DECISION OF THE

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

DIVISION I INFRACTIONS APPEALS COMMITTEE

April 27, 2023

Decision No. 567

Former Assistant Football Coach

Louisiana State University

Baton Rouge, Louisiana

FORMER ASSISTANT FOOTBALL COACH
LOUISIANA STATE UNIVERSITY
APPEAL DECISION SUMMARY

Outcome

Former assistant football coach appealed to the NCAA Division I Infractions Appeals Committee the following finding of violation and penalty by the NCAA Division I Committee on Infractions:

Finding of Violation

In September 2020, during the COVID-19 recruiting dead period, the former assistant coach had intentional in-person, off-campus recruiting contacts with a highly touted prospect on two separate occasions. Additionally, he provided the prospect with impermissible recruiting inducements in the form of several items of used LSU-branded athletic gear.

Penalty

The former assistant coach shall be subject to a three-year show-cause-order from September 22, 2022, through September 21, 2025; during which period, he shall be prohibited from participating in all off-campus recruiting activity.

The Infractions Appeals Committee affirmed the appealed finding of violation and the penalty.

Appellate Procedure

In considering the former assistant football coach's appeal, the Infractions Appeals Committee reviewed the notice of appeal; the record and transcript of the institution's July 26, 2022, hearing before the Committee on Infractions; and the submissions by the institution, the Committee on Infractions and enforcement staff. This appeal was reviewed on the written record.

Members of the Infractions Appeals Committee for this Appeal

The members of the Infractions Appeals Committee who reviewed and decided this case were: Ellen Ferris, chair and senior associate commissioner for governance and compliance at the American Athletic Conference; Jonathan Alger, president of James Madison; Tom Goss, insurance chairman and executive; Alejandra Montenegro Almonte, attorney in private practice; and Julie Vannatta, retired senior associate general counsel for athletics at Ohio State.

TABLE OF CONTENTS

I. INTRODUCTION.

The former assistant football coach at Louisiana State University appealed to the NCAA Division I Infractions Appeals Committee a specific finding of violation and penalty as determined by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by the former assistant football coach (hereinafter referred to as former assistant coach or appellant).

II. BACKGROUND.

On September 22, 2022, the Committee on Infractions issued Infractions Decision No. 567 in which the committee found violations of NCAA legislation in the football program. On the basis of those findings, the Committee on Infractions determined that this was a Level II-Aggravated case for former assistant coach and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing impermissible recruiting contacts, inducements, and coaching activity.

After the Committee on Infractions issued its decision, the former assistant coach filed a timely notice of appeal October 5, 2022. A written appeal was filed November 7, 2022. The Committee on Infractions filed its response December 8, 2022. The former assistant coach filed his rebuttal to the Committee on Infractions response December 22, 2022. Enforcement submitted its submittal January 10, 2023. The case was considered on the written record by the Infractions Appeals Committee March 16, 2023 (see Section VIII below).

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

See Committee on Infractions decision for LSU Page Nos. 3 through 9. A copy of the decision may be accessed via the NCAA Legislative Services Database for the Internet (LSDBi) by clicking HERE.

IV. ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for LSU Page Nos. 10 through 14. A copy of the decision may be accessed via LSDBi by clicking HERE.

V. APPEALED FINDING OF VIOLATION FOUND BY THE COMMITTEE ON INFRACTIONS.[1]

The former assistant coach appealed a violation found by the Committee on Infractions. The appealed violation is:

> IV. In September 2020, during the COVID-19 recruiting dead period, the former assistant coach had two impermissible, off-campus, in-person contacts with prospect 1. Additionally, he provided the prospect with impermissible recruiting inducements in the form of several items of LSU-branded athletic gear.

[1] The description of the finding of violation is copied from the Committee on Infractions decision.

For the other violations found by the Committee on Infractions, see Committee on Infractions decision for LSU Page Nos. 10 through 14. A copy of the decision may be accessed via LSDBi by clicking HERE.

VI. APPEALED PENALTY PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.[2]

The former assistant coach appealed a penalty prescribed by the Committee on Infractions. The appealed penalty is:

VI.4. Show Cause Order: During the COVID-19 recruiting dead period, the assistant coach had intentional in-person, off-campus recruiting contacts with a highly-touted prospect on two separate occasions and provided the prospect with several items of used, LSU-branded athletic gear. During these encounters, he also had contact with the prospect's brother, who was not yet a high school junior and therefore not within the permissible time period for off-campus contacts. The assistant coach, who had approximately 14 years of experience in collegiate athletics, admitted that he understood the dead period restrictions and knew that his conduct was impermissible. Therefore, the assistant coach shall be subject to a three-year show-cause order from September 22, 2022, through September 21, 2025. During the show-cause period, the assistant coach shall be prohibited from participating in all off-campus recruiting activity. Pursuant to COI IOP 5-15-3-1, if the assistant coach seeks employment or affiliation with an athletically related position at an NCAA member institution during the three-year show-cause period, any employing institution shall be required to contact the Office of the Committee on Infractions (OCOI) to make arrangements to show cause why the off-campus recruiting restrictions should not apply.

For the other penalties prescribed by the Committee on Infractions, see Committee on Infractions decision for LSU Page Nos. 15 through 26. A copy of the decision may be accessed via LSDBi by clicking HERE.

VII. ISSUES RAISED ON APPEAL.

In his written appeal, the former assistant coach asserted that the finding of violation against him (impermissible recruiting contacts and inducements) is clearly contrary to the evidence presented and facts found by the Committee on Infractions. Additionally, he asserted that the three-year show-cause order penalty prescribed by the Committee on Infractions constitutes an abuse of discretion.

VIII. APPELLATE PROCEDURE.

[2] The description of the penalty is copied from the Committee on Infractions decision.

In considering the former assistant coach's appeal, the Infractions Appeals Committee reviewed the notice of appeal; the record and transcript of the institution's July 26, 2022, hearing before the Committee on Infractions and the submissions by the former assistant coach, the Committee on Infractions and enforcement staff referred to in Section II of this decision.

This appeal was reviewed on the written record by the Infractions Appeals Committee March 16, 2023.

IX. INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.[3]

Finding of Violation and Level.

In reviewing the decision in this case, the Infractions Appeals Committee may overturn the Committee on Infractions' factual findings and its conclusion that one or more violations occurred only on a showing by the appealing party that:

a. A factual finding is clearly contrary to the information presented to the panel;

b. The facts found by the panel do not constitute a violation of the NCAA constitution and bylaws; or

c. There was a procedural error and but for the error, the panel would not have made the finding or conclusion.

The Committee on Infractions determines the credibility of the evidence.

The appellant argued that the hearing panel's finding that his actions constitute a Level II violation are clearly contrary to the evidence presented because his impermissible recruiting activities were isolated or limited in nature and provided no more than a minimal recruiting advantage or benefit. The appellant made several additional arguments in support of his position including that the encounters with prospect 1 and his brother were brief, not in excess of a greeting, and not prearranged. Finally, the appellant argued the factual findings related to the COVID-19 issues were contrary to the evidence presented. (Written Appeal Page Nos. 7 through 17 and Rebuttal Page Nos. 3 through 13)

In response, the hearing panel argued that the factual findings underlying the appellant's Level II violation are not clearly contrary to the record where appellant's own admissions demonstrate that he knowingly and intentionally engaged in multiple in-person contacts during the COVID-19 recruiting dead period, provided impermissible inducements in the form of used athletic gear, and significantly undermined the important health, safety and fairness considerations the COVID-

[3] This appeal case was reviewed under the legislation related to appeals in Article 19 as it appeared prior to the modifications to Article 19 effective January 1, 2023.

19 recruiting dead period was intended to promote. (Committee on Infractions Response Page Nos. 11 through 19)

To demonstrate that a finding of violation is clearly contrary to the information presented, the appellant must show more than that an alternative reading or application of the information exists. NCAA Bylaw 19.10.1.2 specifies that a finding may be set aside on appeal upon a showing that it is clearly contrary to the information presented to the Committee on Infractions. As this committee has stated in the University of Mississippi case:

> "A showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding nor will a showing that such information might have outweighed the information on which the committee based a finding. The Infractions Appeals Committee… will set aside a finding only on a showing that the information that might have supported a contrary result clearly outweighed the information on which the Committee on Infractions based the finding." [University of Mississippi, Infractions Appeals Committee Report (May 1, 1995) Page No. 10]

In this case, the record demonstrates that the appellant's encounters with prospect 1 and his family were not inadvertent or accidental. The appellant could have simply responded to the mother's and his family's calls with just a greeting and explained that in a recruiting dead period he could not participate in any in-person contact. Instead, prior to the first contact at issue, the appellant: (1) told prospect 1's mother that he would be in his neighborhood in his golf cart; (2) provided her turn-by-turn directions to his location; and (3) gathered used athletic gear and took it with him as he drove his golf cart around the neighborhood to connect with prospect 1 and his family. (Committee on Infractions Decision Page No. 5 and Written Appeal Page No. 3) Prior to the second contact, prospect 1's family called the appellant to say that they were going to drive by his home because they "knew where [he] lived." The appellant had a conversation with prospect 1's mother on the telephone and the appellant stood outside his house until the family arrived at his home. (Committee on Infractions Decision Page No. 7 and Written Appeal Page No. 10)

Further, the appellant argued that the encounters were not prearranged because the encounters were planned and initiated by prospect 1's mother, and their telephone calls were minutes before the encounters rather than weeks in advance. Here, it appears that the appellant is misunderstanding or misreading Bylaw 13.02.4. In the bylaw, an example of prearrangement is when a "staff member takes a position in a location where contact is possible." Here, the appellant positioned himself in his driveway and drove his golf cart, with used athletic gear, in the neighborhood with the intent of meeting prospect 1's family who was driving in the neighborhood. Even if this committee agreed, which we do not, with the appellant's argument that there was not enough time between the telephone calls and the encounters for it to be considered prearranged, the case record clearly demonstrates that the appellant intentionally positioned himself in locations where contact was possible.

Therefore, we affirm the finding of violation and the level determination.

Aggravating Factors, Mitigating Factors, and Penalty.

Both the application and weighing of aggravating and mitigating factors as well as the prescription of a penalty by the hearing panel may be set aside on appeal upon a showing by the appellant that the hearing panel abused its 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, Page No. 23, June 30, 2009]

The appellant argued that the hearing panel's determination regarding the application of aggravating factors 19.9.3-(f)[4] and 19.9.3-(o) are based on erroneous factual findings. In addition, he argued that the hearing panel's determination that mitigating factor 19.9.4-(c) does not apply is also based on erroneous factual findings. Regarding his penalty, the appellant argued that the three-year show-cause order prohibiting him from participating in off-campus recruiting constitutes an abuse of discretion since its imposition is arbitrary, capricious, and irrational.

More specifically, the appellant claimed that aggravating factor 19.9.3-(f) does not apply because both contacts between the appellant and prospect 1 were not deliberate or planned. Additionally, the appellant argued that aggravating factor 19.9.3-(o) should not have been applied since he ameliorated any harm from his false statements during his first interview shortly afterwards and the prospect did not suffer any actual harm to his health despite the encounter taking place in the heart of the pandemic. Regarding mitigating factor 19.9.4-(c), the appellant argued that it should be applied in light of his voluntary correction of misinformation in a second interview aiding in a swift resolution. (Written Appeal Page Nos. 17 through 21)

Finally, the appellant argued the prescribed penalty is excessive and an abuse of the hearing panel's discretion since he has not been employed by LSU or any other member institution since June 2021. According to the appellant, the expenses personally incurred for this investigation

[4] In his written submissions, the appellant referenced Bylaw 19.3.3-(f). This is the incorrect bylaw number for the aggravating factor related to violations being premeditated, deliberate or committed after substantial planning. The correct bylaw number is Bylaw 19.9.3-(f).

combined with the loss of his LSU salary and benefits already serve a severe penalty for the conduct alleged. (Written Appeal Page No. 24)

The hearing panel argued that it did not abuse its discretion when it applied and weighed aggravating factors 19.9.3-(f) and 19.9.3-(o) or when it decided not to apply the mitigating factor 19.9.4-(c) because the appellant knowingly and deliberately violated well-known recruiting legislation and did so during the COVID-19 recruiting dead period, thus undermining the membership's critical health, safety and fairness objectives. (Committee on Infractions Response Page Nos. 12 through 15) The hearing panel also argued it appropriately declined to apply mitigating factor 19.9.4-(c) because the appellant did not identify any affirmative steps he took to speed up the investigation or eventual resolution of this case. (Committee on Infractions Response Page Nos. 24 and 25) Finally, the hearing panel argued it did not abuse its discretion when it prescribed a specific three-year show-cause order that falls within the membership-approved guidelines for Level II-Aggravated violations, is consistent with past case guidance, and is proportionate and tailored to the appellant's violations.

This committee does not find the appellant's arguments persuasive. As discussed above, the appellant coordinated the in-person contact with prospect 1's mother and family shortly before the contacts, gathered athletic gear that he intended to give to prospect 1 and/or his family and intentionally positioned himself in locations where contact with prospect 1 and his family was likely, and as a result, contact did occur. This reflects that the appellant's conduct was prearranged, premeditated, and deliberate. Therefore, the committee finds there was no abuse of discretion in the application or weighing of aggravating factor 19.9.3-(f).

The appellant knowingly had impermissible recruiting contacts during the COVID-19 recruiting dead period despite participating in educational efforts, targeted especially for the football staff, regarding the COVID-19 recruiting dead period by compliance the day before the first impermissible contact occurred. Further, these contacts occurred during a national pandemic when significant restrictions towards in-person contact by individuals were in place. The hearing panel appropriately considered the impact and significance of COVID-19 given the timing of these in-person recruiting contacts. Therefore, this

committee finds there was no abuse of discretion in the application or weighing of aggravating factor 19.9.3-(o).

The appellant was not forthcoming with truthful information in his initial interview, which necessitated a second interview resulting in him correcting his answers. This committee recognizes the importance of cooperation and the provision of truthful information by current and former institutional staff to the NCAA infractions process. Not being forthcoming in the first interview may result in an undue delay in the infractions proceedings. With this information and the affirmation of findings described above, this committee finds that the hearing panel did not abuse its discretion with its decision to not apply mitigating factor 19.9.4-(c).

Based on the information above and the committee's review of the case record, this committee does not find the hearing panel abused its discretion in the prescription of a three-year show-cause order. Therefore, penalty VI.4 is affirmed.

X. CONCLUSION.

The finding of violation IV (impermissible recruiting contacts, inducements, and coaching activity) and Penalty VI.4 (3-year show cause order) are affirmed.[5]

NCAA Infractions Appeals Committee[6]

Ellen M. Ferris, chair
Jonathan Alger
Tom Goss
Alejandra Montenegro Almonte
Julie Vannatta.

[5] According to the Division I Infractions Appeals Committee Internal Operating Procedures 4-4, any penalty that is appealed is automatically stayed through the course of the appeal process. This stay is triggered with the filing of the notice of appeal by the appellant and ends with the public release of the committee's decision. Therefore, the appellant's affirmed penalty of a three-year show-cause order shall be applied April 27, 2023, through April 26, 2026.

[6] Due to a last-minute time conflict, Allison Rich, a member of the Infractions Appeals Committee, was unable to participate in the deliberations for this appeal.