

**DECISION OF THE
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
DIVISION I INFRACTIONS APPEALS COMMITTEE
February 26, 2021**

Decision No. 524

Georgia Institute of Technology

Atlanta, Georgia

GEORGIA INSTITUTE OF TECHNOLOGY APPEAL DECISION SUMMARY

Outcome

Georgia Institute of Technology appealed to the NCAA Division I Infractions Appeals Committee the application and prescription of the following aggravating factor and penalties by the NCAA Division I Committee on Infractions:

1. Aggravating factor in NCAA Bylaw 19.9.3-(m) - Intentional, willful or blatant disregard for the NCAA constitution and bylaws;
2. Penalty V.4 - Scholarship reductions: reduction in the number of grants-in-aid awarded in men's basketball by seven percent (or one grant-in-aid) during each year of probation; and
3. Penalty V.9 - Official visit limitation: during first two years of probation, prohibition on scheduling any official visits in conjunction with home men's basketball competition.

The Infractions Appeals Committee vacated aggravating factor in Bylaw 19.9.3-(m), penalty V.4 and penalty V.9. Given the determinations in this appeal, the infractions case is remanded to the Committee on Infractions for reassessment of the classification for this case and prescription of the appropriate penalty based on that classification related to scholarship reductions (penalty V.4).

Members of the Infractions Appeals Committee

The members of the Infractions Appeals Committee who heard this case were W. Anthony Jenkins, acting chair and attorney in private practice; Ellen M. Ferris, associate commissioner for governance and compliance at the American Athletic Conference; Jonathan Alger, president of James Madison; Patricia Ohlendorf, retired vice president for legal affairs at Texas; and Allison Rich, senior associate athletics director and senior woman administrator at Princeton.

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I. INTRODUCTION.

The Georgia Institute of Technology 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 Georgia Tech (hereinafter referred to as Georgia Tech or appellant).

II. BACKGROUND.

The Committee on Infractions issued Infractions Decision No. 524 September 26, 2019, in which the committee found violations of NCAA legislation in the men's basketball program. On the basis of those findings, the Committee on Infractions determined that this was a Level I-Standard case and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing recruiting inducements, extra benefits, unethical conduct and failure to cooperate.

After the Committee on Infractions issued its decision, Georgia Tech filed a timely Notice of Appeal October 11, 2019. A written appeal was filed November 15, 2019. The Committee on Infractions filed its Response December 17, 2019. Georgia Tech filed its Rebuttal to the Committee on Infractions Response January 3, 2020. The case was considered by the Infractions Appeals Committee October 28, 2020 (see Section IX below).

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

See Committee on Infractions decision for Georgia Tech 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 Georgia Tech Page Nos. 9 through 15. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

V. APPEALED VIOLATIONS FOUND BY THE COMMITTEE ON INFRACTIONS.

The appellant did not appeal any of the findings of violations in this infractions case. For the findings of violations found by the Committee on Infractions, see the Committee on Infractions decision for Georgia Tech Page Nos. 9 through 15. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

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

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

VII. APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.¹

Georgia Tech appealed some of the penalties prescribed by the Committee on Infractions. The appealed penalties are:²

V.4 Scholarship reductions: Georgia Tech shall reduce the number of grants-in-aid awarded in men's basketball by seven percent (or one grant-in-aid) during each year of probation. Specifically, Georgia Tech shall be limited to no more than 12 grants-in-aid for the 2019-20, 2020-21, 2021-22 and 2022-23 academic years. If Georgia Tech has already awarded its full allotment of grants-in-aid for the 2019-20 academic year, it is permitted to take two grant-in-aid reductions in either the 2020-21, 2021-22 or 2022-23 academic year.

V.9 The Level I recruiting violations occurred during a high-profile prospect's official visit in conjunction with the men's basketball competition. Therefore, during the first two years of probation (the 2019-20 and 2020-21 academic years), Georgia Tech shall be prohibited from scheduling any official visits in conjunction with home men's basketball competitions.³

For the other penalties prescribed by the Committee on Infractions, see Committee on Infractions decision for Georgia Tech Page Nos. 15 through 25. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

¹ The description of the penalty(ies) is copied from the Committee on Infractions decision.

² Georgia Tech appealed penalty V.2, competition penalty. However, March 2, 2020, Georgia Tech withdrew its appeal of this penalty.

³ The [Committee on Infractions Decision Page No. 23 in Footnote 28](#) of: “Although under the previous penalty structure, this penalty is similar to the visit restrictions prescribed by the COI in *Miami [University of Miami (Florida) Public Infractions Decision (2013)]*, which specifically placed two years of additional restrictions on unofficial visits, an area where a significant amount of the recruiting violations occurred. In this case, because the conduct in Violation No. 1 occurred during an official visit in conjunction with a home contest, the COI prescribes additional recruiting restrictions in that area.”

VIII. ISSUES RAISED ON APPEAL.

In its written appeal, Georgia Tech asserted that the Committee on Infractions abused its discretion by prescribing penalties V.4 (scholarship reductions) and V.9 (official visit limitation).

IX. APPELLATE PROCEDURE.

In considering the Georgia Tech appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the record and transcript of the institution's August 22, 2019, hearing before the Committee on Infractions and the submissions by Georgia Tech and the Committee on Infractions referred to in Section II of this decision.

Originally, the in-person oral argument for this appeal was scheduled for May 19, 2020. However, March 24, 2020, all pending oral arguments were postponed due to the circumstances and impact of the COVID-19 pandemic. In September 2020, the Infractions Appeals Committee determined that it would be unable to conduct in-person oral arguments in the foreseeable future and would need to conduct oral arguments virtually. The parties were notified September 25, 2020, that the oral argument for this appeal would be conducted virtually.

A virtual oral argument was conducted October 28, 2020. The institution was present and was represented by its outside legal counsel, president, senior associate athletics director, general counsel and director of athletics. The Committee on Infractions was represented by the appeals coordinator for the Committee on Infractions and the director of the Office of Committees on Infractions. The enforcement staff was represented by the managing director of enforcement and a director of enforcement. Other participants included the director of legal affairs and associate general counsel, the vice president of hearing operations, an associate director and the intern for hearing operations. One representative for the former assistant men's basketball coach and three new members of the Infractions Appeals Committee participated 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, a penalty prescribed by the Committee on Infractions may be set aside on appeal if the prescription of the penalty is an abuse of discretion.

As we stated in the Alabama State University case:

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 public infractions decisions and bylaws in LSDBi.

“...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\]](#)

The appellant argued that the panel abused its discretion by improperly weighing an aggravating factor and arbitrarily establishing the period of the scholarship reductions when prescribing the penalty. It was also argued, by the appellant, that the panel abused its discretion by departing from penalty guidelines and improperly applying the NCAA legislation regarding core and additional penalties.

Scholarship Reductions (Penalty V.4) - Assessment of the Application of the Aggravating Factor Related to the Intentional, Willful or Blatant Disregard for the NCAA Constitution and Bylaws [NCAA Bylaw 19.9.3-(m)].

The appellant made three arguments to support that the panel abused its discretion when it attributed the aggravating factor in [Bylaw 19.9.3-\(m\)](#) to the appellant. First, the appellant argued the panel “ignored NCAA enforcement’s position on the aggravating factor as well as enforcement and the institution’s agreement that the bylaw [19.9.3-(m)] should not apply to the institution.” (Written Appeal Page No. 2) The appellant contended that historically, a panel has deferred to the enforcement staff’s position on the application of aggravating and mitigating factors. (Written Appeal Page No. 3) Second, the appellant asserted that the panel “failed to properly consider case precedent.” Specifically, the appellant argued the three cases the panel cited in its decision to support the application of the aggravating factor were aberrations in case precedent. (Written Appeal Page No. 4) The appellant argued that “[t]he disproportionate rate in which the COI assigned 19.9.3 (m) to involved individuals who intentionally committed the violations, and not their employer, is a material factor that the COI panel ignored.” (Written Appeal Page No. 4) And finally, the appellant argued that it “did not willfully or intentionally disregard the NCAA constitution or bylaws as demonstrated by material factors not considered” by the panel. (Written Appeal Page No. 2) The appellant identified these material factors as including: (1) that the former assistant coach acted alone and concealed his impermissible activities; and (2) that this case did not involve “charges implicating the institution or its head basketball coach” such as

institutional control, failure to monitor or head coach responsibility.⁵ (Written Appeal Page No. 5 and Rebuttal Page No. 6)

The panel argued that the undisputed facts support the application of [Bylaw 19.9.3-\(m\)](#), and the appellant cannot “insulate itself from the acts of its staff.” (Committee on Infractions Response Page Nos. 12 and 13) To support this argument, the panel highlighted that: (1) the appellant invited the prospective student-athlete to the campus for a “highly structured process in an effort to recruit him”; (2) the former assistant coach “intentionally orchestrat[ed] the events in his official capacity” and as the prospective student-athlete’s “primary recruiter”; (3) “there is a substantial and heightened degree of institutional involvement and responsibility when institutions invite and welcome prospects and their families to campus on a structured official visit”; and (4) the former assistant coach lied about the violation while the appellant’s employee. (Committee on Infractions Response Page Nos. 13 and 14) Additionally, the panel argued that the “parties’ position on aggravating and mitigating factors does not bind the COI to a particular application.” (Committee on Infractions Response Page No. 15) The panel pointed to the membership designating the panel “as the appropriate body to determine whether any factors that may affect penalties are present in a case,” and “[t]here is no requirement that any party support an aggravating or mitigating factor for it to apply to a case.” (Committee on Infractions Response Page No. 15) Finally, the panel argued that case precedent supports the application of the aggravating factor, but noted that even if the factor was not applied, the case is a Level I-Standard case and the “penalty outcome would not have automatically been different.” (Committee on Infractions Response Page Nos. 17 through 22)

As we have stated in previous appeals decisions, “[t]he NCAA legislation gives the panel discretion to determine whether mitigating and aggravating factors, included and not included in Bylaws 19.9.3 and 19.9.4, are present and how they are weighed in an infractions case.” ([University of Missouri, Columbia Infractions Appeals Committee Decision \(November 26, 2019\) Page No. 6](#)) The panel is not bound or limited by the identification of or any agreement to aggravating or mitigating factors by an institution, involved individual and/or the enforcement staff. There is no requirement that the panel provide any deference to the agreements of the parties. Further, the panel has the authority and discretion to consider, weigh and apply mitigating and aggravating factors not put forward or agreed to by the parties.

The Association has established that the control and responsibility for the conduct of intercollegiate athletics rests with an institution. ([NCAA Constitution 2.1.1](#) and [Constitution 6.01.1](#)) As a result of that responsibility, institutions will be held accountable

⁵ During the oral argument, the appellant further clarified its position that the commission of “a violation while in the capacity of the coach doing job duties” was an “inferior, if not irrelevant, standard when compared [to] looking at the overall culpability of the institution” when determining the application of the aggravating factor. (Oral Argument Transcript Page No. 20.)

for violations that occur due to the actions or inactions of their staff, coaches, administrators, etc. In this case, the panel determined that the former assistant coach “in his official capacity as an assistant coach”:

- “...intentionally involved a booster in recruiting and orchestrated a prospect's visit to a strip club when he knew he could not.”
- “...willfully did not tell the truth and misled investigators when being interviewed about those events and attempted to persuade the host to change his [prior] story...during team activity.” ([Committee on Infractions Decision Page No. 17](#))

Based on this information, the panel determined that the appellant exhibited an intentional, willful or blatant disregard for the NCAA constitution and bylaws and applied aggravating factor [Bylaw 19.9.3-\(m\)](#) to the appellant. The former assistant coach’s employment with appellant was the only articulated rationale for the application of this aggravating factor to the appellant.

With this approach, this aggravating factor would be applied to an institution any time an employee commits a violation and demonstrates an intentional, willful or blatant disregard for the NCAA legislation, regardless of the circumstances related to the institution’s action or inaction. The institution is already held accountable for its employee’s violation by having to participate in the infractions process, by having a finding of an institutional violation and by having penalties prescribed (e.g., probation, vacation of records, scholarship reductions, recruiting restrictions). If the intention of the employee is attributed to the institution without a demonstration of relevant action (or lack thereof) by the institution, then a strict liability standard is created for the application of the aggravating factor to institutions when an employee intentionally, willfully or blatantly disregards NCAA legislation and commits an NCAA violation. We find that this approach eliminates the consideration of a material factor, institutional culpability, from the panel’s determination of the application of the aggravating factor.

In order to apply this aggravating factor to the institution, there must be a nexus or connection of action or inaction by the institution relevant to the violation. The nexus must be beyond mere employment status of the individual at the institution when the violation occurred. For example, the institution’s action or inaction will present itself in the context of an institution demonstrating a lack of control over, or a failure to monitor, its intercollegiate athletics program, or where the head coach fails to create an atmosphere of compliance or fails to monitor his/her staff. To be clear, these specific findings of violations are not required in an infractions case for the aggravating factor to apply to an institution. There must, however, be some specific factual findings of action or inaction

by the institution relevant to the violation for the aggravating factor to apply to an institution.⁶

In this case, the application of the aggravating factor was based on the conduct of the former assistant coach, and included no demonstrable ties to action, or lack thereof, by the appellant. There is no reference to any action or inaction by the appellant related to this aggravating factor. Further, the only rationale, provided in the decision, for attributing the former assistant coach's intentional, willful or blatant disregard for NCAA legislation to the appellant was a statement that the Committee on Infractions "has previously attributed this factor to institutions when employees commit intentional violations while acting in their official capacity." ([Committee on Infractions Decision Page Nos. 17 and 18](#))

Therefore, the panel abused its discretion when it failed to consider or to describe its weighing of the material factor of institutional culpability when applying aggravating factor [Bylaw 19.9.3-\(m\)](#) to the appellant. The application of aggravating factor [Bylaw 19.9.3-\(m\)](#) and penalty V.4 are vacated.

Other Determinations Regarding Scholarship Reductions (Penalty V.4) - Assessment of the Period of the Scholarship Reductions.

With the determination of the improper application of an aggravating factor, this case will be remanded to the panel for reassessment of the classification of the case within the prescribed level and the scholarship reductions penalty. However, we continued to assess the other arguments put forward in this appeals case related to the scholarship reductions penalty.

The appellant made two arguments to support its contention that the panel abused its discretion when prescribing scholarship reductions for a period of four years.⁷ First, the appellant argued that the panel irrationally and arbitrarily relied on the length of the prescribed probation penalty to determine the length of this penalty. (Written Appeal Page Nos. 6 and 7) Second, the appellant argued that the panel failed to consider a material factor, case precedent, when establishing a four-year period for the penalty. (Written Appeal Page Nos. 7 and 8)

The panel argued that it is specifically authorized, under NCAA legislation and Committee on Infractions' internal operating procedures, "to prescribe reductions on financial aid awards during a specific period of time." (Committee on Infractions Response Page No.

⁶ This approach is consistent with the application of the aggravating factors in the case precedent cited in the Committee on Infractions decision for this case to support the application of the factor. Those cases included [University of Oregon Committee on Infractions Decision \(December 5, 2018\)](#) and [Southern Methodist University Committee on Infractions Decision \(September 29, 2015\)](#).

⁷ The appellant appealed only the four-year period of the scholarship reductions and not the percentage of the reduction.

22) The panel identified that the appellant “solely focuses on the official visit violations,” but the panel stated that critical to its analysis of a case “is a full consideration of all violations that occurred in the case” and “a reduction of seven percent (amounting to one scholarship) per year over the four-year probationary period is an appropriate penalty.” (Committee on Infractions Response Page Nos. 22 and 23) The panel asserted that the scholarship reductions penalty prescribed in this case was less harsh than what could have been prescribed under the NCAA legislation and its own internal operating procedures. (Committee on Infractions Response Page No. 23) Finally, the panel argued that this case is consistent with case precedent and highlights the [SMU Committee on Infractions Decision](#). (Committee on Infractions Response Page Nos. 23 and 24)

To support their respective arguments, the appellant and the panel cited several previous infractions cases. However, many of these cases provide little precedential guidance or insight in that the length of time for the scholarship reductions was either self-imposed by the institution or processed through the negotiated resolution⁸ or summary disposition processes⁹. This committee continues to have concerns regarding the precedential value, if any, of cases decided through the summary disposition process given what the Committee on Infractions has previously described as its deference to agreements by the parties. ([Missouri Infractions Appeals Committee Decision Page Nos. 7 and 8](#)) This is especially true when the parties have agreed to a specific penalty or aggravating or mitigating factor at issue, instead of it being prescribed by the Committee on Infractions panel. After eliminating these cases, we focused our review of precedent on the following infractions cases: [University of Missouri, Columbia Committee on Infractions Decision \(January 31, 2019\)](#); [Alabama A&M University Committee on Infractions Decision \(September 11, 2018\)](#)¹⁰; [SMU Committee on Infractions Decision](#); and [Weber State University Committee on Infractions Decision \(November 19, 2014\)](#).

In the Missouri case, the panel prescribed a five percent scholarship reduction over a one-year period, and a three-year probation period.¹¹ There was no connection between the period of probation and the length of the scholarship reduction. In the Alabama A&M case, the panel permitted the institution “to aggregate the [scholarship] reduction over the

⁸ Pursuant to [Bylaw 19.5.12.4](#), an approved negotiated resolution case “shall be final and have no precedential value.”

⁹ For the Infractions Appeals Committee, the components (e.g., aggravating and mitigating factors, penalties) of a summary disposition case which are agreed-upon by the parties have little precedential value. However, in a summary disposition case in which the Committee on Infractions panel proposed additional penalty(ies) which was contested by the institution, the outcome(s) related to that contested penalty(ies) have a higher precedential value than the outcome(s) when the penalty(ies) was not contested and agreed-upon.

¹⁰ While this infractions case was decided through the summary disposition process, the institution contested the prescription of the scholarship reduction penalty. An expedited penalty hearing was held to review the application of the penalty. ([Alabama A&M Committee on Infractions Decision Page No. 10](#))

¹¹ [Missouri Committee on Infractions Decision Page No. 15](#).

five-year period of probation.”¹² The panel in the SMU case “gave credit” for the scholarship reductions that were imposed by the institution, and provided the institution “flexibility to determine how to implement the remaining ... scholarship reductions ... over the remaining probationary period.”¹³ Finally, in the Weber State case, the panel noted that “[g]enerally, the committee prescribes scholarship reductions annually; however, given the totality of circumstances in this case, the committee prescribes the reduction to be aggregated over the probationary period.”¹⁴ Thus, in the applicable precedent cited, there is no clear tie between the length of the period of scholarship reductions and the length of the probationary period.

While we will not make a determination regarding whether prescribing scholarship reductions for each year of probation is an abuse of discretion, it is important that in the reconsideration of this penalty, the number and length of the scholarship reductions are consistent with case precedent. Additionally, cases with scholarship reductions that were self-imposed by the institution or agreed-upon in the summary deposition process have little or no precedential value. Finally, when the Committee on Infractions determines a deviation from existing case precedent is warranted, it is important for this committee’s review of an appeal for the Committee on Infractions to include in its decision the basis for such a deviation.

Official Visit Limitation (Penalty V.9).

Penalty V.9, which prohibits official visits in conjunction with home men’s basketball competition, was prescribed as one of the additional penalties pursuant to [Bylaw 19.9.7. \(Committee on Infractions Decision Page No. 23\)](#) The appellant made two arguments to support its position that the prescription of this penalty was an abuse of discretion. First, it asserted that “[b]ylaw 19.9.7 does not include recruiting restrictions as appropriate additional penalties because those types of penalties clearly fall in the domain of core penalties,” and that [Bylaw 19.9.7-\(1\)](#) was not intended to be used “to impose additional penalties as a loophole to extend core penalties” beyond those outlined in [Figure 19-1](#). (Written Appeal Page Nos. 9 and 10) Second, the appellant argued that penalty V.5.b¹⁵ imposed the maximum limitation on official visits related to the men’s basketball program

¹² Alabama A&M contested the application of only the football scholarship reduction. Based on new information, the panel extended the period in which Alabama A&M could aggregate the reduction. Alabama A&M requested that the period in which it could aggregate the football scholarship reduction be extended from five to seven years because of circumstances related to a football game contract. ([Alabama A&M Committee on Infractions Decision Page Nos. 12 and 13](#))

¹³ [SMU Committee on Infractions Decision Page No. 45](#).

¹⁴ [Weber State Committee on Infractions Decision Page No. 9](#).

¹⁵ Penalty V.5(b) states: Georgia Tech shall restrict recruiting in men's basketball during each academic year of the four-year probationary term (i.e., 2019-20, 2020-21, 2021-22 and 2022-23): (b) A three-visit reduction from the permissible number of official visits. ([Committee on Infractions Decision Page No. 21](#))

as a core penalty, and [Bylaw 19.9.6](#) requires the existence and identification of extenuating circumstances by the panel which was not done. (Written Appeal Page No. 10)

The panel argued that it “prescribed a prohibition on official visits in conjunction with home games for two years, and it did so as an appropriate penalty connected to the facts and violations of this case.” (Committee on Infractions Response Page No. 25) Further, the panel argued that penalty V.9 is an additional penalty included in the decision under the heading “Additional Penalties for Level I-Standard Violations (Bylaw 19.9.7),” and [Bylaw 19.9.7](#) authorized the panel “to prescribe ‘[o]ther penalties as appropriate.’” (Committee on Infractions Response Page No. 25) The panel asserted that penalty V.5.b is “different and separately identified” from penalty V.9 in that penalty V.5.b is related “to number and not a tailored scenario to home games.” ([Committee on Infractions Decision Page No. 27](#))

Both the appellant and the panel made arguments regarding the meaning of and authority provided in [Bylaws 19.9.5](#), [19.9.6](#) and [19.9.7](#). The core of the appellant’s arguments is that a penalty in a category captured under core penalties may not be prescribed as an additional penalty, and the panel disagreed with this assertion.

This committee reviewed the language and sought additional information regarding the application and interaction of these bylaws. The rationale of [NCAA Division I Proposal No. 2012-16](#), the proposal adopted to implement the current violation and penalty structure, established the expected outcomes and goals of the changes once adopted:

“The proposed multi-level violation structure will provide member institutions and involved individuals with better notice of potential penalties that may be prescribed if legislation is violated. Further, the structure will better ensure that enforcement efforts are focused on the most significant violations. The proposed procedural changes will (1) result in a more efficient resolution of alleged infractions, (2) allow institutions and involved individuals more control over the means by which cases are heard and ultimately resolved, and (3) enhance the perception of fairness of the process and bring more transparency to more components of the process. The proposed penalty guidelines will set a range of core penalties that the Committee on Infractions may prescribe in given situations (along with other available penalties, as appropriate) depending on the violation level and aggravating/mitigating factors in each case.”

While the rationale did not provide significant insight into the application and interaction of the bylaws, the proposal’s rationale identifies the October 2012 report of the NCAA Working Group: Collegiate Model - Enforcement¹⁶ as the source for additional information

¹⁶ <http://www.ncaa.org/governance/working-groups/working-group-collegiate-model-enforcement>.

regarding the proposal. We reviewed the working group's report for further clarification of the intended meaning and application of the bylaws.

In the working group's overview of the proposed changes, the description of the penalty structure included the following:

“The proposed guidelines aim to find an appropriate balance allowing the Committee on Infractions sufficient discretion to prescribe penalties while also assuring stronger and consistently applied penalties. The group recognizes that, in addition to core penalties, the Committee on Infractions must retain discretion to customize prescribed penalties, depending on the facts of each case, to include other penalties outside of those identified as core and to depart upward or downward in extenuating circumstances.” (NCAA Working Group on Collegiate Model - Enforcement Final Report (October 2012) Pages Nos. 5 and 6).

This language suggests that the working group developed a penalty structure which included two distinct groups of penalties. One would be the penalties identified as core penalties and the second would include other penalties that were not identified as core penalties.

Further on in the report, the working group specifically discussed what constitutes a core penalty. Core penalties would be those penalties identified by the membership which had “the most significant impact on an institution and the most deterrent effect on other institutions and individuals.” (Working Group Report Page No. 16) This led the working group to “recommend that the following penalties constitute core penalties and form the basis for the penalty guidelines: (a) competition limitations; (b) financial penalties; (c) scholarship limitations; (d) recruiting limitations; (e) probation; and (f) when applicable, show-cause orders.” (Working Group Report Page No. 16) Additionally, when discussing retaining the “repeat violator” penalties, the working group explained that because limitations on recruiting activities are core penalties addressed in the penalty guidelines, the elimination of all recruiting activities could be prescribed only if extenuating circumstances merited a departure from the core penalties. (Working Group Report Page No. 16).

The working group report included recommendations of core penalties and proposed legislative language in Attachment No. 6.¹⁷ The language in Attachment No. 6 and Proposal 2012-16, which was later adopted, was different in several areas than the language of the recommendations in the report. In the report, the recommendations state:

- Limitations are prescribed on the number of allowable official paid visits at the institution for varying lengths of time in given sports.

¹⁷ https://www.ncaa.org/sites/default/files/Att6_Bylaw_19_101112.pdf

- Limitations are prescribed on the number of scheduled unofficial visits at the institution for varying lengths of time in given sports to include the provision of complimentary tickets and local transportation.
- Limitations are prescribed on the institution's off-campus recruiting efforts for varying lengths of time in given sports.
- Limitations are prescribed on the institution's other recruiting efforts, including communication restrictions (e.g., telephone contact and written correspondence), for varying lengths of time in given sports. (Working Group Report Page No. 18)

Yet, in Attachment No. 6 and Proposal 2012-16, the language of first and fourth bullets was modified. The change in the language of the first bullet resulted an expansion of the core penalties related to official visits. However, the change to the fourth bullet eliminated a broader catch-all phrase and replaced it with language that only identified limitations on recruiting communications. [Bylaw 19.9.5.6](#) states:

“Recruiting restrictions may include limitations for varying lengths of time on **official visits**; unofficial visits (the number of scheduled unofficial visits, provision of complimentary admissions and local transportation); **recruiting communications (telephone and written correspondence)**; and off-campus recruiting activities.” [emphasis added]

The phrase in the first bullet of “on the number of allowable” no longer preceded the phrase official visits in the bylaw. Removing this language broadens the types of limitations related to official visits considered core penalties such that any limitations applied to official visits would be considered a core penalty. Further, the fourth bullet was a broader statement that captured limitations “on the institution’s other recruiting efforts.” However, the bylaw includes no such language. Instead, the example in the fourth bullet, communications restrictions, was added to the bylaw which substantially narrowed the type of limitations identified in that bullet. These changes were substantive and had an impact on the core penalties identified in the bylaw. After reviewing this information, we find that any limitations on official visits are identified as core penalties in [Bylaw 19.9.5.6](#).

As previously mentioned, in this case, the panel prescribed penalty V.9 as an additional penalty under [Bylaw 19.9.7-\(1\)](#). This penalty is a limitation on conducting official visits which precludes the institution from scheduling official visits in conjunction with home men’s basketball contests for two academic years. ([Committee on Infractions Decision Page No. 23](#)) Given that this is a limitation on official visits, it is a core penalty. Further, it does not fall within the penalties outlined in [Figure 19-1](#) of the NCAA Division I Manual. Pursuant to [Bylaw 19.9.6](#), the panel would have to determine that extenuating

circumstances existed in this case. In this case, the panel failed to meet the requirement of [Bylaw 19.9.6](#) which is necessary when the panel deviates from [Figure 19-1](#).¹⁸ The Committee on Infractions abused its discretion when prescribing penalty V.9 in that it was based in significant part on one or more irrelevant or improper factors (e.g., failure to accurately apply the NCAA legislation related to the prescription of infractions core penalties).

Therefore, penalty V.9, which precludes scheduling official visits in conjunction with home men's basketball contests, is vacated.

XI. CONCLUSION.

The panel abused its discretion when it determined that the aggravating factor in [Bylaw 19.9.3-\(m\)](#) applied in this infractions case. Further, penalties V.4 and V.9 are vacated. Given these determinations, this case is remanded to the panel for reassessment of the classification within the assigned level for this case and prescription of the appropriate penalty based on that classification, if any, related to scholarship reductions (penalty V.4).

NCAA Infractions Appeals Committee

W. Anthony Jenkins, acting chair
Jonathan Alger
Ellen M. Ferris
Patricia Ohlendorf
Allison Rich.

¹⁸ The panel stated that “because the conduct in Violation No. 1 occurred during an official visit in conjunction with a home contest, the COI prescribes additional recruiting restrictions in that area.” [\[Committee on Infractions Decision Page No. 23 \(footnote 28.\)\]](#) However, this was not identified as an extenuating circumstance warranting deviation from the penalty guidelines.