



## Regulating Contact Between Athletics Staff and Faculty on College Campuses

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*The power dynamics of higher education are such that head coaches possess significantly more power and influence, and receive higher compensation, than faculty members. Head coaches also face substantial pressure to win. In two recent instances at different universities, a head coach approached a faculty member seeking special academic arrangements for a student-athlete to retain eligibility in order for them to compete in athletics. In each case, the NCAA penalized the university and the coaches faced both sanctions and employment consequences.*

*This Article explores the consequences of instances in which athletics department staff members, including coaches, contact faculty members seeking special favors or consideration for student-athletes and how universities can mitigate the likelihood that these improper interactions occur. To do so, Part I analyzes applicable NCAA rules and both their*

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*application and enforcement in recent scenarios involving University of Georgia and Rutgers University head coaches. Part II suggests policies and actions that universities can implement and undertake, respectively, to lessen the likelihood that the inappropriate interactions — and consequences from them — occur. A brief conclusion follows.*

TABLE OF CONTENTS

INTRODUCTION .....	81
I. APPLICATION AND ENFORCEMENT OF NCAA LEGISLATION RELEVANT TO ATHLETICS STAFF AND FACULTY	
INTERACTIONS.....	83
A. <i>NCAA Legislation Relevant to Interactions Between       Athletics Staff Members and Faculty</i> .....	85
B. <i>Application and Enforcement of Relevant NCAA       Legislation</i> .....	86
1. University of Georgia 2014 Incident .....	86
2. Rutgers University 2015 Incident .....	89
3. University of North Carolina at Chapel Hill Paper Courses Scandal That Spanned Decades .....	91
II. REGULATING ATHLETICS STAFF INTERACTIONS WITH FACULTY REGARDING STUDENT-ATHLETES' ACADEMICS .....	92
A. <i>Policy Regulating Athletics Staff Interactions with     Faculty</i> .....	92
B. <i>Educating Athletics Staff and Faculty</i> .....	93
C. <i>Monitoring For Potential Academic Improprieties</i> .....	94
D. <i>Enforcing Policies Regarding Athletics-Faculty     Interaction</i> .....	96
E. <i>Instituting an NCAA Rule Regulating Athletics-Faculty     Interactions</i> .....	97
CONCLUSION.....	98

## INTRODUCTION

College coaches are often among the most prominent and powerful individuals on their universities' campuses.<sup>1</sup> The most successful and renowned head coaches even establish and serve as a "brand" for their universities.<sup>2</sup> Lucrative compensation often accompanies coaches' high profiles.<sup>3</sup> Hundreds of college football and basketball coaches alone earn more than \$1 million in annual compensation, and dozens earn at least \$3 million annually.<sup>4</sup> Their popularity and importance to their campuses, combined with the potential of lavish pay, can lead coaches to develop win-at-any-cost attitudes.<sup>5</sup>

On the same campuses, faculty members' salaries and power likely pale in comparison to prominent coaches and coaches of high-profile sport programs.<sup>6</sup> Given these dynamics, faculty members may feel powerless relative to the coaches on their campuses.<sup>7</sup>

What happens, then, when a coach contacts a faculty member seeking special arrangements or considerations for a student-athlete struggling in the faculty member's class? Regardless of whether the faculty member is a longtime friend of the coach or a young adjunct instructor teaching part-time shortly after earning their Ph.D., the mismatched power dynamic is evident and the coach crosses a line that faculty consider sacred.<sup>8</sup> Given

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<sup>1</sup> Randall S. Thomas & R. Lawrence Van Horn, *College Football Coaches' Pay and Contracts: Are They Overpaid and Unduly Privileged?*, 91 IND. L.J. 189, 199 (2016).

<sup>2</sup> Stephen F. Ross & Lindsay Berkstresser, *Using Contract Law to Tackle the Coaching Carousel*, 47 U.S.F. L. REV. 709, 721 (2013). This is likely because head coaches are the face of their athletics programs. Martin J. Greenberg & Jay S. Smith, *A Study of Division I Assistant Football and Men's Basketball Coaches' Contracts*, 18 MARQ. SPORTS L. REV. 25, 26 (2007).

<sup>3</sup> Thomas & Van Horn, *supra* note 1, at 190.

<sup>4</sup> Jason Belzer, *Making Sense of College Coaching Contracts*, ATHLETIC DIR. UNIV., <http://athleticdirector.uconn.edu/articles/making-sense-of-college-coaching-contracts/#:~:text=With%20more%20than%20200%20college,foreseeable%20just%20a%20decade%20ago> (last visited Feb. 9, 2023) [<https://perma.cc/B244-KXCM>].

<sup>5</sup> Martin J. Greenberg, *College Coaching Contracts Revisited: A Practical Perspective*, 12 MARQ. SPORTS L. REV. 127, 146 (2001).

<sup>6</sup> Coaches can earn as much as 17 times the average salary of a full-time university professor. *Id.* at 137.

<sup>7</sup> Jake New, *Limiting Communication*, INSIDE HIGHER ED (Oct. 27, 2015), <http://insidehighered.com/news/2015/10/27/u-north-carolina-chapel-hill-releases-new-guidelines-coach-faculty-contact> [<https://perma.cc/N4WH-YQU6>] (explaining that part-time lecturers and adjunct instructors lacking job security can be especially afraid to stand up to coaches or report their behavior) [hereinafter *Limiting Communication*].

<sup>8</sup> Mark Mueller, *Read Rutgers President Barchi's Letter Suspending Kyle Flood*, NJ.COM, [https://www.nj.com/rutgersfootball/2015/09/read\\_rutgers\\_president\\_barchis](https://www.nj.com/rutgersfootball/2015/09/read_rutgers_president_barchis)

the dynamic, a coach approaching a faculty member for a special arrangement for a student-athlete can cause discomfort for the faculty member and even intimidate them.<sup>9</sup> Faculty must feel the freedom to execute their duties independently and without intimidation and interference from outsiders.<sup>10</sup> Further, any special arrangements or favors from faculty resulting from coach pressure hinders a student-athlete's success at their university and in life.<sup>11</sup>

Faculty members approached by coaches seeking special favors for student-athletes may also be aware of the value that high-profile student-athletes' bring to their universities. Studies show that a single student-athlete is worth hundreds of thousands of dollars to their university.<sup>12</sup> This awareness may pressure a faculty member into providing an arrangement or consideration unavailable to other students in order to keep the student-athlete academically eligible to compete for the university. Any such arrangement, however, violates National Collegiate Athletic Association ("NCAA")<sup>13</sup> rules. Recent instances where head coaches at the University of Georgia and Rutgers University approached a faculty member on their respective campuses for special arrangements for a student-athlete show that these situations can result in severe NCAA sanctions for universities and coaches can face both NCAA penalties and employment consequences.

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letter\_suspending\_k.html (last updated Sept. 16, 2015, 9:00 PM) [<https://perma.cc/4JSU-PTVQ>] (quoting Rutgers's president Robert Barchi explaining that by directly contacting a faculty member regarding a student-athlete's academic matters, the university's head football coach "crossed a line that all faculty hold dear").

<sup>9</sup> See *id.* (describing how the football head coach's position had an intimidating effect and made an instructor feel "uncomfortable" turning down the coach's request for a special academic arrangement for a student-athlete).

<sup>10</sup> *Id.* (quoting Barchi as stating that "faculty must have complete independence in executing their duties," and faculty should be "free of intimidation and interference by outside parties").

<sup>11</sup> *Coach-Faculty Contact Policy*, RUTGERS UNIV. ATHLETICS, <https://scarletknights.com/sports/2017/6/11/compliance-contacting-faculty-academic-officials-html.aspx> (last visited Mar. 1, 2023) [<https://perma.cc/TU7V-CR4W>].

<sup>12</sup> See Stephen A. Bergman & Trevon D. Logan, *Revenue Per Quality of College Football Recruit*, 21 J. SPORTS ECON. 571, 589 (2020); see also Richard Borghesi, *The Financial Value of NCAA Basketball Recruits*, 19 J. SPORTS ECON. 31, 32 (2018).

<sup>13</sup> The NCAA is college athletics' national governing body. Rodney K. Smith, *A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics*, 11 MARQ. SPORTS L. REV. 9, 22 (2000).

These two high-profile incidents exemplify the potential pitfalls of athletics department staff members, including coaches,<sup>14</sup> engaging with faculty members regarding student-athletes' academic matters. This Article explores the need for athletics departments to protect themselves and their staff members through policies regulating interactions between athletics staff members and faculty. To do so, Part I details NCAA legislation relevant to athletics-faculty interactions and its application and enforcement in the Georgia and Rutgers scenarios, as well as one at the University of North Carolina at Chapel Hill. Part II suggests actions for athletics departments to undertake to regulate these interactions and mitigate the likelihood they occur. A brief conclusion follows.

#### I. APPLICATION AND ENFORCEMENT OF NCAA LEGISLATION RELEVANT TO ATHLETICS STAFF AND FACULTY INTERACTIONS

The NCAA is “big, national, the focus of media and public attention, and scrutinized by legislators.”<sup>15</sup> A private association,<sup>16</sup> the NCAA describes itself as “a member-led organization” that consists of over 1,000 colleges and universities.<sup>17</sup>

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<sup>14</sup> The two examples of improper interactions with faculty in this Article involve head coaches. However, this Article intentionally extends the group of individuals who could engage in similar inappropriate interactions with faculty to all athletics staff members. In the NCAA infractions case involving the University of North Carolina at Chapel Hill discussed in Part II, for example, the NCAA alleged that athletics department staff members (student-athletes' academic advisors) inappropriately exerted influence over academic staff members. While these allegations ultimately proved unfounded, they show that it is possible for athletics staffers other than coaches to engage in questionable interactions with faculty.

<sup>15</sup> Josephine (Jo) R. Potuto, *The NCAA Rules Adoption, Interpretation, Enforcement, and Infractions Processes: The Laws That Regulate Them and the Nature of Court Review*, 12 VAND. J. ENT. & TECH. L. 257, 266 (2010). It may surprise that state legislatures and even United States Congresspeople have shown interest in the NCAA's regulation of college athletics. For example, in March 2022, Congresspeople released a bipartisan bill titled the NCAA Accountability Act of 2021. Dennis Dodd, *With NCAA Enforcement on Its Last Legs, Congress Seeks to Place Limits on Investigations*, CBS SPORTS (Mar. 29, 2022, 4:55 PM ET), <http://cbssports.com/college-basketball/news/with-ncaa-enforcement-on-its-last-legs-congress-seeks-to-place-limits-on-investigations/> [<https://perma.cc/QGG3-RMXJ>]. The bill attempts to streamline the NCAA rules enforcement process, limiting investigations to eight months and reducing the statute of limitations in half to two years. *Id.*

<sup>16</sup> Potuto, *supra* note 15, at 266 (citing *NCAA v. Tarkanian*, 488 U.S. 179 (1988)).

<sup>17</sup> *What Is the NCAA?*, NCAA, <http://ncaa.org/about/resources/media-center/ncaa-101/what-ncaa> (last visited Mar. 1, 2023) [<https://perma.cc/EJJ4-PCYG>].

As a ground-up association,<sup>18</sup> the NCAA derives its authority from its member universities.<sup>19</sup> Through the NCAA's legislative process, its member universities propose and adopt rules regarding college athletics and implement them on campus.<sup>20</sup> NCAA legislation, while often complex,<sup>21</sup> attempts to level the playing field for universities competing against each other.<sup>22</sup> NCAA member universities and their staff and student-athletes agree to abide by the rules in exchange for the opportunity to compete in NCAA-sponsored competitions.<sup>23</sup>

The NCAA notoriously does not lack for rules.<sup>24</sup> Its 2023 Division I<sup>25</sup> manual of "bylaws" numbers nearly 500 pages<sup>26</sup> and covers myriad substantive areas, competition rules, and scheduling.<sup>27</sup> For example, one bylaw perhaps unnecessarily defines the term "business day[,]" while others go so far as to regulate when and how often coaches may call or write prospective student-athletes, or even answer incoming calls from

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<sup>18</sup> Jerry R. Parkinson, *Scoundrels: An Inside Look at the NCAA Infractions and Enforcement Processes*, 12 WYO. L. REV. 215, 223 (2012).

<sup>19</sup> Potuto, *supra* note 15, at 259 (describing the NCAA as both "one of the most talked about and widely known private associations" yet "also the least understood").

<sup>20</sup> See *What Is the NCAA*, *supra* note 17 (noting these rules include "everything from recruiting and compliance to academics and championships").

<sup>21</sup> Megan Fuller, *Where's the Penalty Flag? The Unauthorized Practice of Law, the NCAA, and Athletic Compliance Directors*, 54 N.Y.L. SCH. L. REV. 495, 507 (2010) (noting that "experienced coaches and sports law scholars have lamented the difficulty of understanding these rules and called for reforms to the rules").

<sup>22</sup> Potuto, *supra* note 15, at 262 (explaining that "[t]he NCAA exists to do what no institution can do on its own: administer championships and regulate athletics competition so as to ensure a level playing field"). For example, were there no rules regulating the amount of time coaches can require student-athletes to practice, some coaches would "require student-athletes to spend all waking hours in athletics-related activities" to gain a competitive advantage. *Id.* (citing NCAA Division I rules regulating playing and practice seasons).

<sup>23</sup> See Brandon Leibsohn, *Road to Recovery: The NCAA's New Enforcement Process Creates More Legal Headaches*, 21 SPORTS LAWS. J. 123, 126 (2014).

<sup>24</sup> NCAA bylaws and policies cover myriad substantive areas, competition rules, and scheduling. See Potuto, *supra* note 15, at 262.

<sup>25</sup> Division I is the highest division in the NCAA's three-division structure. Glenn M. Wong, Christopher L. Deubert & Justin Hayek, *NCAA Division I Athletic Directors: An Analysis of the Responsibilities, Qualifications and Characteristics*, 22 JEFFREY S. MOORAD SPORTS L.J. 1, 5 (2015). It includes "the largest and best-funded research universities." Potuto, *supra* note 15, at 259 n.2. This Article's focus is on NCAA Division I legislation only.

<sup>26</sup> NCAA, 2022-23 DIVISION I MANUAL (2022), <https://web3.ncaa.org/lstdbi/reports/getReport/90008> [<https://perma.cc/3J6X-V6FN>] [hereinafter 2022-23 MANUAL].

<sup>27</sup> Potuto, *supra* note 15, at 262.

them.<sup>28</sup> Thus, athletics staff members operate in an environment controlled by NCAA rules.<sup>29</sup> The NCAA expects staff members and student-athletes to know and follow its rules.<sup>30</sup>

“Rules are meaningless unless enforced,” however.<sup>31</sup> A byproduct of private associations’ authority to adopt the rules governing them is their right to control their rules’ enforcement and interpretation.<sup>32</sup> The NCAA’s investigative and penal process through which member universities and their staff members are penalized for NCAA rules violations is unique.<sup>33</sup> The following Sections examine NCAA rules relevant to interactions between athletics staff members and faculty and their application and enforcement in three recent high profile instances.

*A. NCAA Legislation Relevant to Interactions Between Athletics Staff Members and Faculty*

NCAA legislation does not explicitly preclude coaches from communicating with faculty members or even directly address or regulate it.<sup>34</sup> Certain interactions between athletics staff members and faculty can trigger the application of NCAA rules, however, including:

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<sup>28</sup> 2022-23 MANUAL, *supra* note 26, §§ 13.02.1, 13.1.3, 13.4.1.

<sup>29</sup> Greenberg, *supra* note 5, at 146 (describing NCAA rules as a “voluminous, complicated and very often broken set of guidelines”).

<sup>30</sup> Kevin E. Broyles, *NCAA Regulation of Intercollegiate Athletics: Time for a New Game Plan*, 46 ALA. L. REV. 487, 509 (1995); *see also* Potuto, *supra* note 15, at 302 (describing expectations that coaches know, understand, and comply with NCAA rules as an affirmative obligation). For example, consider the case involving a University of California, Los Angeles (“UCLA”) assistant football coach who professed ignorance of NCAA recruiting rules after allegedly violating them. *UCLA Associate Head Football Coach Acted Unethically*, NCAA (Sept. 16, 2016, 12:00 PM), <https://www.ncaa.org/news/2016/9/16/ucla-associate-head-football-coach-acted-unethically.aspx>. [<https://perma.cc/NC2L-HNYL>]. The assistant coach received NCAA sanctions for not only violating the recruiting rules but also for engaging in unethical conduct for his lack of awareness of the rules. *Id.*

<sup>31</sup> Pete Nakos, *NCAA Releases Updated NIL Guidance Aimed at Institutions*, ON3NIL (Oct. 26, 2022), <http://on3.com/nil/news/ncaa-division-i-board-of-directors-nil-guidance-collectives-schools-member-institution/> [<https://perma.cc/ESZ8-N2PC>] (quoting an anonymous operator of a name, image, and likeness “collective”).

<sup>32</sup> Potuto, *supra* note 15, at 272.

<sup>33</sup> Broyles, *supra* note 30, at 488 (explaining that aspects of the infractions process would be unconstitutional in the United States court system yet “this is the way the game is played” in college athletics).

<sup>34</sup> New, *Limited Communication*, *supra* note 7.

- Bylaw 16.11.2.1, which prohibits student-athletes from receiving an “extra benefit.”<sup>35</sup> In relevant part, an “extra benefit” is a special arrangement by a university employee to provide a student-athlete with a benefit that NCAA legislation does not expressly authorize.<sup>36</sup> If a benefit is generally available to a university’s students, it is not an extra benefit and thus a student-athlete may accept it without violating NCAA legislation.<sup>37</sup>
- Bylaw 11.1.1.1, which presumes head coaches are responsible for their staff members’ actions and requires them to both promote a compliant atmosphere and monitor staff.<sup>38</sup> Thus, if a staff member (e.g., assistant coach) has improper interactions with a faculty member, NCAA rules presume the head coach is responsible for it.

### B. *Application and Enforcement of Relevant NCAA Legislation*

Two recent incidents involving head coaches approaching faculty members regarding potential academic arrangements for student-athletes and one academic fraud scandal that spanned decades exemplify the application and enforcement of relevant NCAA legislation. The following Parts summarize such occurrences at the University of Georgia, Rutgers University, and the University of North Carolina at Chapel Hill, respectively.

#### 1. University of Georgia 2014 Incident

In 2014, the University of Georgia (“Georgia”) suspended longtime, national champion and hall of fame head women’s and men’s swimming and diving coach Jack Bauerle from all job-related responsibilities.<sup>39</sup> Georgia suspended Bauerle days after the NCAA alleged he made “special

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<sup>35</sup> 2022-23 MANUAL, *supra* note 26, § 16.11.2.1.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* § 16.02.3.

<sup>38</sup> *Id.* § 11.1.1.1.

<sup>39</sup> Marc Weiszer, *UGA Swim Coach Bauerle Suspended from Coaching Duties as NCAA Levies Allegations*, ATHENS BANNER-HERALD (Apr. 4, 2014, 5:31 PM ET), <https://www.onlineathens.com/story/news/local/2014/04/04/uga-swim-coach-bauerle-suspended-coaching-duties-ncaa-levies-allegations/15536385007/> [<https://perma.cc/QQ8Q-SA9M>] (describing Bauerle’s accomplishments as Georgia’s head coach to include winning six national championships).

arrangements” with one of the university’s professors.<sup>40</sup> In the fall 2013 semester, Bauerle became concerned one of his student-athletes was in jeopardy of failing a math course.<sup>41</sup> Compounding the matter, the student-athlete had to pass the math course in order to satisfy NCAA academic eligibility requirements so he could continue to compete for Bauerle and Georgia.<sup>42</sup> Bauerle arranged for a Georgia professor, a friend “he had known for some time,”<sup>43</sup> to add the student-athlete to the professor’s fall semester class on December 10, 2013 even though classes had concluded for the semester and final exams had commenced.<sup>44</sup> Under the arrangement, the course would be part of the student-athlete’s fall schedule, but the student-athlete would complete the work for it in the spring semester.<sup>45</sup> The faculty member would award the student-athlete an incomplete grade at the close of the fall semester until he completed the work.<sup>46</sup> Bauerle saw the pass/fail independent study course to which the student-athlete was added as a “safety net” in case the student-athlete failed the math class because it would allow the student-athlete to satisfy NCAA academic eligibility requirements.<sup>47</sup> Ironically, the student-athlete passed his four courses, including the math class that was in jeopardy, in the fall 2013 semester and ultimately did not require the independent study course to remain eligible to compete.<sup>48</sup> In another fate twist, the psychology professor who took part in the arrangement mistakenly entered a grade of satisfactory (“S”) for the pass/fail independent study at the close

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<sup>40</sup> *Id.* The NCAA’s enforcement staff is responsible for investigating potential NCAA violations. *Division I Infractions Process*, NCAA, <http://ncaa.org/enforcement/division-i-infractions-process> (last visited Mar. 1, 2023) [<https://perma.cc/FV5P-Z5DL>]. If it believes information may substantiate significant or severe breaches of NCAA legislation, the enforcement staff alleges violations against the offending individual(s) and/or university. NCAA, *DIVISION I INFRACTIONS 2019-20 ANNUAL REPORT 7* (2020), [https://ncaaorg.s3.amazonaws.com/infractions/d1/2019D1Inf\\_AnnualReport.pdf](https://ncaaorg.s3.amazonaws.com/infractions/d1/2019D1Inf_AnnualReport.pdf) [<https://perma.cc/B47Q-VMSS>].

<sup>41</sup> COMM. ON INFRACTIONS PANEL, NCAA, UNIVERSITY OF GEORGIA: PUBLIC INFRACTIONS DECISION 4 (2014), <https://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102398> [<https://perma.cc/VT5H-EQDG>] [hereinafter GEORGIA CASE].

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 5.

<sup>44</sup> Weiszer, *supra* note 39.

<sup>45</sup> GEORGIA CASE, *supra* note 41, at 5.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 4-5.

<sup>48</sup> *Id.* at 7.

of the fall 2013 semester, which tipped off an athletics academic counselor to the arrangement.<sup>49</sup>

The Committee on Infractions (“COI”), which is the administrative entity that adjudicates allegations of NCAA rules violations,<sup>50</sup> applied extra benefits legislation to the arrangement and determined that a violation occurred.<sup>51</sup> In its written decision adjudicating the case, the COI emphasized that Bauerle, not the student-athlete, concocted and initiated the arrangement.<sup>52</sup> As a result of Bauerle’s actions and his leveraging of his position on campus and/or his relationship with a faculty member,<sup>53</sup> the student-athlete obtained a benefit unavailable to the general student body that NCAA legislation does not authorize.<sup>54</sup> In sum, “The impermissible benefit was the ‘special arrangement’ to ensure the student-athlete’s eligibility. And it was made possible by [Bauerle’s] request and his involvement in the academic affairs of one of his student-athletes.”<sup>55</sup>

The COI also concluded Bauerle violated his obligation to promote a compliant atmosphere under Bylaw 11.1.1.1.<sup>56</sup> The COI explained that Bauerle’s conduct failed to properly “set the tone for what is and is not acceptable conduct” and that he failed to lead by example.<sup>57</sup> More specifically, Bauerle contacted the psychology professor numerous times about and requested the arrangement.<sup>58</sup> Further, Bauerle directed the student-athlete to act in accordance with Bauerle’s plan.<sup>59</sup>

The COI issued sanctions for Bauerle’s wrongdoing, including suspending him from coaching for half of the 2014-15 swimming and diving season.<sup>60</sup> Bauerle’s suspension began the day prior to the swim meet that could have been his 500th competitive team victory.<sup>61</sup> Georgia’s penalties for Bauerle included not increasing the financial terms of his employment contract for its duration and reducing the bonuses he earned

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<sup>49</sup> *Id.* at 6-7.

<sup>50</sup> *Id.* at 1.

<sup>51</sup> *Id.* at 9-10.

<sup>52</sup> *Id.* at 10.

<sup>53</sup> *Id.* at 11.

<sup>54</sup> *Id.* at 9.

<sup>55</sup> *Id.* at 10.

<sup>56</sup> *Id.* at 9-11.

<sup>57</sup> *Id.* at 10.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 13.

<sup>61</sup> *Id.* at 2.

under his contract by \$5,000 and an amount commensurate with the legal fees Georgia incurred due to the case.<sup>62</sup>

## 2. Rutgers University 2015 Incident

A year later, the head football coach at Rutgers University (“Rutgers”) engaged in similar actions. Like the Georgia scenario, a head coach became concerned about a student-athlete’s chances of passing a course and how failing it would impact their ability to compete. More specifically, then-head coach Kyle Flood contacted an adjunct instructor<sup>63</sup> in an attempt to arrange additional course work in a dance appreciation class for one of his football student-athletes so the student-athlete could improve their failing grade.<sup>64</sup>

After the student-athlete failed the course and the instructor posted his failing grade, the student-athlete contacted the instructor to request an opportunity for an additional assignment to pass the class.<sup>65</sup> The instructor refused the student-athlete’s request based on the student-athlete’s failure to take advantage of other opportunities to earn extra credit throughout the semester.<sup>66</sup> An athletics administrator informed Flood that the student-athlete failed the dance appreciation course and was ineligible to compete in the 2015 season.<sup>67</sup>

Flood, who was the university’s highest paid employee,<sup>68</sup> first used his personal e-mail account to contact the instructor, likely a part-time lecturer

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<sup>62</sup> *Id.* at 16.

<sup>63</sup> Jake New, *Academic Interference Confirmed*, INSIDE HIGHER ED (Sept. 17, 2015), <https://www.insidehighered.com/news/2015/09/17/rutgers-u-suspends-football-coach-contacting-professor-about-players-grades> [<https://perma.cc/94TR-JY2E>].

<sup>64</sup> COMM. ON INFRACTIONS, NCAA, RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY, NEW BRUNSWICK: PUBLIC INFRACTIONS DECISION 6-7 (2017), <https://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102632> [<https://perma.cc/KM7C-T9HE>] [hereinafter RUTGERS CASE] (noting the student-athlete needed to pass the course to be eligible to compete in the 2015 season). Committee on Infractions case decisions do not identify individuals by name, but several media reports identified Flood. For example, see New, *Academic Interference Confirmed*, *supra* note 63.

<sup>65</sup> RUTGERS CASE, *supra* note 64, at 6.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Keith Sargeant, *Rutgers’ Profs Top \$1 Million as University’s Salary Booms*, COURIER POST, <http://courierpostonline.com/story/news/local/new-jersey/2014/02/17/rutgers-profs-top-1-million-as-universitys-salary-booms/5544963/> (last updated Feb. 17, 2014, 12:11 AM ET) [<https://perma.cc/QJH3-WANH>].

making less than \$5,000 per class,<sup>69</sup> regarding the student-athlete's class performance and later arranged a personal meeting with her.<sup>70</sup> Flood did not wear Rutgers apparel to the meeting to mitigate the likelihood someone would recognize him.<sup>71</sup> After their meeting, the instructor acquiesced to Flood's request and the student-athlete submitted the extra work — but only after Flood provided grammatical and punctuation suggested edits to the paper.<sup>72</sup> The instructor ultimately decided she would not accept the student-athlete's late course work.<sup>73</sup>

The COI concluded that Flood's contact with the instructor to arrange an opportunity to complete additional coursework constituted an impermissible extra benefit under Bylaw 16.11.2.1.<sup>74</sup> Like Bauerle's plan with his friend on Georgia's faculty, Flood's arrangement with the Rutgers instructor was due to Flood's involvement and not available to the general student body.<sup>75</sup> In fact, the COI cited the Georgia case in its analysis of Flood's actions and described it as "(a) similar violation."<sup>76</sup> In another similarity to the Georgia case, the COI concluded Flood violated Bylaw 11.1.1.1 by failing to promote a compliant atmosphere by contacting the instructor to arrange for the impermissible academic benefit.<sup>77</sup> Again, the COI noted the similarities between its finding of Bylaw 11.1.1.1 violations in the Georgia and Rutgers cases.<sup>78</sup>

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<sup>69</sup> Kelly Heyboer, *Rutgers Coach Kyle Flood May Have Emailed Part-Time Professor, Faculty Union Says*, NJ.COM, [http://nj.com/education/2015/08/rutgers\\_kyle\\_flood\\_email\\_case\\_when\\_can\\_a\\_rutgers\\_c.html](http://nj.com/education/2015/08/rutgers_kyle_flood_email_case_when_can_a_rutgers_c.html) (last updated Aug. 26, 2015, 11:29 PM) [<https://perma.cc/A8KY-39VZ>] (explaining that Rutgers adjunct instructors have vulnerable positions because they can lose them with little notice or explanation if administrators choose not to renew their contracts). Flood's e-mail to the professor explained, "I am sending (this) from my personal email to your personal email to ensure there will be no public vetting of the correspondence." Kevin Trahan, *Suspended Rutgers Head Coach Kyle Flood Is Pretty Bad at Secrecy*, SB NATION, <http://sbnation.com/college-football/2015/9/16/9340645/rutgers-coach-kyle-flood-suspended-three-games> (last updated Sept. 16, 2015, 4:29 PM EDT) [<https://perma.cc/Z7EQ-RNGM>].

<sup>70</sup> RUTGERS CASE, *supra* note 64, at 6, 13, 17.

<sup>71</sup> New, *Academic Interference Confirmed*, *supra* note 63.

<sup>72</sup> RUTGERS CASE, *supra* note 64, at 6. Rutgers dismissed the student-athlete from the football program in the spring 2015 semester after it declared him academically ineligible, and authorities charged him with aggravated assault, riot, and conspiracy to commit riot. New, *Academic Interference Confirmed*, *supra* note 63.

<sup>73</sup> RUTGERS CASE, *supra* note 64, at 7.

<sup>74</sup> *Id.* at 12-13.

<sup>75</sup> *Id.* at 13.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 17-18.

<sup>78</sup> *See id.* at 18.

As a result of these and other NCAA violations in Flood's football program, Rutgers fined him \$50,000, suspended Flood for three games, and ultimately terminated his employment following the 2015 season.<sup>79</sup> His employment termination came at a time when Flood was building a second home near Rutgers that cost him over \$1.2 million, which was his annual salary.<sup>80</sup>

3. University of North Carolina at Chapel Hill Paper Courses Scandal That Spanned Decades

In a decades-long academic fraud scandal, University of North Carolina at Chapel Hill ("UNC") employees steered students, including student-athletes, to courses that did not meet in person, were taught by someone other than a faculty member, and that only required students to write a single research paper that automatically resulted in a high grade.<sup>81</sup> The lengthy "saga" received significant attention from the national media and public.<sup>82</sup> The head of an academic department was the primary cause of the academic fraud; it had little to do with athletics staff engaging in inappropriate contact with faculty.<sup>83</sup> Regardless, the NCAA investigated, largely due to the involvement of 1,500 student-athletes (out of about 3,000 enrolled students) in the paper course over the decades the course was offered.<sup>84</sup> The NCAA alleged that UNC student-athletes received extra benefits that were not generally available to the larger student population by having access to, and taking, the paper courses.<sup>85</sup>

The COI ultimately concluded that the student-athletes' access to, and benefits from, the course in question did not violate NCAA rules because

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<sup>79</sup> *Id.* at App. 1.

<sup>80</sup> Ryan Dunleavy, *Kyle Flood Fired While Building Second Home Near Rutgers*, ASBURY PARK PRESS, <http://app.com/story/sports/college/rutgers/2015/11/30/kyle-flood-fired-while-building-second-home-near-rutgers/76555292/> (last updated Nov. 30, 2015, 6:33 PM ET) [<https://perma.cc/G7XB-E5E8>].

<sup>81</sup> New, *Limiting Communication*, *supra* note 7 (describing the scheme and noting that UNC's accrediting organization, the Southern Association of Colleges and Schools Commission on Colleges, subsequently placed UNC on probation for a year).

<sup>82</sup> NCAA COMM. ON INFRACTIONS PANEL, NCAA, UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL: PUBLIC INFRACTIONS DECISION 1 (2017), <http://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102636> [<https://perma.cc/Z2RE-8E32>] [hereinafter UNC CASE].

<sup>83</sup> New, *Limiting Communication*, *supra* note 7.

<sup>84</sup> *Id.*

<sup>85</sup> UNC CASE, *supra* note 82, at 15.

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it was available to, and taken advantage by, the general student body.<sup>86</sup> The COI based its conclusion on its finding that the case record lacked identifiable examples supporting individual or systemic efforts to impermissibly benefit student-athletes.<sup>87</sup>

## II. REGULATING ATHLETICS STAFF INTERACTIONS WITH FACULTY REGARDING STUDENT-ATHLETES' ACADEMICS

Part I examines potential downsides to athletics staff members such as coaches contacting faculty members regarding student-athletes' academic matters. This Part suggests methods — policy, education, monitoring, and enforcement — that athletics departments can undertake to mitigate the likelihood that improper interactions — and their consequences — occur. It also suggests that an NCAA rule regarding athletics staff and faculty interaction would be most beneficial.

### A. Policy Regulating Athletics Staff Interactions with Faculty

The fact that NCAA rules do not explicitly prohibit or regulate interaction between athletics staff and faculty leaves universities to create policies regulating it.<sup>88</sup> Following numerous investigations regarding its lengthy academic fraud scandal, UNC, for example, implemented guidelines regarding interactions between coaches and faculty members about student-athletes' coursework in 2015.<sup>89</sup> The guidelines prohibit coaches and sport staff members from initiating contact with student-athletes' instructors to solicit or discuss their grades and/or academic performance.<sup>90</sup> As evidenced in the Rutgers scenario, it is important to protect all instructors, including part-time lecturers and adjuncts, from athletics interference and pressure.<sup>91</sup> UNC's guidelines explicitly extend to "any academic personnel (including, but not limited to teaching

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> New, *Limiting Communication*, *supra* note 7 (quoting an NCAA spokesperson).

<sup>89</sup> *Id.*

<sup>90</sup> *Academic Processes for Student-Athletes*, UNIV. OF N.C. AT CHAPEL HILL, <https://apsa.unc.edu/academic-support-for-student-athletes/#item-7-4-guiding-principles-for-academic-support-for-student-athletes> [<https://perma.cc/2ZTB-N7NH>].

<sup>91</sup> Rutgers professors explained "it was particularly inappropriate for one of the most powerful people on campus — the football coach — to pressure an adjunct lacking in the job security of tenure-track professors. New, *Academic Interference Confirmed*, *supra* note 63.

assistants) who are responsible for assigning or grading a student-athlete's course work."<sup>92</sup>

UNC's guidelines also preclude faculty from seeking information from student-athletes' academic advisors regarding the grade that a student-athlete needs to remain eligible to compete in athletics.<sup>93</sup> Likewise, student-athletes' academic advisors may not provide such information to faculty.<sup>94</sup>

Rutgers has similar guidelines.<sup>95</sup> Recognizing that coach-initiated contact of any type with faculty and instructors with respect to any student-athlete, even innocently intended, can come across as pressure to provide a concession for a student-athlete, Rutgers prohibits such contact.<sup>96</sup> Rutgers's policy further precludes coaches from contacting any university staff members regarding a student-athlete's academic standing in a course.<sup>97</sup> Notably, Rutgers's policy specifically permits contact "with an instructor, professor, assistant dean, dean, admissions liaison, etc. that is general in nature (i.e., contact that is not specific to a particular student-athlete)."<sup>98</sup>

It is also important that policies regulating contact between athletics and faculty exist in written form. While Georgia officials communicated their policy regarding coaches interacting with faculty at coaches' meetings, the policy was unwritten.<sup>99</sup> The fact that the policy was unwritten could have made it easier for Bauerle to claim he was unaware he was not supposed to engage faculty regarding student-athletes' academic matters, making it more difficult for Georgia to punish him or even terminate his employment had it desired.

### B. *Educating Athletics Staff and Faculty*

Not only should athletics departments implement policies regulating athletics-faculty interaction, but they must also educate both athletics staff and faculty about them. Unfortunately, however, education about a policy

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<sup>92</sup> *Academic Processes for Student-Athletes*, *supra* note 90.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *See Coach-Faculty Contact Policy*, *supra* note 11.

<sup>96</sup> *Id.* (explaining that even perceived pressure compromises the athletics department's integrity).

<sup>97</sup> *Id.* (specifically identifying assistant deans, assistant registrars, and academic department administrative assistants as examples of staff members).

<sup>98</sup> *Id.*

<sup>99</sup> GEORGIA CASE, *supra* note 41, at 5.

is not always sufficient to preclude conduct the policy prohibits.<sup>100</sup> As stated in the preceding part, Rutgers had a policy prohibiting the very conduct in which Flood engaged and resulted in NCAA violations and sanctions and contributed to his employment termination.<sup>101</sup> Flood, claimed he was unaware of Rutgers's policy despite that it "was a subject covered in rules compliance sessions for several years."<sup>102</sup> The COI's conclusion that Flood knew or should have known his actions violated institutional policy contributed to Flood receiving a one-year show-cause penalty.<sup>103</sup>

Thus, athletics administrators should use COI cases to educate athletics staff and faculty about potential adverse consequences emanating from improper athletics-faculty interaction. Though written with hindsight's benefit, COI written decisions provide valuable insight into its application of NCAA legislation and expectations.<sup>104</sup> Thus, the Georgia and Rutgers cases serve as a valuable teaching tool for athletics administrators wishing to educate athletics staff and faculty regarding their interactions and the importance of following policies regulating them.

### C. Monitoring for Potential Academic Improprieties

After establishing and educating regarding their athletics-faculty contact policy, athletics administrators must perform one of the central risk management prevention functions — monitoring compliance with the

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<sup>100</sup> Just like the athletics-faculty contact policy should be in written form, athletics administrators should be sure to cover themselves by educating athletics staff and faculty about it in writing.

<sup>101</sup> New, *Limiting Communication*, *supra* note 7 (explaining "Rutgers already had a clear rule in place stating that such communication was not allowed").

<sup>102</sup> RUTGERS CASE, *supra* note 64, at 7 (citing Rutgers's internal investigation's conclusions).

<sup>103</sup> *See id.* at 24. Athletics staff subject to show-cause orders face difficulty continuing and finding employment in college athletics. *See* Ellen J. Staurowsky, Brian Menaker & Jeffrey Levine, *California Judge Rules NCAA's Show-Cause Order Violates State Law*, SPORTS L. EXPERT (Dec. 12, 2018), <http://sportslawexpert.com/2018/12/12/California-judge-rules-ncaas-show-cause-order-violates-state-law/> [<https://perma.cc/W7H8-BCTP>]. If a university hires or retains a coach with a show-cause order, it must "show cause" to the COI, which includes demonstrating why it should not be subject to a penalty for not taking appropriate disciplinary or corrective action. 2022-23 MANUAL, *supra* note 26, § 19.02.3.

<sup>104</sup> Martin J. Greenberg & Alexander W. Evrard, *Athletic Directors*, 26 MARQ. SPORTS L. REV. 735, 823-24 (2016).

policy.<sup>105</sup> Monitoring systems help ensure rules compliance.<sup>106</sup> Two ways that athletics administrators can monitor compliance with their athletics-faculty contact policy are to monitor both student-athlete grade changes and clustering.

The University of Iowa, for example, has grade change guidelines in part “to monitor any suspected cases of impermissible academic assistance.”<sup>107</sup> Under it, a group of faculty members and administrators receive a report identifying instances where a faculty member changed a student-athlete’s grade.<sup>108</sup> If a student-athlete receives a grade change after faculty submit final grades, and the grade change renders the student-athlete eligible to compete in athletics for the university, other faculty conduct an academic review.<sup>109</sup> Notably, the process and review apply to both incomplete grades and requests for grade corrections.<sup>110</sup> Thus, the Iowa process would trigger in the event of an instructor providing a student-athlete with an incomplete grade and permitting them to complete the work the following semester, as Bauerle proposed in his plan.

Athletics and campus administrators can and should monitor occasions where an abnormally high number of student-athletes are in the same major or the same class or take the same instructor. UNC, for example, flags classes with student-athlete enrollment that exceeds 20 percent of its total enrollment during the fall or spring semester.<sup>111</sup> For each such class, administrators review whether a syllabus exists and, if so, whether it aligns with the course’s purpose.<sup>112</sup> Monitoring for clustering could help identify patterns of individual or groups student-athletes receiving abnormally high grades from a certain instructor, for example, perhaps indicating the

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<sup>105</sup> See Josephine (Jo) R. Potuto, *The Athletic Department Compliance Job: Descriptive and Prescriptive*, 61 SANTA CLARA L. REV. 87, 90 (2020).

<sup>106</sup> *Yale University Athletics Compliance*, YALE UNIV. ATHLETICS, <http://yale.prestosports.com/information/compliance/index> (last visited Feb. 14, 2023) [<https://perma.cc/N8HE-W9RX>].

<sup>107</sup> INTERCOLLEGIATE ATHLETICS, UNIVERSITY OF IOWA, 2022-2023 STUDENT-ATHLETE HANDBOOK 21 (2022), <http://academics.athletics.uiowa.edu/sites/academics.athletics.uiowa.edu/files/2022-06/Handbook%202022-23%20-%20Updated%206.2.22.pdf> [<https://perma.cc/RU5C-M2MF>].

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> THE UNIV. OF N.C. AT CHAPEL HILL FAC. ATHLETICS COMM., MINUTES OF MEETING OF MAY 31, 2016, at 2 (2016), [https://facultygov.unc.edu/wp-content/uploads/sites/261/2010/10/05\\_31\\_16-FAC-minutes\\_final.pdf](https://facultygov.unc.edu/wp-content/uploads/sites/261/2010/10/05_31_16-FAC-minutes_final.pdf) [<https://perma.cc/N4H4-6Z8Q>].

<sup>112</sup> *Id.*

faculty member is too “friendly” with athletics.<sup>113</sup> This could lead to follow-up with individual faculty and coaches to ensure they are aware of, and following, the athletics-faculty interaction policy.

*D. Enforcing Policies Regarding Athletics-Faculty Interaction*

While athletics departments should have written policies regarding athletics-faculty interaction and monitor compliance with them, the policies are meaningless unless enforced.<sup>114</sup> Both Georgia<sup>115</sup> and Rutgers<sup>116</sup> enforced their respective university’s policies by, among other things, suspending the coaches who violated them.

College head coach contracts usually contain separate “termination for cause” and “termination without cause” provisions.<sup>117</sup> Termination for cause provisions list the circumstances under which a university may terminate a coach for the coach’s bad act or harmful omission and relieve the university of its duty to further compensate the coach.<sup>118</sup> If a head coach commits an act that, per the employment contract, justifies termination for cause, the university has the right to terminate the contract prior to its natural expiration.<sup>119</sup> Thus, universities would also be wise to include a provision in coaches’ contracts permitting them to terminate coaches’ employment with cause for violating university policies. Flood’s employment contract with Rutgers, for example, permitted the university to terminate his employment with cause for actions “in violation of

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<sup>113</sup> Faculty members being too “friendly” with athletics is not a new issue. Over twenty years ago, a faculty member at the University of Tennessee, for example, described “friendly faculty” who “feel sorry for the athletes because they work 20 hours a week (at their sport), and they want to help out, and probably help out more than they should.” Tom Farrey, *Tennessee to Review Grade Changes*, ESPN, <https://www.espn.com/ncf/s/991019tennessee.html> (last updated Nov. 3, 1999, 1:40 PM ET) [<https://perma.cc/7W35-WU8T>].

<sup>114</sup> Cf. Pete Nakos, *NCAA Releases Updated NIL Guidance Aimed at Institutions*, ON3NIL (Oct. 26, 2022), <http://on3.com/nil/news/ncaa-division-i-board-of-directors-nil-guidance-collectives-schools-member-institution/> [<https://perma.cc/Q93A-TRDR>] (noting similar sentiments in the context of NCAA policies governing name, image, and likeness activities).

<sup>115</sup> GEORGIA CASE, *supra* note 41, at 16 (describing Bauerle’s suspension and fine).

<sup>116</sup> RUTGERS CASE, *supra* note 64, at App. 1 (describing Flood’s suspension and fine).

<sup>117</sup> Martin J. Greenberg, *Termination of College Coaching Contracts: When Does Adequate Cause to Terminate Exist and Who Determines Its Existence?*, 17 MARQ. SPORTS L. REV. 197, 205 (2006).

<sup>118</sup> *Id.*

<sup>119</sup> Martin J. Greenberg & Steven D. Gruber, *You Get Hired to Get Fired*, 24 MARQ. SPORTS L. REV. 141, 150 (2013).

university regulations, policies, [or] procedures.”<sup>120</sup> Flood’s violation of Rutgers’s policy regarding contact with instructors provided Rutgers cause to terminate Flood’s employment under the contract; however, Rutgers elected to terminate Flood’s employment without cause.<sup>121</sup> By doing so, Rutgers owed Flood \$1.4 million instead of Flood “leaving empty-handed” had Rutgers terminated his employment with cause.<sup>122</sup>

*E. Instituting an NCAA Rule Regulating Athletics-Faculty Interactions*

The NCAA has numerous rules regulating contact between individuals. Coaches, for example, face restraints on when and how they may contact prospective student-athletes for recruiting purposes.<sup>123</sup> The NCAA lacks, however, a rule explicitly addressing communication between athletics staff and faculty.<sup>124</sup> Such an NCAA rule would have more teeth than university policy because violating it would result in harsher sanctions and also penalize the university instead of only the rule breaker.<sup>125</sup> Thus, an NCAA rule explicitly regulating athletics-faculty contact would better deter coaches from improperly contacting faculty.<sup>126</sup>

University employees draft and determine whether to adopt proposed NCAA legislation through the NCAA Division I legislative process.<sup>127</sup> Thus, university personnel could propose an NCAA rule regulating athletics-faculty interaction. If the proposal succeeded, all Division I universities would have to follow and monitor compliance with it.<sup>128</sup> This uniform policy would help maintain an even playing field in college athletics<sup>129</sup> and mitigate the likelihood that faculty face pressure from athletics staff, including coaches, to provide special academic arrangements.

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<sup>120</sup> Scott Logan, *Flood and Hermann Fired After Disastrous Football Season at Rutgers*, NEW BRUNSWICK TODAY (Nov. 30, 2015), <http://newbrunswicktoday.com/2015/11/flood-and-hermann-fired-after-disastrous-football-season-at-rutgers/> [<https://perma.cc/BY5Y-XUW2>] (quoting Flood’s employment contract).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> For example, see 2022-23 MANUAL, *supra* note 26, § 13.1.3.1 (regulating coaches’ recruiting telephone calls to prospective student-athletes).

<sup>124</sup> New, *Limiting Communication*, *supra* note 7 (explaining that the NCAA only prohibits student-athletes from receiving extra benefits from any such contact).

<sup>125</sup> *Id.* (citing commentary by David Hughes, president of Rutgers’s faculty union).

<sup>126</sup> *Id.*

<sup>127</sup> Potuto, *supra* note 15, at 273.

<sup>128</sup> *Id.* at 267.

<sup>129</sup> *See id.* at 264.

## CONCLUSION

Pressure, or even its appearance, by athletics staff on faculty to provide special arrangements or accommodations for student-athletes can have numerous adverse consequences. As shown by incidents at Georgia and Rutgers, for example, improper contact between coaches and faculty can lead to NCAA violations and sanctions and employment consequences for coaches. Thus, athletics departments should have written policies regulating athletics-faculty interaction. Departments can increase their policies' effectiveness by educating athletics staff and faculty about them and monitoring and enforcing compliance of them. Universities should also evaluate the potential benefits of proposing and adopting a uniform NCAA rule regarding athletics-faculty interaction.