

STATE OF NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 10 CVS 1941

FILED

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WAKE COUNTY, C.S.C.

BY _____

THE NEWS AND OBSERVER)
PUBLISHING COMPANY; DTH)
MEDIA CORP; THE CHARLOTTE)
OBSERVER PUBLISHING COMPANY;)
TIME-WARNER ENTERTAINMENT-)
ADVANCE/NEWHOUSE PARTNERSHIP;)
WTVD TELEVISION, LLC; CAPITOL)
BROADCASTING COMPANY,)
INCORPORATED; THE ASSOCIATED)
PRESS; and MEDIA GENERAL)
OPERATIONS, INC.,)

Plaintiffs)

v.)

RICHARD A. BADDOUR, as Director)
of Athletics for The University of North)
Carolina at Chapel Hill; PAUL HILTON)
"BUTCH" DAVIS, JR., as Head Football)
Coach at UNC-CH; JEFF B. McCRACKEN,)
as Director of Public Safety at UNC-CH;)
and HOLDEN THORP, as Chancellor at)
UNC-CH,)

Defendants.)

ORDER

This matter came on for hearing before the undersigned on April 15, 2011 on the plaintiffs' Motion for Judgment on the Pleadings. This matter previously was designated as a Rule 2.1 Exceptional Case and thus was permissibly heard out of term and out of county. The Plaintiffs appeared through Hugh Stevens and Amanda Martin of the law firm Stevens Martin Vaughn & Tadych, PLLC. The defendants appeared through Special Deputy Attorneys General Alexander McC. Peters and Melissa Trippe of the North Carolina Department of Justice. After

considering the pleadings and the written and oral arguments of the parties, the Court finds and concludes as follows.

This lawsuit was brought by media organizations seeking to obtain copies of records from the University of North Carolina at Chapel Hill ("UNC-CH") pursuant to the North Carolina Public Records Law, Chapter 132 of the General Statutes. The requested records that are the subject of this suit relate to the football program at UNC-CH, and allegations of improprieties in the program. The plaintiffs are eight media organizations that investigate and report on news throughout the state of North Carolina and nationally. The defendants are Richard Baddour, the Director of Athletics for the University of North Carolina at Chapel Hill ("UNC" or "the University"); Paul Hilton "Butch" Davis, Jr., the head football coach at UNC; Chief Jeff B. McCracken, the Director of Public Safety at UNC; and Holden Thorp, the Chancellor of UNC-CH. At issue are six categories of information:

- a. All documents and records of any investigation conducted by the University related to any misconduct by any UNC-CH football coach, any UNC-CH football player, any sports agent, any UNC-CH booster and/or any UNC-CH academic tutor.
- b. Names of all individuals or organizations that provided impermissible benefits to any UNC-CH football players.
- c. Unredacted phone numbers on telephone bills for mobile phones provided to and used by defendants Baddour and Davis and by former associate football coach John Blake.
- d. Parking tickets issued by UNC-CH relating to 11 players.
- e. Names, employment dates and salaries of all individuals employed as tutors/mentors for UNC-CH student athletes since January 1, 2007, including any documents mentioning former tutor Jennifer Wiley.
- f. Names of recipients of athletic scholarships.

Subsequent to the suit being filed, the University provided documentation of category (b) (the identity of those who provided impermissible benefits to UNC players) and category (f) (names of athletic scholarship recipients). Plaintiffs conceded in open court that these two categories have been satisfied and are no longer at issue.

On March 28, 2011, plaintiffs filed a motion for judgment on the pleadings, which was heard on April 15, 2011. Neither the plaintiffs nor the defendants made arguments with regard to category (a), the plaintiffs' broad request for all documents related to the investigation. Accordingly, this Court rules only on the categories of information denoted above as (c), (d) and (e).

In describing the rationale underlying the Public Records Law, the North Carolina Supreme Court has adhered to the philosophy that "the general rule in the American political system must be that the affairs of government be subject to public scrutiny." *News and Observer Pub. Co., Inc. v. Poole*, 330 N.C. 465, 475, 412 S.E.2d 7, 13 (1992). Accord, *Advance Publications, Inc. v. City of Elizabeth City*, 53 N.C. App. 504, 507, 281 S.E.2d 69, 71 (1981) ("Good public policy is said to require liberality in the right to examine public records."). Moreover, North Carolina's appellate courts repeatedly have admonished that the Public Records Law is to be construed liberally and the exceptions to it interpreted narrowly.

The crux of the dispute between the University and the plaintiffs involves (a) the definition of an "education record" as that term is defined in FERPA, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; and (b) whether the phone numbers of University employees that happen to appear on phone records of University-provided phones used by coaches or the athletic director are shielded from disclosure by the ^{FERPA SE 5/12/11} State Personnel Act.

FERPA applies only to "education records," which are defined as "those records, files, documents, and other materials that (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A). The U.S. Supreme Court has held, "The word "maintain" suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database, perhaps even after the student is no longer enrolled." *Owasso Indep. Sch. Dist. No. 1-011 v. Falvo*, 534 U.S. 426, 431-33 (2002). FERPA

does not provide a student with an invisible cloak so that the student can remain hidden from public view while enrolled at UNC-CH.

Phone Records

The plaintiffs have requested unredacted telephone bills for mobile phones provided to and used by defendants Baddour and Davis and by former associate football coach John Blake. Such records presumably include the numbers of telephones from which calls were placed to those mobile phones and the numbers to which calls were placed from those phones. Release of such telephone bills would not divulge the content of the communication, and the telephone number of a student that happens to appear on the phone bill of a coach or the athletic director is not part of the education records protected by FERPA. Nor does the appearance of the phone number of a University employee on the phone bill of a coach or athletic director constitute a personnel record. The N.C. Supreme Court has held,

In order for personnel information to be protected by section 126-22, it must meet two requirements: (1) it must have been gathered by an individual's employer (including the Office of State Personnel) or considered in an individual's application for employment; and (2) the information must relate to at least one of the enumerated activities by the employer with respect to the individual employee or applicant for employment.

News & Observer Pub. Co., Inc. v. Poole, 330 N.C. 465, 476, 412 S.E.2d 7, 14 (1992).

Moreover, phone numbers are not even among the information listed in the personnel statute as employment-related or personal information to be withheld.

Parking Tickets

The plaintiffs have asked for access to parking tickets issued by UNC-CH relating to 11 players. The University has argued that parking tickets and associated records are education records protected by FERPA and exempt from disclosure under the Public Records Law because one potential sanction for repeated violations or refusal to pay a ticket is disciplinary action before the student honor court. However, the fact that an ultimate sanction *might* include academic or disciplinary ramifications does not convert the entire UNC-CH parking system into

a disciplinary arm of the University. The parking tickets issued by UNC-CH public safety, if any, to 11 players are not education records protected by FERPA.

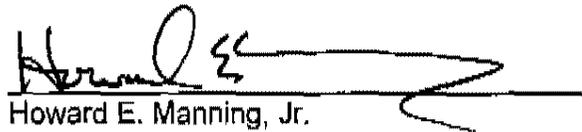
Tutor/Mentor Records

The plaintiffs have requested the names, employment dates and salaries of all individuals employed as tutors or mentors for UNC-CH student athletes since January 1, 2007. Although the athletic tutor program permits the employment of individuals who have received an undergraduate degree, the University has taken the position that undergraduate students who are employed as tutors can be so employed only by reason of their student status. "Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition." 34 C.F.R. § 99.3. Therefore active, enrolled UNC students who are employed by UNC and whose employment ^{was or} is contingent upon their being students at UNC-CH ~~was or~~ ^{was or} are education records protected by FERPA and exempt from disclosure under the Public Records Law.

Accordingly, the Court grants judgment on the pleadings for the plaintiffs with respect to the phone records and parking tickets and grants judgment on the pleadings for the defendants with respect to the tutor records. The Court holds open the issue encompassed in category (a) above, as to the remaining request for all records of the investigation.

IT IS SO ORDERED.

This the 12th day of May, 2011.


Howard E. Manning, Jr.
Superior Court Judge Presiding

NORTH CAROLINA:

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

ORANGE COUNTY:

10 CVS 001944

THE NEWS AND OBSERVER
PUBLISHING COMPANY, et al.,
Plaintiffs,

v.

RICHARD A. BADDOUR, et al.,
Defendants.

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ORANGE COUNTY, N.C.

MEMORANDUM OF DECISION AND ORDER

THIS MATTER was heard by the Court at the July 19, 2012 civil session of the Wake County Superior Court upon Plaintiffs' Motion for Summary Judgment and Defendants' Motion for Summary Judgment. This is a Rule 2.1 exceptional case and motions may be heard outside of the county in which the case is filed. Prior to the hearing both plaintiffs and defendants filed memoranda, deposition excerpts, multiple case citations and other materials for the Court's consideration. The parties, through counsel, made arguments at the hearing and the Court took the matters under advisement.

On August 9, 2012, the Court issued two (2) memoranda regarding its decision on (1) the cross motions for summary judgment and (2) Coach Davis' motion to compel and motion to quash subpoena and for protective order. In the memoranda, the Court instructed counsel to prepare orders for the Court's approval.

The Coach Davis Order. On August 22, 2012, the Court signed an Order regarding the Coach Davis motions, which Order was filed on August 23, 2012, in the Orange County Superior Court. In regards to the Davis Order, it appears to the Court that there is some confusion about what the Court ordered Coach Davis to do with regard to those phone calls made by Coach Davis on his personal cell phone that were made by Coach Davis for official, work-related purposes (i.e. call records that would be public records if the calls were made on a cell phone furnished to Coach Davis by UNC-CH). For those who carped about the Court's decision without reading the decision, here it is again.

In the August 22, 2012, Order the Court declared that University officials and coaches may not use their personal cell phones to "dodge" or evade the North

Carolina Public Records law and may not avoid public scrutiny of their cell phone records by using their personal cell phones to conduct public business.

For that reason, the Court Ordered, in pertinent part that (1) those portions of Coach Davis' personal cell phone billing statements that reflect phone usage unrelated to his duties and responsibilities as Head Football Coach and UNC-CH may not be reviewed by Plaintiffs or Counsel for Plaintiffs and (2) Within 30 days of the entry of this Order, Coach Davis shall produce to plaintiffs those portions of his personal cell phone billing statements that reflect phone usage related to his duties and responsibilities as Head Football Coach at UNC-CH. Order, Aug 22,(emphasis added)

The end result is that Coach Davis' was ordered to produce those portions of his personal cell phone billing records that were work related to his duties as head football coach at UNC for the reason(s) set forth above.

The Court wants to make it clear as a bell that if any other UNC administrator, coach or officer has used his or her personal cell phone for work-related purposes regarding the matters in this case, the same rule would apply to that person. Nothing further in this Memorandum of Decision need be said regarding the Coach Davis personal cell phone issue.

At that time of execution of the Coach Davis Order on August 22, 2012, the Court inquired as to the status of the proposed order that counsel were instructed to prepare and present to the Court containing the decisions of the Court set out in its August 9, 2012 memorandum in this case on the cross motions for summary judgment. The Court was advised that proposed order had not yet been agreed upon by the parties' counsel.

On September 18, 2012, some 40 days from August 9, 2012, the Court had not been presented with any proposed Order by any party reflecting its decision on the cross motions for summary judgment. The Court sent a memo to counsel advising that the delay was unacceptable and that the Court would simply prepare its own Order and enter the Order on its own. In short, the Court relieved counsel of the task of preparing the Order as nothing had been accomplished.

Procedural Background:

This case involves public records requested by the plaintiffs under the North Carolina public records law.

There were initially six (6) categories of records requested under the public records requests by the plaintiffs that were at issue. The issues surrounding these categories of records were decided at two separate hearings. The first hearing was held on April 15, 2011.

To provide continuity for the entire process, the Court will review the first hearing and decision in Part One and the second hearing, held on July 19, 2012 followed by its Decision on the remaining issues as set out in this Memorandum of Decision in Part Two.

PART ONE: The April 15, 2011 hearing and May 13, 2011 ORDER

At an initial hearing on April 15, 2011, counsel for both sides acknowledged that the University defendants ("UNC") had complied with two (2) out of the six requested categories of public records. They were:

Names of all individuals or organizations that provided impermissible benefits to any UNC football players.

Names of recipients of athletic scholarships.

The remaining four (4) categories of public records requested were:

1. All documents and records of any investigation conducted by the University related to any misconduct by any UNC-CH football coach and UNC-CH football player, any sports agent, any UNC-CH booster and/or any UNC-CH academic tutor.
2. Unredacted phone numbers on telephone bills for phones provided to and used by defendants Baddour and Davis and by former associate football coach John Blake. (This did not include personal cell phone issue which was decided by the Court in the Davis Order entered August 23, 2012)
3. Parking tickets issued by UNC-CH relating to 11 players.
4. Names, employment dates and salaries of all individuals employed as tutors/mentors for UNC-CH student athletes since January 1, 2007, including any documents mentioning former tutor Jennifer Wiley.

At the hearing, counsel for plaintiffs advised the Court that the first (1) category was not able to be resolved at that time pending the Court's decisions on categories 2, 3 and 4 above, or words to that effect.

Accordingly, category 1 was not part of the arguments before the Court at the April, 2011 hearing, only categories 2, 3 and 4 – University provided phone records, parking tickets and student/tutors/mentors of student athletes.

The primary defense by UNC as to all three of these categories was FERPA.

On April 19, 2011 this Court announced its Decision as to each category: 2, 3 & 4 in summary form which was followed by an Order entered on May 13, 2012 in Orange County Superior Court reflecting the following:

2. The unredacted phone numbers on telephone bills for phones provided to and used by defendants Baddour and Davis and former coach Blake are to be provided by UNC. The fact that a student's telephone number appears on these telephone bills is public record. The telephone number is not protected by FERPA. FERPA does not provide a student with an invisible cloak so that the student can remain hidden from public view while enrolled at UNC. The telephone number is not part of the education record protected by FERPA. It should be noted that the production of telephone records does not include the CONTENT of any of the telephone conversations.

3. The parking tickets, if any, issued by UNC relating to 11 players. The parking tickets issued by UNC public safety, if any, to 11 players are not education records protected by FERPA. While section 6-3 of Article VI, Parking Control of the UNC Ordinance relating to parking on the campus of UNC permits, after repeated offenses, may result in referral to an appropriate agency for disciplinary action, the receipt of a parking ticket, in and of itself, is not subject to disciplinary action and thus, is not protected educational information under FERPA. If a parking scofflaw were to reach the repeated stage and was referred to disciplinary action, such disciplinary action would be covered under FERPA. However this remote possibility does not constitute a sufficient "threat" to cloak every student with invisibility about the number of parking tickets he or she receives. Parking tickets are subject to civil not criminal penalties.

4. The names, employment dates and salaries of all individuals employed as tutors/mentors for UNC athletes. There is a distinction here that must be addressed. Non-student tutors/mentors employed by UNC to assist UNC athletes are not protected by FERPA but would have rights under the law and regulations governing personnel and employees. Active UNC students/graduate students/etc. that are employed by UNC and their employment is contingent on their being students at UNC, are protected by FERPA and their records are "education records." Accordingly, FERPA protects those UNC student tutors/mentors but not non - UNC student mentors/tutors. UNC must, within the guidelines of the personnel laws and regulations, disclose the non - UNC student tutors/mentors but UNC does not have to disclose the UNC student tutors/mentors information as it is protected by FERPA.

The foregoing decisions were **final decisions by the Court** on those issues. It is the Court's understanding that UNC complied with the Court's Order of May 13, 2011, and furnished the documents and data requested.

With the entry of the Court's May 13, 2011 Order reflecting the foregoing, there remained issues relating to category number 1 above, to wit: documents and records relating to the University and NCAA investigation into allegations of misconduct by any UNC-CH football coach(es) and UNC-CH football player, any sports agent, UNC-CH booster or any UNC-CH academic tutor.

By letter of October 11, 2011, counsel for plaintiffs "clarified" their requests for "certain documents and records of the University's investigation related to any misconduct in UNC's football program." (Category 1). These requests are set forth below and, with the exception of the Coach Davis personal cell phone records issue, are all that remain for the Court to decide in the cross motions for summary judgment now pending.

PART TWO: The July 19, 2012 and the Court's Decision on those issues:

The one unresolved remaining category of records and documents has come down to the following:

1. With respect to any outside law firms retained by the University:
 - a. copies of any engagement letter or other written instrument reflecting the contractual arrangement between the University and the firms
 - b. copies of all bills sent by either firm
 - c. copies of all communications from the University to the firm
 - d. copies of the recordings in the possession of the Bond firm
2. All Statements of Fact submitted to the NCAA
3. All Reinstatement Requests
4. An unredacted copy of University's September 19 submission to the NCAA

The plaintiffs and the UNC defendants agree that the material facts are undisputed and that this matter can be decided on cross motions for summary judgment.

Decision as to each category left to be resolved at the July 19, 2012 hearing.

Category 1a. copies of any engagement letter or other written instrument reflecting the contractual arrangement between the University and the firms (outside law firms retained by the University). - At the hearing, counsel represented to the Court that there were no engagement letters or other writings reflecting the contractual arrangement between the University and the firms. **Accordingly, this issue is off the table as there is no such data or document.**

Decision relative to attorney-client issues, FERPA and public records law affecting attorneys' fee statements (bills), communications from UNC to the Bond law firm and copies of recordings of student athlete interviews in possession of the Bond firm.

Categories 1b, c, and d.

Attorney-client privilege and Public Records law. The North Carolina Public Records law protects written communications to a state agency that are:

made within the scope of the attorney-client relationship by any attorney-at-law serving such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which the body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. G.S. 132-1.1(a).

The North Carolina Public Records law also excludes "trial preparation material":

Any record, wherever located and in whatever form, that is trial preparation material within the meaning of G.S. 1A-1, Rule 26(b)([5]), any comparable material prepared for any other legal proceeding, and any comparable material exchanged pursuant to a joint defense, joint prosecution, or joint interest agreement in connection with any pending or anticipated legal proceeding. G.S. 132.9.9(h)(2).

Plaintiffs contend that since all of the communications at issue in this case related to the NCAA investigation of the football program at UNC, that membership in the NCAA is voluntary, and that the only "sanction" for violation of NCAA rules is disqualification, sanctions about the football program or a fine, that an NCAA investigation into the football program and violations of NCAA rules uncovered therein, are not in the nature of any "claim" or other proceeding covered by G.S. 132-1.1(a). Accordingly, "none of the communications between the University and its outside law firm related to the NCAA are protected by the attorney-client privilege" under the public records statute. (Pls. Memo page 12).

Plaintiffs further contend, in the alternative, that even if the NCAA investigation and its potential sanctions for misconduct under the NCAA rules constituted a "claim" under the public records law, UNC as a public agency is entitled only to a privilege "in the advice it receives from its counsel. Communications from the University to its outside counsel are not privileged." (Pls. Memo page 12)

Finally, plaintiffs demand that the legal bills from the Bond firm or outside counsel sent to UNC should be produced, except for those portions which constitute "legal advice from outside" counsel. On this question, the Court concludes as a matter of law that attorneys' fee statements (bills) are subject to the attorney – client privilege to the extent that those statements contain legal advice, litigation strategy or other client confidential data such as strategy or legal research. To the extent attorneys' fee statements contain the name of the client, the amount of the fee, the hourly rate by lawyer, and the general work purpose, and the amount

of costs and expenses incurred by the law firm, those items and similar items are not privileged and must be disclosed. ***Chaudhry v. Gallerizzo, 174 F.3d 394 (4th Cir. 1999)***

With respect to the request for all communications from UNC to the outside firm and all copies of recordings in the possession of the outside firm as well as internal communications about the matter from in-house counsel and staff acting at their directions, the Court concludes as a matter of law: (1) that the NCAA investigation into the UNC football program is an administrative or other type proceeding to which UNC is a party under G.S. 132.1.1(a) and is covered by the public records law with respect to attorney-client privilege and trial preparation materials; (2) that communications from in-house UNC counsel, corporate counsel, or an outside law firm, to the client (UNC) are not public records and are exempt from disclosure per G.S. 132.1.1(a). (3) that communications from in-house UNC counsel to outside counsel are privileged, attorney-client communications and are exempt from disclosure under G.S. 132.1.1(a) and (4) communications prepared by UNC staff at the direction of in-house or outside counsel for submission to in-house or outside counsel in connection with the NCAA investigation and UNC's response to the investigation are "trial preparation material" as defined in G.S. 1A-1, Rule 26(b)(5) and are precluded from disclosure under G.S. 132.1.9(h)(2)

As a result of this determination, the Court declares that the copies of recordings of interviews prepared in connection with the NCAA investigation at issue and in the possession of the Bond (outside firm) are covered as (a) attorney-client privileged communication and (b) trial preparation material under the public records law sections cited above.

The foregoing has determined all categories of documents covered under section 1 a, b, c & d, outside firms retained by the University.

All the issues that remain to be decided are the requests under Items 2, 3 & 4 dealing with Statements of Fact to NCAA, Reinstatement Requests and an unredacted copy of the UNC September 19, 2011 submission to the NCAA.

Decision on Statements of Fact and Reinstatement Requests and UNC's Response to NCAA.

Plaintiffs and defendants agree (which is unusual) that student-athlete information relating to academics (grades, courses, honor court proceedings, crip course information, and investigations into the true academic side) are covered by FERPA. At the hearing, counsel for plaintiffs was crystal clear that plaintiffs are not seeking (although the Court is sure they would like to have) that type of information in this matter because it is protected by FERPA.

It is quite gratifying to have a clear stated delineation in this area from plaintiffs' counsel. Plaintiffs' argument regarding the NCAA investigation into impermissible benefits to student athletes from coaches, big-time alumni and other supporters of the football program is that this information is not an "educational record" and is not protected by FERPA.

The Court agrees with plaintiffs' position with regard to information relating to the violation of NCAA rules relating to a student-athlete who participates in and receives impermissible benefits such as plane tickets, jewelry, clothing, shoes, automobiles, payments to cover parking tickets, monetary gifts, free meals, etc., and so forth.

Just as in the case of parking tickets, this kind of misbehavior has nothing to do with education. This kind of behavior (impermissible benefits –non-academic) does **not relate** to the classroom, test scores, grades, SAT or ACT scores, academic standing or anything else relating to a student's educational progress or discipline for violating the educational rules or honor code, all of which are clearly protected by FERPA.

The Statements of Facts, according to the defendants' memorandum submitted in response to the motion for summary judgment and defendants' own motion for summary judgment, are described as follows:

Statements of fact are detailed recitations of the facts, frequently in list form, surrounding the alleged improprieties of particular student-athletes. The University submitted Statements of Facts to the NCAA's Academic and Membership Affairs ("AMA") group to receive the NCAA's opinion as to whether a rules violation had occurred. Therefore, each list of facts is followed by the University's assessment of those facts under the applicable NCAA principles. These assessments rely heavily on the facts themselves. (UNC memo p22)

The plaintiffs are correct that Statements of Facts are customarily "anonymized" so that AMA cannot be prejudiced in its review by the identity of the student. (UNC memo p. 23)

The Court views the Statements of Facts "process" as described in the record as one similar to presenting information to a grand jury in a criminal case in that the AMA receives and reviews the Statement of Facts on an individual student athlete and responds to UNC as to whether or not a rules violation has occurred.

If a rules violation has occurred and the student-athlete's conduct is such that he or she is suspended from eligibility to participate in college athletics, the student-athlete and UNC must thereafter formally request approval to reinstate the

student-athlete's eligibility to participate in the athletics program from which the student-athlete was suspended or worse by the NCAA.

A Reinstatement Request is a document developed by the University and submitted to the NCAA to request approval to reinstate a student-athlete's eligibility to participate in college athletics. A Request typically consists of a four-page form that identifies the student using his name, year in school, remaining eligibility and other personal information. The form then incorporates the contents of an attached letter that is similar in function and content to a Statement of Facts.

Unlike a Statement of Facts, however, a Reinstatement Request is not anonymized. It expressly identifies each student by name and therefore undoubtedly "contain[s] information directly related to a student." (UNC memo p 26)

If there is no rules violation resulting in suspension by the AMA, **there is no need** for there to be a Reinstatement Request submitted on behalf of the student-athlete and the Statement of Facts remains anonymous or to use the "new" word created by the academic community and NCAA—"anonymized."

The Court wants to make it clear, once again, that information relating to the truly academic issues pertaining to student-athlete academic misbehavior, the "quality of education" grades, courses and so forth is off limits and protected from disclosure by FERPA.

The only issue that is in play here is for **misconduct relating to Impermissible benefits in violation of NCAA Rules** by student-athletes and their non-student donors, fans, agents and professional athlete friends who bestow impermissible benefits upon them in violation of NCAA Rules. This does not apply to academic issue violations.

With the foregoing in mind, the Court's decision on the remaining issues follows:

2. Statement of Facts. UNC is to produce in its original form each Statement of Facts related to any football player involved in the NCAA investigation at issue that is based on allegations of impermissible benefits (non-academic issues) received by the football player and **which resulted in a decision by the NCAA to declare the student athlete ineligible to play intercollegiate football at UNC as a result.**

Put another way, this includes all Statement of Facts NOT based on an purely academic issue violations (such as failing to make the minimum grade point average for eligibility) which disclosure by UNC to the NCAA resulted in the UNC

football player being declared ineligible to play football or subjected to other sanctions by the NCAA for the impermissible benefits rules violation.

This disclosure order does not include any Statement of Facts in which allegations of impermissible benefit (non-academic) violations were reported but which did not result in the NCAA declaring the football player ineligible or subject to other sanctions by the NCAA.

Likewise, this does not include any Statement of Facts produced in redacted form that were submitted to the NCAA as a result of non-academic issues, such as eligibility based on poor GPA, low grades and lack of hours, valid courses, etc.

Reduced to essentials, if the Statement of Facts relates to alleged impermissible benefits violations (non-academic violations) and the NCAA did not sanction or declare the student-athlete ineligible for the alleged violations, UNC does not have to produce those Statements of Facts as there has been no violation of impermissible benefits sufficient to result in any sanction or declaration of ineligibility. If the Statement of Facts resulted in the imposition of sanctions or declaration of ineligibility by the NCAA, they are to be produced in unredacted form.

3. Reinstatement Requests on the basis of impermissible benefits (not academic problems related to eligibility) – It is the Court's understanding that the only time that a Reinstatement Request is required is when the student-athlete (football player in this matter) has been found to be in violation of NCAA rules and declared ineligible. To attempt to become eligible again, the student-athlete has to file a Reinstatement Request.

The ground(s) for this Reinstatement Request can be (1) on the basis of academic performance (bad grades, or no grades, etc.) which is protected under FERPA or (2) on the basis of impermissible benefits violations, which information the Court has determined should not be protected under FERPA and should be produced without redaction or other cover up process.

Accordingly, the Court directs UNC to produce any Reinstatement Requests generated as a part of the NCAA investigation at issue here, that resulted from a football player (student-athlete) being declared ineligible to participate in the football program as a result of violations of impermissible benefits rules (non-academic issue violations), and being required to apply through a Reinstatement Request to attempt to regain eligibility to participate in collegiate football. These Reinstatement Requests should dovetail with the Statement of Facts that must be disclosed for impermissible benefits violations as discussed above.

Reinstatement Requests on the basis of academic performance issues such as low GPA, academic courses, etc., are not to be disclosed and are protected by FERPA as academic record.

4. UNC's September 19, 2011 Response to the NCAA.

UNC defined this document in its memorandum as follows:

On September 19, 2011, the University responded to the NCAA's allegations. The document – Response to Notice of Allegations, Case Number 357 (“Response to the NCAA) – includes a 111 page detailed discussion of all issues that were under investigation, i.e., the academic issues and issues related to improper benefits and contacts with agents.

The University publicly released this document, including 983 pages of exhibits, in redacted form the same day it was submitted to the NCAA – September 19, 2011. That is, the document did not even exist until nearly a year after the Plaintiffs' Complaint in this case. (UNC's Memorandum page 27)

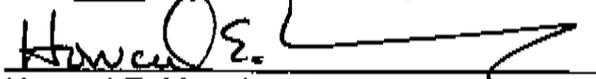
The issues surrounding this behemoth of a document present the Court with a Gordian knot. The Court will deal with this as Alexander did with the Gordian knot itself --- slice it. Here's the decision.

Simply put, the Personnel Act and FERPA redactions related to student-athlete academic issues and protection of employees covered by the Personnel Act, are to remain in redacted form. However, those portions of the Response to the NCAA that relate to student-athlete impermissible benefits violations resulting in sanctions and ineligibility are not protected as discussed above and as to that information, the cloak of secrecy must be lifted and the sun let in for all to see.

IT IS, THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Plaintiffs' and Defendants' cross motions for summary judgment are granted in part and denied in part for the reasons contained in the Memorandum of Decision set forth above.
2. Defendants are to produce the records which the Court has directed the defendants to produce in the Memorandum of Decision set forth above within thirty (30) days of the date of this Order.
3. The Court retains jurisdiction to consider any future matters relating to enforcement, costs and attorney's fees.

This ^{26th} day of September, 2012



Howard E. Manning, Jr.
Superior Court Judge Presiding