercollegiate athletics.

The University respects the NCAA enforcement process, and it recognizes that an NCAA infractions matter is not the proper forum to discuss all of the events at the institution that have been widely

reported in the past six years. It understands that this Response plays a specific role in the enforcement process, informing the Committee's consideration of particular issues raised by the ANOA under the NCAA's constitution and bylaws. Accordingly, this Response is tailored to the specific infractions as alleged by the enforcement staff, not to issues raised by SACSCOC or others.

In this spirit, against the backdrop of the University's public acceptance of its errors, its rigorous accreditation experience, and its robust dialogue with the NCAA, UNC-Chapel Hill appreciates the opportunity to appear before the hearing panel and address the enforcement staff's allegations.

#### **A. BACKGROUND**

##### **1. The University Discovered a Pattern of Serious Academic Irregularities**

In the summer of 2010, the NCAA informed the University that some members of its football team may have violated NCAA rules by receiving impermissible benefits from various individuals, including sports agents and their associates. Based on information discovered by the University, the investigation soon expanded to include, among other issues, academic fraud and impermissible benefits provided by a former tutor in the institution's Academic Support Program for Student-Athletes (ASPSA).<sup>1</sup> Following a June 2011 Notice of Allegations, the Committee on Infractions heard the case on October 28, 2011 and issued its ruling on March 12, 2012.

In August 2011, before the Committee's October hearing, the University discovered a pattern of serious academic irregularities in what was then known as the Department of African and Afro-American Studies (the Department or AFRI-AFAM).<sup>2</sup> These irregularities resulted from inappropriate behavior, and its concealment, by a small number of people who themselves betrayed the trust of their colleagues and their students.

Since its inception as a curriculum, the Department had grown substantially—not only because its faculty members made substantial contributions to their disciplines, but also because it offered students

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<sup>1</sup> A full description of the University's ASPSA program can be found at <http://aspsa.unc.edu>.

<sup>2</sup> The Department was known as the curriculum in African and Afro-American Studies from 1979 until it became a department in 1997. As part of a series of reforms and initiatives, this academic unit is now known as the Department of African, African American, and Diaspora Studies. A history of the Department is attached as **Exhibit IN-1**.

the chance to explore subjects that were important to them and to society. Unfortunately, this growth occurred at a time when the Department's leadership and administrative procedures were inadequate.

In 1992, Dr. Julius Nyang'oro became the chair of the Department. A respected scholar, Nyang'oro proved to be a deeply flawed department chair. He provided limited and ineffective oversight of the Department's day-to-day operations, and his attention to administrative duties eroded over the years as he spent less time on campus. As his Department grew, Nyang'oro often neglected the responsibilities expected of the chair of a new and expanding academic department.

Rather than discharge the responsibilities entrusted to him by his colleagues, Nyang'oro delegated much of his authority to the Department's student services manager, Deborah Crowder, without establishing the necessary boundaries and limitations. This inappropriate delegation of authority, coupled with the absence of appropriate constraints, contributed to the Department's practice of offering a number of courses to undergraduate students that fell below the University's academic standards.

As reflected in the ANOA, students took certain courses identified in the University's Undergraduate Bulletin as lecture courses taught by Nyang'oro and other departmental faculty. Students in these courses were required to write one or more research papers to earn academic credit. They were not, however, required to attend classes. Over time, Crowder assumed primary responsibility for the assignment of topics and the grading of papers for these courses, with little or no input or oversight by the Department Chair or other faculty members.

The University immediately stopped these anomalous classes when this activity was discovered in August 2011. The nature and scope of these academic irregularities are now well known, having been the subject of multiple investigations and media reports. Today's renamed Department of African, African-American and Diaspora Studies is a critical part of the University's academic mission, providing an essential academic focus on important issues in our nation and one of the fastest-growing regions of the world.

## 2. The University's Response to Its Discovery of Academic Irregularities

An extended period of intense public and internal scrutiny, reflection, and discipline followed the University's discovery of the anomalous courses.<sup>3</sup> The University voluntarily reported its discovery to SACSCOC and the NCAA. It conducted multiple internal reviews and commissioned several independent, outside investigations of the academic irregularities.<sup>4</sup> These wide-ranging reviews explored to the fullest extent possible the academic and administrative failures that gave rise to these courses, but the public attention they generated focused predominantly on athletics.

### a. Extensive Review by SACSCOC

As it investigated the facts, the University stayed in close contact with SACSCOC beginning in May 2012. The University made lengthy submissions to SACSCOC, and the first of two separate Special SACSCOC Committees visited the University in April 2013. (See **Exhibit IN-2**.) After two years of review, SACSCOC informed the University in July 2014 that no further reports related to this matter were necessary. In October 2014, a day before its public release, the University delivered the Cadwalader Report to SACSCOC, prompting an additional round of SACSCOC review focused initially on compliance with 18 accreditation standards. In January 2015, the University submitted a 200-page report to SACSCOC demonstrating its compliance with the standards in question and reviewing the reforms and initiatives undertaken since its discovery of the anomalous courses. In June 2015, the SACSCOC Board imposed a one-year period of probation to allow the institution to demonstrate the effectiveness of specific new reforms and initiatives the University had implemented since 2014. The University delivered to SACSCOC an additional extensive report related to specific issues identified by SACSCOC in March 2016 in preparation for the second visit by a Special Committee in April 2016. Following that visit, in June 2016, the SACSCOC Board of Trustees removed the University from probation and determined that the University would maintain its accreditation.

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<sup>3</sup> A chronology of significant events related to the Department, subsequent investigations, and other important developments is attached as **Exhibit IN-2**.

<sup>4</sup> A complete list of the University's investigations, reforms and initiatives, and monitoring reports to SACSCOC can be found at <http://carolinacommittment.unc.edu>. External reviews include the Cadwalader Report (October 2014) (see FIs 32-34), a report of the statewide UNC System's Board of Governors Academic Review Panel (February 2013), former North Carolina Governor James G. Martin's Academic Anomalies Review (January and February 2013) (see FI 31), and a Report Addressing Plans to Enhance Academic Policies, Processes, Procedures and Systems, completed by the Baker Tilly consulting firm (December 2012). Internal reviews include a Report by the University's Faculty Executive Committee (July 2012), the Hartlyn-Andrews Review of Courses in African and Afro-American Studies (May 2012) (see FI 30), an Independent Study Task Force Report (April 2012), and a review of the Academic Support Program for Student-Athletes (September 2011).

b. Frequent Communication with the NCAA

As the University participated in the SACSCOC process, it also worked closely with the NCAA. When the irregularities came to light in August 2011, the institution immediately reported its discovery to the NCAA and began a review with the enforcement staff's full participation. This inquiry resulted in 16 interviews in late August through mid-September 2011 of student-athletes, Department faculty and staff, and ASPSA employees. In addition to Nyang'oro, who stepped down as Department Chair at the end of August, the interviews included

In September 2011, the University began an intensive internal review of the Department's courses. As that review and subsequent investigations concluded, the University consistently communicated all developments and investigative findings to the NCAA, as well as to SACSCOC. (See Exhibit IN-2.)

Beyond its work with SACSCOC and the NCAA, the University took careful, measured action to hold individuals appropriately accountable. Among them was Boxill. The University informed her in October 2014 of its intent to terminate her employment.

3. The University's Commitment to Sustained Reform

Under its new leadership team, UNC-Chapel Hill also undertook a comprehensive and University-wide series of more than 70 wide-ranging and extensive reforms and initiatives designed to limit the possibility that the types of irregularities that occurred here could ever recur. Those reforms focus on six main areas:

- **Admissions and Preparedness:** Enhancements to and transparency of the special-talent admissions process, and improved methods of assessing preparedness for University academics.
- **Academic Excellence and Accountability:** Changes in reporting relationships, policies, and processes to improve accountability and standards for independent studies, expectations for faculty, and department chair reviews.
- **Course Integrity:** Processes, systems and reporting to ensure compliance and to audit course delivery, numbering of courses, assessment standards, grade changes and clustering.
- **Athletics Integrity:** Standards for athletics oversight, changes to the Faculty Athletics Committee, increased staffing for institutional compliance, risk identification and management, and extensive reporting.

- ***Athletics Excellence and Accountability:*** Measures to enhance the student-athlete experience and strengthen collaboration through the faculty governance structure.
- ***Advising and Supporting:*** Improvements to maximize students' academic opportunities and future success and better monitor student athletes' academic progress.

These reforms and initiatives, many of them implemented following the Cadwalader Report, have had a profound effect at the University. For example, over the past five years, the University:

- Reviewed and revived the Department, which has restored the rigor and intellectual vitality of its curriculum under new leadership. Further, the University enhanced its mandatory program review processes to include all undergraduate programs. In October 2014, the Department completed its first review by an outside team and received high marks in all areas, especially for the new departmental culture. The University's Provost, having received an evaluation from senior members of his staff about the Department, recognized vast improvements in the program that include a strong governance structure and shared faculty responsibility;
- Undertook a top-to-bottom review and revision of its processes that ensure the integrity of academic programs and courses (including independent studies);
- Expanded the academic advising and support services available to student-athletes, moved oversight of ASPSA from the College of Arts and Sciences to the Provost, and eliminated the dotted-line relationship to the Department of Athletics;
- Formed the Student-Athlete Academic Initiative Working Group, which comprehensively cataloged over 20 academic processes related to student-athletes from recruiting to graduation. These processes are detailed at [www.apsa.unc.edu](http://www.apsa.unc.edu). The Group's initial effort also produced a Process Review Group, formed to undertake periodic review of these processes;
- Enhanced faculty governance structures;
- Audited academic policies and procedures across the University;
- Created an Ethics and Integrity Working Group to assess the quality and sufficiency of the University's ethics-related programs and training to ensure the existence of clear and confidential channels through which individuals can report concerns or violations of policy;
- Created a Policy and Procedures Work Group to design and improve processes for policy management institution-wide;
- Created a web portal at [ethicsandintegrity.unc.edu](http://ethicsandintegrity.unc.edu) that reflects the recommendations of these two Working Groups;
- Appointed a Director of Ethics Education and Policy Management;
- Instituted measures to ensure systematic reviews of department chairs;

- Augmented athletics compliance measures; and
- Launched a new public records website to enhance accountability, transparency and responsiveness to records requests.

As part of the University's commitment to sustained reform, each of the 70 reforms and initiatives is reexamined, evaluated, and enhanced on an ongoing basis.

## **B. THE AMENDED NOTICE OF ALLEGATIONS**

UNC-Chapel Hill accepts full responsibility for its serious past academic problems, and it has addressed them directly without regard to cost or reputational harm. The University underwent a series of exhaustive reviews at its own initiative. It was placed on probation by its accreditor, the first such sanction in the institution's long history.

But the question before the hearing panel is not whether the University or those affiliated with it failed to meet the appropriately high expectations set by the institution itself, its accreditor, or others. The question is whether the matters raised by the ANOA meet the jurisdictional, procedural, and substantive requirements of the NCAA constitution and bylaws.

### Forecast of Substantive Arguments

The University's substantive response to the allegations appears in two main parts.

As forecast in Section I.B.1 below and explained fully in Section II, the ANOA raises serious questions about the NCAA's jurisdiction over the academic affairs of its members generally, and about the procedural fairness of certain events in this matter specifically. As the hearing panel considers these threshold issues, mutual adherence to the NCAA's constitution and bylaws, the source and limit of the NCAA's authority, should be its primary consideration.

If the hearing panel decides to proceed beyond these important threshold issues, the University responds to the ANOA's five specific allegations in Section III of the Response. A forecast of the institution's position on each allegation appears below in Section I.B.2.

1. Mutual Adherence to Jurisdictional and Procedural Principles Reflected in NCAA Rules

The NCAA's authority to initiate and conduct enforcement actions against its member institutions is derived from – and constrained by – the NCAA's constitution and bylaws. As a membership association, all NCAA rules are agreed upon and adopted by its members. The NCAA and its members are bound by the Association's rules. This principle is fundamental to the relationship between the NCAA and all of its members and to the integrity of the NCAA Collegiate Model.

The academic nature of the underlying conduct and this matter's complex procedural history make mutual adherence to this principle all the more important in this enforcement action. As explained in Section II of this Response, the Amended Notice of Allegations does not conform to the NCAA's constitution and bylaws in several ways.

*First*, the Amended Notice of Allegations refer to core academic issues of course structure, content, and administrative oversight that are beyond the scope of authority granted to the NCAA by its members. Such matters concern fundamental issues of institutional and academic integrity, not athletics compliance, and the University has addressed them with its accreditor. They are not the proper subject of an NCAA enforcement action.

*Second*, the Amended Notice of Allegations concerns issues known to the NCAA when it issued the previous Infractions Report in 2012. Before the Committee's October 2011 hearing, the NCAA and the University investigated the academic irregularities in the Department and whether ASPSA employees provided impermissible academic assistance to student-athletes. The NCAA considered and resolved most of that alleged conduct in 2012, and the remainder should have been raised in that proceeding. Under Bylaw 19.8.3, the NCAA's prior decision on those matters is "final, binding, and conclusive," and issues raised in the previous investigation cannot support allegations in the current ANOA.

*Third*, NCAA Constitution 2.8.2 and Bylaw 19.01.1 require fair procedures in infractions proceedings that reflect fundamental legal concepts of fairness and equity. As applied here, these rules constrain the NCAA from (a) reversing its prior decisions about issues raised in the ANOA, especially when those decisions were repeatedly communicated to and relied upon by the University and others; and (b) pursuing issues that arose or could have been raised previously by the NCAA.

*Fourth*, each of the Amended Notice of Allegations is untimely under Bylaw 19.5.11, the NCAA's four-year statute of limitations, for the reasons explained in Section II.D.

*Fifth*, the information considered by the hearing panel should be limited to materials in the record that comply with procedural requirements adopted by member institutions to protect the integrity of the NCAA's investigative process. See Bylaws 19.5.4 through 19.5.8; NCAA Internal Operating Procedure 4.4. This process requires investigators to inform witnesses that testimony concerns potential NCAA violations, to allow member institutions to question witnesses, and to apply the NCAA's enforcement standards consistently in all infractions cases.

As explained in Section II, several of these threshold issues apply to Allegations 1, 4, and 5 in their entirety. The University raises these jurisdictional and procedural issues not to excuse the underlying conduct, or to escape accountability for those events before its accreditor or elsewhere, but rather to ensure mutual adherence to the rules that govern NCAA enforcement actions, including this one.

## 2. The University's Response to Specific Allegations

If the hearing panel determines that the threshold arguments described in Section II do not bar the allegations, this Response also addresses each of the ANOA's specific allegations as part of its membership obligation to address potential NCAA rules violations. In Section III, the University provides a detailed response to the particular allegations.

*Allegation 1*: The University accepts that in 15 of the 18 alleged instances, Boxill provided extra benefits in violation of Bylaw 16.11.2.1 in her capacity as an ASPSA academic counselor. The institution disagrees that Boxill engaged in unethical conduct as defined by Bylaw 10.1-(c), even though her actions fell short of the University's own standards. As Boxill worked with students as both a faculty member and a part-time ASPSA academic counselor, her actions may have been intentional – she knew she was providing academic assistance – but under Bylaw 10.1-(c), she did not knowingly provide extra benefits as alleged by the enforcement staff. If the hearing panel agrees with the University that Boxill did not violate Bylaw 10.1-(c), the conduct in Allegation 1 is properly treated, at most, as a Level III violation under NCAA rules and case precedent, not a Level I violation as alleged.

*Allegations 2 and 3:* The University accepts that Nyang'oro and Crowder violated the NCAA's ethical conduct legislation when they did not cooperate with the current investigation despite repeated requests by the enforcement staff and the University. Unfortunately, the University could not compel Nyang'oro and Crowder, former employees, to cooperate.

*Allegation 4:* The NCAA alleges that the University failed to monitor the academic Department and ASPSA related to the enrollment of students in anomalous courses for academic terms between Fall 2005 and Summer 2011, and that it failed to monitor Boxill's conduct identified in Allegation 1. Several of the jurisdictional and procedural issues described in Section II bar this allegation, which concerns core academic matters related to courses offered to all undergraduates – matters known to the enforcement staff in August 2011. If the hearing panel decides to proceed despite those obstacles, the institution accepts that it failed to monitor Boxill, but that its failure amounts to a Level II violation, not a Level I violation as alleged.

*Allegation 5:* The NCAA alleges that the University lacked institutional control because of (a) its failure to identify or investigate the anomalous courses despite concerns having been raised, and the resulting continuation of the courses and student enrollment in them; (b) its failure to provide adequate guidance and supervision to ASPSA employees, causing them to believe their actions related to the anomalous courses and those of the academic Department were appropriate; and (c) its failure to identify and investigate the anomalous courses offered to all students, resulting in the violations alleged in Allegations 1 and 4.

The University disagrees with this allegation. Issues related to UNC–Chapel Hill's academic irregularities are the proper subject of review by SACSCOC, its accrediting agency – not the NCAA, its athletic association. Accordingly, though conduct related to the anomalous courses presents serious institutional issues, it should not and cannot support a lack of institutional control allegation under the NCAA constitution and bylaws absent an underlying rules violation. In addition, because the anomalous courses did not cause or give rise to Boxill's actions as alleged in Allegations 1 and 4, neither of those allegations independently supports a lack of institutional control charge.

## II. THRESHOLD JURISDICTIONAL AND PROCEDURAL ISSUES

As a membership association, the NCAA's authority to regulate the activities of its members, and to conduct enforcement actions such as this one, is derived from – and constrained by – the NCAA's constitution and bylaws adopted by its members. Just as each member school must comply with these rules, so too must the NCAA. This principle is fundamental to the relationship between the NCAA and its members and to the integrity of the NCAA Collegiate Model.

The ANOA raises fundamental questions about the reach of NCAA authority to core academic functions of its members, and about how that authority has been exercised in this case. Further, given the unusual history of events that is discussed throughout this Response, the ANOA raises a number of jurisdictional and procedural issues under the NCAA constitution and bylaws that need to be addressed prior to a discussion of the University's responses to the allegations.

### A. The ANOA Incorporates Core Institutional Academic Issues that are Beyond the Scope of the NCAA's Authority

NCAA legislation pertains to all operations of a member institution's athletics program and to control of that program by the institution's leadership. The NCAA's constitution and bylaws do not extend to matters related to academic structure, content, and processes on a member institution's campus. This most basic limitation impacts any analysis of this case.

Before the enforcement staff issued the ANOA, the NCAA had examined this limitation carefully and correctly determined several times that the anomalous courses and other irregularities relating to the Department do not present violations of NCAA bylaws. The issues relating to the anomalous courses and the other irregularities in the Department were self-reported by the University in August 2011, investigated by the NCAA and the University in 2011, and the NCAA determined in the fall of 2011 that these issues do not present violations of the NCAA's bylaws. As is described herein, this decision was repeatedly reviewed by the NCAA, including by the Academic and Membership Affairs (AMA) staff, in 2012 and 2013. The conclusion remained the same: there was no violation of NCAA bylaws related to the anomalous courses.

After the Cadwalader Report was issued, the enforcement staff initially expressed to the University its desire to revisit the case because it anticipated individuals who were previously unavailable might now be available for interviews. While this did not occur, the staff engaged in additional extensive investigation in 2014 and 2015 related to the anomalous courses and the other irregularities in the Department. The NCAA concluded yet again that anomalous courses did not violate NCAA bylaws prior to issuing both its NOA and its ANOA.

The decisions that the anomalous courses presented no violations were based primarily on the fact that the anomalous courses involved core academic issues that are not regulated by the NCAA constitution and bylaws. The ANOA does not allege that student-athletes received impermissible benefits by their enrollment in anomalous courses. Indeed, the ANOA acknowledges in Allegation 5 that problems with the anomalous courses were not directed at or limited to student-athletes, but instead affected the “general student body.”

The University does not minimize the extent of the academic irregularities it experienced, even as it emphasizes that those matters are beyond the NCAA’s purview. To the contrary, in Section I, the University has been completely forthcoming about its failures and implemented numerous reforms and initiatives, and those responses have been reviewed by its academic accreditor. These matters concern fundamental institutional, not athletic, integrity, and they are not the proper subject of an NCAA enforcement action.

**B. Finality of Decisions (Bylaw 19.8.3)**

Bylaw 19.8.3 plainly provides that “[a]ny decision by a hearing panel of the Committee on Infractions that is not appealed or reconsidered pursuant to Bylaw 19.8.2 shall be final, binding, and conclusive, and shall not be subject to further review by any governance body.”<sup>5</sup> The membership imposed this principle of finality to provide the NCAA with one opportunity to address issues, to relieve member institutions of the burdens of multiple proceedings directed at the same conduct, and to promote certainty in making decisions about the future.

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<sup>5</sup> Bylaws 19.02.1 and 19.8.3 permit reconsideration of a public infractions report only when new, relevant, material information is learned that could not have been reasonably obtained prior to the report.

Bylaw 19.8.3 bars Allegations 1, 4, and 5 because the NCAA considered and resolved most of the conduct alleged in the ANOA in connection with the 2012 Infractions Report – and the remaining conduct could have been raised and resolved in that proceeding.

1. The NCAA Knew of Improper Academic Assistance by ASPSA Employees and Academic Irregularities in the Department

In 2010-11, the University and the enforcement staff jointly investigated several issues, including possible academic misconduct and the provision of impermissible academic benefits to student-athletes by ASPSA tutors. This effort included more than 60 interviews. The interviews included student-athletes, coaches, department of athletics administrators, current and former employees of the ASPSA, and other University personnel with knowledge about the work of ASPSA. At the conclusion of the investigation, the NCAA issued a Notice of Allegations in June 2011 that included the charge that several student-athletes had received impermissible academic assistance from an ASPSA tutor. The impermissible academic assistance involved the tutor making substantive changes and supplying content to student-athletes' papers in courses offered by several departments, the AFRI-AFAM Department among them. In August 2011, before the Committee on Infractions heard the University's case, Nyang'oro and others revealed information to the University that raised concerns about academic irregularities in the Department, including issues pertaining to the anomalous courses. The University immediately disclosed this information to the NCAA, and the University and the NCAA promptly began to investigate the academic irregularities in the Department.

In August and September 2011, the University provided the NCAA with information about the anomalous courses and other academic irregularities in the Department. The NCAA and the University jointly conducted 16 interviews that included AFRI-AFAM Department faculty and staff, ASPSA personnel, and student-athletes. Nyang'oro, ASPSA academic counselors were interviewed. Crowder had retired from the University in 2009 and did not consent to an interview.<sup>6</sup> The enforcement staff was, however, able to extensively question

The NCAA

enforcement staff participated in all of the interviews.

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<sup>6</sup> The University made extensive efforts to convince Deborah Crowder to agree to an interview. However, Crowder refused and as a retired employee, the University had no ability to compel her to cooperate.

Each interview included a focus on whether the irregularities in the Department violated any NCAA bylaws. At the outset of each interview, the enforcement staff told the witness that “the purpose of this interview is to determine whether you have any knowledge of or involvement in any violations of NCAA legislation.” After explaining the purpose of the interview, the enforcement staff then proceeded to question each witness at length about his or her knowledge of, or involvement in, academic irregularities, including whether some of the witnesses requested certain course offerings within the Department, contacted individuals within the Department to register student-athletes for courses, obtained assignments on behalf of student-athletes, submitted assignments on behalf of student-athletes, recommended grades for student-athletes, or knew about any such matters. The interviews also covered the irregularity of class meeting times, a lack of professor oversight, and grading irregularities. The interviews of the students and some staff included questions to determine whether the students received too much assistance in completing their coursework. As part of the investigation, the staff reviewed tutor feedback forms for the same purpose. These issues reflect the subject matter described in the ANOA.

Ultimately, the NCAA concluded that it had conducted a sufficient investigation, that no NCAA bylaws had been violated by academic irregularities in the Department, and that the Notice of Allegations did not need to be amended. The NCAA further concluded that the only conduct of an ASPSA employee that violated NCAA bylaws involved the actions of the tutor who was alleged in the June 2011 Notice of Allegations to have provided improper assistance to certain student-athletes in connection with writing assignments, including for courses in the Department.

The NCAA’s Committee on Infractions held its hearing on October 28, 2011 and issued its Public Infractions Report on March 12, 2012. That Report addressed the tutor’s conduct but did not find any other violation of NCAA bylaws in connection with impermissible academic assistance by ASPSA employees or the academic irregularities in the Department. Neither the University nor any individual named in the 2012 Infractions Report appealed or sought reconsideration pursuant to Bylaw 19.8.2, making the March 12, 2012 decision “final, binding, and conclusive” under Bylaw 19.8.3.

2. Boxill’s [FI-1] Email (Allegation 1-r)

This principle of finality applies to the ANOA as a whole, but one illustration merits particular attention. Allegation 1-r concerns a [FI-1] email exchange between Boxill and The University

provided this email to the enforcement staff in August 2011, and it prompted extensive questioning of

(See **Exhibit JUR-1**, pages 25-30, 32-36 and **Exhibit JUR-2**, pages 44-49, 54-57, 59-66.)

(See **Exhibit JUR-3**, page 104.)

Having investigated and reviewed all of this information by September 2011, the enforcement staff chose not to amend its June 21, 2011 NOA to allege any violation relating to this communication. Further, the enforcement staff did not raise any issue about this email thread or assert it was evidence of any violation of the bylaws at any time prior to the 2012 Infractions Report being issued. When no party appealed or sought reconsideration, the 2012 Infractions Report became “final, binding and conclusive” under Bylaw 19.8.3.

As with so much of the material described in the ANOA, Bylaw 19.8.3 bars the enforcement staff from alleging that the email it had – and questioned witnesses about – in August 2011 now supports a violation.<sup>7</sup> The University raised its concerns prior to the issuance of the NOA and the enforcement staff recognized that it had previously investigated the [FI-1] email and determined that it was not a violation. The staff advised the University that the [FI-1] email would not be included in the NOA, but it was included. The staff subsequently informed the University that it would not be included in the ANOA, but it is.

**C. Fairness in Procedures (NCAA Constitution 2.8.2 and Bylaw 19.01.1) and Fundamental Fairness**

The NCAA’s member institutions have adopted rules that require fair procedures in infractions proceedings. This principle, embodied in NCAA Constitution 2.8.2 and Bylaw 19.01.1, reflects bedrock legal concepts of fairness and equity. As applied in this case, these rules should constrain and estop the NCAA from (a) reversing its prior determinations, which were communicated to and relied upon by the University, its employees, and others, and (b) pursuing issues that were or could have been raised in the prior proceeding.

The NCAA membership requires that the NCAA “shall afford the institution, its staff and student-athletes fair procedures in the consideration of an identified or alleged failure in compliance.” See NCAA

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<sup>7</sup> The enforcement staff has not contended that it has learned any new information about the [FI-1] email.

Constitution 2.8.2. Similarly, Bylaw 19.01.1 provides that the enforcement “program is committed to the fairness of procedures.” Where, as here, the staff (a) has repeatedly determined that conduct was not a violation, (b) communicated to the institution that the conduct was not a violation, and (c) informed the institution that the investigation of the conduct is complete, the fairness required under NCAA Constitution 2.8.2 and Bylaw 19.01.1, as well as general principles of equity, prevent the staff from later re-investigating the same subject matter.

The enforcement staff has indicated that the Cadwalader Report provided new information which it is entitled to pursue. As described above, Bylaw 19.02.2 defines “new information” as “relevant, material information that could not have reasonably been ascertained prior to the Committee on Infractions hearing.” Initially, there was nothing to prevent the enforcement staff from seeking and obtaining additional evidence of the conduct that was clearly in front of them in 2010-2011 and is now charged as violations of NCAA bylaws in Allegation I. This could have been done any time before the October 28, 2011 COI hearing, but it was not. Moreover, as to the anomalous courses and other academic irregularities in the Department, the staff has correctly determined that nothing it has learned since the 2012 Infractions Report has altered its prior conclusions that these matters did not raise issues that are within the NCAA’s jurisdiction. As to the [FI-1] email, there is no new information about this email. All of the evidence about the email comes from the 2011 investigation.

The information cited in Allegation 1-a through 1-q was discovered and investigated in 2014 and 2015. However, the issue of excessive academic assistance by ASPSA employees was the subject of extensive investigation in 2010-11 and the conduct of one ASPSA employee was alleged and found to violate the bylaws. Thus, the NCAA had the opportunity to uncover and address the conduct alleged in Allegation 1-a through 1-q. Accordingly, it does not constitute “new information” under Bylaw 19.02.2.

As is explained above, in 2010-11, the enforcement staff investigated impermissible academic assistance by ASPSA personnel, the academic irregularities in the Department, and Boxill’s [FI-1] email, and determined that only the conduct of one tutor was a violation of NCAA rules and the 2012 Infractions Report ended the matter. Subsequent communications confirmed that the investigation into and the evaluation of the academic irregularities in the Department was closed, as evidenced by (1) the NCAA’s explicit approval of a University press release on August 31, 2012; (2) a March 5, 2013 internal NCAA communication from the then Managing Director of the AMA staff and Legislative Liaison to the Division

I Legislative Council; and (3) a September 26, 2013 communication from the enforcement staff to the University.

1. The August 31, 2012 Press Release

Although the March 2012 decision by the NCAA's Committee on Infractions found no violation of the NCAA's bylaws in connection with the anomalous courses and other academic irregularities in the Department, the University continued to address the matter internally (as well as with SACSCOC). Because these issues raised serious academic concerns, the University worked consistently and in good faith to explore any and all irregularities, disclose them fully, and implement changes to reduce the possibility of their recurrence. As the University continued its efforts, public speculation continued to swirl about whether the NCAA was still involved with the review of anomalous courses and related matters. To address this speculation, the University sought and obtained NCAA approval of the content of a press release. The University released the statement on August 31, 2012.

In the NCAA-approved press release, the University explained that it had discovered "potential academic issues involving student-athletes" and the anomalous courses, self-reported possible compliance issues in connection with the matter, invited the NCAA to participate in a joint investigation, and conducted a joint investigation with the NCAA. It also explained that "[b]ased on the joint review, UNC and the NCAA staff concluded there were no violations of current NCAA rules or student-athlete eligibility issues related to courses in African and Afro-American Studies." The press release also explained that the University had provided to the NCAA's enforcement staff an update about the matter a week before the public statement was released. The press release further stated that the "NCAA staff reaffirmed to University officials that no NCAA rules appeared to have been broken." (See **Exhibit JUR-4**.)

2. The March 5, 2013 Internal Communication

On December 20, 2012, the University provided copies of the Martin Report and its Addendum (FI-31) and the Baker Tilly Review to the NCAA enforcement staff. In February 2013, the enforcement staff asked the AMA staff to review the issues pertaining to the anomalous courses and other academic irregularities relating to the Department and provide an opinion using its authority to interpret the NCAA constitution and bylaws. The enforcement staff explained that it had looked into the matter but had not found "any information that substantiated violations." The staff also explained that the University had commissioned an independent investigation and report [the Governor Martin Report and

its addendum (FI- 31)] concerning the matter, the Martin Report had “drawn heavy media interest and scrutiny,” the staff had reviewed the Martin Report, and, based on the report, the staff had requested and obtained additional information from the University. Having reviewed all of this information, the enforcement staff had concluded that the anomalous courses and other academic irregularities did not involve any violations of NCAA bylaws. The enforcement staff asked the AMA to review this conclusion “to ensure that we haven’t overlooked anything of significance.” Thereafter, a team of individuals within AMA was put together and they reviewed the issues. (See Exhibit JUR-5.)

On March 5, 2013, the then Managing Director of the AMA responded to the enforcement staff in no uncertain terms. He wrote, “There are always concerns with aberrant classes comprised of a significant number of student-athletes in comparison with non-athletes; however, there is nothing definitive in the report [provided by the University] that would validate that there was a systematic effort within the African and African American Studies department motivated by the desire to assist student-athletes with maintaining their eligibility, either in how the courses were created, taught and/or how the grades awarded.” (See Exhibit JUR-5.)<sup>8</sup> AMA’s conclusion confirmed that the NCAA itself had concluded that the anomalous courses and the other academic irregularities in the Department did not violate NCAA rules.

3. The September 26, 2013 Communication from the Enforcement Staff to the University

During the second part of 2012 and first part of 2013, the University provided additional information to and regularly communicated with the enforcement staff. On September 26, 2013, the University’s Senior Associate Athletic Director contacted the enforcement staff. He set forth the University’s understanding that the collaborative review by the University and the NCAA was complete, and that based on the available information, the NCAA’s enforcement staff did not intend to conduct any further investigations or allege any further violations of the NCAA’s bylaws in connection with the anomalous courses and the other academic irregularities. In response, the enforcement staff confirmed the University’s understanding. (See Exhibit JUR-6.)

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<sup>8</sup> It is worth noting that the University discovered the exchanges related to the enforcement staff’s request and AMA’s response long after the fact, and purely by happenstance on July 13, 2015. Despite the fact that the enforcement staff had previously represented that the University’s outside counsel could access all materials relevant to the investigation via a secure website, these materials were not included, contrary to the requirements of Bylaw 19.5.9. They were discovered by the University only because its representatives traveled to the national office to review the physical files personally.

The University reasonably relied to its detriment on the resolution of the 2010-11 investigation with the 2012 Infractions Report and these repeated reassurances in recruiting staff and students-athletes. Staff and student-athletes, in turn, reasonably relied to their detriment in accepting employment and deciding to enroll at the University, believing that the University would not be subject to the risk of future sanctions for conduct previously investigated and resolved. The long delay between the NCAA's first receiving notice of the anomalous courses and the other academic irregularities in August 2011 and its current enforcement action only underscores the unfairness of the situation.

In sum, NCAA Constitution 2.8.2 and Bylaw 19.01.1 require fairness in the procedures used, and they embody the general concept of fairness and equity. Where, as here, there has been a prior final, binding, and conclusive public infractions report followed by multiple assurances to the University that there are no additional violations, it would be procedurally and fundamentally unfair to allow the staff to re-investigate the same subject matter. This is particularly true in the absence of any "new information" within the meaning of Bylaw 19.02.2 and where the University and others have relied on the NCAA's prior assurances.

**D. Statute of Limitations (Bylaw 19.5.11)**

The membership has adopted a statute of limitations in Bylaw 19.5.11 that restricts the ability of the NCAA to bring allegations pertaining to events that occurred many years earlier. Subject to three exceptions that do not apply here, Bylaw 19.5.11 states, "[a]llegations included in a notice of allegations shall be limited to possible violations occurring not earlier than four years before the date the notice of inquiry is provided to the institution or the date the institution notifies (or, if earlier, should have notified) the enforcement staff of its inquiries into the matter." This limitation promotes fairness and accuracy by ensuring that investigations are brought when memories are fresh and before documentary evidence or witnesses are lost. It also increases the chance that punishments, if they are appropriately imposed, reach the responsible people. Because there is frequent turnover at member schools in faculty, coaches, staff, and of course the students, bringing a case and imposing a punishment more than four years after the relevant events occurred carries an unacceptably high risk that innocent people will be punished for transgressions that were committed by people who are no longer at the school.

There are two issues concerning the application of Bylaw 19.5.11 to this proceeding – what is the measuring date for the four-year period and whether any of the exceptions apply.

1. The Measuring Date

The enforcement staff provided an oral Notice of Inquiry to the University on June 30, 2014. Under the first part of Bylaw 19.5.11, that would mean that conduct that occurred prior to June 30, 2010 was beyond the limitations period. The only conduct in Allegation 1 that occurred after this date was the [FI-1] Boxill email that is referenced in Allegation 1-r. However, as is noted above, the enforcement staff previously investigated this email and determined it was not a violation so they are barred from relying upon it in this proceeding. Thus, if the Notice of Inquiry is the measuring date, Allegation 1 and the portions of Allegations 4 and 5 that rely on Allegation 1 are time-barred.

The enforcement staff has informed the University that it considers the measuring date to be February 21, 2014, not the date of the Notice of Inquiry. The staff has indicated that, on that date, they received notification from the Cadwalader firm that the institution was inquiring into this matter.<sup>9</sup>

The enforcement staff's reliance on the February 21, 2014 date is incorrect. The NCAA became aware of the Cadwalader firm's investigation and expressed an interest in learning any information gathered by the Cadwalader firm that raised potential NCAA violations. Because the Cadwalader firm had no expertise with NCAA bylaws and was working on other matters with the NCAA, and because identifying and investigating potential NCAA violations were not the focus of Cadwalader's work, the institution retained separate NCAA counsel, Bond, Schoeneck & King, PLLC (the Bond firm).

A communications protocol was set up on May 28, 2014 pursuant to which information gathered by the Cadwalader firm which might indicate potential NCAA bylaw violations would be shared with the Bond firm, as the University's outside NCAA counsel, and the NCAA. [See FI-33, Ex. 9]. The establishment of this protocol marks the beginning of the University's inquiries into the NCAA matters for the purposes of Bylaw 19.5.11. The distinction between Cadwalader's work and the NCAA process is evident in their procedural differences. The Cadwalader investigation was not conducted in a manner consistent with NCAA investigation protocols (e.g., interviews were not recorded, witnesses were not advised of their

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<sup>9</sup> It is noteworthy that although the enforcement staff relies upon the Cadwalader Report into the "paper classes," only three of the classes involved in Allegation 1 (Subparagraphs c, j, and n) were identified in the Cadwalader Report as "paper classes." (See FI-33, Exhibits 11 and 12.)

right to counsel, or that the purpose of the interview was to determine if there were any NCAA violations [see Bylaws 19.5.4, 19.5.5, and 19.5.7]. This distinction is also made in the Cadwalader Report in which the only references to NCAA-related issues are that (1) the NCAA was already on campus in 2011 when the academic irregularities first arose, (2) the institution and the NCAA jointly investigated them, and (3) the NCAA closed its investigation into the issues with a determination that there were no new NCAA violations (see FI-32, pp. 24-25). Inasmuch as the [FI-1] Boxill email is the only evidence within the four-year period, Allegation 1 is untimely and the reliance on Allegation 1 in Allegations 4 and 5 are time-barred as well for the reason stated above.

## 2. The Exceptions to the Four-Year Limitations Period are Not Applicable

The enforcement staff asserts two separate bases for its position that the Statute of Limitations has been met based on exceptions to the limitations period included in the bylaws. The staff first asserts that, pursuant to Bylaw 19.5.11-(b), there was a pattern of willful violations that began outside the statute of limitations and continued into the four-year period. The staff also asserts that, pursuant to Bylaw 19.5.11-(c), there was a “blatant disregard for the Association’s fundamental . . . extra benefit, academic or ethical-conduct bylaws.”

As noted above, the only conduct that occurred within the four-year period is the [FI-1] Boxill email. However, for the reasons stated above, the University asserts that the enforcement staff is barred from relying on this email and they cannot be permitted to change their minds on whether this email constitutes a violation because it is needed to make the other allegations timely. Thus, there is no “pattern” that is within the four-year period. Further, Boxill did not engage in “willful” violations. The term “willful” requires a deliberate or intentional act knowing that it is wrong. (See the definitions of “willful” in the Meriam-Webster, Oxford, and Cambridge dictionaries). As is discussed in more detail in the University’s response to the unethical conduct charge in Allegation 1, the evidence indicates that Boxill did not deliberately or intentionally violate the extra benefit rules. Thus, for both of these reasons, this exception does not apply.

The second exception to the four-year limitations period, Bylaw 19.5.11-(c), does not apply either. There was no “blatant disregard” of fundamental extra benefit or ethical conduct bylaws. As is discussed at length below in the University’s response to Allegation 1, although the assistance provided by Boxill in 15 of the instances alleged constituted extra benefits as the bylaws were applied and

enforced at the time of her conduct, the degree of assistance provided was limited to the extent that it would not have been considered a violation under the November 19, 2014 Weber State University Public Infractions Report (see Exhibit JUR-7), should at most be treated as a Level III violation, and it will not be treated as a violation under NCAA Proposal 2015-66, now in effect. As such, the conduct cannot be fairly characterized as blatant disregard of “fundamental” extra benefit and ethical conduct bylaws. Further, for the same reasons that Boxill’s conduct was not “willful,” it also was not done in “blatant disregard” of the NCAA rules.

Moreover, this exception provides that “the enforcement staff shall have a one-year period after the date the information concerning the matter becomes available to the NCAA to investigate and submit to the institution a notice of allegations concerning the matter.” The enforcement staff was aware by 2011 that at least one member of the ASPSA staff had provided impermissible academic benefits to student-athletes in 2008-09 and it investigated and charged violations that were upheld in the 2012 Infractions Report. Thus, it had reason to investigate whether other ASPSA employees also provided impermissible academic benefits and it did.

Finally, as is described in detail in this Response, the enforcement staff was aware of the communication that is the subject of Subparagraph r in August 2011 and questioned witnesses, about that communication at that time. Thus, the enforcement staff’s ability to utilize Bylaw 19.5.11-(c) expired in 2012, long before the May 20, 2015, NOA was issued.

**E. The Record of This Proceeding and the Exclusion of the Use of Statements Made Outside of the Investigation**

The NCAA enforcement process includes a number of procedural requirements that the membership determined were necessary to protect the integrity of the investigative process. See Bylaws 19.5.4 through 19.5.8. The extensive public comments and some of the information contained in the investigations and reviews that the University initiated do not comply with the requirements of the enforcement investigation process and therefore such comments and information are not part of the record and should not be considered by the hearing panel.

There have been statements made, numerous articles written, and intense and widespread speculation about this case during the past five years. The temptation to use public speculation and other unverified

information is a very real part of this case. The University believes that it is vital that only information that is in the record, as defined in the COI's internal operating procedures (see NCAA Internal Operating Procedure 4.4), be used to evaluate the conduct, behavior, and institutional responsibility related to this case.

This case carries with it an additional layer of complication related to the "record." The FIs include the Cadwalader Report (FI-32), which includes references to statements attributed to two individuals, Nyang'oro and Crowder, who were not cooperative in this proceeding but did cooperate in the Cadwalader investigation in order to avoid potential criminal prosecution. Because those individuals did not cooperate with this investigation and because their discussions with Cadwalader were not conducted in a manner consistent with NCAA investigation procedures (e.g., interviews conducted in the presence of the interested parties and recorded, witnesses advised of the right to counsel and the purpose of the interview, and its potential use in alleging violations), the staff and the University have agreed that the statements attributed to those individuals in the Cadwalader Report will not be used in this proceeding.

By asserting the foregoing jurisdictional and procedural issues, the University is not looking to excuse the past serious failures. Rather, the University is asserting its rights to a fair procedure consistent with the membership's constitution and bylaws.

### III. RESPONSES TO SPECIFIC ALLEGATIONS

1. [NCAA Division I Manual Bylaws 10.1, 10.1-(c), 16.11.2.1 (2003-04 through 2010-11)]

It is alleged that from February 2003 to July 2010, Jan Boxill (Boxill), then philosophy instructor, director of the Parr Center for Ethics, women's basketball athletic academic counselor in the Academic Support Program for Student-Athletes and chair of the faculty, knowingly provided extra benefits in the form of impermissible academic assistance and special arrangements to women's basketball student-athletes. Specifically:

- a. On [redacted] Boxill provided the beginning of a paper in the form of an introduction and additional written content to a student-athlete to use in an unknown course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]
- b. On [redacted] Boxill provided an annotated bibliography for a student-athlete to edit and use for an unknown course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]
- c. On [redacted] Boxill provided the beginning of a paper in the form of an introduction for a student-athlete to use in her AFAM [redacted] course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]
- d. On [redacted] Boxill provided the beginning of a paper in the form an introduction and additional content to a student-athlete to use in her AFAM [redacted] course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]
- e. On [redacted] Boxill provided the beginning of a paper in the form of an introduction and additional content to a student-athlete to use in her AFAM [redacted] course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]
- f. On [redacted] Boxill provided a completed quiz for a student-athlete to use in a PHIL course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]
- g. On [redacted] after reviewing a student-athlete's incomplete paper for the course AFAM [redacted] Boxill added content to the student-athlete's introduction and conclusion. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]
- h. On [redacted] Boxill provided the beginning of a paper in the form of an introduction and additional content to a student-athlete to use in her AFAM course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]
- i. On [redacted] after reviewing a student-athlete's incomplete paper for the course AFAM [redacted] Boxill added content to the paper in the form of a conclusion. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]
- j. On [redacted] after reviewing a student-athlete's incomplete paper, Boxill added content in the form of several additional paragraphs to use in an unknown course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]

- k. On [redacted] Boxill provided the beginning of a paper in the form of an introduction and additional content for a student-athlete to use in an unknown course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]]
- l. On [redacted] after reviewing a student-athlete's journal entries, Boxill added additional content in the form of a conclusion to one of the journal entries for an unknown course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]]
- m. On [redacted] after reviewing a student-athlete's incomplete paper for the course AFAM [redacted] Boxill added content to the paper in the form of a conclusion. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]]
- n. On [redacted] after reviewing a student-athlete's incomplete paper for course AFAM [redacted] Boxill added content to the paper in the form of a conclusion. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]]
- o. On [redacted] after reviewing a student-athlete's incomplete paper, Boxill added content to the paper by providing additional quotations to use in an unknown course. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]]
- p. On [redacted] Boxill wrote to an instructor in the exercise science department and asked that the instructor provide a specific grade to a student-athlete in the course. This occurred after the conclusion of the semester. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]]
- q. On [redacted] after reviewing a student-athlete's incomplete paper for a psychology course, Boxill added additional content at the end of the paper. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]]
- r. On [redacted] in an email communication with the African and Afro-American Studies department concerning a student-athlete's paper, Boxill requested a grade to the department for the submitted work. [NCAA Bylaws 10.1, 10.1-(c) and 16.11.2.1 ( [redacted] )]]

This serves as part of the basis for the lack of institutional control allegation in Allegation No. 5.

**Level of Allegation No. 1:**

The NCAA enforcement staff believes a hearing panel of the NCAA Division 1 Committee on Infractions could determine that Allegation No. 1 is a severe breach of conduct (Level I) because the violations involve unethical conduct and, thus, seriously undermine or threaten the integrity of the NCAA Collegiate Model. The impermissible academic assistance along with the academic arrangements also provided, or were intended to provide, extensive of substantial impermissible benefits. [NCAA Constitution 2.2 and Bylaws 19.1.1 and 19.1.1-(d) (2015-16)]

**A. UNIVERSITY'S CONCLUSIONS**

1. Jurisdictional Issues

As explained in Section II above, this Allegation is barred in its entirety on jurisdictional and procedural grounds. In addition, the enforcement staff cannot properly allege a violation for the conduct described in Subparagraph r, where (1) this email was fully investigated in 2011, including extensive questioning of the parties to the email thread about the communication; (2) the NCAA determined and acknowledged on several occasions that the email was not a violation; (3) there is no new information about this email that was not known in 2010-11; and (4) all matters investigated in 2010-11 became final, binding, and conclusive under Bylaw 19.8.3 upon the issuance of the 2012 Infractions Report. Further, the remaining information alleged in Subparagraphs a-q is outside of the statute of limitations set forth in Bylaw 19.5.11.

Because of the seriousness of the underlying conduct, and because the University understands its obligations to address potential NCAA rules violations and to participate fully in the process, the University nonetheless addresses the underlying merits of this Allegation in detail.

2. Application of Bylaw 16.11.2.1 (Extra Benefits)

Based upon the evidence obtained and reviewed, and upon an assessment of the credibility of those interviewed, the University has concluded that the information alleged in Subparagraphs a, b, d-o, and q of this Allegation 1 regarding Boxill's providing improper academic assistance to particular student-athletes in her role as an ASPSA academic counselor is substantially correct. Boxill's activities as alleged in these subparagraphs did not constitute permissible tutoring or academic support under NCAA Bylaw 16.3.1.1, constituted "special arrangement[s] by an institutional employee" that provided student-athletes with extra "benefit[s] not expressly authorized by NCAA legislation," and therefore violated Bylaw 16.11.2.1 as that legislation was articulated, enforced, and penalized at the time of the violations. As is discussed below, based on statements made by the enforcement staff, the NCAA would not pursue these matters under the new academic misconduct legislation, adopted as NCAA Proposal 2015-66 now in effect.

Despite the staff's allegation, the information alleged in Subparagraph c does not constitute a violation of Bylaw 16.11.2.1. The evidence shows that Boxill was simply giving the student-athlete a sample of a possible topic and how the first paragraph should be written for a paper, and they discussed several

other topics. There is no evidence that the student-athlete wrote her paper on the initial topic or used the sample paragraph. Further, Boxill's conduct was the type of tutoring and academic support service that is expressly permitted under Bylaw 16.3.1.1.

The University also disagrees with the staff that the information alleged in Subparagraph p constitutes a violation of Bylaw 16.11.2.1. As is discussed in the review of the evidence, the email cited by the staff was part of an ongoing conversation. An instructor had advised Boxill that if a student-athlete turned in certain work, she could raise her grade from a "C-" to "a "strong C." In response, Boxill noted that the student-athlete was in the process of turning in the work referenced by the instructor and stated that she hoped it was sufficient to raise her grade to a "C+." Given this context, the University concludes that there was no violation of the bylaw.

As is explained below, the University believes that the NCAA has previously and correctly determined that the information alleged in Subparagraph r was not a violation.

3. Application of Bylaws 10.1 and 10.1-(c) (Unethical Conduct)

Allegation 1 asserts that Boxill violated Bylaws 10.1 and 10.1-(c) by knowingly providing student-athletes with extra benefits. The University expects that, based on her interview statements, Boxill will assert

The University anticipates that if the hearing panel disagrees and determines that she provided extra benefits, Boxill will argue that she did not violate Bylaws 10.1 or 10.1-(c) because

Bylaw 10.1-(c) requires "knowing involvement" in providing extra benefits. The University concludes that the weight of the evidence is that Boxill did not knowingly violate the extra benefit provisions. While there is no question that she intentionally and knowingly supplied the academic assistance, Bylaw 10.1-(c) requires more than that. It mandates that to find a violation, Boxill knew she was violating the extra benefit provisions. The University bases its conclusion on not only the statements that Boxill made in her interviews, but also on having had the opportunity to observe her during her interview.

As such, it does not believe that Boxill's conduct violated Bylaw 10.1-(c).

**B. REVIEW OF THE EVIDENCE**

Boxill played basketball at UCLA and obtained her B.A. in 1967. She later obtained her M.A. (1975) and Ph.D. (1981) in philosophy from UCLA. Prior to coming to the University in 1985 as a visiting assistant philosophy professor, Boxill taught at several institutions and also worked as a coach and an athletics administrator. Boxill spent one year at Elon College (1987-88) as an assistant professor before returning to the University in 1988 where she remained on the staff as a lecturer and then a senior lecturer from 1988 until October 2014. In October 2014, the University informed Boxill that her employment was terminated.

In addition to her teaching duties at the University, Boxill took on several other roles: through ASPSA, she served as the part-time academic counselor for women's basketball from 1991 to 2011 and was an academic counselor for several other sports for part of this time; she was a public address announcer and radio color commentator for women's basketball for much of her time at the University; she directed the University's ethics center from 2006 to 2014; and she chaired the University faculty from July 1, 2011 to June 30, 2014.<sup>10</sup>

The University, both independently and jointly with the enforcement staff, diligently examined the details of Boxill's past work with student-athletes to assess whether rules infractions occurred. The University and enforcement staff interviewed her and others who might have knowledge of the situation, reviewed relevant documents, and considered the various independent reports and the evidence they cited. Further, in the summer and fall of 2015, the University worked with the enforcement staff to conduct an extensive review of the more than 1.7 million emails and documents that the University collected in support of the Cadwalader investigation. As a result of that University-initiated effort, the University disclosed a number of new emails to the enforcement staff. The NCAA

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<sup>10</sup> Allegation 1 mistakenly states that Boxill directed the ethics center and chaired the University faculty throughout the period from February 2003 to July 2010.

and the University conducted an additional joint interview of Boxill and the staff added 12 new emails to the ANOA relating to this subject.

Most or all of the Subparagraphs below share common features.

- Each of the emails involved a then-member of the women’s basketball team.
- Fifteen of the 18 subparagraphs do not involve papers for an anomalous course.
- Except for the student-athlete involved in Subparagraph c, none of the student-athletes have been interviewed.
- Except for Subparagraph f (which involved a course that Boxill taught), none of the course instructors were interviewed about the assistance that Boxill provided to the student-athletes.
- The final versions of the assignments referenced in Subparagraphs a-o and q were not recoverable despite thorough efforts made by the University and Cadwalader.
- Except in connection with Subparagraph o, Boxill’s email folders did not contain the emails she received from the student-athletes and her replies did not include as attachments any documents that the student-athletes sent to her in the original emails. As a result, the base versions of any documents received by Boxill from the student-athletes were not available for comparison.
- Finally, in many cases, the University has referenced emails other than those cited in Allegation 1 to provide context for the communications that are cited.

**Subparagraph a**

On the evening of \_\_\_\_\_ student-athlete \_\_\_\_\_ wrote an email to Boxill regarding two assignments that were due in English \_\_\_\_\_ the next day and provided the instructions for them. (See **Exhibit 1-1**.) Several hours later, Boxill sent an email to the student-athlete with a subject line “Paper 2” that included the instructions for the second assignment followed by three short paragraphs of text.<sup>11</sup> (See FI-15.) The enforcement staff did not ask Boxill about this specific email in either of her interviews.

(See FI-35, pages 28-32.)

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<sup>11</sup> Subparagraph a alleges that “Boxill provided the beginning of a paper in the form of an introduction and additional written content to a student-athlete.” The University does not know what “additional written content” the enforcement staff references, so it cannot admit or deny this portion of Subparagraph a.

**Subparagraph b**

On [redacted] Boxill sent an email to student-athlete [redacted] relating to English [redacted] with the subject line “Bibliography” and that stated “Here is a biblio edit for class. Be sure to look up how she wants it. I’ve also attached 2 of the essays.” One of the attachments to the email was entitled “Title IX biblio.doc.,” and it contained four annotated citations followed by the statement, “You can do the websites.” (See FI-11.) The metadata for the bibliography indicates that it had been created at 12:41 p.m. on [redacted] edited, and saved two minutes before Boxill’s email. (See Exhibit 1-2.)

(See FI-35, pages 33-34.)

**Subparagraph c**

On [redacted] Boxill sent an email to student-athlete [redacted] with a subject line “Afam – paper intro sample.” The text of the email consisted of a paragraph about [redacted] and appears to be the introduction for a paper about [redacted]. [See FI-13.]

Later that day and the next, Boxill exchanged emails with the student-athlete in which they discussed a variety of potential ideas for the paper (such as [redacted]

[redacted]). (See Exhibit 1-3.) There is no evidence that the student-athlete wrote a paper about [redacted] or [redacted] or that she used the paragraph referenced in this subparagraph.

[See FI-35, pages 58-60.] Further, in her interview, the student-athlete stated in no uncertain terms but that Boxill “absolutely [did] not” write “any part” of that or any other paper for her.

**Subparagraph d**

On [redacted] Boxill sent an email to student-athlete [redacted] regarding “Afam” stating, “Here is an idea for your paper” and attaching a document that consisted of a paragraph that appears to be an introduction to a paper followed by a brief, five point outline. [See FI-16.]

[See FI-35,

pages 73-75.]

**Subparagraph e**

At 1:46 a.m. on [redacted] Boxill emailed student-athlete [redacted] about a paper for AFAM [redacted] <sup>12</sup> stating, “Here’s a start.” followed by instructions on how to write the rest of the paper. The attachment to the email contained three paragraphs of text. [See FI-17.] Later that day, Boxill advised the student-athlete that she “should be able to fill out the paper” and the student-athlete wrote back “Ok thanks for doing it for me though and helping me out...” (See Exhibit 1-4.) A few days later, Boxill and the student-athlete exchanged a longer draft of the paper that included the above paragraphs. (See FI-17 and Exhibit 1-5.)

**Subparagraph f**

This is the only Subparagraph that pertains to a course (Philosophy [redacted]) for which Boxill was the instructor (although a teaching assistant graded the quizzes). On [redacted] student-athlete [redacted] wrote to Boxill stating “my quiz i need some help” and Boxill replied, “I have looked at it and it needs some help. I’ll reread it and try to help make some changes.” (See Exhibit 1-7.) A few hours later, Boxill wrote “Attached – change it or fill in as you wish” and sent a 1½ page, single spaced Quiz #4 response for the student-athlete. [See FI-18.] [redacted] [See FI 35, pages 78-79.] The University reviewed the emails and other available records and found a number of emails relating to other students submitting their quizzes to Boxill, but it could not locate any other situations where Boxill modified the content of a quiz answer before she forwarded it to the teaching assistant to grade.

**Subparagraph g**

On [redacted] Boxill emailed student-athlete [redacted] and [redacted]

Attached to the email is a seven-page paper with a document name of [redacted]

[See FI-5.] The [redacted] Boxill added is not apparent on the face of the attachment.

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<sup>12</sup> The email attaches a document named “ [redacted] -Afam [redacted].doc.” However, the student-athlete’s transcript indicates that the course she was taking at the time was AFAM [redacted] – and she had not taken a course identified as AFAM [redacted] (See Exhibit 1-6.)

[See

FI-35, pages 79-80; FI-43, pages 100-101.]

**Subparagraph h**

On [redacted] Boxill emailed student-athlete [redacted] at her Yahoo email address concerning her AFAM [redacted] paper. The body of the email consisted of a paragraph of text and four outline points. [See FI-19.] Shortly thereafter, the student-athlete emailed Boxill from her University email address stating “Jan, I did not get the part you wrote. Did you send it to this email or my yahoo mail.” At 11:23 p.m., Boxill replied, “I sent it to your yahoo account” and a minute later she re-sent the same information to the student-athlete’s University email address. (See Exhibit 1-8.)

[FI-

35, pages 80-81.]

**Subparagraph i**

On [redacted] Boxill sent student-athlete [redacted] a version of a [redacted] paper for AFAM [redacted].<sup>13</sup> Boxill’s email stated, “The paper is good. I added a brief conclusion.” The final paragraph of the attached 11-page paper was three sentences long. [See FI-4.]

[FI-35, page 85.]

**Subparagraph j**

On [redacted] student-athlete [redacted] emailed Boxill about a paper she had for Anthropology [redacted] and stated, “I need to add a little more...wanted to see what you thought.” Boxill replied, “I’ve attached it with some edits -- you’ll see them in bold.” The attachment is five pages long and there are three paragraphs and one sentence in bold. [See FI-20.] Boxill was not asked about these emails during either of her interviews.

**Subparagraph k**

On [redacted] student-athlete [redacted] wrote Boxill about a two-question assignment for COMP concerning a movie, stating, “I just need some ideas on how i could start this paper if you could help.”

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<sup>13</sup> The allegation states that the mid-June email related to AFAM [redacted] took that course in the spring semester and was enrolled in AFAM [redacted]. Further, other emails concerning this paper indicate that it was for AFAM [redacted].

[redacted]. However, the student-athlete [redacted]. (See Exhibit 1-9.)

Boxill responded by summarizing the first question and stating, “So here is a way to proceed” followed by: (a) a paragraph of text that appears to be an introduction; (b) the statement, “You likely have to give both sides again;” (c) a “Pro” paragraph; (d) a short “Con” paragraph; and (e) a paragraph on “Answering the Con.” [See FI-10.]

[See FI-35, page 92.] The University could not locate the paragraph on IMDb.com or other internet sites.

#### **Subparagraphs l and m**

On student-athlete sent Boxill journals for AFAM and Boxill responded, “I’ve made some grammatical changes and added an ending. You will need to format it.” There were four journals attached, and the changes were not evident except that the final paragraph to the fourth journal is in a different font. [See FI-21.]

[See FI-35, pages 92-93.]

On the student-athlete appears to have sent a document to Boxill, who then replied “Is there a conclusion you wanted to add to this? If so, I’ve added a last paragraph. You can keep it or delete it.” The attached 10-page document is comprised of five journals for AFAM ; the concluding paragraph is three sentences long. [See FI-2.] Within the hour, the student-athlete emailed Boxill that she had “just sent the journals to” the course instructor. (See Exhibit 1-10.)

(See FI-35, pages 93-95.)

The student-athlete participated in a women’s basketball

#### **Subparagraph n**

On Boxill sent student-athlete an email indicating that she had “edited the grammar” but “didn’t get to the conclusion” for a paper for AFAM (See Exhibit 1-11.) On

Boxill emailed the student-athlete, “Here is the paper again. I’ve added a conclusion.” The attachment included eight sentences that were not in the [first] version and instructed the student-athlete how to finish the paper. [See FI-7.]

The University could not locate any emails between Boxill and the student-athlete to corroborate her statement.

**Subparagraph o**

On \_\_\_\_\_ student-athlete \_\_\_\_\_ sent Boxill a draft of a paper for AFAM (See Exhibit 1-12.) Within the hour, Boxill responded, “I’ve attached your paper, I made some grammatical changes, and added some quotes if you want to use them. Also, the conclusion was good – I edited it.” (See FI-6.) The attached version made some grammatical changes, inserted three quotes, and reworded the two-sentence conclusion.

(See FI-43, pages 62-64.)

**Subparagraph p**

Student-athlete \_\_\_\_\_ took EXSS \_\_\_\_\_ in the fall of \_\_\_\_\_ and was given the opportunity by the instructor to make up some work. As of \_\_\_\_\_ she had turned in some, but not all, of the late work. The instructor emailed her (with a copy to Boxill) that she currently had earned a “C-” and listed what additional work she needed to submit to get “a strong ‘C’”. (See Exhibit 1-13.) On \_\_\_\_\_

Boxill emailed the instructor, noted that the student-athlete had just turned in a paper and would be submitting other work that day, and added, “I am hoping that these are sufficient for perhaps a C+ and we can get the grade changed tomorrow.” (See FI-14.) The student-athlete’s grade eventually was changed to a “C+”.

(See FI-35, pages 64-66.)

**Subparagraph q**

On \_\_\_\_\_ student-athlete \_\_\_\_\_ asked for help in wrapping up a paper for PSYC \_\_\_\_\_ Boxill responded, “I’ve reworded some of the stuff at the end” and noted that the paper needed to be formatted. The attachment was four pages long. The last 4½ paragraphs of the paper are in a different font. [See FI-22.]

[See FI-35, pages 99-

100.]

**Subparagraph r**

As explained in Section II above, the NCAA repeatedly determined in 2011-13 that this email does not violate NCAA bylaws. Those decisions are final and correct. It has been clearly established that there are no major or secondary infractions case reports, rules interpretations, official rules education or other authority notifying member institutions that an academic counselor is prohibited from engaging in such conduct. Further, there is no evidence that Boxill helped student-athlete with her paper.

(See **Exhibits JUR-1**, page 30; **JUR-2**, pages 46-49, **JUR-3**, page 104.) While Boxill's comment was certainly ill-advised, it was not a violation.

**C. LEVEL OF ALLEGATION 1**

The enforcement staff asserts that Allegation 1 should be treated as a severe breach of conduct/Level I violation, because there was unethical conduct on the part of an individual that seriously undermines or threatens the integrity of the NCAA Collegiate Model including conduct that involved the provision of substantial or extensive impermissible benefits. See Bylaws 19-1.1 and 19-1.1-(d). Even if the hearing panel rejects the University's argument and concludes that Boxill violated Bylaw 10.1-(c), this position is inconsistent with the NCAA's established rules and precedent. While the University does not condone Boxill's conduct relating to the 15 items it acknowledges are violations, these infractions should be properly treated, at most, as Level III violations.

1. **Prior Case Precedent**

The NCAA's approach to situations where some academic assistance has been provided has evolved over time, but the most relevant recent infractions authority is the Weber State University matter, decided on November 19, 2014. In that case, an instructor provided assistance to a number of student-athletes on tests and quizzes. The amount of assistance varied among the student-athletes and they were categorized in three groups. For the first group, the instructor allegedly completed tests and quizzes with no student-athlete involvement. The second group of student-athletes allegedly received substantial assistance, defined as more than 50% assistance on tests and quizzes. A third group of student-athletes received substantially less than 50% assistance on tests and quizzes. The enforcement

staff's original Notice of Allegations alleged academic misconduct with respect to the first two groups but made no allegations related to the third group, who received less than 50% assistance. (See **Exhibit JUR-7**, pages 2-3.)

The enforcement staff delivered an Amended Notice of Allegations to Weber State after AMA issued its April 16, 2014 interpretation on academic misconduct. In the amended notice, only the first group of student-athletes – those for whom the instructor allegedly completed entire assignments – were the subject of Level I violations. The student-athletes in the second group, who received more than 50% help, were subsequently found in a separate proceeding to have received Level III extra benefits. No violations were alleged in connection with the student-athletes who received less than 50% assistance. (See **Exhibit JUR-7**, page 3 and fn. 7.) The conduct at issue occurred prior to the April 16, 2014 AMA interpretation, yet that interpretation was applied. The penalty was assessed before the adoption of the new academic misconduct legislation that is discussed below.

Using the enforcement staff's analysis from the Weber State University matter, allegations arising from Boxill's activities should be considered Level III violations at most. Boxill provided limited assistance that typically consisted of small additions or suggestions in connection with a lengthy paper. Specifically, she provided the following assistance:

- Subparagraph a - three short paragraphs of text.
- Subparagraph b - a four citation, annotated bibliography that the student had to edit to meet the instructor's requirements.
- Subparagraph c - the University believes there is no violation, but in any event, this involves only one paragraph.
- Subparagraph d - one paragraph of text and a brief four-point outline.
- Subparagraph e - three paragraphs of text.
- Subparagraph f - some editing of a quiz response.
- Subparagraph g - two sentences in a seven-page paper.
- Subparagraph h - one paragraph of text and four outline points.
- Subparagraph i - three-sentence concluding paragraph in an 11-page paper.

- Subparagraph j - three paragraphs and one sentence in a five-page paper.
- Subparagraph k - four paragraphs of text.
- Subparagraph l - one paragraph in a 6-page document.
- Subparagraph m - one paragraph in a 10-page document.
- Subparagraph n - between one and eight sentences in a 10-page paper.
- Subparagraph o - three quotes and two reworded sentences in a five-page paper.
- Subparagraph p - the University believes this allegation does not involve a violation, but in any event, this involves no assistance.
- Subparagraph q - rewording at most four and a half paragraphs in a four-page paper.
- Subparagraph r - the University believes this allegation should not be considered and, in any event, does not involve a violation.

The enforcement staff alleged that similar conduct at Weber State did not constitute violations of NCAA bylaws. In that case, academic help that comprised more than 50% of the content on a particular assignment – less help than Boxill provided here – triggered only allegations of Level III violations.

The same principles should apply here and the conduct here should be treated, at most, as a Level III violation.

## 2. The New Rules Concerning Academic Assistance

The new NCAA rules adopted as NCAA Proposal 2015-66, currently in effect, substantially changed the rules that pertain to unauthorized academic assistance. Under these new rules, the enforcement staff likely would not pursue a violation in the circumstances presented here. The University understands that the new legislation does not govern whether Boxill provided extra benefits. It believes, however, that how the membership currently regulates the type of conduct that Boxill engaged in is relevant to whether that conduct undermines or threatens the integrity of the NCAA Collegiate Model and, therefore, should be treated as a Level I violation.

Recent statements by the enforcement staff confirm this conclusion. On October 13, 2015, the NCAA circulated Draft Questions and Answers and a Memorandum from the Vice President of Enforcement concerning NCAA Division I Proposal 2015-66. The Memorandum provides, in part:

Some fear that the enforcement staff will overreach and allege violations when schools provide ordinary assistance to college athletes who need academic support. The enforcement staff is sensitive to this concern and has no interest in discouraging appropriate and generous academic support for college athletes.

To be very clear, the enforcement staff will not pursue allegations where appropriate personnel provide...edits to a research paper. These and other similar supports advance the collegiate model and the educational interests of college athletes. The enforcement staff will not bring allegations in these instances.

In contrast, writing a paper for a college athlete or sharing exam answers are not acceptable supports and are not permitted by Bylaw 16.3. These are substantial benefits not generally available to students and do not serve the interests of the college athlete. They are also unfair to eligible competitors who work hard to comply with applicable educational requirements. Accordingly, after working with the school and considering all relevant facts, the enforcement staff would consider bringing an allegation in this context. The enforcement staff would also look carefully at the individuals involved and the impact of the misconduct when weighing whether the violation might be Level I, II or III.

(See **Exhibit 1-14.**) This same memorandum was published in a May 13, 2016 NCAA Educational Column.

The chair of the NCAA enforcement staff's academic integrity group also has addressed the scope of conduct covered by the new impermissible academic assistance legislation. She explained that only cases involving "substantial" assistance would be pursued as "impermissible academic assistance" under the proposed legislation, rather than as "extra benefits." When asked what "substantial" means, the chair of the enforcement staff's academic integrity group replied:

That's sort of the million-dollar question. We're not looking for the close call. We're not looking for a paragraph added. We're not looking for heavy editing. We're looking for an entire paper has been done for someone. We're looking where someone got the answer key to an entire exam. We're looking at things that make a big difference for that class.

[See **Exhibit 1-15** (emphasis added).]

The University does not condone the conduct described in the 15 subparagraphs it acknowledges as violations, and it understands that new bylaws established by NCAA Proposal 2015-66 do not govern Boxill's conduct in 2003-2010. But the fact that her conduct would not even constitute a violation today belies the staff's position that Boxill's conduct "seriously undermine[s] or threaten[s] the integrity of the NCAA Collegiate Model" and, therefore, constitutes a Level I violation under Bylaw 19.1.1. Allegation 1 comprises, at most, Level III violations under the legislation in place at the time of Boxill's activity.

2. [NCAA Division I Manual Bylaws 10.1, 10.1-(a) and 19.2.3 (2014-15)]

It is alleged that in 2014 and 2015, Deborah Crowder (Crowder), former student services manager in the African and Afro-American Studies department, violated the NCAA principles of ethical conduct when she failed to furnish information relevant to an investigation of possible violations of NCAA legislation when requested to do so by the NCAA enforcement staff and the institution. Specifically, Crowder refused to participate in an interview with both the institution and the enforcement staff despite at least three requests for her participation.

**Level of Allegation No. 2:**

The enforcement staff believes a hearing panel of the NCAA Division I Committee on Infractions could determine that Allegation No. 2 is a severe breach of conduct (Level I) because the violation involves individual unethical conduct and a failure to cooperate in an NCAA enforcement investigation. Participation in an NCAA enforcement investigation is critical to the common interests of the NCAA's membership. [NCAA Bylaws 19.1.1 and 19.1.1-(c) (2015-16)]

**A. UNIVERSITY'S CONCLUSION**

The University agrees that the information contained in this allegation is substantially correct. Deborah Crowder, former Student Services Manager in the University's AFRI-AFAM Department, declined to interview with the NCAA enforcement staff and institution's counsel on several occasions and thereby failed to furnish information relevant to an investigation of possible violations of NCAA legislation.

**B. REVIEW OF THE EVIDENCE**

Crowder retired from the University in September 2009, and she has not been under the University's control or direction since that time. However, the University encouraged Crowder (directly and through counsel) to consent to interviews in prior investigations of her former department, as well as the NCAA investigation. These efforts include a late summer 2011 visit to her home by an NCAA enforcement representative and the then University General Counsel to request an interview. In August 2013, Chancellor Carol Folt invited Crowder to meet with her or a representative of her office. Through her attorney at that time, Crowder declined that request. (See Exhibit 2-1.)

Crowder refused to cooperate in any review of the Department's affairs until February 2014. The University, in conjunction with the local District Attorney (who oversaw the criminal investigation of matters relating to the Department), arranged through Crowder's legal counsel her participation in the Cadwalader investigation of anomalous courses. As explained in Section II.E. above, information

attributed to Crowder through her participation in the Cadwalader investigation is not evidence in this enforcement action.

Crowder was not an institutional staff member at the time of the NCAA enforcement staff's 2014 or 2015 requests for an interview with her. (See FI-49-FI-51). Specifically, the staff communicated with Crowder's attorney via phone and email on or about July 17, 2014, to request an interview. On July 22, 2014, Crowder's attorney indicated that Crowder had "no desire to be subjected to any further interviews." On April 20, 2015, the enforcement staff sent a letter directly to Crowder, wherein the staff again requested an interview and advised Crowder of the staff's next steps should she decline to submit to an interview. Crowder did not respond.

The University does not have any additional information pertinent to Crowder's failure to cooperate.

**C. LEVEL OF THE VIOLATION**

The University acknowledges that former institutional staff members have an "affirmative obligation" to cooperate and assist the University and enforcement staff in "furthering the objectives of the Association and its infractions program" (Bylaw 19.2.3) and, further, that a "failure to cooperate in an NCAA enforcement investigation" is specifically identified in Bylaw 19.1.1-(c) as a Level I, Severe Breach of Conduct. Understanding this legislation, the University takes no position on the level of this allegation, inasmuch as Crowder is no longer an institutional staff member, and the effect of her conduct (refusing to interview) is indeterminable. The University is confident that the hearing panel, in determining whether such conduct constitutes a Level I, Severe Breach of Conduct, violation, will appropriately weigh Crowder's refusal to participate in the context of her position as a former institutional staff member.

3. [NCAA Division I Manual Bylaws 10.1, 10.1-(a) and 19.2.3 (2014-15)]

It is alleged that in 2014 and 2015, Dr. Julius Nyang'oro (Nyang'oro), former professor and chair of the African and Afro-American Studies department, violated the NCAA principles of ethical conduct when he failed to furnish information relevant to an investigation of possible violations of NCAA legislation when requested to do so by the NCAA enforcement staff and the institution. Specifically, Nyang'oro refused to participate in an interview with both the institution and the enforcement staff despite at least five requests for his participation.

**Level of Allegation No. 3:**

The enforcement staff believes a hearing panel of the NCAA Division I Committee on Infractions could determine that Allegation No. 3 is a severe breach of conduct (Level I) because the violation involves individual unethical conduct and a failure to cooperate in an NCAA enforcement investigation. Participation in an NCAA enforcement investigation is critical to the common interests of the NCAA's membership. [NCAA Bylaws 19.1.1 and 19.1.1-(c) (2015-16)]

**A. UNIVERSITY'S CONCLUSION**

The University agrees that the information contained in this allegation is substantially correct. Specifically, the institution acknowledges that former professor and chair of the AFRI-AFAM Department Dr. Julius Nyang'oro declined to interview with the NCAA enforcement staff and institution and, thereby, failed to furnish information relevant to an investigation of possible violations of NCAA legislation.

**B. REVIEW OF THE EVIDENCE**

Nyang'oro resigned his position as Chair of the Department on August 30, 2011, and retired from the University in the summer of 2012. He has not been under the University's control or direction since that time. However, the University encouraged Nyang'oro (directly and through counsel) to cooperate and consent to interviews in prior investigations of his former department, as well as the current NCAA investigation. Though he participated in a wide-ranging interview in 2011, while still a University employee, Nyang'oro refused to cooperate in any review of this information after his departure until spring 2014 when the University, in conjunction with the local District Attorney (who oversaw the criminal investigation of matters relating to the Department), arranged through Nyang'oro's legal counsel his participation in the Cadwalader investigation of anomalous courses. As explained in Section II.E. above, information attributed to Nyang'oro through his participation in the Cadwalader investigation is not evidence in this enforcement action.

The factual information cited in this case supports this allegation and is clear that Nyang'oro was not an institutional staff member during the NCAA and institution's documented attempts to arrange an interview with him during the current investigation. (See FI-52-FI-55). Specifically, the staff communicated with Nyang'oro's attorney via email on July 23, 2014, to request an interview. The staff reached out to Nyang'oro's attorney again via email on July 25, 2014, to follow up on the request to interview Nyang'oro. Later that day, the attorney responded to the staff's email, indicating that Nyang'oro would "not be available for further interviews." Thereafter, between August 2014 and January 2015, outside counsel for the University attempted to contact Nyang'oro's attorney on six occasions and, on each occasion, either left a message with a staff member at his firm or on his voicemail. Nyang'oro's attorney never responded. On April 6, 2015, the enforcement staff sent a letter to Nyang'oro (via his attorney), wherein the staff again requested an interview and advised Nyang'oro of the staff's next steps should he decline to submit to an interview. Neither Nyang'oro nor his attorney responded to the staff's April 6, 2015 letter.

The University does not have any additional information pertinent to Nyang'oro's failure to cooperate.

**C. LEVEL OF THE VIOLATION**

The University acknowledges that former institutional staff members have an "affirmative obligation" to cooperate and assist the University and the enforcement staff in "furthering the objectives of the Association and its infractions program" (Bylaw 19.2.3) and, further, that a "failure to cooperate in an NCAA enforcement investigation" is specifically identified in Bylaw 19.1.1-(c) as a Level I, Severe Breach of Conduct. Understanding this legislation, the University takes no position on the level of this allegation inasmuch as Nyang'oro is no longer an institutional staff member, and the effect of his conduct (refusing to interview) is indeterminable. The University is confident that the hearing panel, in determining whether such conduct constitutes a Level I, Severe Breach of Conduct, violation, will appropriately weigh Nyang'oro's refusal to participate in the context of his position as a former institutional staff member.

4. NCAA Division I Manual Constitution 2.8.1 [2005-06 through 2010-11]

It is alleged that from the 2005 fall semester and continuing through the 2011 summer semester, the institution violated the NCAA Principle of Rules Compliance when individuals in the athletics and academic administrations on campus, particularly in the college of arts and sciences, did not sufficiently monitor the Academic Support Program for Student-Athletes (ASPSA) and the African and Afro-American Studies (AFRI/AFAM) department. Certain AFRI/AFAM courses were anomalous because they were designed as lecture courses but taught as independent study courses. The nature of these anomalous courses went undetected or was known and not addressed due to the institution's failure to sufficiently monitor the department's operations and students', including student-athletes', enrollment in such courses. The department did not adequately document independent study course offerings, and the college of arts and sciences failed to effectively address the use of these courses by students, including student-athletes.

It is also alleged that from the beginning of the 2005 fall semester and continuing through the 2011 summer semester, the institution failed to monitor the activities of Jan Boxill (Boxill), then philosophy instructor, director of the Parr Center for Ethics, women's basketball athletics academic counselor in ASPSA and chair of the faculty. Although employed by ASPSA, Boxill conducted her athletics academic advising responsibilities largely within the philosophy department. Despite concerns by some at the institution that Boxill's relationship with the women's basketball student-athletes may have been too close, the institution did not monitor Boxill or determine whether her conduct violated institutional rules or NCAA bylaws. As a result, Boxill provided extra benefits in the form of impermissible academic assistance to women's basketball student-athletes over multiple years.

**Level of Allegation No. 4:**

The NCAA enforcement staff believes a hearing panel of the NCAA Division I Committee on Infractions could determine that Allegation No. 4 is a severe breach of conduct (Level I) because the violation seriously undermines or threatens the integrity of the NCAA Collegiate Model. [NCAA Bylaws 19.1.1 and 19.1.1-(c) (2015-16)]

**A. UNIVERSITY'S CONCLUSIONS**

This Allegation asserts that the University failed to monitor three aspects of its activities allegedly governed by NCAA rules. First, the University allegedly failed to monitor the activities of the AFRI-AFAM Department, allowing the creation and persistence of anomalous courses. Second, the University allegedly failed to monitor ASPSA, permitting ASPSA to enroll student-athletes with non-athlete students in anomalous courses. Third, the University allegedly failed to monitor the activities of Boxill, allowing her to provide the impermissible extra benefits identified in Allegation 1.

As an initial matter, as explained in Section II above, each of these allegations is barred for reasons of finality (Bylaw 19.8.3), fairness and equity (Constitution 2.8.2 and Bylaw 19.01.1), and the statute of limitations (19.5.11). The NCAA has no authority over the operations of an academic department or the courses it offers to an institution's student body. See Section II.A. The NCAA investigated the anomalous courses and other irregularities that are the subject of the first two aspects of Allegation 4 in 2011. It alleged the provision of improper academic assistance by an ASPSA employee in 2011 and in August 2011, learned of Boxill's connection to anomalous courses, including the [FI-1] email. The enforcement staff had an opportunity to investigate these matters. It concluded and informed the University that these matters did not constitute violations of NCAA bylaws. See Section II.C.

Because of the seriousness of the underlying conduct, and because the University understands its obligations to address potential NCAA rules violations and to participate fully in the process, the University nonetheless addresses the underlying merits of this allegation in detail.

The first aspect of this allegation cannot be an NCAA rules violation. The NCAA has no authority over the operations of an academic department, much less the quality of the courses it offers to students in general. The University recognizes that the NCAA's regulatory authority encompasses academic support units such as ASPSA in many circumstances, but that authority cannot extend to the second aspect of Allegation 4: failure to monitor related to student-athlete enrollment in courses that are available to the University's student body, and that are not themselves the subject of an allegation.

Despite its significant procedural concerns about the third aspect of this allegation, the University admits responsibility for its substance. The University failed to adequately monitor Boxill, an ASPSA academic counselor whose service as a faculty member and in other roles on campus raised important compliance issues. This failure contributed to her providing extra benefits in the 15 instances the University acknowledges in its response to Allegation 1.

## **B. REVIEW OF THE EVIDENCE**

### **1. Alleged Failure to Monitor the AFRI-AFAM Department**

As discussed above, the University has recognized its failings related to its lack of proper oversight over the Department, which led to the anomalous courses being created and offered to thousands of students over many years. The University has made extensive efforts to correct and overcome them,

but those failings, as serious and regrettable as they are, do not present NCAA rules violations that are punishable under NCAA Constitution 2.8.1. Rather, the issues pertaining to the Department are properly under the jurisdiction of the University, subject to review by its accrediting agency, SACSCOC.<sup>14</sup>

The University made lengthy submissions to SACSCOC, and the first of two separate Special SACSCOC Committees visited the University in April 2013. (See **Exhibit IN-2.**) After two years of review, SACSCOC informed the University in July 2014 that no further reports related to this matter were necessary. In October 2014, a day before its public release, the University delivered the Cadwalader Report to SACSCOC, prompting an additional round of SACSCOC review focused initially on compliance with 18 accreditation standards. In January 2015, the University submitted a 200-page report to SACSCOC demonstrating its compliance with the standards in question and reviewing the reforms and initiatives undertaken since its discovery of the anomalous courses. In June 2015, the SACSCOC Board imposed a one-year period of probation to allow the institution to demonstrate the effectiveness of specific new reforms and initiatives the University had implemented since 2014. In March 2016, the University delivered to SACSCOC an additional extensive report related to specific issues identified by SACSCOC in March 2016 in preparation for the second visit by a Special Committee in April 2016. Following its review of the University's monitoring report and the report of the visiting team, in June 2016, the SACSCOC Board of Trustees removed the University from probation and determined that the University would maintain its accreditation.<sup>15</sup>

The alleged failure to monitor the Department relates to the function and operation of an academic unit of the University that offered courses to the entire student body – not just student-athletes. The irregularities in that academic department present core academic issues for the University and its accreditor to assess, which they did. When the University discovered the academic irregularities in the Department, the University addressed them by making core institutional academic judgments, which are

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<sup>14</sup> An understanding of SACSCOC and its role in oversight of the University's accreditation in general and with regard to the Department in particular underscores why it is the appropriate body, rather than the NCAA, to work with the University to address all issues related to the Department. SACSCOC is the regional body for the accreditation of degree-granting higher education institutions in the southern states. It serves as the common denominator of shared values and practices among the diverse institutions in that region of the country which award associate, baccalaureate, master's, or doctoral degrees. The mission of SACSCOC is "to assure the educational quality and improve the effectiveness of its member institutions." The core values of the Association are: Integrity, Continuous Quality Improvement, Peer Review/Self-Regulation, Accountability, Student Learning and Transparency.

<sup>15</sup> The University's submissions to SACSCOC are available at [carolinacommittment@unc.edu](mailto:carolinacommittment@unc.edu).

detailed in Section I. Those judgments were reviewed by SACSCOC. The NCAA has neither the authority nor the expertise to make these judgments.

The enforcement staff on multiple occasions has agreed that the Department's conduct pertaining to the anomalous courses affected all students and thus does not present an issue regulated by member institutions through the adopted bylaws: (a) when the issue first arose in the summer of 2011 and the Department irregularities were not alleged to be a violation via an amended notice of allegation or otherwise raised prior to the October 28, 2011 COI hearing; (b) after the University supplied the enforcement staff with the various reports and other materials relating to the Department and the anomalous courses in 2012 and early 2013, and both the enforcement staff and AMA determined that no NCAA bylaw was violated; (c) prior to advising the University on September 26, 2013 that the investigation was closed and the NCAA did not intend to pursue the matter further; and (d) throughout the current investigation, including by not alleging in either the NOA or the ANOA that the anomalous courses constituted a violation of any NCAA bylaw. Since the anomalous courses do not present NCAA issues, the University's failure to monitor the Department that resulted in the continuation of these courses until August 2011 likewise does not present issues regulated by NCAA bylaws.

## 2. Alleged Failure to Monitor ASPSA

The enforcement staff alleges that the University's failure to monitor ASPSA resulted in that unit's enrolling student-athletes in the anomalous courses.

The ANOA does not allege that the academic counselors in ASPSA violated any rules through their recommendation of anomalous courses to student-athletes. Inasmuch as the anomalous courses were offered to the student body in general and therefore did not violate any NCAA rules, there can be no restriction on ASPSA assisting student-athletes in enrolling in the courses. Otherwise, member institutions could be at risk for a failure to monitor for conduct that applies to all students and is not tied to student-athletes' status as athletes. Accordingly, this part of the allegation also presents an issue outside the authority granted to the NCAA by its membership.

The issues relating to ASPSA, like those that concern the Department, have been taken extremely seriously and numerous steps, reviewed by SACSCOC, have been taken by the University to address them and limit the possibility of a recurrence. The University and SACSCOC provide the appropriate

forum and context for addressing these academic issues, not the NCAA. As is discussed in Section I above and in the University's response to the supplemental requests, the University has taken a number of steps to reform and strengthen ASPSA.

### 3. Failure to Monitor Boxill

The allegations related to Boxill's conduct present issues different from those raised by the anomalous courses and other irregularities in the academic Department. Of the 18 subparagraphs of Allegation 1, seven (Subparagraphs a, b, f, j, k, p, and q) relate to courses other than those offered by the Department. Eight others (Subparagraphs d, e, g, h, l, m, o, and r) relate to courses offered by the Department that were not anomalous. Only three (Subparagraphs c, i, and n) arise from work related to anomalous courses – and Boxill's alleged assistance on those papers is unrelated to whether the courses should have been offered or their anomalous nature. Thus, the University's alleged failure to monitor Boxill's conduct presents issues separate and distinct from any alleged failure to monitor and detect the anomalous courses and the enrollment of students in them.

The University acknowledges that Boxill engaged in the conduct alleged in Allegation 1, subparagraphs a, b, d-o, and q and that it should have done more to monitor Boxill's activities as an ASPSA academic counselor. Boxill was an unconventional member of the ASPSA staff.

[See FI-41, pages 45-46; FI-43, page 19; FI-47, page 43; FI-83, pages 39-40.]

[See FI-40, page 31; FI-47, pages 42-43; FI-43, page 19; FI-83, pages 39-40.]

(See FI-36, pages 15-18; FI-41, pages 41-46, 48; and FI-42, pages 34, 45-48.) The University's insufficient monitoring of Boxill's conduct as an ASPSA academic counselor contributed to the acknowledged violations referenced in Allegation 1, Subparagraphs a, b, d-e, and g-q.<sup>16</sup>

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<sup>16</sup> The violation alleged in Subparagraph f of Allegation 1 relates to Boxill's conduct as an instructor – not her role as an ASPSA academic counselor, and, therefore, is not within the scope of Allegation 4.

**C. LEVEL OF ALLEGATION 4**

As explained above, the NCAA constitution and bylaws do not support the alleged failure to monitor violation with respect to the portions of Allegation 4 that deal with the Department and ASPSA.

If the hearing panel rejects the University's arguments in Section II and finds a failure to monitor Boxill's activities as an ASPSA academic counselor, the severity of such a violation would not rise above Level II. Under Bylaw 19.1.2-(b), failure to monitor violations are "presumed Level II" violations absent proof that the failure was "substantial or egregious." The ANOA does not contain evidence of that kind.

Here, any failure to monitor involved only one employee. That employee was a respected, full-time faculty member and director of the ethics center at the University. Boxill was an expert in the field of sports ethics, the author of multiple books, articles, and presentations on the subject. As a University professor, she was exactly the kind of person universities routinely trust to educate their students.

In addition, Boxill provided relatively modest assistance in each instance identified in Allegation 1. The degree of academic help went beyond the University's expectations for an academic counselor, and many of those instances violated NCAA rules at the time they occurred. But the NCAA declined to pursue similar levels of assistance as violations in the 2014 Weber State matter, and it treated somewhat greater levels of assistance as Level III extra benefit violations. (See Exhibit JUR-7, page 3 and fn. 7.) The enforcement staff has provided no evidence to justify treating Boxill's academic help more severely.

Further, the NCAA has explained that under its rules effective on the date of this Response, Boxill's allegedly impermissible assistance would not warrant a violation at all. As explained in the University's response to Allegation 1, an NCAA Educational Column, an NCAA Question and Answer document that describes the recent legislative changes, and statements made by the enforcement staff show that Boxill's conduct would not be a violation under these NCAA rules adopted as NCAA Proposal 2015-66. Under these circumstances, any failure to monitor the person who provided such assistance cannot reasonably be "substantial or egregious" or otherwise justify a Level I violation.

Finally, the enforcement staff has cited two bylaws in Allegation 4 that merit attention. First, the staff invokes Bylaw 19.1.1 to support its position that the alleged violation should be treated as a Level I

violation. Because Bylaw 19.1.2-(b) specifically addresses failure to monitor violations, it – not Bylaw 19.1.1 – governs the appropriate level of any violation here. In any event, for the reasons stated above, any failure to monitor Boxill’s activities does not seriously undermine or threaten the integrity of the NCAA Collegiate Model as is required by Bylaw 19.1.1.

The enforcement staff also cites Bylaw 19.1.1-(c) to support Allegation 4. This citation appears to be an error. This bylaw applies when there has been a failure to cooperate with the investigation. The University has provided exemplary cooperation throughout the investigation. The failure of Crowder and Nyang’oro to cooperate after they left the University’s employment and retained counsel cannot be attributed to the University and it has no bearing on the appropriate level of this allegation. Indeed, in 2011 when he was still employed by the University, Nyang’oro was made available by the University for an extensive joint interview with the NCAA enforcement staff.

5. [NCAA Division I Manual Constitution 2.1.1, 2.8.1 and 6.01.1 (2005-06 through 2010-11)]

It is alleged that the scope and nature of the allegations set forth in Allegation Nos. 1 and 4 demonstrate that the institution violated the NCAA Principle of Institutional Control and Responsibility when individuals in the athletics and academic administrations on campus, particularly in the college of arts and sciences, did not identify or investigate anomalous courses offered by the African and Afro-American Studies (AFRI/AFAM) department and students', including student-athletes', enrollment in such courses.

Specifically, the AFRI/AFAM department created anomalous courses that were available to the general student body and went unchecked for at least six years. As a result of the institution's obligation and ability to provide academic support services to student-athletes, and as a result of the relationships between the Academic Support Program for Student-Athletes (ASPSA) and the AFRI/AFAM department, student-athletes had increased exposure to the anomalous course offerings. When individuals brought concerns to the attention of then leaders both on campus and within athletics, those leaders had multiple opportunities to investigate the AFRI/AFAM course anomalies and student-athletes' exposure to those courses. However, the institution failed to exert control when it did not recognize and sufficiently investigate these practices. Both campus and the athletics department administrators' reactions and responses to those opportunities were inadequate and ineffective, creating the conditions and opportunities that made possible the violations described in Allegation Nos. 1 and 4. As a result of the failure of leadership and the lack of corrective action, problems within the AFRI/AFAM department and athletics were allowed to continue for multiple years.

Further, the institutional leadership did not provide adequate guidance and supervision to those employed within ASPSA. Because of this failure in leadership and oversight, those charged with providing academic support for student-athletes did not believe their actions or the actions of the AFRI/AFAM department were inappropriate. The institution's failure to take necessary steps to provide adequate oversight of the anomalous AFRI/AFAM courses resulted in an investigation, analysis and ultimately disciplinary action taken against the institution by the Southern Association of Colleges and Schools Commission on Colleges, its accrediting agency.

**Level of Allegation No. 5:**

The NCAA enforcement staff believes that a hearing panel of the NCAA Division I Committee on Infractions could determine that Allegation No. 5 is a severe breach of conduct (Level I) because the violations seriously undermine or threaten the integrity of the NCAA Collegiate Model and lack of control violations are presumed Level I. [NCAA Bylaws 19.9.1 and 19.1.1-(a) (2015-16)]

**A. UNIVERSITY'S CONCLUSIONS**

The enforcement staff alleges that athletic and academic administrators failed to identify or investigate the anomalous courses, including when leaders learned of concerns about the courses, and that this failure constitutes a lack of institutional control under NCAA rules. The allegation further asserts that

institutional leadership did not adequately guide and supervise ASPSA employees, causing them to be unaware that their actions, and those of the Department, concerning the anomalous courses were inappropriate. Finally, the allegation asserts that the University failed to exert control when it did not recognize and sufficiently investigate the Department's practice of offering anomalous courses to all students, and that such inaction led to the violations in Allegations 1 and 4.

As explained in Section I, UNC–Chapel Hill accepts full responsibility for its serious past academic problems, and it has addressed them directly without regard to cost or reputational harm. The University took measured action to hold individuals accountable, and it underwent a series of exhaustive reviews at its own initiative. Its responses to the academic irregularities have been expansive, and its accreditor has closely monitored their successful implementation.

The academic irregularities – grave as they were – do not, however, constitute a lack of institutional control under the NCAA constitution and bylaws. The University acknowledges that information was available that should have prompted questions about the anomalous courses and that it should have identified and investigated them sooner. As explained in Section II and in response to Allegation 4, however, the anomalous courses did not violate NCAA rules. Neither the courses nor student-athlete enrollment in them are the subject of an allegation in the ANOA. The NCAA has recognized that the anomalous courses raised core academic issues beyond the scope of the NCAA constitution and bylaws. Absent any underlying violation of NCAA rules, the University disagrees that a failure to identify or investigate these courses somehow violates NCAA rules.

The same analysis applies to the University's guidance and supervision of ASPSA employees related to their failure to assess the appropriateness of the anomalous courses. The evaluation of course offerings is appropriately performed by the institution's faculty and academic leaders – not ASPSA. The NCAA constitution and bylaws do not extend to such core academic judgments.

The University believes that to the extent this allegation claims the University's failure to identify and investigate anomalous courses enabled Boxill's activities, it overreaches. Only three of the 18 instances identified as impermissible in Allegation 1 involved an anomalous course. Boxill's role in two of those cases (Subparagraphs i and n), was unrelated to the anomalies of the particular course; she simply

provided unauthorized assistance similar to help she provided for conventional courses identified in Allegation 1. The remaining instance (Subparagraph c) did not constitute a violation at all.

Boxill provided impermissible academic assistance on assignments from different departments in a variety of courses. The amount of academic assistance she provided exceeded what the University considers is acceptable. But on close inspection, her activities did not arise from the University's alleged failure to identify and investigate the anomalous courses. Boxill's conduct related to the anomalous courses cannot justify a lack of institutional control under the NCAA constitution and bylaws.

**B. REVIEW OF THE EVIDENCE**

The University acknowledges evidence that shows it did not identify or investigate the anomalous courses soon enough and did not respond in a timely fashion to concerns raised about them. If the University had investigated or responded sooner than it did, the anomalous courses likely would have ended earlier.

But these facts do not transform an academic matter and failing into an athletic matter that should be regulated by the NCAA. The evidence shows that the anomalous courses were available to the general student body. It further shows that the availability of these courses and student enrollment in them, no matter how objectionable, was not an NCAA extra benefit and consequently not an NCAA rule violation. As explained in Section II, the University's academic irregularities are an institutional matter beyond the scope of the NCAA's constitution and bylaws.

The NCAA has neither the jurisdiction nor the expertise to regulate academic matters that affect a university at large. The irregularities in the Department were just such non-athletic, institutional matters. To the extent that the anomalous courses touched upon athletics at all, it is only because student-athletes were among the students affected. Because any and all academic issues at a university are likely to affect student-athletes and non-athlete students alike, the involvement of student-athletes does not give the NCAA the authority to intrude into matters of purely academic concern.

For these reasons, the University believes that any administrative failure with respect to the AFRI-AFAM Department is not a violation of NCAA rules. The Department is an academic unit of the larger University and the appropriate review of such an academic unit is properly under the jurisdiction of the

University and its academic accrediting agency, SACSCOC, and not for scrutiny by way of the NCAA infractions process. As discussed above, the University has addressed these serious academic shortcomings with SACSCOC.

The University acknowledges that many functions of academic support units like ASPSA are subject to NCAA oversight. ASPSA's alleged failures related to anomalous courses, however, are not among them. The enforcement staff alleges that the University failed to provide adequate guidance and supervision to ASPSA employees, and this failure led to a belief by those providing academic support for student-athletes that the AFRI-AFAM Department's actions were appropriate. But if an academic department's operations and course offerings are not matters regulated by the NCAA's constitution and bylaws – and they are not – then neither are the training and supervision of University employees with respect to those issues. Whether courses were sufficiently rigorous, whether classroom attendance was or should have been required, whether independent study courses are appropriate parts of a university curriculum—all these are core issues of academic judgment to be made by the University's faculty and administrative leadership.

The NCAA, much less employees in academic support units such as ASPSA, cannot be expected to second-guess the academic judgments of University academic departments and faculty, regardless of their training and supervision. When a University academic department offers a particular course, tutors, academic counselors, and academic advisors properly may assume that the course is appropriate and suitable for students, whether athletes or otherwise, with whom they work. Where, as here, a course proves to be anomalous, that academic irregularity does not reflect a failure to control the institution's training of or supervision over tutors, academic counselors, and academic advisors.

As explained above, these issues relating to the Department are issues appropriately addressed through review and evaluation by the University itself and ultimately by SACSCOC as the accrediting agency that has the authority and jurisdiction over, knowledge about, and expertise in such matters, rather than by the NCAA. For the above reasons and because there are no underlying NCAA rule violations regarding ASPSA's involvement in student-athletes' enrollment in the anomalous courses that were generally available to all the University's students, there should be no finding of lack of institutional control.

The hearing panel should consider the fact that, in the five years since the University discovered and reported the irregularities in the Department, the University has put into place more than 70 reforms and initiatives related to its academic processes and procedures, the ASPSA, academic advising, and athletics. See the discussion of reforms and initiatives in Section I.A.3. The University's efforts in this regard and their effectiveness have been reviewed by SACSCOC. Accordingly, when the hearing panel considers the issue of institutional control, it should be mindful of the difficult academic journey that the University has been on during the last five years. The journey has included unprecedented review of academics and athletics requiring an extensive commitment of personnel and resources, prolonged public scrutiny and continued speculation regarding its academics and athletics programs, and the highly unusual and damaging step of being placed on probation by its accrediting agency.

The resulting introspection has been a painful, yet ultimately healthy, endeavor. The irregularities and failures that have been revealed through this process are of great concern to the University, and it believes that it has addressed the deficiencies by holding appropriate personnel accountable and by undertaking its reforms and initiatives.

**C. LEVEL OF THE VIOLATION**

Because the alleged violation did not occur, the University does not address the appropriate Level of the alleged violation.

#### **IV. CONCLUSION**

This Response reflects the University's strong commitment to honor its obligations as an NCAA member institution, and it follows years of close cooperation and productive discussion with the enforcement staff. The University has confidence that the hearing panel will consider this information carefully and looks forward to the opportunity to discuss these issues with the hearing panel.

In the interim, this case's jurisdictional and procedural issues make it difficult for the University to assign appropriate penalties for the alleged violations. If the hearing panel determines that penalties are to be imposed, the University believes that they must be tied directly to a particular violation of NCAA bylaws and, in all instances, must be applied in a fair and consistent manner. It would be an unprecedented application of NCAA rules to impose a penalty on institutional employees, student-athletes, or sport programs that are not the subject of, or even referenced in, an allegation in the ANOA.

The University acknowledges its ultimate responsibility for the past events on its campus, and it has made enormous investments to address them. A summary of the University's corrective measures appears in its Response to Supplemental question 3, and comprehensive information about its more than 70 reforms and initiatives may be found at <http://carolinacommittment.unc.edu>. It has emerged from this ordeal as a stronger institution.

## SUPPLEMENTAL INFORMATION

1. Provide mailing and email addresses for all necessary parties to receive communications from the hearing panel of the NCAA Division I Committee on Infractions related to this matter.

Please direct all communications from the hearing panel to the University's outside counsel for this matter:

**Rick Evrard**

[revrard@bsk.com](mailto:revrard@bsk.com)

**Bond, Schoeneck & King, PLLC**  
7500 College Boulevard, Suite 910  
Overland Park, Kansas 66210

2. Indicate how the violations were discovered.

See the Introduction and responses to Allegations 1, 4 and 5 of the University's Response.

3. Provide a detailed description of any corrective or punitive actions implemented by the institution as a result of the violations acknowledged in this inquiry. In that regard, explain the reasons the institution believes these actions to be appropriate and identify the violations on which the actions were based. Additionally, indicate the date that any corrective or punitive actions were implemented.

The University's January 15, 2015, annual report to the Committee on Infractions contains a detailed examination of the University's current compliance practices and the series of corrective actions that are pertinent to both the University's 2012 infractions matter and the current infractions case.<sup>17</sup> The report includes a summary of the University's implementation of significant changes and/or enhancements to: Academic Support Program for Student-Athletes (ASPSA) policies and procedures; the hiring, training and supervision of ASPSA tutors; tutor, student-athlete and staff rules education; and other programs put in place by the University to ensure academic integrity. Further, the report details significant restructuring and growth in the Athletics Compliance Office and the ongoing efforts of compliance staff to educate and monitor all aspects of NCAA compliance.

Specific examples of the University's corrective actions and its efforts to monitor, educate and enhance the ASPSA program include:

- The appointment of a new Director of ASPSA (Michelle Brown) and the removal of individuals who formerly oversaw the program. The new director has appropriate credentials and background related to higher education and advising.
- In conjunction with the appointment of the new director, ASPSA began reporting directly to University Provost Jim Dean, UNC's chief academic officer, instead of the College of Arts and Sciences.
- Centralizing all ASPSA operations and counselors to a single facility.

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<sup>17</sup> The University was previously advised by the Office of the Committee on Infractions (OCOI) to hold the January 15, 2015 report – the last report required under the probationary penalty in the prior case – due to the present matter. Inasmuch as the report contains a comprehensive evaluation of the information central to this Supplemental Information request, the report is provided as **Exhibit D-1** and is being submitted to the OCOI with the University's Response to the ANOA. Due to the substantial nature of the materials cited as "Appendices," those records and documents are not provided as part of this exhibit but can be accessed through the Office of the Committee on Infractions.

- Replacing a dotted-line relationship by designating a senior associate athletics director as a liaison with the ASPSA and the Office of Undergraduate Admissions to provide contextual information related to compliance with the clear understanding that academic functions are independent of athletics.
- Eliminating the ASPSA student mentoring program.
- Beginning in 2014, the University began offering reimbursement for ASPSA personnel and counselors to attend national meetings concerning industry standards, best practices, NCAA rules, etc. to encourage education and participation in those opportunities. Participation has increased each academic year since the commitment to funding professional development opportunities was made. See Exhibit D-2.
- The Provost’s Office and Faculty Athletics Representative (FAR) began hosting regular meetings including the Department of Athletics, Registrar and ASPSA to improve communication and coordination. The “CARE” meeting (Compliance, Academics, Registrar for Excellence) facilitates discussion between key parties regarding current national topics, NCAA rule interpretations, educational scenarios, and processes that cross over several divisions. The meeting is chaired by the FAR. Meeting agendas and sample educational materials shared during those meetings are provided as **Exhibit D-3.**
- Launching the Academic Processes for Student-Athletes website ([www.apsa.unc.edu](http://www.apsa.unc.edu)). The website provides detail of the Student-Athlete Academic Initiative Working Group’s review and analysis of 21 comprehensive processes related to student-athletes and academics at the University. One such process, Process 7 – Academic Support for Student-Athletes, includes guiding principles for the role(s) and conduct of ASPSA employees.

4. Provide a detailed description of all disciplinary actions taken against any current or former athletics department staff members as a result of violations acknowledged in this inquiry. In that regard, explain the reasons the institution believes these actions to be appropriate and identify the violations on which the actions were based. Additionally, indicate the date that any disciplinary actions were taken and submit copies of all correspondence from the institution to each individual describing these disciplinary actions.

Inasmuch as there were no NCAA rules violations by a member of the athletics department staff, the University did not take any disciplinary actions against any current or former athletics department staff member related to this matter.

5. Provide a short summary of every past Level I, Level II or major infractions case involving the institution or individuals named in this notice. In this summary, provide the date of the infractions report(s), a description of the violations found by the Committee on Infractions/hearing panel, the individuals involved, and the penalties and corrective actions. Additionally, provide a copy of any major infractions reports involving the institution or individuals named in this notice that were issued by the Committee on Infractions/hearing panel within the last 10 years.

The University has been involved in two prior major infractions cases:

**Date:**

March 12, 2012 (See **Exhibit D-4.**)

**Description:**

Violations of NCAA legislation involving: a former tutor engaging in academic fraud and providing extra benefits to student-athletes; student-athletes receiving preferential treatment benefits based on their athletics reputation and interaction with prospective agents; ineligible participation; failure to monitor; unethical conduct by the former tutor and a former assistant coach; and a failure to report outside income by the former assistant coach.

**Involved Sport (Individuals):**

Football (former tutor, former assistant coach)

**Penalties and Corrective Actions:**

- Public reprimand and censure
- Three years of probation
- One-year postseason ban
- Vacation of all contests and records involving ineligible student-athletes
- Reduction of grants-in-aid by a total of 15 over a three-year period
- Three-year show cause order for the former assistant coach
- \$50,000 financial penalty

**Date:**

January 10, 1961

**Description:**

Improper entertainment and lodging for parents of student-athletes; improper recruiting entertainment.

**Sport/Individuals Involved:**

Men's Basketball

**Penalties and Corrective Actions:**

- One-year probation
- One-year postseason ban

6. Provide a chart depicting the institution's reporting history of Level III and secondary violations for the past five years. In this chart, please indicate for each academic year the number of total Level III and secondary violations reported involving the institution or individuals named in this notice. Also include the applicable bylaws for each violation, and then indicate the number of Level III and secondary violations involving just the sports team(s) named in this notice for the same five-year time period.

See Exhibit D-5.

7. Provide the institution's overall conference affiliation, as well as the total enrollment on campus and the number of men's and women's sports sponsored.

The University of North Carolina, Chapel Hill, is a member of the Atlantic Coast Conference.

The University sponsors thirteen (13) men's programs: baseball, men's basketball, men's cross country, men's fencing, football, men's golf, men's lacrosse, men's soccer, men's swimming and diving, men's tennis, men's indoor track & field, men's outdoor track & field and wrestling.

The University sponsors fifteen (15) women's programs: women's basketball, women's cross country, women's fencing, field hockey, women's golf, gymnastics, women's lacrosse, rowing, women's soccer, softball, women's swimming and diving, women's tennis, women's indoor track & field, women's outdoor track & field, volleyball.

Undergraduate campus full-time enrollment for the spring of 2016 was 16,131 students. Total campus full-time enrollment for the spring of 2016 was 28,279 students.

8. Provide a statement describing the general organization and structure of the institution's intercollegiate athletics department, including the identities of those individuals in the athletics department who were responsible for the supervision of all sport programs during the previous four years.

Organizational charts for the University of North Carolina, Chapel Hill's Department of Athletics for the past four years are provided as **Exhibit D-6**. In addition to the athletics director and those senior administrators listed in the organizational charts who have department-wide responsibilities, a small group of individuals has been directly responsible for the supervision of the University's sports programs. Since 2011, supervision of the institution's sports programs has been divided among seven to eight individuals.<sup>18</sup> Current sports supervisors for the institution's sports programs are:

- Bubba Cunningham, director of athletics (football, men's and women's basketball)
  - Larry Gallo, executive associate athletic director (fencing, field hockey, swimming and diving, baseball and women's soccer)
  - Vince Ille, senior associate athletic director (wrestling and men's tennis)
  - Nicki Moore, senior associate athletic director and senior woman administrator (track and field/cross country, women's golf, men's soccer and volleyball)
  - Clint Gwaltney, senior associate athletic director (women's tennis and men's lacrosse)
  - Paul Pogge, associate athletic director (men's golf)
  - Mike Bunting, associate athletic director (softball)
  - Rick Steinbacher, senior associate athletic director (women's lacrosse)
  - Martina Ballen, senior associate athletic director and CFO (gymnastics)
  - Paul Krause, senior associate athletic director (rowing)
9. State when the institution has conducted systematic reviews of NCAA and institutional regulations for its athletics department employees. Also, identify the agencies, individuals or committees responsible for these reviews and describe their responsibilities and functions.

The compliance office conducts regular, systematic rules education with all University sports programs, student-athletes and staff members. The education is provided through daily compliance information,

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<sup>18</sup> Current director of athletics Bubba Cunningham was hired in October 2011. Prior to that date, the supervisors of the institution's sports programs were: Dick Baddour, director of athletics (football and men's basketball) and Beth Miller, senior associate director of athletics (all other sports).

regular emails and in-person meetings. Calendars of the compliance office's rules-education activities for the 2014-15 and 2015-16 academic years are provided as **Exhibit D-7**.

Additionally, as referenced above in response to Item 3, the University's most recent annual report to the Committee on Infractions contains a detailed examination of the University's current compliance practices, including numerous examples of the materials utilized by compliance staff to review NCAA and institutional regulations and monitor for compliance with those rules. (See Exhibit D-1.)

Outside compliance reviews have been conducted of the University's compliance program by the Atlantic Coast Conference in 2011 and 2016 (in progress).

10. Please provide the following information concerning the sport programs identified in this inquiry:

- The average number of initial and total grants-in-aid that have been awarded during the past four academic years.

Women's Basketball

Average Initial Grants-in-Aid (2012-13 to 2015-16):	<b>3</b>
Average Total Grants-in-Aid (2012-13 to 2015-16):	<b>12.5</b>

- The number of initial and total grants-in-aid in effect for the current academic year (or upcoming academic year if the regular academic year is not in session) and the number anticipated being in effect for the following academic year.

Women's Basketball

Initial Grants-in-Aid (2016-17):	
Total Grants-in-Aid (2016-17):	<b>11</b> ( <b>14</b> anticipated for 2017-18)

- The average number of official paid visits provided by the institution to prospective student-athletes during the past four years.

Women's Basketball

Average Official Paid Visits (2012-13 to 2015-16):	<b>5.5</b>
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- Copies of the institution's squad lists for the past four academic years.

See Exhibit D-8.

- Copies of the institution's media guides, either in hard copy or through electronic links, for the past four academic years.

Women's basketball media guides for the 2012-13 through 2015-16 seasons are available at the following website:

[http://www.goheels.com/ViewArticle.dbml?DB\\_OEM\\_ID=3350&ATCLID=205682698](http://www.goheels.com/ViewArticle.dbml?DB_OEM_ID=3350&ATCLID=205682698)

- A statement indicating whether the provisions of NCAA Bylaws 31.2.2.3 and 31.2.2.4 apply to the institution as a result of the involvement of student-athletes in violations noted in this inquiry.

The women's basketball student-athletes identified in Allegation 1 as recipients of "extra benefits in the form of impermissible academic assistance and special arrangements," participated in team championships with the women's basketball team (in various capacities) during the 2002-03 through \_\_\_\_\_ seasons. The violations adversely affected each student-athlete's eligibility for future competition at the point in time in which the extra benefit was provided, per the terms of Bylaw 16.11.2.1, and thus the student-athletes' participation in team championships during the 2002-03 through \_\_\_\_\_ seasons is subject to the provisions of NCAA Bylaws 31.2.2.3 and 31.2.2.4. A chart summarizing the years of competition and number of contests competed (including championship participation) for each involved student-athlete is provided as **Exhibit D-9**.

- A statement indicating whether the provisions of Bylaw 19.9.7-(g) apply to the institution as a result of the involvement of student-athletes in violations noted in this inquiry.

As noted above, the acknowledged extra benefit violations in Allegation 1 adversely affected the eligibility of the identified women's basketball student-athletes for future competition, per the terms of Bylaw 16.11.2.1. Accordingly, the student-athletes' participation in certain contests during the 2002-03 through \_\_\_\_\_ seasons is subject to the provisions of NCAA Bylaw 19.9.7-(g). See Exhibit D-9.

11. Consistent with Committee on Infractions IOP 4-16-2-1 Total Budget for Sport Program and 4-16-2-2 Submission of Total Budget for Sport Program, please submit the three previous fiscal years' total budgets for all involved sport programs. At a minimum, a sport program's total budget shall include: (1) all contractual compensation including salaries, benefits and bonuses paid by the institution or related entities for coaching, operations, administrative and support staff tied to the sport program; (2) all recruiting expenses; (3) all team travel, entertainment and meals; (4) all expenses associated with equipment, uniforms and supplies; (5) game expenses; and (6) any guarantees paid associated with the sport program.

**WOMEN'S BASKETBALL BUDGET SUMMARY**

<b>Expense Type</b>	<b>2013-2014</b>	<b>2014-2015</b>	<b>2015-2016</b>
Salaries/Benefits	\$1,293,293	\$1,375,100	\$1,498,296
Recruiting	\$143,600	\$143,600	\$153,600
Team Travel	\$430,135	\$637,611	\$506,696
Equipment/Supplies	\$106,350	\$106,350	\$106,350
Game Expenses	\$167,488	\$195,488	\$208,288
Guarantees	\$138,000	\$145,500	\$221,500
Other*	\$113,220	\$113,220	\$135,720
<b>Total Budgeted Expenses</b>	<b>\$2,392,086</b>	<b>\$2,716,869</b>	<b>\$2,830,450</b>

\* The other category consists of communication, repairs, rentals, and printing expenses.

## INDEX TO EXHIBITS CITED IN RESPONSE TO ANOA

### **I. Introduction**

IN-1 – AFRI-AFAM History

IN-2 – Chronology

### **II. Jurisdictional Arguments**

JUR -1 – [Employee] 2011 Interview Transcript

JUR-2 – [Employee] 2011 Interview Transcript

JUR-3 – Julius Nyang'oro 2011 Interview Transcript

JUR- 4 – 8/31/12 UNC Press Release

JUR-5 – 3/5/13 Mallonee Email Thread

JUR-6 – 9/26/13 Zonder Email Thread

JUR-7 – Weber State University 11/19/14 Public Infractions Report

### **III. Allegation 1**

Ex. 1-1 – Email thread between and Boxill

Ex. 1-2 – Metadata for FI-11

Ex. 1-3 – and Emails between Boxill and

Ex. 1-4 – Emails between Boxill and

Ex. 1-5 – Email and attachment between Boxill and

Ex. 1-6 – academic transcript

Ex. 1-7 - Email between Boxill and

Ex. 1-8 – Emails between Boxill and

Ex. 1-9 – Academic Transcript

Ex. 1-10 – Email between Boxill and

Ex. 1-11 – Email and attachment between Boxill and

Ex. 1-12 – Email and attachment between Boxill and

Ex. 1-13 – Email from to

Ex. 1-14 – 10/13/15 NCAA Q & A and Duncan Memo

Ex. 1-15 – Sulentic remarks about NCAA Proposal 2015-66

#### **IV. Allegation 2**

Ex. 2-1 – Crowder’s Attorney’s Communication in August 2013 Declining Chancellor Folt’s Request to Meet

#### **SUPPLEMENTAL INFORMATION**

Exhibit D-1 1/15/15 Annual Report to Committee on Infractions

Exhibit D-2 ASPSA Rules Education

Exhibit D-3 CARE meeting agendas

Exhibit D-4 3/12/12 Public Infractions Report

Exhibit D-5 Chart of Level III/Secondary Violations

Exhibit D-6 Organizational Charts

Exhibit D-7 Rules Compliance Education

Exhibit D-8 Squad Lists

Exhibit D-9 Summary of Participation by Women’s Basketball Student-Athletes Identified in Allegation 1