

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

February 6, 2020

Decision No. 516

California Polytechnic State University

San Luis Obispo, California

This decision is filed in accordance with NCAA Article 19

CALIFORNIA POLYTECHNIC STATE UNIVERSITY APPEAL DECISION SUMMARY

Outcome

California Polytechnic State University appealed to the NCAA Division I Infractions Appeals Committee the prescription of the following penalty by the NCAA Division I Committee on Infractions:

- Penalty V.4 – Vacation of records: Cal Poly shall vacate all regular season and conference tournament records and participation in which ineligible student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for athletics competition.¹

The Infractions Appeals Committee affirmed penalty V.4.

Appellate Procedure

In considering Cal Poly's appeal, the Infractions Appeals Committee reviewed the Notice of Intent to Appeal; the record and transcript of the institution's March 1, 2019, hearing before the Committee on Infractions; and the submissions by the institution and the Committee on Infractions.

The oral argument on the appeal was held by the Infractions Appeals Committee October 24, 2019, in Indianapolis, Indiana. The institution was present and was represented by its attorney, president, director of athletics and the vice president for student affairs. The Committee on Infractions was represented by the appeals coordinator for the Committee on Infractions as well as the managing director and director from the Office of the Committees on Infractions. Also present from the NCAA were the managing director of enforcement, the director of legal affairs and associate general counsel and the vice president of hearing operations. Two externs from the Office of the Committees on Infractions and the NCAA senior vice president of administration and chief financial officer attended as silent observers. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

Members of the Infractions Appeals Committee

The members of the Infractions Appeals Committee who heard this case were: Jonathan Alger, President at James Madison; Ellen M. Ferris, associate commissioner for governance and compliance at the American Athletic Conference; W. Anthony Jenkins, committee chair and attorney in private practice; Allison Rich, senior associate athletics director and senior woman administrator at Princeton; and David Shipley, law professor and faculty athletics representative at Georgia.

¹ For full details of Penalty V.4, please go to Section VII of this Infractions Appeals Committee decision or the California Polytechnic State University Infractions Decision (April 18, 2019) via Legislative Services Database for the Internet (LSDBi) by clicking [HERE](#).

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I. INTRODUCTION.

California Polytechnic State University appealed to the NCAA Division I Infractions Appeals Committee the vacation of records penalty as determined by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by Cal Poly (hereinafter referred to as Cal Poly or appellant).

II. BACKGROUND.

The Committee on Infractions issued Infractions Decision No. 516 April 18, 2019, in which the committee found violations of NCAA legislation in 18 of Cal Poly's sport programs. On the basis of those findings, the Committee on Infractions determined this was a Level II-Mitigated case and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing book-related financial aid and the institution's responsibility to monitor book stipends during the time period that the violations occurred.

After the Committee on Infractions issued its decision, the institution filed a timely notice of intent to appeal May 1, 2019. A written appeal was filed June 5, 2019. The Committee on Infractions filed its Response July 22, 2019. The institution filed its Rebuttal to the Committee on Infractions' Response August 8, 2019. The case was considered October 24, 2019, by the Infractions Appeals Committee (see Section IX below).

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

See Committee on Infractions decision for Cal Poly Page Nos. 2 and 3. A complete copy of the decision may be accessed via the 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 Cal Poly Page Nos. 3 through 9. A complete copy of the decision may be accessed via LSDBi by clicking [HERE](#).

V. FINDINGS OF VIOLATIONS FOUND BY THE COMMITTEE ON INFRACTIONS.

See the Committee on Infractions decision for Cal Poly Page Nos. 3 through 9.² A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

² Cal Poly submitted a Notice of Intent to Appeal May 1, 2019, and identified that Cal Poly intended to appeal findings of violations and two of the penalties prescribed by the Committee on Infractions. However, in its written appeal, Cal Poly only put forth arguments related to the vacation of records penalty. During its October 24, 2019, oral argument, Cal Poly clarified that it was only appealing the vacation of records penalty.

VI. CORRECTIVE ACTION TAKEN AND PENALTIES (PROPOSED OR SELF-IMPOSED) BY THE UNIVERSITY.

See Committee on Infractions decision for Cal Poly APPENDIX ONE. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

VII. APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.³

Cal Poly appealed one penalty prescribed by the Committee on Infractions. The appealed penalty is Penalty V.4:

Vacation of records: Cal Poly acknowledged that student-athletes in most of its sports programs competed while ineligible as a result of the financial aid violations. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3, Cal Poly shall vacate all regular season and conference tournament records and participation in which the ineligible student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition. Further, if ineligible student-athletes participated in NCAA postseason competition, 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 the affected sports, as well as the records of the respective 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 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 the affected 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

³ The description of the penalty is copied from the Committee on Infractions decision.

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.

For the other penalties prescribed by the Committee on Infractions, see Committee on Infractions decision for Cal Poly Page Nos. 13 through 16. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

VIII. ISSUES RAISED ON APPEAL.

In its written appeal, Cal Poly asserted that the Committee on Infractions abused its discretion by prescribing penalty V.4.

IX. APPELLATE PROCEDURE.

In considering Cal Poly's appeal, the Infractions Appeals Committee reviewed the Notice of Intent to Appeal; the record and transcript of Cal Poly's March 1, 2019, hearing before the Committee on Infractions; and the submissions by Cal Poly and the Committee on Infractions referred to in Section II of this decision.

The oral argument on the appeal was held by the Infractions Appeals Committee October 24, 2019, in Indianapolis, Indiana. The institution was present and was represented by its attorney, president, director of athletics and the vice president of student affairs. The Committee on Infractions was represented by the appeals coordinator for the Committee on Infractions, as well as the managing director and director from the Office of the Committees on Infractions. Also present from the NCAA were the managing director of enforcement, the director of legal affairs and associate general counsel and the vice president of hearing operations. Two externs from the office of the Committees on Infractions and the NCAA senior vice president of administration and chief financial officer attended as silent observers. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

X. INFRACTIONS APPEALS COMMITTEE’S RESOLUTION OF THE ISSUES RAISED ON APPEAL.⁴

In reviewing the decision in this case, the Infractions Appeals Committee may vacate a penalty prescribed by a panel of the Committee on Infractions only on a showing by the appealing party that the prescription 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, Infractions Appeals Committee Report \(June 30, 2009\) Page No. 23](#)]

In this case, the appellant agreed that for a period of three-and-one half years, it violated book-related financial aid legislation. Specifically, from the 2012-13 academic year through the 2015 fall quarter, the appellant provided 265 student-athletes in 18 sport programs impermissible financial aid. This aid was distributed in the form of cash stipends totaling \$800 for books and course-related supplies that was not equal to the actual cost of the items, as required by NCAA legislation. Out of the 265 student-athletes who received cash stipends, 72 student-athletes received funds that exceeded the cost of the books, and at least 30 student-athletes exceeded their financial aid limits. Additionally, as a result of the institution’s lack of understanding related to the permissible use of the cash stipends for books, the Committee on Infractions panel found that the appellant failed to monitor its book scholarship program to ensure compliance with NCAA legislation. [[California Polytechnic State University Infractions Decision \(April 18, 2019\) Page Nos. 2 through 9](#)]

The panel prescribed a vacation of records penalty that required the appellant to vacate all regular season, conference tournament and NCAA postseason competition records in which the 72 student-athletes who received funds that exceeded the cost of their books and the 30 student-athletes who exceeded their individual financial aid limits competed. The vacation of record penalty covers the period from the time they became ineligible through the time they were reinstated as eligible for competition. ([Committee on Infractions Decision Page Nos. 13 through 15](#))

⁴ In this section of the decision, the cites to other infractions cases and NCAA bylaws will be linked to the full text of the infractions decisions and bylaws in LSDBi.

Applying Case Precedent

The appellant argued that the vacation of records is inappropriate, arbitrary, capricious, patently unfair to the innocent student-athletes and coaches and contrary to established precedent in similar cases. [Written Appeal Page No. 13] Specifically, the appellant argued that the panel abused its discretion when it:

1. Imposed a vacation of records penalty based upon the participation of student-athletes who were not culpable and received negligible benefits.
2. Imposed a vacation of records without merit.
3. Failed to consider or weigh the university's corrective measures, self-imposed penalties and cooperation.
4. Failed to consider that [Article 16](#) mandates that ineligibility begins upon discovery of the violation, and that there is a minimum threshold of \$200 to affect eligibility. [Written Appeal Page Nos. 17 through 26]

In response to the appellant's arguments, the panel argued that it appropriately exercised its authority, which is expressly granted within [Bylaw 19.9.7-\(g\)](#) and ratified by its internal operating procedures. [Committee on Infractions Response Page Nos. 6 and 7] The vacation of records penalty was prescribed to address the appellant's misapplication of book-related financial aid, its failure to withhold ineligible student-athletes from competition and its failure to monitor the administration of its book-related financial aid. The panel argued that the vacation of records penalty is supported and consistent with prior "case guidance" involving student-athletes who competed while ineligible. [Committee on Infractions Response Page Nos. 8 and 9] In addition, the panel noted that the cases used by the appellant to support its arguments were either dated or factually dissimilar. The panel argued that even in cases that may be considered similar, the Committee on Infractions uses its discretion to weigh the facts and determine the appropriateness of the vacation penalty in each individual case. [Committee on Infractions Response Page No. 18]

For the vacation of records penalty, the Committee on Infractions' Internal Operating Procedures and previous infractions cases provide guidance on the circumstances when the likelihood of such a penalty being prescribed is significantly increased.⁵ Those circumstances include:

⁵ See [Southeast Missouri State University Infractions Report \(June 18, 2008\) Page Nos. 10 and 11](#), and the Committee on Infractions' internal operating procedure (IOP) 5-15-4 (currently IOP 5-15-6).

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. A recent history of Level I, Level II or major violations; or
6. Ineligible competition in a case that includes a finding of failure to monitor or lack of institutional control.

None of these enumerated circumstances are required to be present for the panel to prescribe a vacation of records penalty. This committee has also noted that the list of factors that increase the likelihood of a vacation of records penalty is not exhaustive and does not require any of the factors to be present for the panel to prescribe the penalty.⁶

The appellant agreed that it misapplied the NCAA financial aid legislation, violations occurred and student-athletes participated while ineligible.⁷ In this case, two circumstances existed which increased the likelihood of the prescription of a vacation of records penalty. First, there were a large number of violations. The violations involved 265 student-athletes in 18 sport programs. Second, it involved ineligible competition and a finding that the appellant failed to monitor book-related financial aid. Therefore, the likelihood of a vacation of records penalty was increased in this case.

Fairness of Vacation of Records Penalty

As noted above, the appellant argued that the panel abused its discretion by prescribing a vacation of records penalty in the circumstance where the student-athletes had no culpability or received nominal benefits. Without making any statement about the level of culpability of or level of benefits provided to the student-athletes in this case, we are mindful of the consequences that a vacation of records penalty has on those individuals involved in and impacted by the imposition of the penalty. However, the vacation of records penalty is designed to hold an institution accountable for its responsibility to understand and abide by legislation adopted by the NCAA membership, and address any competitive advantages gained by the institution's failure to withhold ineligible student-athletes from competition.

⁶ See [Georgia Institute of Technology Infractions Appeals Report \(March 9, 2012\) Page No. 15.](#)

⁷ Cal Poly agreed to the underlying facts of this violation but asserted that the violation is Level III. ([Committee on Infractions Decision Page No. 4](#)) As a reminder, appellant is not appealing the findings of violations. (See Section VIII of this decision)

The appellant argued that the student-athletes' eligibility could have been easily restored had it known its book scholarship program violated NCAA legislation. [Written Appeal Page Nos. 23 and 24] This argument is based on the assumption that had the appellant sought reinstatement for the ineligible student-athletes, the NCAA subsequently would have granted those requests.

In this case, the appellant did not actually seek reinstatement, which would be required for the student-athletes to be eligible. This committee is unable to base its decision on facts that were not applicable at the time of the appeal, or at best a speculative possibility. This committee has also previously recognized that outcomes of reinstatement processes are not guaranteed. As such, an institution is not free from penalties related to the participation of ineligible student-athletes, based on a speculative assumption that the student-athletes would have been reinstated.⁸

Finally, the appellant argued that previous infractions case precedent supports its position that a Committee on Infractions panel did not prescribe a vacation of records penalty in other cases when student-athletes had no culpability or inadvertently received a benefit. In its written appeal, the appellant focused on four previous infractions cases to support its argument. [[University of Alabama Infractions Report \(June 11, 2009\)](#); [University of Nebraska, Lincoln Infractions Report \(February 1, 2012\)](#); [Indiana University-Purdue University, Fort Wayne Infractions Decision \(November 24, 2015\)](#); and [Morehead State University Infractions Decision \(February 10, 2017\)](#)]

In October 2012, the membership adopted significant changes to the NCAA's approach and structure related to violations and penalties.⁹ [Bylaw 19.9.1](#) outlined how the new penalty structure would be used by the Committee on Infractions when prescribing penalties based on the timing of the violations.¹⁰ As a result of the implementation of a new violation and penalty structure, infractions cases under the old violation and penalty structure may have limited precedential value.¹¹ The Alabama, IPFW and Nebraska cases were decided before the implementation of the current penalty structure found in

⁸ [North Carolina Central University Infractions Appeal Decision \(December 12, 2018\) Page No. 7](#), [Georgia Tech Infractions Appeal Report Page No. 14](#) and [University of Louisville Infractions Appeal Decision \(February 20, 2018\) Page No. 5](#).

⁹ [NCAA Division I Proposal No. 2012-16](#).

¹⁰ [Bylaw 19.9.1](#) states the following: The penalties set forth in this section shall be prescribed for violations committed on or after October 30, 2012. Penalties prescribed for violations committed before October 30, 2012, shall be the penalties set forth in this section or the penalties that would have been prescribed pursuant to the 2012-13 Division I Manual, whichever is less stringent. For violations that commence before October 30, 2012, and continue on or after October 30, 2012, the hearing panel shall prescribe the penalties set forth in this section unless it determines that the conduct occurred before October 30, 2012. (2013-14 NCAA Division I Manual)

¹¹ In addition to changing the penalty structure with the adoption of Proposal No. 2012-16, penalties were also increased.

[Figure 19-1](#) and [Bylaws 19.9.5](#) and [19.9.7](#). Additionally, although the appellant cited cases it believed had similar fact patterns, there are facts in some of the cases that are distinguishable from this case.

In the IPFW case, the institution also miscalculated book costs. The institution improperly awarded book scholarships using the amount legislated for the book award equivalency computation figure without verifying the actual cost of textbooks. However, in that case, the impermissible awarding of book scholarships affected only two sports, women's tennis and baseball. In this case, 18 out of 20 sponsored sports were affected by the appellant's misapplication of the legislation related to book awards. Although there were previous infractions cases outlining the proper distribution of cash stipends for books and required course-related materials, the appellant's compliance department did not establish educational efforts or monitoring policies designed to ensure compliant administration of cash stipends for books. ([Cal Poly Infractions Decision Page No. 7](#))

The Morehead State infractions case involved violations related to the progress-toward-degree legislation. The panel in that case did not impose a vacation of records penalty because the certification of eligibility errors were the result of a computer system error and did not involve the institution's lack of understanding of the legislation. Unlike the violations in Morehead State, the violations in this case were a result of institutional staff's lack of understanding of the legislation related to book stipends.

As noted above, the guidance related to the vacation of records penalty was not inappropriately applied by the panel, as two factors included in the guidance from the Southeast Missouri State case and the Committee on Infractions Internal Operating Procedures were present in this case. While the appellant cited a limited number of examples in which the Committee on Infractions determined that the vacation of records penalty was not warranted, it is within the panel's discretion to determine the penalties based on the specific circumstances of the case. The record before the Infractions Appeals Committee does not support a determination that the panel abused its discretion by failing to follow the limited number of cases in which the vacation of records penalty was not prescribed. [[Morgan State University Infractions Appeals Decision \(July 20, 2018\) Page No. 7](#)]

For the reasons noted above, this committee does not find that the panel abused its discretion when it prescribed a vacation of records penalty.

XI. CONCLUSION.

Penalty V.4 is affirmed.

NCAA Infractions Appeals Committee

W. Anthony Jenkins, chair
Jonathan Alger
Ellen M. Ferris
Allison Rich
David Shipley