

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

March 8, 2022

Decision No. 524
(Appeal from NCAA Division I Committee on Infractions
Remand Infractions Decision)

Georgia Institute of Technology

Atlanta, Georgia

GEOGRIA INSTITUTE OF TECHNOLOGY APPEAL DECISION SUMMARY

Outcome

Georgia Institute of Technology appealed to the NCAA Division I Infractions Appeals Committee the prescription of the following penalty by the NCAA Division I Committee on Infractions on remand:

- Penalty V.4 - Scholarship reductions: Georgia Tech shall reduce the number of grants-in-aid awarded in men's basketball by a total of four scholarships by the end of the 2024-25 academic year. Because Georgia Tech served one scholarship reduction during the pendency of the appeal, Georgia Tech may apply that scholarship as a credit to the prescribed penalty. The panel provides Georgia Tech with the flexibility to take the remaining three scholarship reductions as it deems appropriate between now and the 2024-25 academic year. This penalty equates to a 7.69 percent reduction from the total number of scholarships available over a four-year period.

The Infractions Appeals Committee vacated three of the four scholarship reductions prescribed in penalty V.4. Therefore, penalty V.4 becomes a reduction of one scholarship, which was completed by the institution during the 2019-20 academic year.

Members of the Infractions Appeals Committee

The members of the Infractions Appeals Committee who heard this case were Ellen M. 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; Allison Rich, senior associate athletics director and senior woman administrator at Princeton; and Julie Vannatta, senior associate general counsel for athletics/senior associate athletics director at Ohio State.

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I. INTRODUCTION.

The Georgia Institute of Technology appealed to the NCAA Division I Infractions Appeals Committee a specific penalty as prescribed 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.

In response to the Infractions Appeals Committee's February 26, 2021, decision to remand the infractions case, May 17, 2021, the Committee on Infractions issued the Remand Infractions Decision No. 524 in which the hearing panel included violations of NCAA legislation in the men's basketball program.¹ On the basis of those findings the Committee on Infractions maintained a determination that this was a Level I-Standard case and prescribed specific 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 remand infractions decision, Georgia Tech filed a timely notice of appeal May 21, 2021. A written appeal was filed June 28, 2021. The Committee on Infractions filed its response August 10, 2021. Georgia Tech filed its rebuttal to the Committee on Infractions response September 3, 2021. The case was considered by the Infractions Appeals Committee December 15, 2021 (see Section IX below).

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

See Committee on Infractions remand infractions decision for Georgia Tech Page Nos. 3 through 9. A copy of the remand infractions 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 remand infractions decision for Georgia Tech APPENDIX THREE. A copy of the remand infractions 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 remand infractions decision for Georgia Tech Page Nos. 9 through 15. A copy of the remand infractions decision may be accessed via LSDBi by clicking [HERE](#).

¹ [Committee on Infractions Decision No. 524](#) was originally issued September 26, 2019.

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

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

VII. APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.

Georgia Tech appealed the penalty prescribed by the Committee on Infractions. The appealed penalty is:

V.4 Scholarship reductions: Georgia Tech shall reduce the number of grants-in-aid awarded in men's basketball by a total of four scholarships by the end of the 2024-25 academic year. Because Georgia Tech served one scholarship reduction during the pendency of the appeal [during the 2019-20 academic year], Georgia Tech may apply that scholarship as a credit to the prescribed penalty. The panel provides Georgia Tech with the flexibility to take the remaining three scholarship reductions as it deems appropriate between now and the 2024-25 academic year. This penalty equates to a 7.69 percent reduction from the total number of scholarships available over a four-year period.

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

VIII. ISSUES RAISED ON APPEAL.

In its written appeal, Georgia Tech asserted that the Committee on Infractions abused its discretion by prescribing penalty V.4 (scholarship reductions).

IX. APPELLATE PROCEDURE.

In considering Georgia Tech's 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, the Infractions Appeals Committee's prior determinations in this case, and the submissions by Georgia Tech and the Committee on Infractions referred to in Section II of this decision.

The virtual oral argument on the appeal was held by the Infractions Appeals Committee December 15, 2021. The institution was present and was represented by its outside legal counsel, president, director of athletics, general counsel, counsel for student life and academic affairs and associate athletics director for compliance. The Committee on Infractions was represented by the appeals advocate for the Committee on Infractions and

the managing director of the Office of the Committees on Infractions. The enforcement staff was represented by the managing director of enforcement and two directors of enforcement. Other participants included the director of legal affairs and associate general counsel, the vice president of hearing operations and an associate director of hearing operations. 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.²

In reviewing the decision in this case, the Infractions Appeals Committee may set aside a penalty prescribed by the Committee on Infractions on appeal if the appellant demonstrates 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](#)]

The Infractions Appeals Committee’s mission is to provide a meaningful, reliable and credible appeal opportunity, which produces outcomes that have a positive impact on the infractions process and support the NCAA’s commitment to provide a fair competitive environment for student-athletes.³ This responsibility incorporates the legislated high standard of review for setting aside hearing panel conclusions and penalties in [NCAA Bylaws 19.10.1.1](#) and [19.10.1.2](#), and the guidance to be provided to the membership and Committee on Infractions through appeals decisions. The standard of review is an appropriately high bar, not often met upon appeal, designed to provide a last opportunity

² 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.

³ The [mission](#) developed by the Infractions Appeals Committee is found on the committee’s webpage on [ncaa.org](#). Further, the committee has determined that a meaningful appeal requires: (1) the parties are provided adequate time to prepare; (2) the parties are provided full access to record before the Committee on Infractions; (3) the appellant is provided the opportunity to provide his/hers/its arguments (written appeal); (4) the Committee on Infractions is provided the opportunity to provide its arguments (Committee on Infractions response); (5) the appellant is provided the opportunity to respond to the Committee on Infractions’ response (rebuttal); (6) the parties are provided the opportunity to present their arguments to the Infractions Appeals Committee, where appropriate (oral argument); and (7) the outcome of the appeal is not a forgone conclusion and there is a chance for the appeal to be successful.

for the membership to be heard while ensuring consistency and predictability in the infractions process.

This committee notes that there have been legislated strides in addressing the breadth of potential penalties, that each case offers unique circumstances that may not allow for complete case-to-case comparison and that the Committee on Infractions has begun to elaborate upon the full breadth of factors impacting their decisions. However, there continue to be some circumstances where hearing panels either have not fully articulated their rationale for some aspects of published decisions, which would assist the membership's understanding of outcomes for perceived like cases, or have not clearly differentiated the cases before them in a manner that ensures the outcome is consistent within the current line of adjudicated Level I and II infractions.⁴ This committee recognizes that case precedent may evolve over time, but the hearing panel must provide detailed rationale when a penalty deviates from past precedent, even if the new penalty is within the same penalty-matrix box. This explanation is necessary to educate the membership and to meet the goal of ensuring consistency and predictability in future outcomes.⁵

In remand cases where the hearing panel has been provided specific guidance from the Infractions Appeals Committee regarding both the framework for analysis and the specific case precedent from which to draw appropriate comparison or differentiation, it is especially necessary for such detailed rationale to be provided. This reflects the obligation on remand for adherence to the final, binding and conclusive⁶ determination of the Infractions Appeals Committee. This obligation remains, even if the panel disagrees with the outcome. The Infractions Appeals Committee is the final step of the peer-driven infractions process, and not recognizing that legislated authority deprives an appellant of its initial meaningful appeal and creates additional bureaucracy and delays involving secondary appeals. If such nonadherence to specific guidance is determined, that, in and of itself, could justify a determination of abuse of discretion by this committee.

Specific to this appeal, the appellant argued four separate but interrelated abuses of discretion by the hearing panel, regarding what the appellant noted is a practical equivalent to the previous penalty through the prescription of a four-scholarship reduction over a four-year period. At least two of the abuse of discretion arguments spoke to the nonadherence to the committee-provided direction noted above. The outlined arguments for abuse of discretion are as follows:

⁴ The NCAA Working Group on Collegiate Model – Enforcement included the following as one of their guiding principles in the creation of the current violation and penalty structures: Any new structures must be designed to ensure effectiveness and efficiency in the process and its results. The new structures must be easily understood, legitimate, timely, respecting of confidentiality while transparent with the process, and sufficiently workable to establish clear and strict guidelines and boundaries. (The Working Group on Collegiate Model – Enforcement Report Page No. 4)

⁵ Working Group on Collegiate Model - Enforcement Final Report (October 2012) Pages Nos. 5 and 6 highlighting specifically the goal of consistently applied penalties.

⁶ [Bylaw 19.10.7](#) - Final decision not subject to further review. Any decision of the Infractions Appeals Committee shall be final, binding and conclusive, and shall not be subject to further review by any governance body.

- The hearing panel ignored material factors of applicable case precedent as noted by the Infractions Appeals Committee;
- The hearing panel failed to provide a basis for departure from precedent as instructed by the Infractions Appeals Committee;
- The hearing panel failed to appropriately weigh the remaining aggravating and mitigating factors in determining the appropriate classification of the case due to its failure to completely remove the factor overturned in the previous appeal from its analysis; and
- The hearing panel based the penalty on several irrelevant factors, including hypothetical outcomes, alternative penalties not available under the current penalty structure and reliance on the negative characterization of head coach's conduct in a case where no head coach violations were alleged, nor was a finding of head coach's responsibility violation made.⁷

In response, the hearing panel argued that it appropriately continued to classify the case as Level I-Standard based on the remaining aggravating and mitigating factors, including one remaining aggravating factor to which it had previously assigned significant weight. The panel also noted that the penalty prescribed was consistent with the penalty matrix and therefore did not require additional rationale. Further, the hearing panel argued that it adhered to the Infractions Appeals Committee's guidance related to case precedent. The panel determined that only the [Southern Methodist University Committee on Infractions Decision \(September 29, 2015\)](#) case provided appropriate comparison, and the panel noted that the prurient nature of the behavior involved in the current case required an enhanced penalty similar to other cases involving such behavior. Finally, the hearing panel argued that it cannot abuse its discretion when it explains its analysis and rationale.⁸

As elaborated below, we find the totality of the appellant's arguments persuasive. The hearing panel's prescription of an equivalent financial aid reduction penalty upon remand is an abuse of discretion because the panel failed to consider and weigh material factors. In addition, the prescription of the penalty was based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational and based in significant part on one or more irrelevant or improper factors.

As a point of initial emphasis, nothing in this decision condones the behavior involved in this case, specifically the extreme lapse in judgment in providing sexually explicit entertainment as part of a recruiting visit. However, it is equally important not to inflate the behavior in a manner that loses sight of the overall extent of the violations at issue

⁷ Written Appeal Page Nos. 3 through 10.

⁸ Committee on Infractions Response Page Nos. 6 and 13.

relative to comparable cases, especially ones that speak directly to other areas of import to the collegiate model and/or institutional control.

The committee also wishes to address the threshold argument put forward by the hearing panel that the remand reclassification was appropriate and a penalty in the appropriate matrix box requires a level of deference such that an explanation of any departure from case precedent is not required. As noted earlier, such explanation is necessary to educate the membership and to meet the goal of ensuring consistency and predictability in future outcomes. In addition, if the hearing panel had fully eliminated the vacated aggravating factor from its analysis as prescribed by this committee, then there should have been an explanation beyond reliance on an argument that the original factors could have supported the higher Level-I Aggravated classification and that the remaining aggravating factors supported the same scholarship reduction. In the original infractions decision, the hearing panel did not note any assigned weight for the now-vacated aggravating factor,⁹ so this committee is left to assume that “normal” weight was given to the factor. Generally, when a “normal” weight aggravating factor is removed from the equation, one would not expect discussion about a potentially higher classification or the same penalty without further explanation. Also, included in the rationale provided, the hearing panel specifically cited “the intentional involvement of adult entertainment and the involvement of a notable booster to entice a prospect to come to” the institution. The same “intentional” action is similar to the rationale that was used to initially justify the application of the now vacated factor.¹⁰ All of these factors, when combined with the panel’s noted disagreement with the vacation,¹¹ lends credence to the appellant’s argument that the vacated factor was in fact not fully eliminated from the analysis and had some impact on the penalty determination.

While this committee provides an appropriate level of deference to the hearing panel upon initial appeal, such deference is impacted when the hearing panel has been provided specific instruction by this committee on remand to make its penalty determination via the lens of all the specifically cited case precedent for this case as noted below, not just the one case the hearing panel agreed with. Further, for the hearing panel to only fully articulate its analysis and justify its decisions in its appellate arguments, and not in the original decision, is both unfair to the appellant and contrary to the need for the infractions process to provide clarity and guidance to the membership.

Additionally, as is the case here, only noting the common portions of case precedent that support an outcome without providing sufficient examination of key distinguishing factors or dismissing the applicability of other cases on the premise that they are different types of violations does not meet the scope of the evaluation requested and required. While this committee is aware that each infractions case is unique, there are sufficient similarities in

⁹ [Georgia Institute of Technology, Committee on Infractions Decision \(September 26, 2019\) Page Nos. 17 and 18.](#)

¹⁰ “As mentioned above, the assistant coach was operating in his official capacity as an assistant coach....In that capacity, he *intentionally* [emphasis added] involved a booster in recruiting and orchestrated a prospect’s visit to a strip club when he knew he could not.” [Committee on Infractions Remand Decision, Page No. 18.](#)

¹¹ [Committee on Infractions Remand Decision, APPENDIX THREE, Footnote No. 3.](#)

cases that may provide guidance, and also dissimilarities in findings that can either bolster or temper such guidance. In the initial appeal decision, this committee focused on four cases in its review of precedent:¹² [University of Missouri, Columbia Committee on Infractions Decision \(January 31, 2019\)](#), [Alabama A&M University Committee on Infractions Decision \(September 11, 2018\)](#), [SMU Committee on Infractions Decision](#) and [Weber State University Committee on Infractions Decision \(November 19, 2014\)](#). Three of those cases involved academic fraud¹³ and the fourth case involved improper certification of eligibility on 188 instances in 14 sports over a period of several years. Additionally, the [Alabama A&M Committee on Infractions Decision](#) included a finding of a lack of institutional control and the [SMU Committee on Infractions Decision](#) included a violation of the head coach responsibility bylaw.

The hearing panel argued that the appellant's "intentional activity in the recruitment of prospects by both boosters, extra benefits and the use of adult entertainment in recruiting a top tier prospect" is more egregious than the [Missouri Committee on Infractions Decision](#), [Alabama A&M Committee on Infractions Decision](#) and [Weber State Committee on Infractions Decision](#) cases,¹⁴ and the hearing panel used only the [SMU Committee on Infractions Decision](#) case in its analysis for reviewing case precedent in its remand review. Again, we do not condone the use of adult entertainment in the recruiting process, and we believe it is contrary to the core tenets of the collegiate model. However, we disagree with the premise that the one-time use of adult entertainment with one prospective student-athlete and one student-athlete is *more* detrimental to the collegiate model than academic fraud or significant eligibility certification issues. As noted in [NCAA Constitution 1.3.1](#), "a basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body." As such, academic fraud must be at least equally as egregious as a recruiting violation involving extra benefits from a booster and the use of adult entertainment in one instance while recruiting one prospect. Therefore, this committee believes that all four cases are relevant to the case precedent analysis, especially those involving academic fraud.

In reviewing the four cases cited above, this committee noted that the [Missouri Committee on Infractions Decision](#),¹⁵ [Alabama A&M Committee on Infractions Decision](#)¹⁶ and [Weber State Committee on Infractions Decision](#)¹⁷ were all prescribed one-year scholarship

¹² [Georgia Institute of Technology Infractions Appeals Committee Decision \(February 26, 2021\) Page No. 8](#)

¹³ [SMU Committee on Infractions Decision](#), [Missouri Committee on Infractions Decision](#) and [Weber State Committee on Infractions Decision](#).

¹⁴ Committee on Infractions Response Page No. 9.

¹⁵ Missouri was prescribed a 5% scholarship reduction in football, baseball and softball over a one-year period. [[Missouri Committee on Infractions Decision Page No. 15](#)]

¹⁶ Alabama A&M was prescribed a 10% scholarship reduction in baseball, men's basketball, football and men's golf for the 2018-19 academic year, but permitted the institution to aggregate the reduction over the five-year period of probation. [[Alabama A&M Committee on Infractions Decision Page No. 15](#)]

¹⁷ Weber State was prescribed a 14.23% reduction in football (nine equivalencies). That panel noted that the committee generally prescribes scholarship reductions annually; however, given the totality of the circumstances, the panel

reduction, which two of the schools were permitted to aggregate over a longer period of time, and those one-year reductions ranged from 5% to 14.23%. For the [SMU Committee on Infractions Decision](#), the reduction was nine scholarships over a period of three years in basketball (23.08%, which is equivalent to three scholarships in a year).¹⁸ It should be noted that the penalty matrix was revised after the [SMU Committee on Infractions Decision](#) case, and the range for scholarship reductions for Level-I Standard cases was reduced to a range of 5% to 15%. This fact must be accounted for in the process of weighing case precedent. So too must the facts that [SMU Committee on Infractions Decision](#) involved a head coach responsibility violation not found in this case, and that at least one of the one-year scholarship reduction cases included a lack of institutional control finding not found in this case. Taken in their entirety then, the totality of the case precedent as actual comparator to the case at hand clearly does not support the prescribed penalty, but rather points much more definitively to a one-year scholarship reduction.

Finally, this committee wishes to address two additional arguments that were used to support the hearing panel's determination in this remand case. First, in an effort to support penalty V.4 remaining at the same classification, the panel noted that the presence and weight of aggravating and mitigating factors could have originally supported a Level I-Aggravated classification.¹⁹ Just as this committee has not accepted speculative arguments from appellants,²⁰ arguments from the hearing panel related to what could have been but was not found are not persuasive. Second, the panel argued that if the Infractions Appeals Committee vacated the scholarship reduction penalty, the appellant would effectively serve no meaningful penalties for its violations.²¹ In this case, a one-year postseason ban was considered served in spring 2020 as a result of a decision made by the NCAA Division I Board of Directors.²² The actions by the Board of Directors during a national pandemic should not serve as justification for the prescribed penalty. This is especially true when

prescribed the reduction to be aggregated over the three-year probation period. [[Weber State Committee on Infractions Decision Page No. 9](#)]

¹⁸ SMU was prescribed a 25% reduction for a period of three years in men's golf, and, in men's basketball, a reduction of scholarships by nine over a period of three years was prescribed. In men's basketball, the institution self-imposed a reduction of two scholarships. [[SMU Committee on Infractions Decision Page Nos. 45 and 46](#)]

¹⁹ Committee on Infractions Response Page No. 7.

²⁰ [California Polytechnic State Institute Infractions Appeals Committee Decision \(February 6, 2020\)](#); [North Carolina Central University Infractions Appeals Committee Decision \(December 12, 2018\)](#); and [Georgia Institute of Technology Infractions Appeals Committee Report \(March 9, 2012\)](#) where the institutions argued that had they known the student-athlete was ineligible, they would have sought reinstatement and the student-athlete would have been reinstated with no withholding penalty to support that an imposition of vacation of records penalty was an abuse of discretion.

²¹ The panel cited that due to the Board of Directors action related to postseason bans as well as the Infractions Appeals Committee's vacation of the panel's additional official visit prohibition tethered to home basketball contests as rationale for its argument that the appellant would effectively serve no meaningful penalties if the scholarship penalty reduced in the remand appeal decision. (Committee on Infractions Response Page Nos. 6 and 14)

²² The NCAA Division I Board of Directors Administrative Committee noted that in the specific instance of a postseason ban, institutions should be considered to have served a postseason ban even if postseason competition was not completed due to the impact of COVID-19. The Administrative Committee cited the extenuating circumstances of the global pandemic and the detrimental student-athlete impact of extending a postseason ban for an additional year under such circumstances. (Report of the NCAA Division I Board of Directors Administrative Committee June 23, 2020, videoconference)

arguing that the penalty somehow is necessary to ensure adequate punishment to dissuade future behavior by the appellant or to provide sufficient guidance for other institutions as to the impact of similar behavior.

XI. CONCLUSION.

For the reasons cited above, this committee finds an abuse of discretion and vacates three of the four scholarship reductions prescribed in penalty V.4. Therefore, penalty V.4 becomes a reduction of one scholarship, which is consistent with the applicable case precedent.²³ The one scholarship reduction was completed by the institution during the 2019-20 academic year.

NCAA Infractions Appeals Committee

Ellen M. Ferris, chair
Jonathan Alger
Tom Goss
Allison Rich
Julie Vannatta.

²³ Pursuant to the authority of the Infractions Appeals Committee under [Bylaw 19.4.5-\(b\)](#), the Infractions Appeals Committee may affirm, reverse or vacate penalties. Affirm is generally accepted to mean to accept in whole and reverse is generally accepted to mean to eliminate in whole. Recognizing then that vacate would need to have a meaning other than reverse or affirm, it, by definition, allows for setting aside a portion of a penalty and retaining a portion of a penalty in a situation where the appealing party successfully demonstrates that the Committee on Infractions abused its discretion in prescribing a penalty.