

# EVALUATING THE NCAA’S RESPONSIVENESS TO TAMPERING IN THE NIL ERA

*Josh Lens\**

*Recent and significant changes in college athletics have led to an increase in the number of athletes who transfer between universities. This requires college coaches to expend significant effort retaining key athletes, especially in the face of widespread “tampering”—recruiting athletes enrolled at other universities who are not in the National Collegiate Athletic Association (NCAA) transfer portal. Despite NCAA rules explicitly forbidding it, coaches have been outspoken regarding the prevalence of tampering, with some going so far as to publicly beg the NCAA to more strictly enforce its anti-tampering rules.*

*This Essay scrutinizes whether the oft-maligned NCAA has been responsive to coaches’ concerns regarding tampering. Specifically, the Essay examines trends in data regarding recent NCAA enforcement actions to determine whether the NCAA is utilizing the resources at its disposal to pursue and penalize tampering coaches.*

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\* Associate Professor of Instruction, University of Iowa (J.D., University of Iowa College of Law). Prior to entering academia, Lens worked on Baylor University’s athletics compliance staff. In addition to his academic duties, Lens consults on National Collegiate Athletic Association (NCAA) compliance matters for college athletics conferences and university athletics departments. This Essay’s opinions are not necessarily representative of the University of Iowa.

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## INTRODUCTION

Five recent and seismic changes to college athletics occurred in a relatively short time window:

1. The implementation of the transfer portal;
2. Extension of the so-called one-time transfer exception to undergraduate athletes in all sports such that they no longer must sit out a season of competition upon their first transfer;
3. Collegiate athletes' newfound ability to accept name, image, and likeness (NIL) compensation;<sup>1</sup>
4. A federal judge's ruling that restricted the National Collegiate Athletic Association (NCAA) from requiring undergraduate athletes to sit out a year of competition upon their second transfer;<sup>2</sup> and
5. Another federal judge's ruling that prohibited the NCAA from enforcing its rules precluding athletes and NIL collectives from negotiating NIL compensation during the recruiting process.<sup>3</sup>

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1. See Dean Golembeski, *Here's How the NCAA Transfer Portal Changed College Athletics*, BEST COLLEGES (Sept. 23, 2022), <https://www.bestcolleges.com/news/2021-2/12/22/ncaa-transfer-portal-nil-college-football-playoff/> [<https://perma.cc/664M-T4S3>]; see also Rob Oller, *College Sports Need Rescuing from the Transfer Portal. I Am Here to Help*, COLUMBUS DISPATCH (May 17, 2022, 6:00 AM), <https://www.dispatch.com/story/sports/2022/05/17/ncaa-college-sports-how-fix-nil-transfer-portal-athletics/9791268002/> [<https://perma.cc/DP39-PH7L>] (explaining how the transfer portal, immediate eligibility for transferring athletes, and NIL are closely linked).

2. *Ohio v. Nat'l Collegiate Athletic Ass'n*, 706 F. Supp. 3d 583, 602 (N.D. W. Va. 2023); see also Pat Eaton-Robb, *West Virginia's Farrakhan, Others Suit Up After Court Ruling Against NCAA Transfer Policy*, ASSOCIATED PRESS (Dec. 16, 2023, 9:47 PM), <https://apnews.com/article/farrakhan-battle-transfer-west-virginia-61e962e47df5d8b02813938cb765369a> [<https://perma.cc/CA3F-TMX7>] (describing the ruling's "profound impact" on college athletics). The NCAA subsequently settled the lawsuit, which included ending many of its impediments on athletes' ability to transfer multiple times. See Mike Scarella, *NCAA Settles US, States' Antitrust Lawsuit Over Athlete Transfer Rules*, REUTERS (May 30, 2024, 5:57 PM), <https://www.reuters.com/legal/government/ncaa-settles-us-states-antitrust-lawsuit-over-athlete-transfer-rules-2024-05-30/> [<https://perma.cc/2Z95-XRSC>].

3. See *Tennessee v. Nat'l Collegiate Athletic Ass'n*, 718 F. Supp. 3d 756, 759 (E.D. Tenn. 2024); see also Alex Anderson, Marcus Leonard & William Sullivan, Jr., *Another Brick in the Wall: NCAA Enjoined from Enforcing NIL Rules Prohibiting Student-Athletes from Negotiating with Third Parties*, JD SUPRA (Mar. 6, 2024), <https://www.jdsupra.com/legalnews/another-brick-in-the-wall-ncaa-enjoined-9154813> [<https://perma.cc/2L4M-NXFU>].

Against a backdrop of increasing commercialism within college athletics,<sup>4</sup> these changes have resulted in collegiate athletes transferring in greater numbers and at growing rates.<sup>5</sup>

This increase has forced coaches to adapt and at least consider recruiting more potential transfers,<sup>6</sup> especially those who coaches believe can spur immediate on-field success, thus increasing the likelihood that coaches receive lucrative contract incentives, raises, and extensions.<sup>7</sup> Perhaps unsurprisingly, college coaches report that their competitors routinely violate NCAA rules that prohibit them from contacting athletes enrolled at other four-year universities who are not in the transfer portal.<sup>8</sup> This can cause roster uncertainty and requires coaches to spend more time and effort retaining current athletes.<sup>9</sup> Thus, coaches have publicly begged the NCAA to more strictly enforce its rules that explicitly prohibit this activity,

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4. See *The Multibillion-Dollar Industry: Unveiling the Business of College Sports*, BUS. OF COLL. SPORTS (Oct. 27, 2023), <https://businessofcollegesports.com/other/the-multibillion-dollar-industry-unveiling-the-business-of-college-sports/> [<https://perma.cc/C6XS-4JRM>].

5. See Nathan Barber, *A Growth in NCAA Student Athlete Transfers Since 2021*, THE FRONT (July 16, 2024, 8:00 AM), <https://www.westernfrontonline.com/article/2024/07/a-growth-in-ncaa-student-athlete-transfers-since-2021> [<https://perma.cc/E88D-9ZC7>] (describing recent increases in numbers and percentages of collegiate-athlete transfers).

6. See Matt Hayes, *How the Transfer Portal Has Shifted Power and Transformed College Football*, ATHLON SPORTS (Aug. 19, 2021, 10:00 AM), <https://athlonsports.com/college-football/how-the-transfer-portal-has-shifted-power-and-transformed-college-football> [<https://perma.cc/C3EJ-LH29>]; see also Alex Scarborough, *Tampering Has Arrived in College Football, and It Looks Like NBA Free Agency*, ESPN (May 24, 2021, 5:42 AM), [https://www.espn.com/college-football/story/\\_/id/31477534/tampering-arrived-college-football-looks-nba-free-agency](https://www.espn.com/college-football/story/_/id/31477534/tampering-arrived-college-football-looks-nba-free-agency) [<https://perma.cc/RC9V-K296>]. One way in which coaches have had to adapt is by increasing efforts to retain current athletes. See Pete Iacobelli & John Zenor, *College Coaches Now Must Retain, Not Just Recruit, Players with Transfer Portal Rules*, NBC BAY AREA (Dec. 17, 2023), <https://www.nbcbayarea.com/news/sports/ncaaf/college-coaches-now-must-retain-not-just-recruit-players-with-transfer-portal-rules/3400141/> [<https://perma.cc/HTJ7-Z7CQ>].

7. See Justin Williams, *Amid a '25-Year-Bull Market,' College Football Coaches Continue to Cash In*, THE ATHLETIC (Jan. 8, 2024), <https://www.nytimes.com/athletic/5181955/2024/01/08/college-football-coach-contracts-jim-harbaugh-kalen-deboer/> [<https://perma.cc/8LZD-VUSH>] (“The more successful coaches can increasingly command longer and more lucrative contracts . . .”).

8. See Brandon Marcello, *College Coaches Express Frustrations over Tampering and Share Tactics to Curb the Trend*, 247 SPORTS (June 7, 2023, 9:52 AM), <https://247sports.com/article/college-football-transfer-portal-tampering-solutions-examples-211259119/> [<https://perma.cc/TT3M-UZ63>]; see also Chandler Vessels, *Mike Norvell Details Tampering Attempts Florida State Has Dealt with This Spring*, ON3 (May 10, 2022), <https://www.on3.com/college/florida-state-seminoles/news/mike-norvell-details-tampering-attempts-florida-state-has-dealt-with-this-spring-nil-transfer-portal/> [<https://perma.cc/N9BK-3ZAB>] (“Accusations of tampering have been rampant throughout this college football offseason . . .”).

9. Alex Scarborough, *SEC Coaches Sound Off on Tampering: It's 'a Cutthroat Business'*, ESPN (May 30, 2023, 3:02 PM), [https://www.espn.com/college-football/story/\\_/id/37761615/cutthroat-business](https://www.espn.com/college-football/story/_/id/37761615/cutthroat-business) [<https://perma.cc/FSK3-9WKP>].

commonly referred to as “tampering”<sup>10</sup> in college athletics.<sup>11</sup> NCAA Vice President of Enforcement Jon Duncan acknowledged that tampering is “a significant concern for coaches” and thus “a significant concern for [the NCAA].”<sup>12</sup>

This Essay examines whether the oft-maligned NCAA has acted on coaches’ concerns by increasing enforcement actions against tampering coaches. Part I examines the recent and significant changes to college athletics that have led to an increasing number of transferring athletes. Part II describes the process by which the NCAA enforces its myriad rules. Part III examines data regarding trends in recent NCAA infractions cases to determine whether the NCAA has utilized its rules enforcement process to penalize tampering coaches.

### I. THE INCREASE IN TAMPERING IN COLLEGE ATHLETICS RECRUITING

As college athletics’ primary governing body, the NCAA has adopted numerous rules regulating the process by which sport staffs recruit prospective athletes.<sup>13</sup> One such rule explicitly prohibits what is commonly referred to as tampering.<sup>14</sup> In this context, tampering occurs when a coach attempts to recruit an athlete enrolled at another four-year university who is not in the NCAA’s transfer portal.<sup>15</sup> Though NCAA rules expressly forbid it,<sup>16</sup> tampering is ubiquitous in college athletics.<sup>17</sup> This part explores how

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10. The author recognizes and appreciates that some feel the term “tampering” is inappropriate as used in this context. This stems, in part, from the reasoning that universities and their graduate programs often recruit high-performing students enrolled elsewhere without repercussions. This Essay uses the term “tampering,” however, as the national media and NCAA commonly use it.

11. See, e.g., J.C. Shelton, *SEC Coach Admits Tampering Reality Shows No Signs of Stopping*, ATHLON SPORTS (Nov. 13, 2024, 8:25 PM), <https://athlonsports.com/college/mississippi-state-bulldogs/sec-coach-admits-transfer-portal-tampering-shows-no-signs-of-stopping> [https://perma.cc/UT6G-3W8T] (quoting Mississippi State University head football coach Jeff Leiby); see also James Parks, *College Football Coach Believes Rivals Guilty of Tampering*, SPORTS ILLUSTRATED (July 12, 2024), <https://www.si.com/fannation/college/cfb-hq/news/college-football-news-coach-tampering-claim-jay-norvell> [https://perma.cc/58GC-DYAA] (“Colorado State head coach Jay Norvell has joined the chorus of program leaders . . . to call out the NCAA and address the issue . . .”).

12. Aaron Beard, *Claims of Tampering Abound in College Basketball. Getting It Under Control Won't Be Easy*, ASSOCIATED PRESS (Nov. 2, 2023), <https://apnews.com/article/college-basketball-transfers-tampering-7c51888007dc0c9ae1881102e3df6ef2> [https://perma.cc/7UV8-WZK3].

13. See W. Burlette Carter, *Student-Athlete Welfare in a Restructured NCAA*, 2 VA. J. SPORTS & L. 1, 3 (2000).

14. NAT’L COLLEGIATE ATHLETIC ASS’N, DIVISION I 2024-25 MANUAL, at art. 13.1.1.3 (2024).

15. Mitchell Forde, *Look: College Football Coach Sounds Off on Widespread Tampering Issues*, ATHLON SPORTS (Dec. 16, 2022, 2:13 PM), <https://athlonsports.com/college-football/look-college-football-coach-sounds-off-on-widespread-tampering-issues/> [https://perma.cc/DLM6-SLYY].

16. NAT’L COLLEGIATE ATHLETIC ASS’N, *supra* note 14, at art. 13.1.1.3.

17. See David Teel, *Teel: Transfer Portal, NIL, Tampering a Combustible Mix for College Athletics*, RICHMOND TIMES-DISPATCH (June 1, 2023),

recent changes in college athletics resulted in a recruiting environment ripe for tampering.

*A. Implementation of Notification-of-Transfer and the Transfer Portal*

In 2018, Division I<sup>18</sup> eschewed its permission-to-contact model through which athletes transferred between universities in favor of the notification-of-transfer model.<sup>19</sup> The change eradicated the need for athletes to obtain their coaches' permission to merely interact with coaches at other universities about the possibility of transferring.<sup>20</sup> Now, an athlete considering a transfer need only notify an athletics administrator that they wish to enter the transfer portal.<sup>21</sup> Such notification gives an athlete's current university two business days to enter the athlete's information into the NCAA's portal database.<sup>22</sup> Once an athlete's information appears in the portal, NCAA rules permit coaches at other universities to recruit them.<sup>23</sup>

The number of transfers increased after the portal's implementation. In 2017, prior to the portal's implementation, less than 7 percent of men and women Division I athletes transferred between four-year universities.<sup>24</sup> By the end of the 2020–21 academic year—just three years after the portal's implementation—that number had increased to 10 percent of all Division I male athletes and 8.5 percent of Division I female athletes.<sup>25</sup> The trend of increasing transfers led some coaches like University of Mississippi head football coach Lane Kiffin to describe the post-portal recruiting landscape as “free agency.”<sup>26</sup>

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[https://richmond.com/sports/college/teel-transfer-portal-nil-tampering-a-combustible-mix-for-college-athletics/article\\_038ca126-ff4b-11ed-af61-2f45a7e731a1.html](https://richmond.com/sports/college/teel-transfer-portal-nil-tampering-a-combustible-mix-for-college-athletics/article_038ca126-ff4b-11ed-af61-2f45a7e731a1.html) [<https://perma.cc/G983-XPDN>] (explaining that tampering occurs “hourly throughout college sports”); see also Ross Dellenger, *‘It’s Going to Change the Landscape’: The NCAA’s Transfer Revolution Is Here, and Its Impact Will Be Felt Far and Wide*, SPORTS ILLUSTRATED (Apr. 14, 2021), <https://www.si.com/college/2021/04/14/ncaa-transfers-rule-change-football-basketball> [<https://perma.cc/V2VV-36D6>] (“Recruiting a player from a college team before he enters the portal is against NCAA rules, but even now, it happens in rampant fashion.”).

18. Division I is the highest division in the NCAA's three-division structure. Glenn M. Wong, Christopher R. 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).

19. See Greg Johnson, *What the NCAA Transfer Portal Is . . . and What It Isn't*, NCAA (2019), <https://s3.amazonaws.com/static.ncaa.org/static/champion/what-the-ncaa-transfer-portal-is/index.html> [<https://perma.cc/G6VQ-69ZY>].

20. See *id.*

21. See *id.*

22. *Id.*

23. Beth Hoole, *Transferpalooza '22: How the Transfer Portal Has Changed College Football*, FOX CAROLINA (Dec. 6, 2022, 10:35 PM), <https://www.foxcarolina.com/2022/12/07/transferpalooza-22-how-transfer-portal-has-changed-college-football/> [<https://perma.cc/2TWZ-YPJH>].

24. NCAA RSCH., *TRANSFER COMPOSITION OF DIVISION I TEAMS 7* (2022), [https://ncaaorg.s3.amazonaws.com/research/transfers/RES\\_TransCompDITeamsSlides.pdf](https://ncaaorg.s3.amazonaws.com/research/transfers/RES_TransCompDITeamsSlides.pdf) [<https://perma.cc/S9UX-4ZHC>].

25. *Id.*

26. Golembeski, *supra* note 1 (Kiffin stated: “I don’t think people really say it this way, but let’s not make a mistake: We have free agency in college football.” (first quoted in Nick

*B. The One-Time Transfer Exception's Extension to All Sports*

This increase in collegiate-athlete transfers occurred prior to a 2021 NCAA rule change<sup>27</sup> that led to another increase in the number of athletes entering the portal.<sup>28</sup> Although the switch in procedure from permission-to-contact to notification-of-transfer empowered athletes,<sup>29</sup> it did not guarantee their ability to compete in their sport the season following their transfer.<sup>30</sup> More specifically, athletes who had previously transferred or competed in certain restricted sports, including basketball and football, had to sit out a year of competition after transferring.<sup>31</sup>

That changed in 2021 when, subject to some limited conditions, the NCAA extended what college athletics constituents generally called the “one-time transfer exception” to athletes from all sports.<sup>32</sup> Under the NCAA’s revised rule, any athlete who has not previously transferred can now compete the season following their first transfer, so long as they are otherwise eligible.<sup>33</sup>

Perhaps predictably, the one-time transfer exception’s extension triggered a spike in transfers among collegiate athletes.<sup>34</sup> For example, Division I

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Suss, *Lane Kiffin on Transfer Portal: ‘They’re Going Where They’re Going to Get Paid the Most’*, MISS. CLARION LEDGER (Dec. 14, 2021, 6:00 AM), <https://www.clarionledger.com/story/sports/college/ole-miss/2021/12/14/ole-miss-lane-kiffin-football-recruiting-transfer-portal-nil-issues/6469290001/> [<https://perma.cc/MR8Y-WJWA>]; see also Hayes, *supra* note 6; David Hale, *What Is the Future of College Football?: Over 200 Coaches, Players and Administrators Respond*, ESPN (Aug. 1, 2022), [https://www.espn.com/college-football/story/\\_/id/34307234/what-future-college-football-200-coaches-players-administrators-respond](https://www.espn.com/college-football/story/_/id/34307234/what-future-college-football-200-coaches-players-administrators-respond) [<https://perma.cc/TG7E-6UE4>] (summarizing a survey of 200 college football constituents showing that nearly 60 percent believe the portal led to college football free agency).

27. See Hayes, *supra* note 6.

28. Dellenger, *supra* note 17.

29. See Johnson, *supra* note 19.

30. See Brett Dawson, *What Is the NCAA Transfer Portal?: Explaining the NCAA’s Process for Athletes Switching Schools*, LOUISVILLE COURIER J. (Dec. 7, 2023, 1:37 PM), <https://www.courier-journal.com/story/sports/college/2023/01/12/everything-you-need-to-know-about-the-ncaa-transfer-portal/69670749007/> [<https://perma.cc/5F6H-MN9T>]; see also Hoole, *supra* note 23.

31. See Dawson, *supra* note 30.

32. *Id.*; see also Ross Dellenger, *‘It’s Going to Be a Clusterf---’: The New Era of College Sports Is Here. Is Anyone Ready?*, SPORTS ILLUSTRATED (July 1, 2021), <https://www.si.com/college/2021/07/01/ncaa-athletes-profit-nil-daily-cover> [<https://perma.cc/W99U-CLUB>].

33. Press Release, Michelle Brutlag Hosick, Nat’l Collegiate Athletic Ass’n, Division I Board of Directors, Presidential Forum Discuss Sustainability (Apr. 28, 2021), <https://www.ncaa.org/news/2021/4/28/division-i-board-of-directors-presidential-forum-discuss-sustainability.aspx> [<https://perma.cc/M5G7-H8RR>].

34. Scott Rosner, *NCAA Transfer Tumult Talk Misses the Point: Will Athletes Graduate?*, SPORTICO (May 25, 2022, 8:45 PM), <https://www.sportico.com/leagues/college-sports/2022/ncaa-transfer-tumult-misses-graduation-1234675565/> [<https://perma.cc/L4MQ-V4YM>]; see also James Parks, *Georgia Coach Kirby Smart Opens Up on Tampering in College Football*, CFB-HQ ON SI (May 13, 2022), <https://www.si.com/fannation/college/cfb-hq/ncaa-football/college-football-tampering-georgia-coach-kirby-smart-comments> [<https://perma.cc/T2K8-RD8R>] (“The new rule has resulted in a wave of thousands of college football players electing to transfer elsewhere . . .”).

men's basketball athletes entered the transfer portal in record numbers.<sup>35</sup> Transfers by football athletes also increased in the absence of the requirement that they sit out a season of competition upon transferring.<sup>36</sup> The number of transfer football athletes who started for Football Bowl Subdivision<sup>37</sup> universities doubled between 2020 and 2021, for example.<sup>38</sup> Further, the number of total portal entrants increased by around 20 percent between 2021 and 2022.<sup>39</sup> If “free agency” was not already available to Division I athletes, the one-time transfer exception's extension may have provided it.<sup>40</sup>

### C. Temporary Restraining Order Regarding Multiple Transfers

Increasing the ease at which collegiate athletes can transfer was a temporary restraining order issued by Judge John Preston Bailey of the U.S. District Court for the Northern District of West Virginia in December 2023.<sup>41</sup> The order prevented the NCAA from requiring athletes to sit out a year of competition after their second transfer.<sup>42</sup> Judge Bailey was unpersuaded by the NCAA's characterization of the plaintiffs' challenge to the relevant rules as a complete change to college athletics that would result in “a system of perpetual and unchecked free agency.”<sup>43</sup> The NCAA thereafter relaxed its rules and, with few conditions, will permit athletes to transfer multiple times without having to sit out a year of competition.<sup>44</sup>

35. David Cobb, *NCAA Board of Directors Ratifies One-Time Transfer Legislation Allowing Athletes Immediate Eligibility*, CBS SPORTS (Apr. 28, 2021, 5:31 PM), <https://www.cbssports.com/college-football/news/ncaa-board-of-directors-ratifies-one-time-transfer-legislation-allowing-athletes-immediate-eligibility> [https://perma.cc/FA2X-VFQJ].

36. Parks, *supra* note 34 (describing transfer student-athletes' “immediate eligibility” to play).

37. Football Bowl Subdivision includes those universities generally considered to compete at the highest level of college football. See Daniel Wilco, *FCS Championship: Everything You Need to Know*, NCAA (Jan. 13, 2020), <https://www.ncaa.com/news/football/article/2020-01-11/fcs-championship-everything-you-need-know> [https://perma.cc/9GCA-FUWM].

38. Hoole, *supra* note 23 (explaining that the percentage of such individuals doubled from 10.7 percent in 2020 to 20.9 percent in 2021).

39. NCAA RSCH., TRANSFER PORTAL DATA: DIVISION I STUDENT-ATHLETE TRANSFER TRENDS (2024), <https://www.ncaa.org/sports/2022/4/25/transfer-portal-data-division-i-student-athlete-transfer-trends.aspx> [https://perma.cc/JFN5-NM5R] (showing the total number of Division I portal entrants increased from just over 10,000 in 2021 to nearly 12,000 in 2022).

40. Cobb, *supra* note 35; see also Beard, *supra* note 12 (“Yet coaches say the efforts to lure players from one roster to another are exacerbated by a 2021 rule change allowing undergraduate athletes to transfer once without sitting out a year in a move that basically kicked off a form of collegiate free agency . . .”).

41. *Ohio v. Nat'l Collegiate Athletic Ass'n*, 706 F. Supp. 3d 583 (N.D. W. Va. 2023).

42. *Id.* at 591; see Eaton-Robb, *supra* note 2.

43. See Eaton-Robb, *supra* note 2; see also John Raby, *College Athletes Who Transfer Twice Can Play, for Now, After a Judge Sets Aside NCAA Transfer Rule*, ASSOCIATED PRESS (Dec. 13, 2023, 5:27 PM), <https://apnews.com/article/ncaa-transfer-portal-22ef447ad67826138724cec3cd6ab581> [https://perma.cc/KRN2-ZX45].

44. Ryan Young, *NCAA Officially Ratifies New Rules Allowing Athletes to Transfer Multiple Times and Still Be Immediately Eligible*, YAHOO! SPORTS (Apr. 22, 2024), <https://sports.yahoo.com/ncaa-officially-ratifies-new-rules-allowing-athletes-to-transfer-multiple-times-and-still-be-immediately-eligible-225903569.html> [https://perma.cc/Y8Y8-

*D. College Athletics' NIL Era and Further Commercialization*

Prior to July 2021, the NCAA had long strictly enforced numerous restraints on collegiate athletes' ability to accept remuneration for use of their names, images, and likenesses.<sup>45</sup> In a seismic shift, however, the NCAA eliminated many of its longstanding constraints on July 1, 2021,<sup>46</sup> permitting athletes to accept compensation for NIL deals without violating NCAA rules.<sup>47</sup>

Even though this new college athletics era resulted in novel positives,<sup>48</sup> it also caused uncertainty, chaos, and a free-for-all.<sup>49</sup> Instead of initially adopting new NIL-related bylaws that would apply to member universities and their athletes, the NCAA implemented a minimalist "uniform interim policy"<sup>50</sup> that eliminated numerous longstanding NCAA rules restricting athletes from accepting NIL compensation.<sup>51</sup> The NCAA eventually adopted permanent NCAA legislation that essentially codified its interim policy.<sup>52</sup>

NIL has become a large part of—and has begun affecting—recruiting,<sup>53</sup> as athletes often seek to transfer to pursue more lucrative NIL opportunities

WX58] (noting that one of the contingencies—academic progress requirements—could limit some collegiate athletes seeking multiple transfers).

45. Tim Tucker, *NIL Timeline: How We Got Here and What's Next*, ATL. J.-CONST. (Mar. 18, 2022), <https://www.ajc.com/sports/georgia-bulldogs/nil-timeline-how-we-got-here-and-whats-next/EOL7R3CSSNHK5DKMAF6STQ6KZ4/> [<https://perma.cc/NM8D-M3F8>].

46. *Id.*; see also Dellenger, *supra* note 32 (quoting former University of Miami football student-athlete D'Eriq King as describing the NCAA's elimination of the restrictions as "long overdue"); Dennis Dodd, *NCAA Unlikely to Meet Constitution Deadline as Hot-Button NIL Issue Disrupts College Athletics*, CBS SPORTS (May 5, 2022, 11:37 AM), <https://www.cbssports.com/college-football/news/ncaa-unlikely-to-meet-constitution-deadline-as-hot-button-nil-issue-disrupts-college-athletics/> [<https://perma.cc/9Y7A-FV46>] (identifying NIL as the most impactful factor on college athletics' future).

47. Tucker, *supra* note 45.

48. See Ross Dellenger, *Big Money Donors Have Stepped Out of the Shadows to Create 'Chaotic' NIL Market*, SPORTS ILLUSTRATED (May 2, 2022), <https://www.si.com/college/2022/05/02/nil-name-image-likeness-experts-divided-over-boosters-laws-recruiting> [<https://perma.cc/V2UU-XNM5>] ("Proponents of NIL believe the benefits of the law outweigh any negatives—college town charities, athletes staying in college for longer periods of time, small businesses partnering with collectives and collectives putting money in the pockets of the industry's labor force, many from a low-income background, that has for years earned only scholarships while coaches bathed in millions.").

49. See Dellenger, *supra* note 32 (describing "this new space" as consumed by "chaos"); see also Teel, *supra* note 17 (quoting University of Pittsburgh head men's basketball coach Jeff Capel: "We're in a period now of absolute chaos.").

50. See Press Release, Michelle Brutlag Hosick, Nat'l Collegiate Athletic Ass'n, NCAA Adopts Interim Name, Image and Likeness Policy (June 30, 2021), <http://ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> [<https://perma.cc/PT8G-7B8D>].

51. Dellenger, *supra* note 32 (describing the NCAA's interim NIL policy as taking "a wrecking ball to its already crumbling bedrock of antiquated rules").

52. See NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 14, at art. 22.

53. Richard Davenport, *Outlook for NIL Is Uncertain*, ARK. DEMOCRAT GAZETTE (Mar. 5, 2023), <https://www.arkansasonline.com/news/2023/mar/05/outlook-for-nil-is-uncertain/> [<https://perma.cc/QVA4-HYJG>] ("When the NCAA enacted Name, Image and Likeness on July 1, 2021, it changed recruiting for prospects and college coaches."); see also Dennis Dodd, *Rampant Tampering, Inducing of College Football Players Has Coaches Unsure About Best Path Forward*, CBS SPORTS (Jan. 4, 2023, 11:58 AM), <https://www.cbssports.com/college->



at other universities.<sup>54</sup> This has resulted in college athletics recruiting becoming increasingly transactional.<sup>55</sup>

These changes come at a time when successful athletics programs are increasingly crucial to universities. Many in higher education view athletics as a university's metaphorical "front porch" where high-profile teams and their head coaches reside.<sup>56</sup> On-field success increases game attendance and donations, helps increase the likelihood of lucrative media deals, and influences prospective athletes to attend a university.<sup>57</sup> Thus, universities often view their athletics departments as a revenue source and a means to increase brand recognition and enrollment applications.<sup>58</sup> Conversely, a high-profile team's on-field struggles can garner negative media attention and result in decreased donor contributions.<sup>59</sup>

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football/news/rampant-tampering-inducing-of-college-football-players-has-coaches-unsure-about-best-path-forward/ [https://perma.cc/LS8F-9SJR] ("Even the most upstanding recruits and their families can be swayed by potential NIL riches.").

54. See Jesse Simonton, *Tampering, NIL and Blind Speed Dating: Coaches, Personnel Staffers Sound Off on the Transfer Portal*, ON3 (Jan. 18, 2023), <https://www.on3.com/news/tampering-nil-and-blind-speed-dating-coaches-personnel-staffers-sound-off-on-the-transfer-portal/> [https://perma.cc/A9MK-87TV] (explaining that NIL is the reason behind the large number of transfer portal entries); see also Rosner, *supra* note 34 ("The addition of the potential pursuit of NIL dollars as a factor motivating the decision to transfer adds yet another layer of complexity.").

55. Dodd, *supra* note 53; see also David Jablonski, *Dayton AD on Tampering Problems in Recruiting: 'It's Outrageous and Out of Control'*, DAYTON DAILY NEWS (Apr. 14, 2023), <https://www.daytondailynews.com/sports/dayton-ad-on-tampering-problems-in-recruiting-its-outrageous-and-out-of-control/UJTSHQZ7SRDUPOPP2I6V5STVHE/> [https://perma.cc/Q2TT-EPDL]. Recruiting could become increasingly transactional as a result of likely forthcoming changes to the college athletics industry that include athletics departments possessing the ability to share millions in revenue with their athletes if a settlement agreement in a lawsuit filed by current and former athletes against the NCAA and several conferences receives final approval in federal court. See Becky Sullivan, *Landmark Day for College Sports as Judge Holds Final Hearing on Major NCAA Settlement*, NPR, <https://www.npr.org/2025/04/07/nx-s1-5354232/paying-college-athletes-ncaa-legal-settlement> [https://perma.cc/L273-ZUK3] (Apr. 7, 2025, 8:21 PM) (describing changes that would result from settlement agreement in *House v. National Collegiate Athletics Ass'n*, No. 09-cv-03919 (N.D. Cal. filed June 15, 2020)).

56. Josephine R. Potuto, *The Athletic Department Compliance Job: Descriptive and Prescriptive*, 61 SANTA CLARA L. REV. 87, 118 (2020) (quoting former University of North Carolina, Chapel Hill head men's basketball coach Dean Smith: "It [college athletics] is the most visible part, yet certainly not the most important.").

57. Martin J. Greenberg, *College Coaching Contracts Revisited: A Practical Perspective*, 12 MARQ. SPORTS L. REV. 127, 127 (2001).

58. See Martin J. Greenberg & Steven D. Gruber, *You Get Hired to Get Fired*, 24 MARQ. SPORTS L. REV. 141, 147 (2013).

59. See Potuto, *supra* note 56, at 118; see also Gene Marsh & Marie Robbins, *Weighing the Interests of the Institution, the Membership and Institutional Representatives in an NCAA Investigation*, 55 FLA. L. REV. 667, 668 (2003).

Meanwhile, college athletics has become increasingly commercialized as an industry,<sup>60</sup> generating billions of dollars annually.<sup>61</sup> Consider, for example, universities changing athletics conference affiliations in the pursuit of television broadcast revenue at the expense of regionality and traditional rivalries.<sup>62</sup> More specifically, the University of Texas and University of Oklahoma eschewed their longstanding ties to the Big 12 Conference in favor of Southeastern Conference membership and its \$3 billion media rights agreement with ABC and ESPN.<sup>63</sup>

As universities' revenues have increased, so have their coaches' salaries.<sup>64</sup> The potential to advance their careers and garner enormous salaries can incentivize some coaches to win at any cost, including by violating NCAA rules.<sup>65</sup> Then-Southern Methodist University head football coach Sonny Dykes expounded, "You want people in our sport to be ethical enough where they don't fall prey to that . . . but . . . you got to win and you got a high-pressure job . . ."<sup>66</sup> University of Florida head football coach Billy Napier succinctly explained, "This is a cutthroat business."<sup>67</sup>

When combined, these factors encourage tampering.<sup>68</sup> An anonymous Power 4<sup>69</sup> assistant football coach, for example, described the amount of

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60. See Heidi Roche, *Loyalty v. Laissez Faire: The Coaching Contract Conundrum and Antitrust Implications of a No-Tampering Policy in College Sports*, 24 MARQ. SPORTS L. REV. 219, 221 (2013) (explaining that college athletics has morphed from a "time-honored tradition" to "an economic commodity"); see also Dennis Dodd, *Watchdog Group: Commercialization of FBS, College Basketball Requires Restructuring of NCAA*, CBS SPORTS (Dec. 16, 2019, 11:56 PM), <https://www.cbssports.com/college-football/news/watchdog-group-commercialization-of-fbs-college-basketball-requires-restructuring-of-ncaa/> [<https://perma.cc/5GW6-3EAK>] (citing the Knight Commission on Intercollegiate Athletics' description of the "highly commercialized environment" of major college football and basketball programs).

61. 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, 25 (2007); see also Kevin Stangel, *Protecting Universities' Economic Interests: Holding Student-Athletes and Coaches Accountable for Willful Violations of NCAA Rules*, 11 MARQ. SPORTS L. REV. 137, 137 (2000) ("The role of intercollegiate athletics at major colleges and universities has undergone a dramatic change since the inception of the [NCAA] in 1906.").

62. See Amanda Christovich, *As Conference Realignment Becomes Official, the Power 5 Era Is Over*, FRONT OFF. SPORTS (June 30, 2024), <https://frontofficesports.com/newsletter/the-new-era-of-college-sports/> [<https://perma.cc/2UQ9-WLVB>] ("This wave of conference realignment is yet another indicator that college sports have become more commercialized than ever.").

63. *Id.*

64. See Taylor Wilson, *Is Exorbitant College Coach Pay Sustainable?: Is It Ethical?*, USA TODAY (Oct. 21, 2024, 8:18 PM), <https://www.usatoday.com/story/sports/college/2024/10/21/can-colleges-afford-to-pay-football-coaches-millions-of-dollars/75784651007/> [<https://perma.cc/V8ZB-8K2M>] (discussing, among others, University of Georgia head football coach Kirby Smart's \$13 million yearly salary).

65. See Stangel, *supra* note 61, at 152–53.

66. Scarborough, *supra* note 6 (second omission in original).

67. Marcello, *supra* note 8.

68. See Hayes, *supra* note 6 (quoting coaches, some anonymously, explaining how recent changes in college athletics have led to tampering).

69. The media and college sports fans routinely refer to the Big Ten, Big 12, Atlantic Coast Conference, and Southeastern Conference as the Power 4 conferences. See Pat Forde, *Welcome to the New College Landscape: How Each Power Four Conference Stacks Up*,

tampering happening as “unbelievable,”<sup>70</sup> and a Southeastern Conference head football coach explained that tampering “happens most of the time.”<sup>71</sup> Jake Dickert, the former head football coach at Washington State University, claimed that “[t]here’s more tampering going on than you could ever imagine . . . . And it’s stunning, it’s amazing . . . .”<sup>72</sup> To that point, former Wake Forest University head football coach Dave Clawson can recount multiple specific occasions of his players encountering tampering.<sup>73</sup> Current University of Michigan head men’s basketball coach Dusty May had a similar experience, noting that tampering occurred with his Florida Atlantic University men’s basketball players while coaching them amid their unprecedented 2023 Final Four run.<sup>74</sup> Clemson University head football coach Dabo Swinney painted a broader picture, lamenting, “It’s crazy. It’s really sad, to be honest with you . . . . It’s total chaos right now . . . . There’s so much tampering going on and so many adults manipulating young people, and it’s sad.”<sup>75</sup> To add insult to injury, coaches may even endure tampering by fellow coaches who they once considered friends.<sup>76</sup>

Suddenly, coaches who refrain from tampering could be at a disadvantage.<sup>77</sup> Thus, many coaches publicly crave stricter enforcement of the NCAA’s anti-tampering rules during the NIL era of college athletics.<sup>78</sup> Dickert, for example, lamented tampering attempts to “pry [his] players

SPORTS ILLUSTRATED (July 1, 2024), <https://www.si.com/college/welcome-to-the-new-college-landscape-how-each-power-four-conference-stacks-up> [https://perma.cc/265L-JX3D]. The Power 4 used to be known as the Power 5 and previously included the Pac-12 Conference. *See id.*

70. Dustin Schutte, *Report: College Football Coaches Say Tampering Has Arrived with Transfer Portal*, SATURDAY TRADITION, <https://saturdaytradition.com/big-ten-football/report-college-football-coaches-say-tampering-has-arrived-with-transfer-portal/> [https://perma.cc/6UHT-7PR8].

71. Scarborough, *supra* note 6.

72. Brendan Bell, *The Policing of Tampering in College Athletics Might Start with Coaches*, CONDUCT DETRIMENTAL (Mar. 7, 2023), <https://www.conductdetrimental.com/post/the-policing-of-tampering-in-college-athletics-might-start-with-coaches> [https://perma.cc/H86F-5PFG].

73. *See* Marcello, *supra* note 8.

74. Beard, *supra* note 12.

75. Golembeski, *supra* note 1.

76. Chris Hummer, *Crisis or Cost of Doing Business?: College Football Reckons with the Tampering Era*, 247 SPORTS (May 5, 2022, 9:51 AM), <https://247sports.com/article/college-football-tampering-allegations-can-ncaa-fix--187210953/> [https://perma.cc/A4KT-3H6X] (quoting a conversation with University of North Texas head football coach Seth Littrell in which he explained why tampering was at an “all-time high” while attempting to keep his roster intact).

77. Hayes, *supra* note 6 (quoting an anonymous Power 5 football coach as stating that coaches who attempt to run “clean” programs are in “untenable” positions); *see also* Bell, *supra* note 72 (suggesting that coaches who wait to contact an athlete until their information appears in the portal may be at a disadvantage).

78. *See, e.g.*, Ross Dellenger, *While NCAA Tries to Enforce Its Own Murky Rules, NIL Collectives Left Hanging in Limbo—‘The NCAA Is Grasping at Straws’*, YAHOO! SPORTS (Feb. 1, 2024), <https://sports.yahoo.com/while-ncaa-tries-to-enforce-its-own-murky-rules-nil-collectives-left-hanging-in-limbo--the-ncaa-is-grasping-at-straws-164047535.html> [https://perma.cc/5VJM-NTEU] (“Encouraged by its own member schools to take enforcement action on NIL transgressions, the NCAA is finally showing teeth.”).

away” and asked “[w]ho’s regulating this stuff?”<sup>79</sup> Mississippi State University head football coach Jeff Leiby explained that until tampering “is managed and policed at the highest level, there’s nothing that’s going to stop people from doing it.”<sup>80</sup> Colorado State University head football coach Jay Norvell has likewise called on the NCAA to better enforce its anti-tampering rules.<sup>81</sup> The next part describes the system by which the NCAA enforces its myriad rules, including those prohibiting tampering.

## II. THE NCAA’S RULES ENFORCEMENT PROCESS<sup>82</sup>

Rules such as the NCAA’s tampering prohibition are meaningless unless enforced,<sup>83</sup> and compliance with NCAA rules should not disadvantage universities and their staff members.<sup>84</sup> Fortunately for those compliant universities, not only do private associations like the NCAA<sup>85</sup> enjoy the right to adopt governing rules, they also have the ability to enforce them.<sup>86</sup> Accordingly, NCAA member universities created an infractions process to

79. Bell, *supra* note 72.

80. Shelton, *supra* note 11.

81. Parks, *supra* note 11.

82. The NCAA and conferences that are defendants in the ongoing *House* case have created a new entity that will monitor and oversee compliance with forthcoming new rules on athletics departments’ revenue sharing with athletes; however, this process will be separate from the traditional NCAA enforcement process and, as of this writing, will not pertain to tampering violations. See Daniel Libit & Eben Novy-Williams, *Power 5 Incorporates New College Sports Enforcement Entity*, SPORTICO (Apr. 15, 2025, 12:54 PM), <https://www.sportico.com/leagues/college-sports/2025/power-5-college-sports-enforcement-entity-1234848521/> [<https://perma.cc/RWS3-73AJ>].

83. Pete Nakos, *NCAA Releases Updated NIL Guidance Aimed at Institutions*, ON3NIL (Oct. 26, 2022), <https://www.on3.com/nil/news/ncaa-division-i-board-of-directors-nil-guidance-collectives-schools-member-institution-2/> [<https://perma.cc/L7KZ-VK8J>] (quoting an anonymous NIL collective operator); see also Jeremy Crabtree, *Enforcement Is Key to Solving NIL ‘Pay-For-Play’ Concerns on Recruiting Trail*, ON3NIL (Dec. 22, 2022), <https://www.on3.com/nil/news/ncaa-enforcement-is-key-to-solving-nil-pay-for-play-concerns-on-college-football-recruiting-trial/> [<https://perma.cc/NK2H-HVBG>]. For example, see 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, 262 (2010) (“Were there no rules setting up an enforcement and infractions system to find and punish cheaters, unscrupulous coaches and staff would have a field day.”).

84. See Elizabeth Lombard, Note, *Changes Are Not Enough: Problems Persist with NCAA’s Adjudicative Policy*, 95 NOTRE DAME L. REV. 925, 928 (2019) (describing the NCAA’s infractions process’s purpose).

85. See Potuto, *supra* note 83, at 259 (describing the NCAA as not only a prominent private association but “also the least understood”).

86. See *id.* at 272; see also Pat Forde, *Meet the Officials Who Volunteered for an NCAA Job Most Would Run Away From*, SPORTS ILLUSTRATED (Feb. 28, 2023), <https://www.si.com/college/2023/03/01/committee-infractions-ncaa-rulings-inside-look-tennessee> [<https://perma.cc/8CQ6-VUQ4>] (“This is the structure the NCAA has created for itself, a byproduct of attempting to regulate fair play for hundreds of disparate universities in dozens of sports.”). Professor Matthew Mitten has described the NCAA’s “rules enforcement process as a private legal system . . . .” Matthew J. Mitten, *The Penn State “Consent Decree”*: *The NCAA’s Coercive Means Don’t Justify Its Laudable Ends, but Is There a Legal Remedy?*, 41 PEPP. L. REV. 321, 332 (2014).

help encourage fair play and integrity among members.<sup>87</sup> The NCAA's use of its broad power<sup>88</sup> to investigate and penalize member universities and their staff members for NCAA rules violations is unique,<sup>89</sup> and like the NCAA itself, the public often misunderstands it.<sup>90</sup> Thus, this part describes the current Division I enforcement and infractions processes.

#### A. *The NCAA Enforcement Staff's Role in the Infractions Process*

Tasked with enforcing the NCAA's myriad rules,<sup>91</sup> the enforcement staff acts as the NCAA's prosecutor.<sup>92</sup> Largely consisting of attorneys and former student-athletes, coaches, scouts, academic advisors, compliance staff members, or other athletics administrators,<sup>93</sup> the enforcement staff receives information about potential rule violations from many sources.<sup>94</sup> Consider,

87. See NAT'L COLLEGIATE ATHLETIC ASS'N, INSIDE THE DIVISION I INFRACTIONS PROCESS: INFRACTIONS PROCESS OVERVIEW 1 (2024), [https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc\\_grphcs/D1INF\\_InfractionsProcessOverview.pdf](https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/D1INF_InfractionsProcessOverview.pdf) [<https://perma.cc/2DLR-AKUB>].

88. See Mitten, *supra* note 86, at 331.

89. See Kevin E. Broyles, *NCAA Regulation of Intercollegiate Athletics: Time for a New Game Plan*, 46 ALA. L. REV. 487, 488 (1995) (explaining that components of the NCAA's enforcement process would be unconstitutional in the United States court system yet are routinely used in college athletics).

90. See, e.g., Jerry R. Parkinson, Comment, *Scoundrels: An Inside Look at the NCAA Infractions and Enforcement Processes*, 12 WYO. L. REV. 215, 219–20 (2012) (recounting fans' criticisms of NCAA infraction proceedings).

91. See NAT'L COLLEGIATE ATHLETIC ASS'N, DIVISION I INFRACTIONS: 2019-20 ANNUAL REPORT 9 (2020) [hereinafter NAT'L COLLEGIATE ATHLETIC ASS'N, 2019-20 ANNUAL REPORT], [https://ncaaorg.s3.amazonaws.com/infractions/d1/2019D1Inf\\_AnnualReport.pdf](https://ncaaorg.s3.amazonaws.com/infractions/d1/2019D1Inf_AnnualReport.pdf) [<https://perma.cc/WGP4-4F5J>]; see also NAT'L COLLEGIATE ATHLETIC ASS'N, NCAA ENFORCEMENT OVERVIEW 1 (2024) [hereinafter NAT'L COLLEGIATE ATHLETIC ASS'N, ENFORCEMENT OVERVIEW], [https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc\\_grphcs/D1INF\\_InsideEnforcement.pdf](https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/D1INF_InsideEnforcement.pdf) [<https://perma.cc/YZ9H-RVDQ>] (“The NCAA enforcement staff supports schools and individuals who play by the rules and are committed to integrity.”).

92. See Timothy Davis & Christopher T. Hairston, *Majoring in Infractions: The Evolution of the National Collegiate Athletic Association's Enforcement Structure*, 92 OR. L. REV. 979, 988 (2014) (describing how the enforcement staff's roles include presenting information to support allegations of rules infractions to the Committee on Infractions); see also Mike Rogers & Rory Ryan, *Navigating the Bylaw Maze in NCAA Major-Infractions Cases*, 37 SETON HALL L. REV. 749, 753–54 (2007) (noting that enforcement staff members are full-time NCAA employees).

93. See NAT'L COLLEGIATE ATHLETIC ASS'N, ENFORCEMENT OVERVIEW, *supra* note 91, at 1.

94. See NAT'L COLLEGIATE ATHLETIC ASS'N, INSIDE THE INFRACTIONS PROCESS: PATHS FOR INCOMING INFORMATION AND POTENTIAL VIOLATIONS (2023), [https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc\\_grphcs/D1INF\\_ResolutionPathForIncomingInformation.pdf](https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/D1INF_ResolutionPathForIncomingInformation.pdf) [<https://perma.cc/M56A-837N>]. The enforcement staff may receive tips on potential violations from university self-reports, rival coaches, media stories, anonymous sources, and disgruntled staff members or athletes. See Potuto, *supra* note 83, at 289–90. In one case, a University of California, Los Angeles assistant football coach's ex-girlfriend notified the NCAA that the “coach had knowledge of and/or involvement in potential NCAA recruiting violations.” See DIV. I COMM. ON INFRACTIONS, NAT'L COLLEGIATE ATHLETIC ASS'N, UNIVERSITY OF CALIFORNIA, LOS ANGELES PUBLIC INFRACTIONS DECISION 2 (2016), <https://web3.ncaa.org/lldbsearch/miCaseView/report?id=102558> [<https://perma.cc/DDG4-Y2T3>] (describing violations of NCAA recruiting rules).

for example, an incident involving current Auburn University men's basketball head coach Bruce Pearl that occurred early in his career. As a twenty-nine-year-old assistant coach for the University of Iowa, Pearl had suspicions about another university's recruitment of a prospective student-athlete who Pearl was attempting to recruit to Iowa.<sup>95</sup> Pearl secretly tape-recorded a phone call with the recruit and, after the enforcement staff confronted Pearl about some of his own dealings, he provided the recording to the NCAA.<sup>96</sup>

In such situations where the enforcement staff determines further investigation is warranted, it issues a formal document called a Notice of Inquiry to the involved university and works with it to ascertain facts.<sup>97</sup> During its investigation, the enforcement staff must review information regarding potential violations in a "fair, accurate, collaborative and timely manner."<sup>98</sup>

When the enforcement staff determines its investigation may validate NCAA rules violations, it alleges Level I or Level II violations, with the former being the weightier categorization.<sup>99</sup> The enforcement staff describes the facts of a case and alleges the violations in a formal document directed to the university and involved individuals called a Notice of Allegations (NOA).<sup>100</sup>

### B. *The Committee on Infractions' Role in the Infractions Process*

There are four ways an infractions case involving a Division I member university resolves, each of which concludes with a Committee on Infractions (COI) decision.<sup>101</sup> Thus, while the enforcement staff is the

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95. Dana O'Neil, *Bruce Pearl, Deon Thomas and the Apology That Lifted a Burden from Both Men*, THE ATHLETIC (Apr. 5, 2019), <https://nytimes.com/athletic/908019/2019/04/05/bruce-pearl-deon-thomas-and-the-apology-that-lifted-a-burden-from-both-men/> [<https://perma.cc/BKJ4-QG6J>] (describing Pearl's suspicions involving the University of Illinois's recruitment of high school star Deon Thomas).

96. *Id.*

97. NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 87, at 1. A Notice of Inquiry signals the commencement of a formal, joint investigation of, and with, the university. *See* Parkinson, *supra* note 90, at 226 (explaining that the investigation will go "wherever else the evidence leads"). "The Notice of Inquiry is not an allegation . . . rather, it merely informs the institution of a formal investigation . . ." Rogers & Ryan, *supra* note 92, at 765.

98. NAT'L COLLEGIATE ATHLETIC ASS'N, 2019-20 ANNUAL REPORT, *supra* note 91, at 9 (characterizing trust and collaboration between the enforcement staff, universities, and conferences as "vital" to the process).

99. *See id.* at 6. Note that the third category of violations is Level III, which the enforcement staff and university usually handle without Committee on Infractions (COI) involvement. *See id.* at 9.

100. *Enforcement Process: Charging*, NCAA, <https://ncaa.org/sports/2013/11/27/enforcement-process-charging.aspx> [<https://perma.cc/M9F8-UTZX>] (last visited Apr. 2, 2025) (noting that the enforcement staff issues an NOA upon its investigation's conclusion); Parkinson, *supra* note 90, at 226 (noting that the enforcement staff directs the NOA to the university's president or chancellor).

101. *See* NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 87. "The jurisdictional responsibility of the COI is to hear and resolve cases of institutional culpability." Potuto, *supra* note 83, at 295.

NCAA's prosecutor,<sup>102</sup> the COI is the judge and jury of the infractions process.<sup>103</sup> Established in 1954,<sup>104</sup> the COI is an independent administrative group consisting of volunteers who appreciate college athletics and seek competitive equity in it.<sup>105</sup> There are up to two dozen COI members at any given time, a smaller panel of which considers infractions cases on the COI's behalf.<sup>106</sup> These individuals hail from university campuses and athletics conferences, and include former coaches and individuals from the general public with legal training.<sup>107</sup> COI panelists' professional profiles also include current and former university presidents, chancellors, athletic

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102. See Potuto, *supra* note 83, at 289 (describing the enforcement staff's role as "something like that of police in investigating crimes or a prosecutor presenting cases in court").

103. Josh Lens, *NCAA's Changing Landscape Offers Chance to Improve Infractions Process*, SPORTICO (Feb. 2, 2022, 8:50 AM), <http://sportico.com/leagues/college-sports/2022/ncaa-infractions-reform-1234659517/> [<https://perma.cc/6YTX-QBWZ>]; see also Forde, *supra* note 86 ("There are some major distinctions, but this is the college sports version of a courtroom and the people seated around the square are both judge and jury.").

104. See Greg Heller, *Preparing for the Storm: The Representation of a University Accused of Violating NCAA Regulations*, 7 MARQ. SPORTS L.J. 295, 298–99 (1996) (explaining that the COI's creation "gave the NCAA some legitimacy and spurred growth, as it now had a mechanism in place with investigative powers and powers to punish member institutions").

105. Pete Thamel, *In New College Sports World, What Is Role of NCAA Committee on Infractions?*, ESPN (Feb. 29, 2024, 2:00 PM), [https://www.espn.com/college-football/story/\\_/id/39623660/in-new-college-sports-world-role-ncaa-committee-infractions](https://www.espn.com/college-football/story/_/id/39623660/in-new-college-sports-world-role-ncaa-committee-infractions) [<https://perma.cc/NTZ8-K6LU>].

106. NAT'L COLLEGIATE ATHLETIC ASS'N, INSIDE THE DIVISION I INFRACTIONS PROCESS: DIVISION I COMMITTEE ON INFRACTIONS COMPOSITION (2019), [https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc\\_grphcs/D1INF\\_COIComposition-FactSheet.pdf](https://ncaaorg.s3.amazonaws.com/infractions/d1/glnc_grphcs/D1INF_COIComposition-FactSheet.pdf) [<https://perma.cc/3ZVQ-JCYA>]. Panels of three, five, or seven COI members consider each case, and panelists' "experience, availability and the absence of a conflict of interest" determines a panel's makeup. NAT'L COLLEGIATE ATHLETIC ASS'N, DIVISION I INFRACTIONS: 2021-22 ANNUAL REPORT 18 (2022), [https://ncaaorg.s3.amazonaws.com/infractions/d1/2022D1Inf\\_AnnualReport.pdf](https://ncaaorg.s3.amazonaws.com/infractions/d1/2022D1Inf_AnnualReport.pdf) [<https://perma.cc/9PB5-Z25E>] [hereinafter NAT'L COLLEGIATE ATHLETIC ASS'N, 2021-22 ANNUAL REPORT].

107. *Division I Committee on Infractions*, NCAA, <http://ncaa.org/governance/committees/division-i-committee-infractions> [<https://perma.cc/7MW2-3Y4H>] (last visited Apr. 2, 2025). The NCAA enforcement staff and COI are "entirely separate enterprise(s)." Marsh & Robbins, *supra* note 59, at 677. However, the COI affirmed a staggering 93 percent of the enforcement staff's allegations over a recent three-year period. JON DUNCAN, NAT'L COLLEGIATE ATHLETICS ASS'N, ENFORCEMENT SELF-STUDY OPERATIONS AND COMPLIANCE 7 (2019), [https://ncaaorg.s3.amazonaws.com/infractions/guides/2019ENF\\_SelfStudyOperComp.pdf](https://ncaaorg.s3.amazonaws.com/infractions/guides/2019ENF_SelfStudyOperComp.pdf) [<https://perma.cc/A342-VNVU>] (contending that this data shows that the enforcement staff makes well-supported charges). Some question the COI's neutrality and describe it as an enforcement staff arm that will not deviate from the enforcement staff's allegations. See, e.g., Davis & Hairston, *supra* note 92, at 993. For additional analysis of the propriety of the COI's affirmation rate of enforcement staff allegations, see generally Josh Lens, *Examining the Committee on Infractions's Affirmation Rate of NCAA Enforcement Staff Allegations of Rules Violations*, 72 FLA. L. REV. F. 121 (2022).

directors, conference commissioners, and professors.<sup>108</sup> Thus, the COI touts the infractions process as “peer-review[ed].”<sup>109</sup>

One way parties may resolve an infractions case is through “negotiated resolution.” Established in 2019, negotiated resolution has quickly become the desired resolution option for most infractions cases.<sup>110</sup> If the university and any other parties (e.g., coaches) and enforcement staff agree on the facts, violations, levels of violations, and penalties, the parties may pursue negotiated resolution to resolve their case.<sup>111</sup> The enforcement staff and parties draft a report that they submit for the COI’s review.<sup>112</sup> The COI reviews the parties’ agreed-upon penalties for appropriateness and analyzes whether the resolution serves the NCAA’s best interests.<sup>113</sup>

The second means by which infractions cases can resolve is via the “summary disposition track.” When the parties agree to the facts, violations, and violation level(s) but dispute penalties, they may attempt to forgo participating in a COI hearing and instead resolve their case through summary disposition.<sup>114</sup> When this occurs, the enforcement staff, university,

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108. See *NCAA Division I Committee on Infractions Roster*, NCAA, <http://ncaa.org/sports/2018/3/20/ncaa-division-i-committee-on-infractions-roster.aspx> [<https://perma.cc/XR75-RPDE>] (last visited Apr. 2, 2025). Former COI chair Gene Marsh has stated, “Being on the Committee on Infractions is like being on jury duty in perpetuity.” Marsh & Robbins, *supra* note 59, at 679.

109. See NAT’L COLLEGIATE ATHLETIC ASS’N, 2019-20 ANNUAL REPORT, *supra* note 91, at 5. For discussion regarding the benefits of judgment by peers, see Gene A. Marsh, *A Call for Dissent and Further Independence in the NCAA Infractions Process*, 26 CARDOZO ARTS & ENT. L.J. 695, 709–10 (2009) (recommending, among other things, more independent COI members). For analysis regarding whether the process is actually peer-reviewed for coaches who face allegations that they violated NCAA rules, see generally Joshua Lens, *The NCAA Infractions Process and Peer Review*, 83 OHIO ST. L.J. ONLINE 80 (2022).

110. NAT’L COLLEGIATE ATHLETIC ASS’N, 2021-22 ANNUAL REPORT, *supra* note 106, at 2. The University of Tennessee, for example, attempted to resolve a 2023 case through negotiated resolution but the COI panel assigned to the case thwarted the attempt in order to hold a hearing to explore the case’s issues. DIV. I COMM. ON INFRACTIONS, NAT’L COLLEGIATE ATHLETICS ASS’N, UNIVERSITY OF TENNESSEE, KNOXVILLE PUBLIC INFRACTIONS DECISION 72 (2023), [https://ncaaorg.s3.amazonaws.com/infractions/decisions/Jul2023D1INF\\_TennesseePublicReport.pdf](https://ncaaorg.s3.amazonaws.com/infractions/decisions/Jul2023D1INF_TennesseePublicReport.pdf) [<https://perma.cc/X2WC-PH3S>].

111. NAT’L COLLEGIATE ATHLETICS ASS’N, *supra* note 87. Universities act through the individuals they employ and for whom they are responsible; thus, when one such person violates an NCAA rule, the university does, too. Potuto, *supra* note 83, at 298 (referring to institutional responsibility for violations as “[o]ne of the least understood aspects of the infractions process”). It is irrelevant whether a university knew, or should have known, of the violation—it is responsible due to its relationship with the rulebreaker. *Id.* at 298–99 (noting that penalty mitigation can occur depending on who committed the violation and whether the university could have prevented or uncovered it).

112. See NAT’L COLLEGIATE ATHLETICS ASS’N, *supra* note 87, at 1 (noting there is no opportunity to appeal a case resolved via negotiated resolution).

113. NAT’L COLLEGIATE ATHLETICS ASS’N, INSIDE THE DIVISION I INFRACTIONS PROCESS: NEGOTIATED RESOLUTION (2019), [https://ncaaorg.s3.amazonaws.com/infractions/d1/glnr\\_grphcs/D1INF\\_InfractionsProcessNegotiatedResolution-FactSheet.pdf](https://ncaaorg.s3.amazonaws.com/infractions/d1/glnr_grphcs/D1INF_InfractionsProcessNegotiatedResolution-FactSheet.pdf) [<https://perma.cc/CX2A-SC9Y>] (explaining that the negotiated resolution process requires fewer resources).

114. See NAT’L COLLEGIATE ATHLETICS ASS’N, *supra* note 87, at 1. The summary disposition process is intended to be streamlined and cooperative. See Edward F. O’Brien, *NCAA Announces Results of Its Investigation into UM’s Athletics Department*,



and any individual(s) subject to a violation allegation submit a report to the COI.<sup>115</sup> If the COI accepts the report, it administers penalties.<sup>116</sup> The COI can reject the report and order a hearing for various reasons, however, including if it determines the enforcement staff failed to allege a germane violation.<sup>117</sup>

An infractions case can also resolve by written record hearing. Written record hearings are suitable for cases where the parties narrowly disagree on the facts, violations, and/or violation levels.<sup>118</sup> The parties submit a report to the COI panel describing the case's allegations and their agreements and unresolved issues.<sup>119</sup> Based solely on the written record, the COI focuses on the case's contested parts and concludes whether violations occurred and administers penalties as appropriate.<sup>120</sup>

Finally, in cases involving disputed allegations, a COI panel conducts a hearing to determine the veracity of the enforcement staff's allegations.<sup>121</sup> A COI hearing is a combination of a legal trial, an administrative agency hearing, and a university academic misconduct hearing.<sup>122</sup> The enforcement staff has the burden of proving its allegations<sup>123</sup> and the COI makes fact

MONT. PUB. RADIO (July 26, 2013, 10:17 AM), <http://mtrpr.org/montana-news/2013-07-26/ncaa-announces-results-of-its-investigation-into-ums-athletics-department> [<https://perma.cc/WK66-VA8Z>] (reproducing University of Montana President Royce Engstrom's letter to the public after the University's summary disposition case).

115. See NAT'L COLLEGIATE ATHLETICS ASS'N, *supra* note 87.

116. See *id.* In this case, the "path avoids the need for an in-person hearing before the Committee on Infractions, eliminates the costs associated with such a hearing and reduces the amount of time needed to resolve a case." NAT'L COLLEGIATE ATHLETICS ASS'N, 2021-22 ANNUAL REPORT, *supra* note 106, at 24.

117. See NAT'L COLLEGIATE ATHLETICS ASS'N, DIVISION I COMMITTEE ON INFRACTIONS: INTERNAL OPERATING PROCEDURES § 4-8-1-5 (2023), [https://ncaaorg.s3.amazonaws.com/committees/d1/infraction/D1COI\\_IOPs.pdf](https://ncaaorg.s3.amazonaws.com/committees/d1/infraction/D1COI_IOPs.pdf) [<https://perma.cc/EP2H-L6A5>] [hereinafter NAT'L COLLEGIATE ATHLETICS ASS'N, INTERNAL OPERATING PROCEDURES]. For example, the Ohio State University's former head women's golf coach and the enforcement staff submitted a summary disposition report agreeing that violations occurred in the university's women's golf program. DIV. I COMM. ON INFRACTIONS, NAT'L COLLEGIATE ATHLETICS ASS'N, THE OHIO STATE UNIVERSITY PUBLIC INFRACTIONS DECISION 1 (2022), <https://web3.ncaa.org/lstdbi/search/miCaseView/report?id=102968> [<https://perma.cc/CWN5-FXLZ>]. However, the COI rejected the parties' report over concerns regarding a potential failure to monitor violation. *Id.* at 31. After a full hearing, the COI ultimately concluded that no such violation occurred. *Id.*

118. See NAT'L COLLEGIATE ATHLETICS ASS'N, *supra* note 87, at 1.

119. *Id.*

120. *Id.*

121. *Id.*

122. See Marsh & Robbins, *supra* note 59, at 678 (describing a COI hearing as "a unique process"). Critics argue that COI hearings lack due process safeguards. *E.g.*, Heller, *supra* note 104, at 308. Evidence rules, for example, are inapplicable at infractions hearings; therefore, reliance on hearsay occurs often. Potuto, *supra* note 83, at 297. For further comparison of NCAA infractions and legal proceedings, see Rogers & Ryan, *supra* note 92, at 754-61.

123. See Parkinson, *supra* note 90, at 224 (noting that the COI has determined that the enforcement staff failed to meet its burden "plenty" of times); see also Potuto, *supra* note 83, at 289 (referring to the enforcement staff as "the moving party at COI hearings").

findings based on the case's record.<sup>124</sup> When the COI concludes that the enforcement staff meets its burden, it imposes penalties on the involved university and any involved individuals.<sup>125</sup> The COI also may conclude that violations occurred even if the enforcement staff did not allege them.<sup>126</sup> Perhaps fortunately for college coaches and administrators whose actions are at issue in the proceedings,<sup>127</sup> COI hearings are conducted privately.<sup>128</sup> Upon adjudicating a case, however, the COI authors a written decision detailing the case's facts, violations, penalties,<sup>129</sup> and reasoning for those findings and penalties.<sup>130</sup> This written report is similar to a court opinion<sup>131</sup> and is publicly available online.<sup>132</sup>

In summary disposition or contested cases, the COI utilizes NCAA member-legislated guidelines when determining penalties.<sup>133</sup> Any penalties should reflect the violations' severity and degree of institutional fault while heeding other uninvolved universities' interests by counterbalancing any competitive or other advantage through sanctions.<sup>134</sup>

Penalties range from monetary fines and the vacation of wins and records up to athletics scholarship reductions and even postseason participation bans.<sup>135</sup> For these reasons, a law review article co-authored by former COI Vice Chair Gene Marsh describes the COI as "the thousand pound gorilla, with the final word in the case,"<sup>136</sup> though others contend it may be college

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124. Potuto, *supra* note 83, at 296; *see also* George Dohrmann, *An Inside Look at the NCAA's Secretive Committee on Infractions*, SPORTS ILLUSTRATED (Feb. 18, 2010), <https://si.com/more-sports/2010/02/18/usc-coi> [<https://perma.cc/FKJ7-YC42>] (explaining the procedure in a case involving the University of Southern California). The case file typically includes interview transcripts and other supporting documents. *Id.*

125. NAT'L COLLEGIATE ATHLETICS ASS'N, *supra* note 87.

126. *See* NAT'L COLLEGIATE ATHLETICS ASS'N, INTERNAL OPERATING PROCEDURES, *supra* note 117, § 5-11.

127. *See* Forde, *supra* note 86 ("If you are a college coach or administrator, this is the last room you should want to be in, defending yourself against allegations of NCAA rules violations. Your career may be on the line. Your university may be facing harmful penalties.").

128. *See* Broyles, *supra* note 89, at 507 (describing the privacy of COI hearings as one of the "most apparent problems" with the infractions process); Potuto, *supra* note 83, at 296 ("COI deliberations and case-relevant discussions are confidential within the COI."); Dohrmann, *supra* note 124 (explaining that the COI "goes about its business in relative obscurity, its deliberations kept secret, its findings conveyed mostly via press releases").

129. *See* NAT'L COLLEGIATE ATHLETICS ASS'N, 2019-20 ANNUAL REPORT, *supra* note 91, at 21; Broyles, *supra* note 89, at 497.

130. Potuto, *supra* note 83, at 296.

131. *See* Broyles, *supra* note 89, at 497.

132. *See* Parkinson, *supra* note 90, at 218 (noting that many are unaware that COI written decisions are publicly available on the NCAA's website).

133. *See* NAT'L COLLEGIATE ATHLETICS ASS'N, 2019-20 ANNUAL REPORT, *supra* note 91, at 15.

134. Potuto, *supra* note 83, at 301.

135. *See* Nathaniel Richards, Note, *The Judge, Jury, and Executioner: A Comparative Analysis of the NCAA Committee on Infractions Decisions*, 70 ALA. L. REV. 1115, 1116 (2019) (citing relevant NCAA legislation).

136. *See* Marsh & Robbins, *supra* note 59, at 677 (describing the COI's vast authority).

athletics' most powerful committee.<sup>137</sup> The next part examines whether the enforcement staff and COI have utilized their resources to address coaches' concerns regarding tampering.

### III. INCREASE IN THE NUMBER OF LEVEL II INFRACTIONS CASES INVOLVING TAMPERING<sup>138</sup>

The NCAA's own vice president of enforcement, Jon Duncan, has acknowledged coaches' and member universities' "significant concern" regarding tampering, even going so far to say that the NCAA shares these concerns.<sup>139</sup> This part examines trends in recent infractions case data to determine whether the enforcement staff and COI have in fact used the resources at their disposal to address them.

Specifically, the notification-of-transfer system that replaced the NCAA's decades-old permission-to-contact requirement has been in place since October 15, 2018.<sup>140</sup> Though NCAA rules precluding tampering existed prior to the portal's implementation,<sup>141</sup> the below tables<sup>142</sup> show that Division I Level II infractions cases involving tampering have risen drastically since the portal's implementation. As shown in Figure 1, there have been sixteen infractions cases that include a Level II tampering violation in the six years since the portal's implementation.<sup>143</sup> In comparison, there was one such case in the six years preceding it.

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137. See, e.g., Broyles, *supra* note 89, at 493; see also Dohrmann, *supra* note 124 (describing the COI as "one of the most powerful, yet least examined, entities in American sports").

138. Although a tampering scenario could constitute a Level I violation, that has not happened in the time frame this Essay contemplates. In fact, the NCAA's definition of a Level II violation lists tampering as an example of activity that can constitute such a violation. See NAT'L COLLEGIATE ATHLETICS ASS'N, *supra* note 14, at art. 19.1.3(f).

139. See Beard, *supra* note 12.

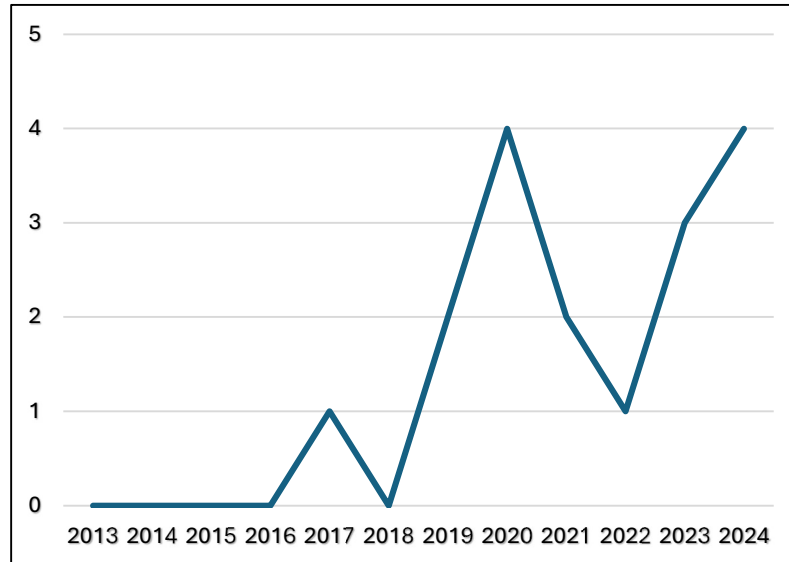
140. Press Release, Michelle Brutlag Hosick, Nat'l Collegiate Athletics Ass'n, New Transfer Rule Eliminates Permission-to-Contact Process (June 13, 2018), <https://naaa.org/news/2018/6/13/new-transfer-rule-eliminates-permission-to-contact-process.aspx> [<https://perma.cc/ST6P-R22D>].

141. See Beard, *supra* note 12 ("Tampering isn't new in college sports.").

142. All information provided in this Essay's tables comes from the NCAA's Legislative Services Database (LSDBi) search engine that provides information on NCAA rules and Level I and II violations of them. See LSDBi, NCAA, <https://web3.ncaa.org/lsdbi/resources> [<https://perma.cc/WPK4-9XN8>] (last visited Apr. 2, 2025).

143. Note that some of the cases that the COI processed after 2018 applied the previous permission-to-contact legislation as it was in effect at the time of the rule-breaking activity. However, information about the leveling of Bylaw 13.1.1.3 violations is useful, regardless of whether under the permission-to-contact or notification-of-transfer legislation, as it is indicative of the shift in emphasis that occurred in 2018 to increasingly target tampering coaches.

Figure 1: Number of Infractions Cases Involving Tampering Level II Violations by Year



Although Figure 1 shows a drastic increase in the number of Level II tampering infractions cases since the portal's 2018 implementation, it is also important to examine the context in which this increase occurred. Specifically, if similar increases in Level I or II violations of other NCAA rules occurred since 2018, the increase in tampering cases is less impactful and would perhaps suggest that tampering coaches were just collateral damage as the number of cases increased overall.

However, Table 1 shows that is not the case. In fact, though the number of annual Level I and II cases has actually decreased since the portal's 2018 implementation, the percentage of those cases that include a Level II tampering violation has dramatically increased in that time, further suggesting that the enforcement staff is increasingly pursuing tampering coaches.

Table 1: Percent of Level I or II Cases Involving Tampering

Year	Level II Cases Involving Tampering	Total Level I or II Cases	Percent of Level I or II Cases Involving Tampering
2024	4	12	33%
2023	3	11	27%
2022	1	5	20%
2021	2	19	11%
2020	4	22	18%
2019	2	19	11%
2018	0	15	0%

Just because the enforcement staff is pursuing tampering coaches does not necessarily mean they are facing harsh punishments, however. Specifically, penalties for tampering violations *can* be severe, including suspensions of, and show-cause orders<sup>144</sup> for, involved coaches, with the latter being the most severe penalty a college coach can receive due to the complications it causes their employer.<sup>145</sup> Table 2 lists the universities involved in Level II tampering cases since 2013 and provides information about penalties from their cases. It shows that the COI *is* administering severe penalties—nearly always administering a suspension and show-cause order—in Level II tampering cases.

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144. A show-cause penalty attaches to an individual and causes complications when a university wishes to hire or retain them. See John Leuzzi, *What Is a Show-Cause Order?: What to Know About NCAA Penalty Leveled Against Jim Harbaugh, Jeremy Pruitt*, KNOX NEWS (Aug. 8, 2024, 12:35 PM), <https://www.knoxnews.com/story/sports/college/university-of-tennessee/football/2024/08/08/show-cause-order-what-is-ncaa-jim-harbaugh-michigan-football-jeremy-pruitt-tennessee-volunteers/74719237007/> [https://perma.cc/PT4B-YY8T]. It also often includes a suspension from games for the rule breaker and/or restrictions on engaging in certain athletic-related activities. See *id.* Then-University of Tennessee head football coach Jeremy Pruitt, for example, received a hefty six-year show-cause order in 2023 as the result of recruiting violations that occurred during his Tennessee tenure. *Id.* Jim Harbaugh is essentially unaffected by the four-year show cause order and one-year suspension he received as the result of a 2024 infractions case emanating from his time at the University of Michigan, as he left the University to serve as the Los Angeles Chargers' head coach. See Jared Ramsey, *Jim Harbaugh's Show-Cause Penalty: What the NCAA's Punishment Means*, DETROIT FREE PRESS (Aug. 8, 2024, 2:30 PM), <https://www.freep.com/story/sports/university-michigan/wolverines/2024/08/07/show-cause-order-jim-harbaugh-ncaa-michigan/74705053007/> [https://perma.cc/A4Q9-V3B3].

145. See Nicole Auerbach, *The Perception and Reality of NCAA Show-Cause Penalties*, USA TODAY (May 27, 2014, 7:14 PM), <https://www.usatoday.com/story/sports/college/2014/05/27/ncaa-show-cause-penalty-bruce-pearl-kelvin-sampson/9632273/> [https://perma.cc/7R78-Y66P]. A university that wishes to retain or hire an individual subject to a show-cause order must show the COI why it should not be penalized for employing the coach and how it will monitor their rules compliance, all while knowing it would receive harsh penalties if the coach violates NCAA rules again. *Id.*

Table 2: Division I Infractions Cases Involving a Level II Tampering Violation by Year

Year	Number of Level II Tampering Cases	Involved Universities	Whether Case Penalties Included Suspension <sup>146</sup> and/or Show-Cause Penalty <sup>147</sup>
2024	Four	Arizona State University Southern Methodist University Southern Utah University Arkansas State University	Both Both Both Both
2023	Three	U.S. Air Force Academy University of Massachusetts Lowell Boise State University	Both Both Both
2022	One	California State University, Northridge	Both
2021	Two	Jacksonville State University Youngstown State University	Neither Suspension only
2020	Four	St. Francis College University of Hartford Charleston Southern University University of North Carolina at Greensboro	Both Both Both Both
2019	Two	Seton Hall University Georgia Institute of Technology	Both Both
2018	Zero	N/A	N/A
2017	One	Sam Houston State University	Both
2016	Zero	N/A	N/A
2015	Zero	N/A	N/A
2014	Zero	N/A	N/A
2013	Zero	N/A	N/A

The data in these tables shows that the enforcement staff and COI have increased efforts to address coaches' and universities' concerns about tampering. Not only is the enforcement staff increasingly pursuing tampering coaches,<sup>148</sup> the COI is administering the harshest penalties at its

146. Suspensions could include game suspensions, suspensions from practice involvement or exhibition games, and/or future suspensions should a university hire a coach subject to a show-cause order.

147. Importantly, the author is not intending to suggest that every Level II Bylaw 13.1.1.3 violation will result in a suspension and show-cause order. Most of these cases involved violations of other NCAA legislation that could have influenced the imposition of a suspension and/or show-cause order, for example.

148. Note that a federal court preliminary injunction currently precludes the NCAA from enforcing its rule precluding boosters, including NIL collectives, from negotiating NIL

disposal on them. Thus, though it took some time, the NCAA has increased attempts to remedy tampering during this period of upheaval within college athletics.<sup>149</sup>

Furthermore, if the NCAA's anti-tampering rules remain in place, the enforcement staff has suggested that it can be more effective if coaches notify it and cooperate in investigations when other coaches tamper.<sup>150</sup> This can be difficult, however, due to reasons including the creative and covert ways in which tampering occurs and the resulting lack of evidence for the enforcement staff.<sup>151</sup> The coaching community's close knit nature<sup>152</sup> and/or its code of silence<sup>153</sup> may deter some coaches from telling on each other, too. Perhaps a test case is whether the enforcement staff investigates a recent incident involving the University of Alabama football program after Miami University (in Ohio) head football coach Chuck Martin publicly accused Alabama's program of "illegally" recruiting his former kicker, Graham Nicholson.<sup>154</sup> It is a charge that Alabama head football coach Kalen DeBoer denies, but it remains to be seen how the NCAA will handle this or similar accusations.<sup>155</sup>

#### CONCLUSION

Although the current era of college athletics has greatly benefited collegiate athletes financially and through giving them more freedom to transfer between universities, it has resulted in a recruiting environment that

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compensation during the recruiting process. See Teresa M. Walker & Ralph D. Russo, *Judge Hands NCAA Another Loss, Says Compensation Rules Likely Violate Antitrust Law, Harm Athletes*, ASSOCIATED PRESS (Feb. 23, 2024, 11:31 PM), <https://apnews.com/article/tennessee-ncaa-lawsuit-nil-7ecfad9c88f8c8baa7e0f4bb00f22ec9> [<https://perma.cc/Y8TC-ZBY6>]. This ruling inhibits the enforcement staff's ability to enforce anti-tampering legislation against boosters and NIL collectives.

149. Dellenger, *supra* note 78.

150. See Bell, *supra* note 72 (referencing NCAA memo emphasizing the importance of reporting tampering instances); see also Dodd, *supra* note 53 (describing instances whereby "NCAA officials have stood before coaches' conventions in both football and basketball asking for help nabbing those making impermissible contact"). According to Jon Duncan, "[t]he more cooperative individuals are, the more we can do . . . . But with actionable information from people who have personal knowledge—copies of messages, text messages, messaging applications—we can move very quickly. Without that, we can move, but it's harder and more time consuming." Beard, *supra* note 12.

151. Bell, *supra* note 72; see also Hummer, *supra* note 76 (describing comments by former University of Louisville head football coach, Scott Satterfield, regarding potential tampering by the University of Alabama).

152. See Bell, *supra* note 72; see also Hummer, *supra* note 76.

153. Dodd, *supra* note 53 ("The Mafia calls it *omerta*.").

154. See *Miami (Ohio) Coach Accuses Alabama of 'Illegally Recruiting' Kicker Graham Nicholson*. DeBoer Denies, ASSOCIATED PRESS (Aug. 23, 2024, 12:44 PM), <https://apnews.com/article/miami-of-ohio-alabama-graham-nicholson-tampering-01711b33a9205e79fe8f812d95b5b284> [<https://perma.cc/MZ5F-BHT4>] (quoting Martin: "We didn't lose him. He's at Alabama . . . . You media people, it's all pretend . . . . They illegally recruited our kicker and stole him from us. That's a fact. But we act like it's not . . . . We live in this la-la-type world, like hey let's not talk (reality). I don't know why, everyone knows what's going on. Alabama stole our kicker.").

155. *Id.*

encourages coaches to tamper with athletes enrolled elsewhere in violation of NCAA rules. Coaches have not only publicly expressed concern, but also advocated for increased NCAA enforcement of its anti-tampering rules. The data in this article shows that the NCAA has been responsive to coaches' concerns by increasingly pursuing enforcement actions against tampering coaches, who are receiving impactful penalties when caught.