

**REPORT OF THE
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
DIVISION I INFRACTIONS APPEALS COMMITTEE**

April 22, 2013

Report No. 372

University of Central Florida

Orlando, Florida

This report is filed in accordance with NCAA Bylaw 32.11 and is organized as follows:

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I. INTRODUCTION.

The University of Central Florida appealed to the NCAA Division I Infractions Appeals Committee a specific penalty as determined by the NCAA Division I Committee on Infractions. In this report, the Infractions Appeals Committee addresses the issues raised by University of Central Florida (hereinafter referred to as UCF).

II. BACKGROUND.

The Committee on Infractions issued Infractions Report No. 372 July 31, 2012, in which the committee found violations of NCAA legislation in the football and men's basketball programs. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [July 31, 2012, issue of The NCAA News.]

This case centered on violations of NCAA bylaws governing impermissible recruiting activities; impermissible benefits to prospective student-athletes and student-athletes; and impermissible recruiting inducements.

After the Committee on Infractions issued its report, UCF filed a timely Notice of Appeal August 15, 2012. A written appeal was filed September 17, 2012. The Committee on Infractions filed its Response October 31, 2012. UCF filed its Rebuttal to the Committee on Infractions Response November 14, 2012. The case was considered by the Infractions Appeals Committee January 24, 2013 (see Section VII below).

III. VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. [Please note that the cites below are the cites as they appear in the Committee on Infractions report dated July 31, 2012.]

B-1. IMPERMISSIBLE RECRUITING ACTIVITY BY OUTSIDE PARTIES. [NCAA Bylaws 13.01.4, 13.1.2.1, 13.1.2.4-(a) and 13.1.3.5.1]

Between March 2009 and July 2011, representatives 1 and 2 assisted the institution in the recruitment of six men's basketball and five football prospective student-athletes by promoting the institution's athletics programs. As specified below, at times, certain institutional staff members were aware of representatives 1 and 2's activities; at other times, institutional staff members involved them in the recruitment of specific prospective student-athletes. As a result of these activities, representatives 1 and 2 became representatives of the institution's athletics interests and committed violations of NCAA recruiting legislation. Specifically:

a. Representatives 1 and 2 assisted the institution's men's basketball coaching staff with the recruitment of six men's basketball prospective student-athletes as follows:

- (1) In March 2009, representative 1 had telephone and in-person, off-campus recruiting contact with a then men's basketball prospective student-athlete ("prospect 1"). A former assistant men's basketball coach was aware of representative 1's contacts with prospect 1.
- (2) From December 2010 to July 2011, representatives 1 and 2 had telephone and in-person, off-campus recruiting contact with a men's basketball prospective student-athlete ("prospect 2"). The head basketball coach and an assistant basketball coach were aware of these recruiting contacts.
- (3) From March to May 2011, representative 1 had telephone and in-person, off-campus recruiting contact with a men's basketball prospective student-athlete ("prospect 3"). In April 2011, representative 2 had telephone recruiting contact with prospect 3. The head basketball coach, an assistant basketball coach and the director of athletics were aware of these recruiting contacts.
- (4) From October 2010 to April 2011, representative 1 had telephone recruiting contact with a men's basketball prospective student-athlete ("prospect 4"). In March 2011, representative 2 had in-person, off-campus recruiting contact with prospect 4.
- (5) In November 2010, representative 1 had telephone and in-person, off-campus recruiting contact with a men's basketball prospective student-athlete ("prospect 5").
- (6) In January 2011, representative 1 had telephone recruiting contact with a men's basketball prospective student-athlete ("prospect 6").

b. Representatives 1 and 2 assisted the institution's football coaching staff with the recruitment of five football prospective student-athletes as follows:

- (1) From December 2010 to July 2011, representatives 1 and 2 had telephone and in-person, on- and off-campus recruiting contact

with a football prospective student-athlete ("prospect 7"). The assistant football coach and the director of athletics were both aware of the recruiting contacts that representatives 1 and 2 had with prospect 7 and also directly involved representatives 1 and 2 in prospect 7's recruitment.

- (2) From December 2010 to July 2011, representatives 1 and 2 had telephone and in-person, off-campus recruiting contact with a football prospective student-athlete ("prospect 8"). The assistant football coach and the director of athletics were aware of the recruiting contacts that representative 1 and the associate had with prospect 8, and also directly involved representative 1 and the associate in prospect 8's recruitment.
- (3) From January 2010 to July 2011, representative 1 had telephone and in-person, on- and off-campus recruiting contact with a football prospective student-athlete ("prospect 9"). The assistant football coach was aware of these recruiting contacts.
- (4) From January 2010 to July 2011, representatives 1 and 2 had telephone and in-person, on- and off-campus recruiting contact with a football prospective student-athlete ("prospect 10"). The assistant football coach and the director of athletics were both aware of the recruiting contacts representatives 1 and 2 had with prospect 10, and also directly involved representatives 1 and 2 in prospect 10's recruitment.
- (5) From March to May 2011, representative 1 had telephone recruiting contact with a football prospective student-athlete ("prospect 11").

B-2. IMPERMISSIBLE BENEFITS TO PROSPECTIVE STUDENT-ATHLETES AND STUDENT-ATHLETES. [NCAA Bylaws 12.1.2.1.3.1, 12.3.1.2, 13.2.1, 14.11.1, 15.01.2, 15.01.3 and 16.11.2.1]

From March 2009 through March 2011, representative 1 provided impermissible benefits to men's basketball and football student-athletes and prospective student-athletes. Specifically:

- a. On November 30, 2009, December 30, 2010, and January 3, 2011, representative 1 made deposits of \$100, \$200 and \$200, respectively, for a total of \$500, into the bank account student-athlete A, who competed while ineligible during the 2009-10 and 2010-11 seasons as a result of these payments.
- b. On May 13, 2010, representative 1 arranged, through his son, \$11,190.45 for tuition and institution fees at the institution for a men's basketball student-athlete ("student-athlete C") who subsequently competed while ineligible during the 2010-11 season.
- c. In January 2011, representative 1 provided a laptop computer valued at \$465.25 to prospect 10.
- d. On February 25, 2011, representative 1, through his son, arranged to pay \$234.90 in transportation expenses for prospect 4, to travel from Hartford, Connecticut, to Louisville, Kentucky.
- e. On March 24, 2011, representative 1 paid \$375 in tuition expenses at Jefferson County for prospect 4.
- f. On March 24, 2011, representative 1 paid \$1,375 in tuition expenses at Jefferson County for prospect 2.
- g. On March 24, 2011, representative 1 paid \$1,125 in tuition expenses at Jefferson County for the sister of prospect 2.
- h. On March 28, 2011, representative 1 arranged, through his son, to pay \$740.14 in transportation expenses for prospect 2's travel from Louisville, Kentucky, to Calgary, Canada.

B-3. IMPERMISSIBLE RECRUITING INDUCEMENT – ATTEMPTED ARRANGEMENT FOR EMPLOYMENT. [NCAA Bylaws 13.2.1 and 13.2.1.1-(a)]

In January and February 2011, the director of athletics, representative 1, and another representative of the institution's athletics interests ("representative 3"), attempted to arrange employment for the mother of prospect 7 in the locale of the institution.

B-7. LACK OF INSTITUTIONAL CONTROL. [NCAA Constitution 2.8.1, 6.01.1 and 6.4.2]

The scope and nature of the violations detailed in Findings B-1 and B-3 demonstrate that the institution failed to exercise institutional control and monitoring in the administration of its athletics programs by failing to monitor the conduct, interaction and communication between various athletics department staff members and representative 1 and persons associated with representative 1. Further, an impermissible benefit was provided in conjunction with the institution's relationship with representative 1. Specifically:

- a. The director of athletics, and other athletics department staff members, including men's basketball and football coaching staff members, were aware that representative 1 and his associates:
 - (1) Maintained relationships with basketball and football prospective student-athletes and family members recruited by the institution from different cities and locations in the country but failed to adequately explore or monitor the activities of representative 1 and his associates in relation to those prospects to ensure NCAA rules compliance.
 - (2) Promoted the institution's athletics programs and assisted the institution in the recruitment of prospects but failed to take any actions to discourage or stop the activities; ask reasonable questions about the circumstances; or report violations to the institution, Conference USA or the enforcement staff.
- b. During the time period when representative 1 and his associates were promoting the institution's athletics programs and assisting the institution in recruitment, the director of athletics and the head basketball coach allowed representative 1 and his associates to receive tangible benefits and favors in the form of event tickets and access to the director of athletics, the institution's athletics department programs and coaches.
- c. The institution failed to implement adequate monitoring systems relating to the provision of out-of-state tuition fee waivers to student workers to ensure that such fee waivers were provided to student workers performing duties as assigned.

IV. SECONDARY VIOLATIONS. [Please note that the cites below are the cites as they appear in the Committee on Infractions report dated July 31, 2012.]

**C. RECRUITING VIOLATIONS – IMPERMISSIBLE TEXT MESSAGES.
[NCAA Bylaw 13.4.1.2]**

Between January and March 2011, a then assistant football coach sent 10 text-messages to prospective student-athletes and/or their parents prior to the involved prospect signing a NLI/or institutional offer of financial aid in violation of NCAA recruiting communication legislation.

V. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

- D. For the reasons set forth in Parts A and B of this report, the Committee on Infractions found that this case involved major violations of NCAA legislation. In addition the Institution is a repeat violator (See: Bylaw 19.5.2.1.1). In determining the appropriate penalties to impose, the committee considered the institution's self-imposed penalties and corrective actions. Note: The institution's corrective actions are contained in Appendix Two.]

The committee also considered the institution's cooperation in the processing of this case. Cooperation during the infractions process is addressed in Bylaw 19.01.3 - **Responsibility to Cooperate**, which states in relevant part that, "All representatives of member institutions shall cooperate fully with the NCAA enforcement staff, Committee on Infractions, Infractions Appeals Committee and Board of Directors. The enforcement policies and procedures require full and complete disclosure by all institutional representatives of any relevant information requested by the NCAA enforcement staff, Committee on Infractions or Infractions Appeals Committee during the course of an inquiry." Further, NCAA Bylaw 32.1.4 – **Cooperative Principle**, also addresses institutional responsibility to cooperate fully during infractions investigations, stating, in relevant part, "The cooperative principle imposes an affirmative obligation on each institution to assist the enforcement staff in developing full information, to determine whether a possible violation of NCAA legislation has occurred and the details thereof." The committee determined that the cooperation exhibited by the institution met its obligation under Bylaws 19.01.3 and 32.1.4. The cooperation the institution demonstrated in this case must be weighed against the conduct and failures of the institution and its personnel as set forth in Findings B-1, B-2, B-3, B-5, B-6 and B-7. The committee concluded that in light of the serious nature of the violations and the failure of

the institution to detect and/or prevent them, plus the institution's status as a repeat violator, the institution's cooperation did not warrant relief in the penalties imposed by the committee in this case.

This is a case that involved several serious violations of NCAA legislation, most notably unethical conduct on the part of the director of athletics and an assistant football coach, a failure to monitor by the head men's basketball coach and a lack of institutional control, all of which can be traced to the activities of representative 1, and the fallout which resulted from those activities. For a period of more than two years, members of the institution's football and men's basketball coaching staffs not only condoned the involvement of representative 1 and his associates in the recruiting process, they actively embraced and befriended him while he was violating NCAA legislation. In short, the institution's staff members who were in a position to know that representative 1 was engaging in illicit activity and indeed had an affirmative obligation to know, chose instead to look the other way. In doing so, they abdicated their responsibilities under NCAA legislation.

The committee decided that the imposition of postseason penalties was appropriate in this case, noting that four of the five aggravating factors cited under Bylaw 19.5.2-(g) were present, including: 1) An involved individual remains employed at the institution; 2) A significant competitive advantage resulted from the violations; 3) The violations reflect a lack of institutional control and; 4) The institution is a repeat violator.

In light of the above and the egregious nature of this case, the committee imposes the following penalties:

1. Public reprimand and censure.
2. Five years of probation commencing February 10, 2012, and concluding February 9, 2017. [**Note 1:** The period of probation begins retroactively to the ending date of the institution's prior two-year probationary period resulting from its 2010 case. **Note 2:** The institution suggested a three-year period of probation, also beginning on February 10, 2012.]
3. The institution's football team shall end its 2012 season with the playing of its last regularly scheduled, in-season contest and shall not be eligible to participate in any postseason competition, including a bowl game, following the season. Moreover, during the year of this postseason ban, the football team may not take advantage of the

exceptions to the limit in the number of football contests that are provided in Bylaw 17.9.5.2, including a conference championship game, with the exception of a spring game as set forth in Bylaw 17.9.5.2-(a).

4. The institution's men's basketball team shall end its 2012-13 season with the playing of its last regularly scheduled, in-season contest. Moreover, during the year of this postseason ban, the basketball team may not take advantage of the exceptions to the limit in the number of contests that are provided in Bylaw 17.3.5, including a conference season-end tournament.
5. Limit of 20 initial grants-in-aid and 80 total grants in football each year for three academic years. [Note: The institution had proposed a reduction of four, from 85 to 81, in total grants and a reduction of four, from 25 to 21, in the permissible number of initial grants for the 2012-13 and 2013-14 academic years.]⁸
6. Limit of 11 total grants in men's basketball each year for three academic years. [Note: The institution had proposed a reduction of one, from 13 to 12, in total grants for each of the 2012-13 and 2013-14 academic years.]⁹

⁸ The institution has the option to comply with the limits imposed by the committee beginning with the 2012-13 academic year and concluding with the 2014-15 academic year, or commencing with the 2013-14 academic year and concluding with the 2015-16 academic year. If the institution chooses to implement the three-year period of the penalty during the 2012-13, 2013-14 and 2014-15 academic years, with the self-imposed reduction of four initial and four total (from 25 to 21 and from 85 to 81 respectively) during the 2012-13 academic year, it will be required to reduce initial and total grants by six (from 25 to 19 and from 85 to 79) during one of the remaining two years. Conversely, if the institution chooses to delay the three-year period of the penalty to the 2013-14, 2014-15 and 2015-16 academic years, with the current self-imposed reductions in place for the 2012-13 academic year, it will be "credited" with the self-imposed reduction of four initial and four total grants taken during the 2012-13 academic year and be required to reduce grants by one (from 25 to 24 and from 85 to 84) during one of the ensuing years.

⁹ The institution has the option to comply with the limits imposed by the committee beginning with the 2012-13 academic year and concluding with the 2014-15 academic year, or commencing with the 2013-14 academic year and concluding with the 2015-16 academic year. If the institution chooses to implement the three-year period of the penalty during the 2012-13, 2013-14 and 2014-15 academic years,

8. A financial penalty in the amount of \$50,000 payable to the NCAA shall be submitted at the time the institution's preliminary compliance report is due (September 15, 2012).

9. Pursuant to NCAA Bylaws 19.5.2.2-(e)-(2) and 31.2.2.3, the institution will vacate all men's basketball wins in which student-athlete A competed for the 2008-09, 2009-10 and 2010-11 academic years. (Institution imposed). The individual records of student-athlete A shall be vacated as well. Further, the institution's records regarding men's basketball, in addition to the record of the head men's basketball coaches during those years will reflect the vacated records and will be recorded in all publications in which men's basketball records for the 2008-09 through the 2010-11 seasons are reported, including, but not limited to institutional media guides, recruiting material, electronic and digital media plus institutional, conference and NCAA archives. Any institution which may subsequently hire the head coaches shall similarly reflect the vacated wins in their career records documented in media guides and other publications cited above. Head coaches with vacated wins on their records may not count the vacated wins to attain specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to these vacated contests shall be removed from athletics department stationery, banners displayed in public areas and any other form in which they may appear. Finally, to ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected in official NCAA publication and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA director of statistics and appropriate conference officials to identify the specific student- athlete and contests impacted by the penalties. In addition, the institution must provide the NCAA statistics department a written report, detailing those discussions with the director of statistics. This document will be maintained in the permanent files of the statistics department. This written report must be delivered to the NCAA statistics department no

with the self-imposed reduction of one (from 13 to 12) during the 2012-13 academic year, it will be required to reduce grants by three (from 13 to 10) one of those ensuing years. Conversely, if the institution chooses to delay the three-year period of the penalty to the 2013-14, 2014-15 and 2015-16 academic years, it will be "credited" with the self-imposed reduction of one grant during the 2012-13 academic year and be required to reduce grants by one (from 13 to 12) during one of the ensuing years.

later than forty-five days following the initial Committee on Infractions release or, if the vacation penalty is appealed, the final adjudication of the appeals process.

10. A reduction of the number of permissible recruiters allowed off the institution's campus at any one time as follows:
 - a. Reduce by two, from seven to five, the maximum number of full-time coaches permitted to be off campus recruiting at any one time in football for the 2012-13 and 2013-14 academic years. [**Note:** the institution proposed a reduction of one, from seven to six.]
 - b. Reduce by one, from three to two the maximum number of full-time coaches permitted to be off campus recruiting at any one time in men's basketball for the 2012-13 and 2013-14 academic years.
 - c. The head men's basketball coach and assistant men's basketball coach were prohibited from engaging in any off-campus recruiting activity during two of the three July evaluation periods (e.g., head coach prohibited from off-campus recruiting activities during the first Wednesday through Sunday July evaluation period, and assistant men's basketball coach prohibited from off-campus recruiting activities during the second Wednesday through Sunday July evaluation period) for the July 2012 evaluation period. (Institution imposed) In addition, the above identified coaches will have the same prohibition for off-campus recruiting activity during all three evaluation periods in July 2013. [**Note:** the institution suggested a prohibition for two out of the three July evaluation periods for both years.]
13. Official paid visits in the sport of football shall be limited to 30 for each of the 2012-13 and 2013-14 academic years (August 1, 2012 – July 31, 2014). [**Note 1:** The maximum number of official paid visits in football is 56. **Note 2:** The institution had averaged approximately 33 visits over the previous four academic years. **Note 3:** The institution had proposed a limit of 42 official paid visits during the next two academic years.]
19. During this period of probation, the institution shall:

- a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct the coaches, the faculty athletics representative, all athletics department personnel and all institution staff members with responsibility for the certification of student-athletes' eligibility for admission, financial aid, practice or competition;
 - b. Submit a preliminary report to the office of the Committees on Infractions by September 15, 2012, setting forth a schedule for establishing this compliance and educational program; and
 - c. File with the office of the Committees on Infractions annual compliance reports indicating the progress made with this program by January 15 of each year during the probationary period. Particular emphasis should be placed on education of staff members regarding recruiting legislation, particularly the involvement of "third parties" in the recruiting process. The reports must also include documentation of the institution's compliance with the penalties adopted and imposed by the committee.
20. During the period of probation, the institution shall:
- a. Inform prospective student-athletes in football and men's basketball that the institution is on probation for five years and of the violations committed. If a prospective student-athlete takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospective student-athlete signs a National Letter of Intent.
 - b. Publicize the case information annually in football and men's basketball media guides (or web posting), as well as in a general institution alumni publication to be chosen by the institution with the assent of the office of the Committees on Infractions. A copy of the media guides, alumni publication, and information included in recruiting material shall be included in the compliance reports to be submitted annually to the Committees on Infractions.
21. The above-listed penalties are independent of and supplemental to any action that has been or may be taken by the Committee on Academic

Performance through its assessment of contemporaneous, historical, or other penalties.

22. At the conclusion of the probationary period, the institution's president shall provide a letter to the committee affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

VI. ISSUES RAISED ON APPEAL.

In its written appeal, UCF requested that penalty D-3 should be vacated in that it is excessive such that it is an abuse of discretion. (Bylaws 32.10.4 and 32.10.4.1)

VII. APPELLATE PROCEDURE.

In considering UCF's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the transcript of the institution's April 13, 2013, hearing before the Committee on Infractions and the submissions by UCF and the Committee on Infractions referred to in Section II of this report.

The oral argument on the appeal was held by the Infractions Appeals Committee January 24, 2013, in Indianapolis, Indiana. UCF was present and was represented by its attorneys; president; vice president and general counsel; associate general counsel; director of athletics; and faculty athletics representative. The Committee on Infractions was represented by the appeal coordinators for the Committee on Infractions; the managing director - Committees on Infractions; the director - Committees on Infractions; and the associate director - Committees on Infractions. Also present were the vice president of enforcement; director of enforcement; associate director of enforcement; and director and associate general counsel, office of legal affairs of the NCAA. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

VIII. INFRACTIONS APPEALS COMMITTEE’S RESOLUTION OF THE ISSUES RAISED ON APPEAL.

In reviewing the report in this case, the Infractions Appeals Committee may set aside a penalty imposed by the Committee on Infractions on appeal if the penalty is “excessive such that it constitutes an abuse of discretion.” [Bylaw 32.10.2]

As we stated in the Alabama State University case:

“...we conclude that an abuse of discretion in the imposition of a penalty occurs if the penalty: (1) was not based on a correct legal standard or was based on a misapprehension of the underlying substantive legal principles; (2) was based on a clearly erroneous factual finding; (3) failed to consider and weigh material factors; (4) was based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational; or (5) was based in significant part on one or more irrelevant or improper factors.” [Alabama State University, Public Infractions Appeals Committee Report, Page No. 23, June 30, 2009]

In reviewing the record before us, the committee agrees with UCF’s assertion that the Committee on Infractions does not adequately distinguish between the factors on which the football and basketball postseason bans are based. [Appeal Page Nos. 9-11] Specifically, as evidenced in the Committee on Infractions’ report, the rationale for the football postseason penalty is so intricately woven with factors only supportive of the basketball postseason penalty (i.e., continued employment; significant competitive advantage) as to make it impossible to determine whether these additional factors formed a significant basis for the Committee on Infractions imposition of the football postseason penalty in addition to the full range of other significant penalties placed on the UCF football program specifically, and the university overall. [Committee on Infractions Report, Page Nos. 55-56] In addition, the Committee on Infractions does not make it clear the extent to which the finding of a lack of institutional control is based on the infractions in football as opposed to the infractions in basketball. As such, the committee determines these ambiguities within the infractions report in favor of the institution and concludes the penalty in question was based in significant part on irrelevant factors resulting in an abuse of discretion.

Further, when reviewing the imposition of an additional postseason penalty in light of the totality of the penalties imposed on both the football and basketball programs, and the university overall, the football postseason penalty is inconsistent and excessive relative to the overall circumstances presented. Specifically, in reviewing the penalties applied to

basketball and football side by side, the similarity of penalties appears inconsistent relative to the disparities in conduct and material factors applicable to each program noted above.¹ As such, the addition of the appealed penalty is excessive to the committee.

Finally, the committee notes the Committee on Infractions argument that the postseason ban bylaw does not require any of the factors enumerated to be present and that there is ample case precedent to conclude that the Committee on Infractions may apply a postseason ban when any one factor is shown. The committee does not inherently disagree with this assertion when the Committee on Infractions clearly articulates those factors that formed its decision. But, when the record creates the appearance that the Committee on Infractions relied on material factors not present for a particular sport to assess the penalty and there is no evidence in the record that the Committee on Infractions weighed the potential absence of those factors in its determination, the committee finds the Committee on Infractions abused its discretion by failing to appropriately consider and weigh material factors. It is incumbent on the Committee on Infractions to clearly delineate the factors associated with the penalties for each sport when multiple circumstances and disparate behavior are before the Committee on Infractions.

IX. CONCLUSION.

Penalty D-3 is vacated.

NCAA Infractions Appeals Committee

David Williams, chair
Susan Cross Lipnickey
Jack Friedenthal
W. Anthony Jenkins
Patti Ohlendorf.

¹ In the sport of basketball, individuals involved in the violations remained employed by the institution and prospective student-athletes involved in the violations enrolled and represented the institution in competition. Further, in the sport of football, the prospective student-athletes did not enroll at the institution.