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Will U of North Carolina's challenge of NCAA's authority work?

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Last week, the University of North Carolina at Chapel Hill told the National Collegiate Athletic Association ^[1] that it does not have the authority to punish the university for what is widely seen as the most egregious case of academic fraud in the history of intercollegiate athletics. UNC's argument: the NCAA has no jurisdiction over assessing the quality of an institution's courses, even when those courses were fake and involved more than 1,500 athletes.

"The university does not minimize the extent of the academic irregularities it experienced, even as it emphasizes that those matters are beyond the NCAA's purview," UNC's lawyers stated in a letter to the NCAA. "These matters concern fundamental institutional, not athletic, integrity, and they are not the proper subject of an NCAA enforcement action."

In a telephone call with reporters last week, Bubba Cunningham, athletics director at UNC Chapel Hill, said that the university's response was part of a larger debate about "the role of the NCAA relevant to academics." How the NCAA responds may determine the association's ongoing role in ensuring -- as the NCAA says in its mission statement ^[2] -- excellence in both athletics *and* academics.

NCAA bylaws do have plenty to say about academic issues. The association uses metrics known as the Academic Progress Rate and the Graduation Success Rate to gauge athletes' (and institutions') academic performance, and it requires its members to meet certain minimum standards to remain eligible.

For decades, the NCAA has laid out what counts as academic misconduct, clearly barring college employees from completing athletes' course work for them, for example, and banning any "knowing involvement in arranging for fraudulent academic credit or false transcripts" for athletes. The association has punished Division I institutions at least 15 times for academic fraud in just the last decade ^[3], and half a dozen times in the past two years.

Earlier this year, the NCAA's Division I Council adopted new rules ^[4] designed to update its academic integrity policies for the first time since 1983.

Colleges must now "maintain and adhere to written academic integrity policies that apply to the entire student body." If a college breaks its own rules, the NCAA would consider that to be a case of "academic misconduct." At the same time, the new rule redefines "impermissible academic assistance" as "academic conduct involving a staff member or booster that falls outside of a school's academic misconduct policies, provides a substantial impact on the student-athlete's eligibility and is not the type of academic assistance" generally available to all students.

“The NCAA absolutely has jurisdiction over classes that were clearly created to obtain athletic eligibility,” said David Ridpath, professor of sports administration at Ohio University and an advocate for reforming the academic side of college sports. “The NCAA influences curricular decisions all the time at its member institutions, whether it's how to measure satisfactory progress towards a degree, or yes, punishing institutions for creating fake classes.”

In 2001, the NCAA sanctioned Marshall University for, among other violations, a professor granting A grades to all athletes in a course to help football players. Like at UNC, nonathletes took the course as well. In that case, the association argued that the courses were still an NCAA violation.

“And that was one course with maybe a couple dozen athletes,” said Ridpath, who reported the fraud as Marshall’s compliance director at the time. “At UNC, the fake courses were systemically helping men’s basketball and football players for nearly 20 years. The NCAA needs to have the guts to say, ‘Are you kidding me? This was absolutely academic fraud.’ This isn’t about assessing the quality of the courses, because there were no courses.”

For 18 years, some employees at the University of North Carolina at Chapel Hill knowingly steered about 3,000 students toward no-show “paper courses” that never met ^[5], were not taught by any faculty members and in which the only work required was a single research paper that received a high grade no matter the content.

Those were the findings of an investigation led by Kenneth Wainstein, a former official with the U.S. Department of Justice, in 2014. Earlier investigations, following revelations about the courses’ existence in 2012, suggested that the fraud, which largely took place within the university’s African and African-American studies department, was not an athletics issue. The Wainstein report concluded, however, that not only had the fraud lasted for far longer than originally thought, but the courses were created to help athletes.

Word about the courses eventually spread to other students, but athletes accounted for half of the enrollments while representing only 4 percent of the student body.

When the NCAA first investigated the courses in 2012, the association concluded that the university had not violated any NCAA rules ^[6], reporting at the time that -- as other students also took the courses -- there was no indication that athletes received more favorable treatment than nonathletes did. The NCAA reopened the investigation in June 2014 and issued a new notice of allegations last year.

The notice alleged that the university "provided impermissible benefits to student-athletes that were not generally available to the student body." While the notice did not name any UNC employees connected to the men's basketball or football programs as subjects of its investigation, it did broadly refer to those athletes as participating in the fake courses and receiving impermissible benefits.

In August, the university notified the NCAA ^[7] that it had found additional information about improper academic assistance being provided to the women's basketball team by an academic counselor, prompting the association to further investigate and then, eight months later, issue yet another notice. In an unusual move, the notice superseded the earlier one.

In the new notice, the NCAA charged UNC with lack of institutional control and failure to monitor, two of the NCAA's most serious offenses. The charges are significant, but the updated notice also included some important omissions. The original notice of allegations was 59 pages long, while the amended notice was just 13 pages. All references to the men's basketball and football teams, as well as the broad language about impermissible benefits for athletes, were missing.

Instead, the notice largely focused on women’s basketball, due to the information provided by the university in August. Those allegations had more to do with an adviser allegedly helping students

cheat than the nature of the fraudulent courses.

Mary Willingham, a former academic counselor who helped bring the scam to light [8], said the women's basketball team was complicit in the scam, but that to focus so much on the women's team and not mention men's basketball or football is unfair. According to the university's report, football players accounted for 51 percent of the athletes taking the phony courses, and 12 percent were male basketball players. Six percent of athletes taking the courses were female basketball players.

"The NCAA keeps showing us the truth about them and about their member institutions," Willingham said. "They're going to protect their money. Why would they try to hurt their profits, when they can just hurt the women?"

The amended notice of allegations also narrowed the time frame in which the fraudulent courses took place. The university's own report [5] found that the courses began in 1993 and ended in 2011. The original notice of allegations [9] focused on courses beginning in 2002. The new notice describes [10] the classes as starting in 2005, which means UNC's men's basketball team that won a national championship in 2005 -- and accounted for several enrollments in the courses -- is in the clear. The updated notice prompted Roy Williams, the university's longtime men's basketball coach, to proclaim in April that he didn't think UNC would be "hit in any way at all."

Now, UNC says that even the remaining charges should be dropped, and it is using the NCAA's own words to bolster its argument.

UNC and the NCAA are co-defendants in a lawsuit brought by former UNC athletes. In response to the lawsuit last year, the association's lawyers argued that the NCAA "did not assume a duty to ensure the quality of the education of student-athletes." In July 2015, UNC's lawyers discovered a previously undisclosed memo written in 2013 by the then managing director of the NCAA's Academic and Membership Affairs department.

"There are always concerns with aberrant classes comprised of a significant number of student-athletes in comparison with nonathletes," the managing director wrote. "However, there is nothing definitive in the report [provided by UNC] that would validate that there was a systematic effort within the African and African-American studies department motivated by the desire to assist student-athletes with maintaining their eligibility, either in how the courses were created, taught and/or how the grades awarded."

The report referenced in that memo was based on an earlier investigation by the university [11], which, like the NCAA's original investigation, was deemed incomplete, prompting the university to begin the second inquiry that led to the far more robust report by Wainstein.

Nevertheless, UNC argued that the memos showed that "the NCAA itself had concluded that the anomalous courses and the other academic irregularities in the department did not violate NCAA rules."

The NCAA has interpreted its own bylaws on academic fraud differently over the years, but it's on sturdier ground when dealing with institutions that have broken specific rules, such as a university tutor completing an athlete's online assignment, than when an institution has offered phony courses.

While there are rules against arranging for fraudulent credit, those rules traditionally refer to misconduct like a college employee adding a grade to an athlete's transcript for a course he never enrolled in. At UNC, the athletes did enroll in courses that they received grades for, and often they completed the classes' required course work, even if that work was a one-page paper that was not graded on its merits.

Whether those courses were legitimate, UNC argues, is a decision that should be left up to the university and its accrediting agency. (The Southern Association of Colleges and Schools placed UNC on probation last year, but that sanction ended in June.)

The NCAA may be wary about entering another high-profile battle with a member institution over the association's authority.

In 2012, the NCAA announced a series of historic sanctions ^[12] against Pennsylvania State University following the conviction of Jerry Sandusky, a former assistant football coach, on 45 counts of child abuse. Though the NCAA does not have rules specifically dealing with sexual abuse, the association's leaders decided to fine Penn State \$60 million, bar the football program from postseason play for four years, reduce the team's number of scholarships by 10 per year for four years and vacate all football victories from 1998 to 2011.

The decision led to lawsuits against the NCAA from many fronts, and soon the association began rolling back many of the sanctions. It ended the scholarship reduction and postseason ban two years early ^[13]. That \$60 million fine became the focus of one lawsuit, which was originally meant to determine where the penalty should be spent but gradually became a referendum on the NCAA's authority to impose sanctions in the first place. As part of a settlement in that case ^[14], the NCAA restored the 112 football wins it had previously vacated.

Though the type of misconduct at Penn State is wildly different from the fraud at UNC, Marc Edelman, an associate law professor at the City University of New York's Baruch College and an expert on sports law, said the NCAA would likely prefer to avoid another lawsuit with one of its most storied programs. At the same time, Edelman said, if the NCAA were to agree with UNC's argument, the case could still prove problematic for the association's authority going forward.

"If the NCAA does not have the authority of its members to govern academics as it relates to athletics, then it is truly nothing more than a trade cartel," he said. "Its authority is derived from its members, and its members have long delegated it the authority to regulate academic fraud when that fraud implicates athletics. An institution like UNC challenging the legitimacy of the NCAA's power could substantially weaken the association's future ability to maintain those rules."

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Links:

- [1] <https://www.insidehighered.com/quicktakes/2016/08/03/unc-questions-ncaas-authority-academic-fraud-case>
- [2] <http://www.ncaa.org/about/ncaa-core-values>
- [3] <https://www.insidehighered.com/news/2016/07/08/more-dozen-athletic-programs-have-committed-academic-fraud-last-decade-more-likely>
- [4] <http://www.ncaa.org/about/resources/media-center/news/di-council-adopts-academic-integrity-proposal>
- [5] <https://www.insidehighered.com/news/2014/10/23/report-finds-academic-fraud-u-north-carolina- lasted-nearly-20-years>
- [6] <https://www.insidehighered.com/news/2012/09/10/ncaa-jurisdiction-limited-unc-academic-integrity-issues#sthash.3tATjoOF.dpbs>
- [7] <https://www.insidehighered.com/quicktakes/2015/08/17/unc-chapel-hill-reports-new-possible-ncaa-violations>
- [8] <https://www.insidehighered.com/news/2015/03/18/qa-authors-new-book-unc-paper-classes>
- [9] <http://3qh929iorux3fdpl532k03kg.wpengine.netdna-cdn.com/wp-content/uploads/2015/06/NCAA-NOA.pdf>
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- [11] <https://www.insidehighered.com/quicktakes/2012/05/07/academic-fraud-unc>
- [12] <https://www.insidehighered.com/news/2011/11/23/ncaa-inquiry-penn-state-unprecedented-involvement-criminal-matter>
- [13] <https://www.insidehighered.com/news/2014/09/09/ncaa-lifts-penn-states-postseason-ban-two-years-early>
- [14] <https://www.insidehighered.com/quicktakes/2015/01/19/ncaa-restores-penn-states-wins-under-paterno>

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