

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

November 12, 2021

Decision No. 539

University of Washington

Seattle, Washington

**UNIVERSITY OF WASHINGTON
APPEAL DECISION SUMMARY**

Outcome

The University of Washington appealed to the NCAA Division I Infractions Appeals Committee the following findings of violations found by the NCAA Division I Committee on Infractions:¹

- IV.A: Over portions of three academic years, the baseball staff arranged for and provided approximately \$7,795 in impermissible recruiting benefits in the form of airfare for the parents of 14 prospective student-athletes to accompany the prospects on their official paid visits to the institution. As a result of the impermissible benefits, three student-athletes competed in 61 contests and received actual and necessary expenses while ineligible.
- IV.B: For portions of three academic years, Washington failed to monitor recruiting travel in its baseball program by failing to comply with official visit transportation legislation and provide adequate NCAA rules education and training.

Washington also appealed the prescription of the following penalty by the Committee on Infractions:²

- V.5 Washington shall vacate all regular season and conference tournament wins, records and participation in which the ineligible baseball student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition.

The Infractions Appeals Committee affirmed all appealed findings of violations and penalty.

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; Alejandra Montenegro Almonte, attorney in private practice; Tom Goss, chairman, insurance executive; Allison Rich, senior associate athletics director and senior woman administrator at Princeton; David Shipley, law professor and faculty athletics representative at Georgia; and Julie Vannatta, senior associate general counsel for athletics/senior associate athletics director at Ohio State.

¹ For full details of these findings of violations, please go to the University of Washington Committee on Infractions Decision (October 9, 2020) via NCAA Legislative Services Database for the Internet (LSDBi) by clicking [HERE](#).

² For full details of this penalty, please go to the Washington Committee on Infractions Decision via LSDBi by clicking [HERE](#).

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I. INTRODUCTION.

The University of Washington appealed to the NCAA Division I Infractions Appeals Committee specific findings of violations and a penalty as determined by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by Washington (hereinafter referred to as Washington or appellant).

II. BACKGROUND.

On October 9, 2020, the Committee on Infractions issued Infractions Decision No. 539 in which the committee found violations of NCAA legislation in the baseball program. On the basis of those findings, the Committee on Infractions determined that this was a Level II-Mitigated case and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing impermissible recruiting travel expenses, ineligible competition and failure to monitor.

After the Committee on Infractions issued its decision, Washington filed a timely notice of appeal October 23, 2020. A written appeal was filed December 9, 2020. The Committee on Infractions filed its response January 11, 2021. Washington filed its rebuttal to the Committee on Infractions response January 27, 2021. The case was considered by the Infractions Appeals Committee May 10, 2021 (see Section IX below).

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

See Committee on Infractions decision for Washington Page Nos. 2 through 5. 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 Washington Page Nos. 5 through 10. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

V. APPEALED VIOLATIONS FOUND BY THE COMMITTEE ON INFRACTIONS.

Washington appealed all of the violation(s) found by the Committee on Infractions. The appealed violations are:³

- IV.A. Over portions of three academic years, the baseball staff arranged for and provided approximately \$7,795 in impermissible recruiting benefits in the form of airfare for the parents of 14 prospective student-athletes to accompany the prospects on their official paid visits to the institution. As a result of the impermissible benefits, three student-athletes competed in 61 contests and received actual and necessary expenses while ineligible.

³ The descriptions of the findings of violations are copied from the Committee on Infractions decision.

IV.B. For portions of three academic years, Washington failed to monitor recruiting travel in its baseball program by failing to comply with official visit transportation legislation and provide adequate NCAA rules education and training.

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

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

VII. APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.⁴

Washington appealed a penalty prescribed by the Committee on Infractions. The appealed penalty is:

V.5 Vacation of team and individual records: Ineligible participation in the baseball program occurred over one academic year as a result of violations in this case. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3 and COI IOP 5-15-7, Washington 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, Washington's 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, Washington's records regarding its baseball program, as well as the records of the head coach, 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 coach shall similarly reflect the vacated wins in his 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 baseball shall be returned to the Association.

Finally, to aid in accurately reflecting all institutional and student-athlete vacations, statistics and records in official NCAA publications and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the

⁴ The description of the penalty is copied from the Committee on Infractions decision.

NCAA Media Coordination and Statistics office and appropriate conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the NCAA Media Coordination and Statistics office with a written report detailing those discussions. This written report will be maintained in the permanent files of the NCAA Media Coordination and Statistics office. This written report must be delivered to the office no later than 14 days following the release of this decision or, if the institution appeals the vacation penalty, at the conclusion of the appeals process. A copy of the written report shall also be delivered to the Office of the Committees on Infractions (OCOI) at the same time.

For the other penalties prescribed by the Committee on Infractions, see Committee on Infractions decision for Washington Page Nos. 10 through 15. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

VIII. ISSUES RAISED ON APPEAL.

In its written appeal, Washington asserted that the findings of violations (IV.A and IV.B) should be set aside in that the facts found by the Committee on Infractions do not constitute violations. Further, Washington asserted that the vacation of records penalty (V.5) should be overturned in that the Committee on Infractions abused its discretion by prescribing the penalty.

IX. APPELLATE PROCEDURE.

In considering the Washington appeal, the Infractions Appeals Committee reviewed the notice of appeal; the record and transcript of the institution's August 27, 2020, hearing before the Committee on Infractions and the submissions by Washington 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 May 10, 2021. The institution was present and was represented by its outside legal counsel, outside legal counsel's IT support, president, director of athletics, senior associate athletic director, assistant attorney general, head baseball coach and Washington's IT support. The Committee on Infractions was represented by the appeals advocate and the director of the Office of Committees on Infractions. The enforcement staff was represented by the managing director, director of enforcement and assistant director. Other participants included the director of legal affairs and associate general counsel, the interim vice president of hearing operations, an associate director and the executive assistant to the vice president 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.⁵

Findings of Violations

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

- a. A factual finding is clearly contrary to the information presented to the panel;
- b. The facts found by the panel do not constitute a violation of the NCAA constitution and bylaws; or
- c. There was a procedural error and but for the error, the panel would not have made the finding or conclusion.

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

The Committee on Infractions determines the credibility of the evidence.

Finding of Violation IV.A - Impermissible Recruiting Travel Expenses and Ineligible Competition

The appellant argued that the facts found by the panel do not constitute a violation of [Bylaw 12.11.1](#) which states as follows:

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 apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Committee on Student-Athlete Reinstatement for restoration of the student-athlete's eligibility as provided in [Bylaw 12.12](#) if it concludes that the circumstances warrant restoration.

To support this position, the appellant argued that [Bylaw 12.11.1](#) “only applies where an institution knew or should have known a student-athlete was ineligible.” (Written Appeal Page No. 5) The appellant stated that it did not violate its obligation to withhold student-athletes from

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 public infractions decisions and bylaws in LSDBi.

competition because the appellant had no knowledge that the student-athletes were ineligible when the student-athletes competed. (Written Appeal Page No. 7) Finally, the appellant argued the facts found do not demonstrate that the appellant knew or should have known of the violations, nor do they demonstrate the appellant gained a competitive advantage. (Written Appeal Page No. 6)

In response, the panel argued that “[Bylaw 12.11.1](#) is simple and straightforward: if a student-athlete is ineligible, [the] institution must withhold the student-athlete from competition until the student-athlete is eligible.” (Committee on Infractions Response Page No. 8) The panel stated that “knowledge is not written into [Bylaw 12.11.1](#) and the COI has previously made clear knowledge is not a necessary component.” (Committee on Infractions Response Page No. 9) Further, the panel argued the only reason the appellant did not know about the violations is that it did not have effective processes for monitoring official visits and educating key staff. (Committee on Infractions Response Page No. 10)

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, this finding of violation is affirmed.

Finding of Violation IV.B - Failure to Monitor the Baseball Program’s Recruiting Official Visits

The appellant argued that the facts found by the panel do not constitute a failure to monitor violation. (Written Appeal Page No. 13) Specifically, the appellant stated that the panel ignored “facts in the record that clearly demonstrate Washington’s official visit system was functional and effective,” demonstrated by the lack of violations in other sport programs. (Written Appeal Page No. 14) The appellant believed that its official visit process was not devoid of fundamental aspects of monitoring systems as required for a failure to monitor violation. (Written Appeal Page Nos. 14 through 16 and Page No. 18) Additionally, the appellant argued that the panel relied on case precedent that was easily distinguishable from this case. (Written Appeal Page Nos. 18 through 21) Finally, the appellant stated that the finding that it failed to educate its travel manager is clearly contrary to the information presented. (Written Appeal Page Nos. 21 and 22)

In response, the panel argued that the appellant failed to monitor its baseball official visits. The panel stated “[t]he inadequate systems Washington had in place had gaps in both the pre-visit

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

authorization and post-visit reconciliation processes and go undetected for roughly a two-year period. Further, Washington failed to adequately educate key individuals involved in the official visit process... ." (Committee on Infractions Response Page Nos. 13 and 14) To support this position, the panel identified that the "official visit process permitted the baseball team to purchase flights for prospects' parents without coordination with or approval of [the] compliance office"; "preapproval paperwork did not require flight itineraries"; and "post-visit reconciliation process did not require documentation of expenses that were direct billed." (Committee on Infractions Response Page No. 16) Finally, the panel argued that past case precedent supports a failure to monitor violation in this case. (Committee on Infractions Response Page Nos. 18 and 19)

In this case, as agreed by the panel and the appellant, the misunderstanding of legislation and deficiencies in system were only in the area of official visits. The panel identified several gaps in the appellant's official visit system which are supported by the case record or acknowledged by the appellant:

- There was no exchange of information between the travel office and compliance when travel was booked for official visits. Without asking questions, the travel manager would book travel for official visits when requested by the coaches.⁷
- The preapproval forms requested information about the lodging arrangements of the parents during official visits but did not request travel information for the parents or require the inclusion of flight itineraries.⁸
- Post-visit reconciliation packets did not include all travel expenses and receipts. Direct-billed expenses and flight itineraries were not required to be included in the packet.⁹
- In four instances, the appellant agreed that all the necessary information was in the post-visit reconciliation packets, but the violations were not discovered by the appellant.¹⁰

The responsibility for ensuring athletics compliance is shared by the athletics department and the various areas of the institution that have engagement with athletics and student-athletes (e.g., registrar, financial aid, travel manager). The systems and processes developed and implemented to ensure compliance should be designed to prevent or detect issues. In this case, those involved in the official visit process did not ask additional questions or request key information that could have uncovered the issues. The deficiencies in the official visit process for baseball were sufficient to make a finding of a failure to monitor in this case. Therefore, this finding of violation is affirmed.

Penalty V.5 – Vacation of Records

⁷ [Committee on Infractions Decision Page No. 9](#); Page Nos. 5 and 8 of the travel manager's April 15, 2019, interview; and Page Nos. 13 through 16 of the associate athletics director of compliance's April 15, 2019, interview.

⁸ [Committee on Infractions Decision Page No. 9](#).

⁹ [Committee on Infractions Decision Page No. 9](#); and Page No. 18 of the associate athletics director of compliance's April 15, 2019, interview.

¹⁰ [Committee on Infractions Decision Page No. 3](#).

The Infractions Appeals Committee may set aside a penalty prescribed by the Committee on Infractions on appeal only on a showing that the imposition of the penalty is an abuse of discretion.

Further, as we stated in the Alabama State University case:

“...we conclude that an abuse of discretion in the imposition of a penalty occurs if the penalty: (1) was not based on a correct legal standard or was based on a misapprehension of the underlying substantive legal principles; (2) was based on a clearly erroneous factual finding; (3) failed to consider and weigh material factors; (4) was based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational; or (5) was based in significant part on one or more irrelevant or improper factors.” [\[Alabama State University Infractions Appeals Committee Report \(June 30, 2009\) Page No. 23\]](#)

In this case, the appellant claimed the panel abused its discretion in the prescription of the vacation of records penalty against the institution’s baseball program. To support this position, the appellant made three arguments. First, the appellant argued that the panel failed to consider and weigh material factors when it prohibited the institution from fully presenting its case. (Written Appeal Page No. 22) Specifically, the “panel abused its discretion when it failed to follow its own Hearing Procedures and did not permit the institution to ‘provide all the information it wished to present.’ ” Additionally, “[t]he institution’s counsel asked for permission to allow the institution’s Faculty Athletic Representative to speak to the corrective measures implemented by the institution, however, the Chief Hearing Officer stated that panel had ‘hear[d] what they needed to hear on the issue’...[and] noted the institution could address corrective measures in closing statements...” (Written Appeal Page Nos. 23 and 24) Further, “when it came time to present on the penalties, counsel...identified the individuals who would present on its behalf, the Chief Hearing Officer interjected and limited the institution to one representative during this phase.” (Written Appeal Page No. 24)

Second, the appellant argued that the panel based its decision to prescribe a vacation of records penalty on the incorrect legal standard. The appellant stated that “[Bylaw 12.11.1](#) is not the correct standard for withholding student-athletes in circumstances where a recruiting violation has occurred. Instead, [Bylaw 12.11.2](#) requires an institution to withhold a student-athlete when the institution admits a violation that occurred in the recruiting process.” (Written Appeal Page No. 25) The appellant believed that it met the requirements of [Bylaw 12.11.2](#) and “upheld its responsibility to withhold student-athletes” under the bylaw once it “recognized a violation had occurred during the recruiting process.” (Written Appeal Page Nos. 25 and 26)

Finally, the appellant argued the panel based its prescription of the vacation of records penalty in significant part on its improper finding that the appellant gained a competitive advantage. The appellant stated that the “airfare expenses did not assist [Washington] in securing any recruits” and official visits were largely used “to celebrate the student-athletes who have already

committed to Washington, not as a tool to recruit undecided student-athletes.” (Written Appeal Page No. 26)

In response, the panel argued that the chief hearing officer did not prohibit the appellant from presenting its case. (Committee on Infractions Response Page No. 33) Specifically, the chief hearing officer provided alternatives to the planned speakers, which the appellant accepted, for addressing corrective actions and discussing penalties. (Committee on Infractions Response Page No. 32) Additionally, the appellant “did not object or raise its procedural concerns” during the appellant’s hearing before the panel. (Committee on Infractions Response Page No. 32) Finally, the panel argued that “it is completely within the purview and authority of the COI to preside over its infractions hearings.” (Committee on Infractions Response Page No. 33)

The panel also argued that the Committee on Infractions and Infractions Appeals Committee have “consistently recognized that a vacation of records penalty is appropriate any time a student-athlete competes while ineligible.” (Committee on Infractions Response Page No. 24) The appellant “admitted that its baseball coaches, albeit unknowingly, were involved in the recruiting violation that resulted in student-athletes’ ineligibility.” (Committee on Infractions Response Page No. 25) Additionally, the panel stated that two of the factors which make it more likely that a vacation of records penalty will be prescribed (direct involvement of coaches and failure to monitor violation) are present in this case. (Committee on Infractions Response Page No. 25) Finally, the panel argued that regardless of “whether [Bylaw 12.11.1](#) violations occurred, vacation remains appropriate to address the ineligible competition” that the appellant admitted occurred. (Committee on Infractions Response Page No. 27)

This committee disagrees with the appellant’s position that the panel committed a procedural error and abused its discretion when it allegedly prohibited the appellant from fully presenting its case. While the appellant’s desire to have the faculty athletics representative discuss corrective actions and the head coach provide his perspective on penalties was not allowed in the manner the appellant requested, the chief hearing officer presented reasonable alternatives to how this information could be presented, to which the appellant agreed. Specifically, when the request was made, the chief hearing officer stated “...unless a panelist has a specific question for him [faculty athletic representative], that we've heard what we need to hear about that issue. And if you want to come back and reinforce it in your closing comments, that would be fine.” (Committee on Infractions Hearing Transcript Page No. 119) In response to this statement, the appellant thanked the chief hearing officer and the hearing proceeded. Regarding the head coach presenting his perspective on penalties, the chief hearing officer stated that she “prefer a point person here [presentation of appellant’s position on proposed and self-imposed penalties] because we’re straying from our normal process by getting all of these voices weighing in here. So, can you do it with one other person?” (Committee on Infractions Hearing Transcript Page No. 127) The appellant responded in the affirmative and limited its presentation to one other person. Its counsel stated “Sure. I will just address your comment, and then the vast majority of the comments will come from” the director of athletics. (Committee on Infractions Hearing Transcript Page Nos. 127 and 128) Finally, the appellant raised no objections to or concerns regarding the

chief hearing officer's alternative to the appellant's presentation requests during the panel's hearing.

In order for the Committee on Infractions to efficiently and effectively manage the hearing process, the chief hearing officer and/or panel have some discretion to define the hearing process. In this case, alternatives presented by the chief hearing officer for presenting information were accepted without objection by the appellant, and the appellant has failed to demonstrate what specific fundamental or key information would have been shared during the hearing that it did not have an opportunity to share. Therefore, we find that the panel did not prohibit the appellant from fully presenting its case and did not fail to consider and weigh material factors.

Finally, the Committee on Infractions Internal Operating Procedure 5-15-4 (currently Internal Operating Procedure 5-15-7) set forth the circumstances which, when present, significantly increases the likelihood of the prescription of a vacation of records penalty.¹¹ Those circumstances include:

1. Academic fraud;
2. Serious intentional violations;
3. Direct involvement of a coach, high-ranking school administrator or a representative of the institution's athletics interests (commonly referred to as a booster);
4. A large number of violations;

¹¹ Committee on Infractions Internal Operating Procedure 5-15-4 (currently Internal Operating Procedure 15-5-7).

5. A recent history of Level I, Level II or major violations; or
6. When the panel concludes that a failure to monitor or lack of institutional control existed.

While none of the listed circumstances above are required to be present for a vacation of records penalty to be prescribed,¹² the appellant previously agreed that at least one of the circumstances exists in this infractions case, which increases the likelihood of the prescription of a vacation of record penalty -- the direct involvement of a coach. (Written Appeal Page No. 3, [Committee on Infractions Decision Page No. 5](#)) The appellant admitted that impermissible benefits were provided which resulted in student-athletes competing while ineligible. ([Committee on Infractions Decision Page Nos. 6 and 7](#)) The likelihood of a vacation of records penalty was increased in this case.

Therefore, for the above reasons, we do not find that the panel abused its discretion in prescribing the vacation of records penalty.

XI. CONCLUSION.

The findings of violations IV.A and IV. B as well as penalty V.5 are affirmed.

NCAA Infractions Appeals Committee

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

¹² [Georgia Institute of Technology Infractions Appeals Committee Report \(March 9, 2012\) Page No. 15.](#)