DECISION OF THE

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

DIVISION I INFRACTIONS APPEALS COMMITTEE

November 17, 2021

Decision No. 540

University of Massachusetts, Amherst

Amherst, Massachusetts

UNIVERSITY OF MASSACHUSETTS, AMHERST
APPEAL DECISION SUMMARY

Outcome

The University of Massachusetts, Amherst appealed to the NCAA Division I Infractions Appeals Committee a finding of violation and two penalties prescribed by the NCAA Division I Committee on Infractions:

Finding of Violation[1]

IV: Massachusetts violated NCAA Bylaw 12.11.1, when it failed to withhold ineligible student-athletes from competition in two sport programs.

Penalties[2]

VI.1: Probation: Two years of probation from October 16, 2020, through October 15, 2022.

VI. 4: Vacation of team and individual records: Ineligible participation in the men's basketball and women's tennis programs occurred over portions of three academic years as a result of UMass awarding financial aid to 12 student-athletes in excess of their full cost of attendance. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3 and COI Internal Operating Procedure 5-15-7, UMass shall vacate all regular season and conference tournament wins, 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 the ineligible student-athletes participated in NCAA postseason competition at any time they were ineligible, UMass' participation in the postseason contests in which the ineligible competition occurred 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, UMass' records regarding its men's basketball and women's tennis programs, as well as the records of their head coaches, shall reflect the vacated records and 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.

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

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; Alejandra Montenegro Almonte, attorney in private practice; Allison Rich, senior associate athletics director and senior woman administrator at Princeton; David Shipley, law professor and

[1] For full details of the finding of violation in this case, please go to the University of Massachusetts, Amherst Committee on Infractions Decision (October 16, 2020) via Legislative Services Database for the Internet (LSDBi) by clicking HERE.
[2] For full details of the penalties in this case, please go to the Massachusetts Committee on Infractions Decision via LSDBi by clicking HERE.

faculty athletics representative at Georgia; and Julie Vannatta, senior associate general counsel for athletics/senior associate athletics director at Ohio State.

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I. INTRODUCTION.

The University of Massachusetts, Amherst appealed to the NCAA Division I Infractions Appeals Committee a finding of violation and two penalties as determined by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by Massachusetts (hereinafter referred to as Massachusetts or appellant).

II. BACKGROUND.

On October 16, 2020, the Committee on Infractions issued Infractions Decision No. 540 in which the panel found violations of NCAA legislation in the men's basketball and women's tennis sport programs. On the basis of those findings, the panel determined that this was a Level II-Mitigated infractions case and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing financial aid and withholding ineligible student-athletes from competition.

After the Committee on Infractions issued its decision, Massachusetts filed a timely notice of intent to appeal October 30, 2020. A written appeal was filed January 4, 2021. The Committee on Infractions filed its response February 12, 2021. Massachusetts filed its rebuttal to the Committee on Infractions response March 3, 2021. This case was considered by the Infractions Appeals Committee June 28, 2021 (see Section IX for Appellate Procedure).

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

See Committee on Infractions decision for Massachusetts Page Nos. 3 through 6. 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 Massachusetts Page Nos. 6 through 9. A copy of the decision may be accessed via LSDBi by clicking HERE.

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

Massachusetts appealed the finding of violation found by the Committee on Infractions:[3]

IV Over three academic years, UMass provided financial aid packages that aligned with on-campus living expenses even though the student-athletes moved off-campus during the semester. The higher on-campus living expense payments caused the student-athletes to exceed their full cost of attendance and constituted impermissible financial aid. As a result, the student-athletes became ineligible and UMass did not withhold them from competition. UMass also provided them with actual and necessary expenses associated with those competitions. The violations are Level II.

[3] The finding of violation was copied from the Committee on Infractions Decision.

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

See Committee on Infractions decision for Massachusetts APPENDIX ONE. A copy of the decision may be accessed via LSDBi by clicking HERE.

VII. APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.

Massachusetts appealed two penalties prescribed by the Committee on Infractions. The appealed penalties are as follows:[4]

VI.1 Probation: Two years of probation from October 16, 2020, through October 15, 2022.

VI.4 Vacation of team and individual records: Ineligible participation in the men's basketball and women's tennis programs occurred over portions of three academic years as a result of UMass awarding financial aid to 12 student-athletes in excess of their full cost of attendance. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3 and COI Internal Operating Procedure 5-15-7, UMass shall vacate all regular season and conference tournament wins, 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 the ineligible student-athletes participated in NCAA postseason competition at any time they were ineligible, UMass' participation in the postseason contests in which the ineligible competition occurred 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, UMass' records regarding its men's basketball and women's tennis programs, as well as the records of their head coaches, shall reflect the vacated records and 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 records shall be removed from the athletics department stationery, banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in men's basketball and women's tennis shall be returned to the Association.

For the other penalties prescribed by the Committee on Infractions, see Committee on Infractions decision for Massachusetts Page Nos. 14 through 16. A copy of the decision may be accessed via LSDBi by clicking HERE.

[4] The descriptions of the penalties were copied from the Committee on Infractions Decision.

VIII. ISSUES RAISED ON APPEAL.

In its written appeal, Massachusetts asserted that the finding of violation VI is clearly contrary to the evidence and the facts found by the Committee on Infractions. Additionally, Massachusetts asserted that the two-year probation penalty (VI.1) and the vacation of records penalty (VI.4) prescribed by the Committee on Infractions panel constitute clear abuses of discretion.

IX. APPELLATE PROCEDURE.

In considering Massachusetts' appeal, the Infractions Appeals Committee reviewed the Notice of Intent to Appeal; the record and transcript of the institution's September 24, 2020, hearing before the Committee on Infractions; and the submissions by the institution and the Committee on Infractions. The parties were notified March 29, 2021, that the oral argument for this appeal would be conducted virtually. A virtual oral argument on the appeal was held by the Infractions Appeals Committee June 28, 2021.

The institution was present and was represented by its outside legal counsel, director of athletics, associate athletics director for governance and compliance, senior counsel in the institution's general counsel's office and the commissioner for the Atlantic 10 Conference. The Committee on Infractions was represented by the appeals advocate and the associate director of the Office of the Committees on Infractions. The enforcement staff was represented by the director of enforcement. Other participants included the director of legal affairs and associate general counsel, an associate director of hearing operations, an extern in the Infractions Appeals Committees Office and the vice president of hearing operations. The virtual 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.[5]

Review of the Finding of Violation IV: Impermissible Financial Aid in Excess of Full Cost of Attendance and Failure to Withhold Ineligible Student-Athletes from Competition

As outlined in Bylaw 19.10.1.2, the Committee on Infractions hearing panel's factual findings and its conclusion that one or more violations occurred shall not be set aside on appeal except on a showing by the appealing party that:

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

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

[5] 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.

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

In this case, the appellant agreed that during the 2014-15 through 2016-17 academic years, it violated financial aid legislation when it over-awarded financial aid to 12 student-athletes on 13 occasions in two sport programs. The impermissible financial aid packages fell into two categories: (1) student-athletes who continued to receive a telecom fee associated with dorm phones after they moved off campus; and (2) student-athletes whose on-campus housing was more expensive than their off-campus housing. However, the appellant disagreed that a finding of Bylaw 12.11.1 applied to the facts of this case. Specifically, the appellant provided financial aid packages that aligned with on-campus living expenses even though the student-athletes moved off campus during the semester. The higher on-campus living expense payments caused the student-athletes to exceed their full cost of attendance and constituted impermissible financial aid. As a result, the student-athletes became ineligible and the appellant failed to withhold the student-athletes from competition. In total, the ineligible student-athletes participated in 186 contests, and the appellant provided the student-athletes with impermissible expenses associated with those competitions. [Committee on Infractions Decision Page Nos. 3 through 10]

The appellant made two arguments to support its position that the finding of violation IV related to Bylaw 12.11.1 was clearly contrary to the evidence presented to the panel. (Written Appeal Page No. 9) First, the appellant maintained that the panel relied on an erroneous conclusion that the violation occurred as a result of a "misunderstanding of financial aid legislation," "inaction" and "misapplication of financial aid bylaws and/or inattention" rather than a mere oversight attributed to human error. (Written Appeal Page No. 9) The appellant maintained that the panel's conclusion derives from a reliance on a statement made by the compliance coordinator which related to information provided to her by the former associate athletics director. (Written Appeal Page No. 6) According to the appellant, this statement was not supported by the record, or an analysis of the appellant's financial aid processes and other student-athlete awards during the time period the violations occurred. (Written Appeal Page No. 6)

The second argument set forth by the appellant is that the panel's finding of a Bylaw 12.11.1 violation is inconsistent with the intent and plain language of the bylaw and that the panel cited the bylaw simply to bolster a vacation of records penalty. (Written Appeal Page Nos. 12 and 13) The appellant further maintained that Bylaw 12.11.1 supports that an institution's obligation to identify ineligibility is predicated on whether an institution has knowledge of the student-athlete's ineligibility. (Written Appeal Page No. 13)

In response to the appellant's written appeal, the panel argued that the appellant cites the appellant's own speculative statements, lack of knowledge and admissions to support the belief that the compliance coordinator's statement in reference to what the former associate athletics director said about the telecom fee was "speculation" or "[in]accurate." (Committee on Infractions Response Page No. 14) Further, the panel argued that Bylaw 19.7.8.1 gives the panel authority to base its decisions on information it believes is "credible, persuasive and of

a kind on which reasonably prudent persons rely in the conduct of serious affairs." (Committee on Infractions Response Page No. 14)

As it relates to the appellant's second argument, the panel maintained that Bylaw 12.11.1 is simple and straightforward in that if a student-athlete is ineligible, institutions must withhold the student-athlete from competition until the student-athlete is eligible. (Committee on Infractions Response Page No. 12) Actual knowledge of a student-athlete's ineligibility is not a requirement for Bylaw 12.11.1 to apply in fact patterns in which ineligible student-athletes participate in competition. (Committee on Infractions Response Page Nos. 16 and 17)

In reviewing the finding prescribed in this case, the appellant must show more than an alternative reading or application of the information exists. As this committee has stated in the University of Mississippi case:

> "A showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding, nor will a showing that such information might have outweighed the information on which the committee based a finding. The Infractions Appeals Committee specifies that a finding may be set aside on appeal only upon a showing that it is clearly contrary to the information presented to the Committee on Infractions. A showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding, nor will a showing that such information might have outweighed the information upon which the committee based a finding. The Infractions Appeals Committee under existing legislation will set aside a finding only upon a showing that information that might have supported a contrary result clearly outweighed the information upon which the Committee on Infractions based the finding." [University of Mississippi, Infractions Appeals Committee Report (May 1, 1995) Page No. 8]

Additionally, this committee has previously stated it is "deferential to the Committee on Infractions in determining the credibility of the evidence, specifically in relationship to weighing the veracity of individuals before it, and it is hesitant to overturn such determinations absent a clear demonstration to the contrary." [The University of Southern Mississippi, Former Head Men's Basketball Coach, Infractions Appeals Committee Decision (February 2, 2017) Page No. 5]

The appellant raised some alternative versions of what could have happened that led to the violations in this case. However, the panel reasonably relied on the compliance coordinator's statements about providing the telecom fee to the student-athletes who moved off-campus, and the appellant failed to demonstrate that the facts found by the panel were clearly contrary to the information presented to the panel.

Further, the plain language of Bylaw 12.11.1 specifies that, if a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to immediately apply the applicable rule and to withhold the

student-athlete from all intercollegiate competition. Unlike other NCAA bylaws,[6] Bylaw 12.11.1 does not expressly include a "knowledge" requirement. Thus, the panel is not required to determine knowledge or the level of institutional culpability prior to determining whether a violation of Bylaw 12.11.1 occurred. An institution may be held responsible for failing to withhold an ineligible student-athlete from competition even though the institutional staff member(s) did not know at the time that the student-athlete was ineligible.

Therefore, the Infractions Appeals Committee affirms the finding of violation IV.

Review of Penalty (VI.1): Two-Year Probation

The Infractions Appeals Committee may vacate a penalty prescribed by the 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]

The appellant argued that the panel abused its discretion in prescribing a two-year probation penalty in this case when it failed to weigh and consider case precedent. (Written Appeal Page No. 28) Specifically, the appellant argued that of the 38 Level-II Mitigated cases decided by the Committee on Infractions since 2014, only four, including the appellant's case, have been subject to a probationary period of two or more years. (Written Appeal Page No. 28) Further, the appellant maintained that two of those cases involved a failure to monitor, and the remaining case was processed through the negotiated resolution process and the institution agreed to a three-year probationary period with the enforcement staff. (Written Appeal Page Nos. 28 and 29)

In response to the appellant's arguments, the panel contended that the two-year probationary period prescribed by the panel falls within the core penalty range for an infractions case classified as a Level II-Mitigated case. The panel further argued that since this core penalty is approved and expected by the membership, as outlined in Figure 19-1, the penalty was appropriate. (Committee on Infractions Response Page No. 33)

In addition, the panel was concerned that the appellant did not detect the violations earlier and should have "scrutinized the four men's basketball student-athletes when they were

[6] NCAA Constitution 6.4.2, Bylaws 10.1, 10.2, 10.3 and 16.01.1.1.

forced to move off-campus due to student misconduct and disciplinary issues."[7] The panel explained that "[p]robation, while prescribed as a core penalty, also provides an opportunity for institutions to monitor and remediate any weaknesses that may exist in an institution's athletics program with the appropriate member oversight through the COI." (Committee on Infractions Response Page No. 33)

As noted above, the appellant maintained that only four of the 38 Level II-Mitigated infractions cases decided by the Committee on Infractions since 2014 included a probationary period of two or more years.[8] Although the appellant's written appeal did not include a list of the referenced 38 cases, this committee conducted a search of Level II-Mitigated cases since 2014 and found 37 cases, including the appellant's case. Of those 37 cases, 12 were resolved via the negotiated resolution process (including the University of Pittsburgh Negotiated Resolution (February 20, 2020) cited by the appellant), and per Bylaw 19.5.12.4, approved negotiated resolution cases have no precedential value. Therefore, this committee reviewed the remaining 25 cases. In that review, this committee noted the adoption of NCAA Division I Proposal No. 2016-127 (infractions program – penalty guidelines) in 2017, which expanded the range for the probation-period penalty for a Level II-Mitigated infractions case from "0 years" to "0 to 2 years."[9] As a result of the implementation of the revised penalty structure, this committee determined that the use of the 14 Level II-Mitigated cases decided prior to August 1, 2017, is not persuasive case precedent, as the default penalty for probation was "0" years.[10] The remaining 11 Level II-Mitigated infractions cases had probationary periods that were almost equally distributed within the penalty matrix options, including a distribution of penalties for the four institutions with a failure to monitor finding.[11]

We understand Massachusetts' concern regarding the prescription of the probationary period, given that the panel did not find a failure to monitor violation against the appellant and the limited number of institutions that have been subjected to a probationary period of

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[7] Committee on Infractions Decision Page No. 10.

[8] The appellant cited four cases, including its own case currently on appeal. The cited case are referenced as follows: Monmouth University Committee on Infractions Decision (October 18, 2017); California Polytechnic State University Committee on Infractions Decision (April 18, 2019); and Pittsburgh Negotiated Resolution. [Written Appeal Page No. 28].

[9] Proposal No. 2016-127 was adopted in April 20, 2017, with an effective date of August 1, 2017.

[10] It should be noted that the Committee on Infractions panels used Bylaw 19.9.6 (departure from Level I/II penalties) to prescribe a one-year probation in three cases: Oklahoma State University Committee on Infractions Decision (April 24, 2015); University of Notre Dame Committee on Infractions Decision (November 22, 2016) and Southeast Missouri State University Committee on Infractions Decision (February 12, 2016). In addition, the Committee on Infractions panel adopted the institution's recommendation of a year of probation in one case: Wichita State University Committee on Infractions Decision (January 29, 2015). Another Committee on Infractions panel prescribed a year of probation for Coastal Carolina University Committee on Infractions Decision (September 1, 2015) after determining that the pre-matrix penalties were more lenient, and the panel did not use the matrix. Finally, a Committee on Infractions panel prescribed a year of probation for San Jose State University Committee on Infractions Decision (October 26, 2016) without any explanation for the deviation from the matrix at the time.

[11] There are four relevant Level II-Mitigated cases that included a failure to monitor finding. Two institutions were prescribed a one-year probation period: University of San Francisco Committee on Infractions Decision (April 6, 2018) and University of Washington Committee on Infractions Decision (October 9, 2020). The other two institutions were prescribed a two-year probation period: Monmouth Committee on Infractions Decision and Cal Poly Committee on Infractions Decision.

two or more years. However, Bylaw 19.9.5.7 gives the panel discretion to determine penalties based on specific circumstances of the case, and we have previously stated that the panel has significant discretion in its ability to fashion appropriate penalties for an overall infractions case. [Saint Mary's College of California Infractions Appeals Committee Decision (October 14, 2013) Page No. 5] In this case, the penalty prescribed by the panel was within the penalty range as set forth for Level II-Mitigated cases. We are hesitant to conclude that any penalty within the appropriate matrix options is an abuse of discretion absent finding that the panel was clearly arbitrary in prescribing such a penalty.

For the reasons noted above, we do not find that the panel abused its discretion when prescribing a two-year probation penalty (VI.1).

Review of Penalty (VI.4): Vacation of Records

The appellant acknowledged that over a period of three years, 12 student-athletes in its men's basketball and women's tennis sport programs received financial aid in excess of the full cost of attendance. (Written Appeal Page No. 3) However, the appellant argued that the panel abused its discretion when prescribing a vacation of records penalty by:

1. Misapprehending the underlying legal standards that apply to a vacation of records penalty and misconstruing relevant case precedent;

2. Basing the vacation of records penalty upon a clearly erroneous factual finding concerning Bylaw 12.11.1;

3. Failing to consider and weigh relevant factors; and

4. Abusing its discretion by imposing a vacation of records penalty that is arbitrary, capricious and irrational. (Written Appeal Page Nos. 15 through 28)

While the panel addressed the appellant's individual arguments in its Response and during the oral argument, its central argument for the affirmation of the vacation of records penalty was that the panel has the discretion to prescribe a vacation of records penalty in Level I and II infractions cases where a student-athlete participated in competition while ineligible, which is also further supported by a long history of case precedent. (Committee on Infractions Response Page No. 25)

1. Misapprehending Legal Standards and Relevant Case Precedent.

   The appellant maintained that in prescribing a vacation of records penalty, the panel disregarded its own standards outlined in the Committee on Infractions' Internal Operating Procedure 5-15-7 because none of the six enumerated circumstances outlined in the procedure occurred in this case. [Written Appeal Page No. 16] The appellant further argued the panel misconstrued relevant case precedent when the panel prescribed the vacation of records penalty. (Written Appeal Page No. 15)

Committee on Infractions Internal Operating Procedure 5-15-7 sets forth the circumstances, when present, that make the prescription of a vacation of wins and records penalty more appropriate.[12] Those circumstances include:

a. Academic violations;

b. Serious intentional violations;

c. Direct involvement of a coach, high-ranking school administrator or a representative of the institution's athletics interests (commonly referred to as a booster);

d. A large number of violations;

e. A recent history of Level I, Level II or major violations, or

f. When the panel concludes that a failure to monitor or lack of institutional control existed.

The presence of the above factors merely increases the likelihood of a vacation of records penalty, and, as this committee has noted in the past, none of the factors are required to be present for a vacation of records penalty to be prescribed.[13]

The panel retains the discretion to prescribe a vacation of records penalty when it believes the circumstances are warranted. While the appellant tries to distinguish cases in which the Committee on Infractions prescribed or should have prescribed a vacation of records penalty, it is still within the panel's discretion to determine the penalties based on the specific circumstances of the case. This committee must apply its current standard of review in determining whether to affirm or vacate penalties prescribed in infractions cases. Under the current legislation and case precedent, the Committee on Infractions has routinely prescribed a vacation of records when student-athletes competed while ineligible, and such penalties have been affirmed by this committee.[14] While there may be a very small number of cases in which the Committee on Infractions chose to use its discretion to not prescribe a vacation of

[12] Committee on Infractions: Internal Operating Procedure was previously 5-15-4 and Southeast Missouri State University Committee on Infractions Report (June 18, 2008) Page Nos. 10 and 11. As the appellant noted in its written appeal, when former Bylaw 19.5.2-(h) was incorporated into the Committee on Infractions' Internal Operating Procedures, two additional considerations were omitted (competition while academically ineligible and vacation or similar penalty would be prescribed if the underlying violations were secondary). (Written Appeal Page No. 8, Footnote No. 2) In addition, a recent history of Level I, Level II or major violations was added to the Internal Operating Procedure.

[13] Georgia Institute of Technology Infractions Appeals Committee Report (March 9, 2012) Page No. 15 and Brigham Young University Infractions Appeals Committee Decision (September 4, 2019) Page Nos. 6 and 7.

[14] California Polytechnic State University Infractions Appeals Committee Decision (February 6, 2020); Brigham Young Infractions Appeals Committee Decision; Alabama A&M University Committee on Infractions Decision (September 11, 2018); Grambling State University Committee on Infractions Decision (July 28, 2017); Mississippi Valley State University Committee on Infractions Decision (March 24, 2017); Alcorn State University Committee on Infractions Decision (October 19, 2016); and Campbell University Committee on Infractions Decision (August 11, 2016).

records penalty, it is within the panel's purview to determine whether deviation from a customary additional penalty, such as a vacation of records penalty, is warranted based on the specific circumstances of a case.[15] In this case, the panel noted that based on the totality of the circumstances, including that the violations involving 12 student-athletes in two sports went undetected for three academic years, the vacation of records penalty was appropriate to restore the competitive inequity that Massachusetts benefitted from when the ineligible student-athletes competed.[16]

The record before the Infractions Appeals Committee does not support a determination that the panel abused its discretion by prescribing a vacation of records penalty.

2. Basing the Vacation of Records Penalty Upon a Clearly Erroneous Factual Finding Concerning Bylaw 12.11.1.

As noted in a previous section, the appellant and the panel outlined their positions on whether the panel erred in its application of Bylaw 12.11.1. This committee affirmed the finding of the violation. Thus, we do not find that the vacation of records penalty was based on a clearly erroneous finding of a Bylaw 12.11.1 violation.

3. Failing to Consider and Weigh Relevant Factors and Whether the Vacation of Records Penalty is Being Used as a Core Penalty.

The appellant made three arguments to support its position that the panel failed to consider and weigh relevant factors when it prescribed a vacation of records penalty. For the first two, the appellant restated its position that: (1) the panel did not apply a consistent penalty when it failed to consider relevant case precedent and disregarded Committee on Infractions' Internal Operating Procedure 5-15-7. (Written Appeal Page No. 23); and (2) the panel's reliance on the conclusion that the appellant knew or should have known about the financial aid over-awards, and reliance on the compliance coordinator's testimony were improper factors. (Written Appeal Page Nos. 23 and 24) The panel's position on the appellant's first two arguments has been previously addressed by this committee in this decision.

In its third argument, the appellant argued that the prescription of a vacation of records penalty is an attempt by the panel to make it a "de facto" core penalty rather than an additional penalty. (Written Appeal Page No. 24) In support of this position, the appellant noted that NCAA Division I Proposal No. 2019-94 and NCAA Division I Proposal No. 2019-130, which were tabled in March 2020, are contrasting proposals and demonstrate that the membership has not provided direction that a vacation of records penalty should be considered as a core penalty prescribed in the infractions process. (Written Appeal Page No. 24) The appellant also maintained that the panel's

[15] Morgan State University Infractions Appeals Committee Decision (July 20, 2018), Page No. 7.
[16] Massachusetts Committee on Infractions Decision Page No. 13.

conclusion that a competitive advantage was gained was improper and was "undercut" when it failed to apply the same standard in other cases.[17]

In response, the panel maintained that it does not apply a strict liability standard, nor has it treated a vacation of records as a "de facto penalty." (Committee on Infractions Response Page No. 28) The panel further argued that it engages in a "totality of the circumstances, fact-specific analysis and considers past precedent when determining whether a vacation of records penalty is appropriate." (Committee on Infractions Response Page No. 28)

The appellant's arguments regarding the panel misapplying its internal operating procedures and case precedent are not persuasive. While the operating procedures and case precedent provide guidance, Bylaw 19.9.7-(g) is clear on its face that the panel may prescribe a vacation of records for contests "in which a student-athlete competed while ineligible." Thus, a student-athlete competing while ineligible is the only "requirement" necessary for a panel to prescribe a vacation of records penalty. Once the conclusion of ineligibility is made, the panel has significant discretion to determine, based on the circumstances of the case, whether a vacation of records penalty is warranted. As we noted above, this committee has previously determined none of the factors in the Committee on Infractions' Internal Operating Procedure 5-15-7 are required to be present for the panel to use its discretion to prescribe a vacation penalty.[18]

4. Abusing its Discretion by Imposing a Vacation of Records Penalty that is Arbitrary, Capricious and Irrational.

The appellant argued that the "vacation-of-record penalty is arbitrary, capricious and irrational because it does not fit the violations or align with case precedent." (Written Appeal Page No. 27). Citing the Southeast Missouri State Committee on Infractions Decision (June 18, 2008) as precedent, the appellant maintained that it "is particularly inappropriate" to vacate the women's tennis team's two seasons of records and a conference championship because "there were no 'clear warning signs' of the violations" and no finding of lack of institutional control or failure to monitor in this case. (Written Appeal Page No. 28)

As this committee noted above, there may be a small number of cases in which the Committee on Infractions chose to use its discretion to not prescribe a vacation of records penalty or to prescribe a vacation for only some of the wins in which the ineligible student-athletes competed. It is within the panel's discretion to determine

[17] The appellant cited Morehead State University Committee on Infractions Decision (February 10, 2017); Indiana University-Purdue University, Fort Wayne Committee on Infractions Decision (November 24, 2015) (currently Purdue University Fort Wayne) and Texas Christian University Committee on Infractions Decision (December 20, 2019).
[18] Georgia Tech Infractions Appeals Committee Report Page No. 15 and Brigham Young Infractions Appeals Committee Decision Page Nos. 6 and 7).

whether deviation from a customary additional penalty, such as a vacation of records penalty, is warranted based on the specific circumstances of a case.[19]

Finally, this committee understands the impact a vacation of records penalty has on uninvolved staff and student-athletes, especially in the context of a team sport; this is an issue with which the membership has grappled for years. However, there are also decades of case precedent in which a vacation of records penalty has been prescribed when student-athletes competed while ineligible, regardless of the institution's knowledge of the violation or the student-athletes' culpability. While some may disagree with the vacation of records penalty, arriving at a different

[19] Morgan State Infractions Appeals Committee Decision Page No. 7.

outcome would require the Infractions Appeals Committee to ignore rules adopted by the Association's membership and the standards under which this committee is required to review appeals. If the Division I membership wishes to set a different course for the prescription of a vacation of records penalty moving forward, then a legislative change is the most appropriate course of action. Until then, this committee is bound by its standard of review, and an institution must show that the prescription of a vacation of records penalty is an abuse of discretion.

For the reasons set forth above, we find that the panel did not abuse its discretion when prescribing the vacation of records penalty in this case.

XI. CONCLUSION

Finding of violation IV and penalties VI.1 and VI.4 are affirmed.[20]

NCAA Infractions Appeals Committee

Ellen M. Ferris, chair
Jonathan Alger
Alejandra Montenegro Almonte
Tom Goss
Allison Rich
David Shipley
Julie Vannatta.

[20] According to the Division I Infractions Appeals Committee Internal Operating Procedure 4-4, any penalty that is appealed is automatically stayed through the course of the appeal process. This stay is triggered with the filing of the notice of appeal by the appellant and ends with the public release of the committee's decision. Therefore, the appellant's affirmed penalty VI.1 (probation) shall be applied November 17, 2021 through November 16, 2023.