

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

December 12, 2018

Decision No. 499

North Carolina Central University

Durham, North Carolina

This decision is filed in accordance with NCAA Article 19 and is organized as follows:

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I. INTRODUCTION.

North Carolina Central University appealed to the NCAA Division I Infractions Appeals Committee specific penalties as determined by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by North Carolina Central (hereinafter referred to as North Carolina Central).

II. BACKGROUND.

The Committee on Infractions issued Infractions Decision No. 499 May 30, 2018, in which the committee found violations of NCAA legislation in the football, baseball, men's basketball, men's cross country, men's track, women's cross country and women's track.¹ On the basis of those findings, the Committee on Infractions determined that this was a Level II Standard case for North Carolina Central and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing academic eligibility and monitoring the certification process.

After the Committee on Infractions issued its decision, North Carolina Central filed a timely Notice of Appeal June 14, 2018. A Written Appeal was filed July 23, 2018. The Committee on Infractions filed its Response August 27, 2018. North Carolina Central filed its Rebuttal to the Committee on Infractions Response September 10, 2018. The case was considered on the written record by the Infractions Appeals Committee September 24, 2018. (see Section VIII below).

III. FINDING OF FACT AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for North Carolina Central Page Nos. 2 through 3. A copy of the decision may be accessed via the NCAA Legislative Services Database for the Internet (LSDBi) at the following link: <https://web3.ncaa.org/lstdbi/>.

IV. ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for North Carolina Central Page Nos. 4 through 9. A copy of the decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lstdbi/>.

¹ A panel of the Committee on Infractions considered this case through the cooperative summary disposition process, in which all parties agreed to the primary facts and violations as fully set forth in the summary disposition report (SDR). The Committee on Infractions proposed additional penalties to North Carolina Central, which the institution objected to in part. After holding an expedited penalty hearing on the issue, the Committee on Infractions retained the contested penalties. [North Carolina Central University Committee on Infractions Decision (May 30, 2018) Page No. 1]

V. CORRECTIVE ACTION TAKEN SELF-IMPOSED BY THE INSTITUTION.

See Committee on Infractions decision for North Carolina Central Appendix One. A copy of the decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lsdbi/>.

VI. PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.

After considering all information relevant to this case, the Committee on Infractions prescribed the following penalties (self-imposed penalties are so noted), as quoted from the Committee on Infractions decision:

Core Penalties for Level II-Standard Violations (NCAA Bylaw 19.9.5).

1. Probation: Two years of probation from May 30, 2018, through May 29, 2020.²
2. Financial penalty: The institution shall pay a \$5,000 fine to the NCAA. (Self-imposed.)

Additional Penalties for Level II-Standard Violations (Bylaw 19.9.7).

3. Public reprimand and censure. (Self-imposed.)
4. Vacation of records: The institution acknowledged that ineligible participation in seven sports programs occurred as a result of the violations in this case. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3, the institution shall vacate all regular season and conference tournament records and participation in which the ineligible student-athletes detailed in Violation No. 1 competed from the time they became ineligible through the time they were reinstated as eligible for competition. This order of vacation includes all regular season competition and conference tournaments. Further, if any of the ineligible student-athletes participated in NCAA postseason competition at any time they were ineligible, the institution's participation in the postseason shall be vacated. The individual records of the ineligible student-athletes shall also be vacated. However, the individual finishes and any awards for all eligible student-athletes shall be retained. Further, the institution's records regarding its athletics programs, as well as the records of head coaches, shall reflect the vacated records and shall be recorded in all publications in which such records are reported, including, but not limited to, institutional media guides, recruiting material, electronic and digital

² North Carolina Central proposed a one-year probationary period. Institutions may propose probationary periods, but the authority to prescribe NCAA probation rests solely with the Committee on Infractions. Periods of probation always commence with the release of the infractions decision.

media plus institutional, conference and NCAA archives. Any institution that may subsequently hire the affected 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 toward specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to the vacated contests shall be removed from the athletics department stationary [*sic*], banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in these sports shall be returned to the Association.

Finally, to ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected in official NCAA publications and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA Media Coordination and Statistics office and appropriate conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the NCAA Media Coordination and Statistics office with a written report detailing those discussions. This document will be maintained in the permanent files of the NCAA Media Coordination and Statistics office. This written report must be delivered to the office no later than 45 days following the release of this decision or, if the vacation penalty is appealed, at the conclusion of the appeals process. The sports information director (or designee) must also inform the Office of the Committees on Infractions (OCOI) of this submission to the NCAA Media Coordination and Statistics office.

5. During this period of probation, the institution shall:
 - a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for NCAA recruiting and certification legislation;
 - b. Submit a preliminary report to the OCOI by July 15, 2018, setting forth a schedule for establishing this compliance and educational program;
 - c. File with the OCOI annual compliance reports indicating the progress made with this program by April 15 during each year of probation. Particular emphasis should be placed on the institution's continued enhancements to its eligibility certification policies and procedures and monitoring of the eligibility certification process;

- d. Inform prospective student-athletes in the affected sport programs in writing that the institution is on probation for two years and detail 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; and
 - e. Publicize specific and understandable information concerning the nature of the infractions by providing, at a minimum, a statement to include the types of violations and the affected sport programs and a direct, conspicuous link to the public infractions decision located on the athletic department's main webpage "landing page" and in the media guides for the involved sports. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the major infractions case; and (iii) give members of the general public a clear indication of what happened in the major infractions case to allow the public (particularly prospective student-athletes and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.
6. The institution shall send its certification staff (including representatives from the compliance staff, athletic academic support staff, registrar's office, and the faculty athletics representative) to an NCAA Regional Rules Seminar. (Self-imposed.) The panel further requires such attendance in both 2018 and 2019.
 7. The institution shall undergo an internal APP audit at the end of the 2017-18 academic year. (Self-imposed.)
 8. Following the receipt of the final compliance report and prior to the conclusion of probation, the institution's chancellor shall provide a letter to the COI affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

VII. ISSUES RAISED ON APPEAL.

In its written appeal, North Carolina Central asserted that the Committee on Infractions abused its discretion by prescribing penalty V.4 (vacation of records) as related to the football, baseball and men's basketball programs.

VIII. APPELLATE PROCEDURE.

In considering North Carolina Central’s appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the record and transcript of the institution’s April 30, 2018, hearing before the Committee on Infractions; and the submissions by North Carolina Central and the Committee on Infractions referred to in Section II of this decision.

This appeal was reviewed on the written record by the Infractions Appeals Committee September 24, 2018.

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

In reviewing the decision in this case, the Infractions Appeals Committee may set aside a penalty on appeal if the imposition of the penalty is an abuse of discretion.

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 (June 30, 2009) Page No. 23]

In this case, North Carolina Central agreed that between the 2012-13 and 2014-15 academic years, it improperly certified 22 student-athletes in seven sports as eligible, which resulted in the student-athletes competing and receiving actual and necessary expenses while ineligible. [North Carolina Central University Committee on Infractions Decision (May 30, 2018) Page No. 3] Additionally, between the 2013-14 and 2016-17 academic years, North Carolina Central allowed six of the 22 student-athletes to compete before being reinstated as eligible for competition. (North Carolina Central Committee on Infractions Decision Page No. 3) Finally, North Carolina Central agreed that it violated the NCAA principle of rules compliance when it failed to adequately monitor student-athlete eligibility certification to ensure compliance. (North Carolina Central Committee on Infractions Decision Page No. 3)

Based on these violations in the seven involved sports, the Committee on Infractions prescribed additional penalties of vacation of all regular season and conference

tournament records and participation in which the ineligible student-athletes participated through the time their eligibility was reinstated. (North Carolina Central Committee on Infractions Decision Page Nos. 10 and 11)

With respect to the vacation of records penalty in football (2014-15 and 2015-16 seasons), baseball (2012-13 season) and men's basketball (2012-13 season), North Carolina Central argued that by prescribing the vacation of records penalty for those sports, the Committee on Infractions abused its discretion in that:

- The Committee on Infractions ignored directives from the NCAA Division I governance structure related to avoiding the imposition of disproportionate penalties on student-athletes;
- The Committee on Infractions ignored Level III case precedent involving the same or similar violations; and
- The Committee on Infractions relied on infractions case precedent that is clearly distinguishable from North Carolina Central's case and a "competitive advantage" rationale that does not apply to the institution's situation. [Written Appeal Page Nos. 9 through 14]

The Committee on Infractions noted that the vacation of records is a routine penalty in infractions cases involving ineligible competition, and this penalty addresses the advantage the institution gained through ineligible competition. This penalty is consistent with prior cases and holds the institution accountable for its admitted failure to monitor. [Committee on Infractions Response Page Nos. 2 and 3]

Directives from the NCAA Division I Governance Structure

The directives³ from the governance structure to which the institution referred relate specifically to the processes for initial-eligibility waivers, amateurism certification, student-athlete academic waivers, legislative relief waivers and student-athlete reinstatement. [Written Appeal Exhibit 3 Page Nos. 3 and 4]. Further, when the directives were made permanent by the NCAA Division I Council, there was no reference to or intention for the directives to apply to the prescription of penalties in the infractions process. [Written Appeal Exhibit 4 Page Nos. 3 and 4] Therefore, this committee finds that the Committee on Infractions is not subject to or bound by these directives.

³ The institution cited the temporary review process which was made permanent when adopted by the NCAA Division I Council January 13, 2016.

Level III Case Precedent

Level III violations (breach of conduct) are those that are isolated or limited in nature; provide no more than a minimal recruiting, competitive or other advantage; and provide no more than a minimal impermissible benefit.⁴ Additionally, Level III violations are determined and Level III penalties are prescribed by the vice president of enforcement.⁵ North Carolina Central’s violations were all determined to be Level II. In the infractions structure, there are separate NCAA bylaws which govern Level II and Level III violations and penalties, as well as different bodies that make the determination of whether Level II and Level III violations occurred, and prescribe penalties. Further, in this case, North Carolina Central agreed that the violations were Level II violations⁶ which inherently means that the institution was agreeing to the prescription of penalties under the guidelines and case precedent related to Level I and II violations. Therefore, the Committee on Infractions is not bound by the actions taken in Level III infractions decisions when it prescribes penalties related to Level I or II violations.

Lack of “Competitive Advantage” and Distinguishable Case Precedent

North Carolina Central argued that for football, baseball and men’s basketball (in the seasons identified above), no unfair competitive advantage was gained since the involved student-athletes would have been eligible, but for clerical or technical errors. [Written Appeal Page No. 12] The underlying assumption of this argument is that if the institution had submitted waiver requests for or sought reinstatement of these student-athletes, the waivers and reinstatement requests would have been approved. This argument is problematic for two reasons. First, North Carolina Central did not actually submit waiver or reinstatement requests for review which would be required in order for the student-athletes to be eligible. Second, this committee has noted that outcomes of these processes are not guaranteed and as such, an institution is not free from penalties, related to the participation of ineligible student-athletes, based on a speculative assumption. [Georgia Institute of Technology Appeal Report (March 9, 2012) Page No. 14, University of Louisville Appeal Decision (February 20, 2018) Page No. 5]

For the vacation of records, the Committee on Infractions’ Internal Operating Procedures and previous infractions cases provide guidance on the circumstances when the likelihood is significantly increased of such a penalty being prescribed.⁷ Those circumstances include:

⁴ Bylaw 19.1.3.

⁵ Bylaws 19.11.2 and 19.11.3.

⁶ Agreed-upon Summary Disposition Report Page No. 1.

⁷ Division I Committee on Infractions: Internal Operating Procedure 5-15-4, Southeast Missouri State University Public Infractions Report (June 18, 2008) Page Nos. 10 and 11 and Georgia Tech Infractions Appeals Committee Report Page No. 14.

1. Academic fraud;
2. Serious intentional violations;
3. Direct involvement of a coach or high-ranking school administrator;
4. A large number of violations;
5. Competition while academically ineligible;
6. Ineligible competition in a case that includes a finding of failure to monitor or a lack of institutional control; or
7. When vacation of a similar penalty would be imposed if the underlying violations were secondary.

While none of the circumstances above are required to be present as a basis to vacate records⁸, at least one stated circumstance is present in this case. North Carolina Central agreed that it violated the NCAA principle of rules compliance when it failed to adequately monitor student-athlete eligibility certification. That failure resulted in 22 student-athletes participating in competition while ineligible, including in the sports of football, baseball and men's basketball. Thus, the findings of this case increased the likelihood of a vacation of records penalty.

This committee does not find any basis in the record that the Committee on Infractions abused its discretion in prescribing a vacation of records penalty for football (2014-15 and 2015-16 seasons), baseball (2012-13 season) and men's basketball (2012-13 season).

X. CONCLUSION.

Penalty V-4 is affirmed.

NCAA Infractions Appeals Committee

Patti Ohlendorf, chair
Ellen M. Ferris
W. Anthony Jenkins
Allison Rich
David Shipley.

⁸ Georgia Tech Infractions Appeals Decision Page No. 14.