

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

**September 4, 2019**

Decision No. 506

Brigham Young University

Provo, Utah

This decision is filed in accordance with NCAA Article 19.

## **BRIGHAM YOUNG UNIVERSITY APPEAL DECISION SUMMARY**

### Outcome

Brigham Young University appealed to the NCAA Division I Infractions Appeals Committee the prescription of the following penalty by the NCAA Division I Committee on Infractions:

- Penalty V.7 – Vacation of records - Brigham Young shall vacate all regular season, conference tournament and NCAA postseason competition records and participation in which the ineligible student-athlete competed from the time he became ineligible, through the time he was reinstated as eligible for competition.<sup>1</sup>

The Infractions Appeals Committee affirmed penalty V.7.

### Appellate Procedure

In considering Brigham Young's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the record and transcript of the institution's October 28, 2018, expedited hearing before the Committee on Infractions; and the submissions by the institution and the Committee on Infractions.

The oral argument on the appeal was held by the Infractions Appeals Committee June 24, 2019, in Denver, Colorado. The institution was present and was represented by its attorney, president, director of athletics, assistant director of compliance, university counsel, deputy general counsel and assistant to the president and general counsel. The Committee on Infractions was represented by the appeal coordinator for the Committee on Infractions, the managing director of the Office of Committees on Infractions and the associate director of the Office of Committees on Infractions. Also present were the director of enforcement, associate director of enforcement, assistant coordinator of enforcement (all enforcement staff via videoconference), director of legal affairs and associate general counsel of the NCAA. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

### Members of the Infractions Appeals Committee

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

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<sup>1</sup> For the full details of Penalty V.7, please go to Section VII of this Infractions Appeals Committee decision or the Brigham Young Committee on Infractions Decision (November 9, 2018) via the NCAA Legislative Services Database for the Internet (LSDBi) at the following link: <https://web3.ncaa.org/lstdbi/>.

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## **I. INTRODUCTION.**

Brigham Young University appealed to the NCAA Division I Infractions Appeals Committee a specific penalty as determined by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by Brigham Young (hereinafter referred to as Brigham Young).

## **II. BACKGROUND.**

The Committee on Infractions issued Infractions Decision No. 506 November 9, 2018, in which the committee found violations of NCAA legislation in the men's basketball program<sup>2</sup>. On the basis of those findings, the Committee on Infractions determined this was a Level II Standard case and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing extra benefits and withholding a student-athlete from competition.

After the Committee on Infractions issued its decision, the institution filed a timely Notice of Appeal November 20, 2018. A written appeal was filed January 2, 2019. The Committee on Infractions filed its Response February 4, 2019. The institution filed its Rebuttal to the Committee on Infractions' Response February 20, 2019. The case was considered June 24, 2019, by the Infractions Appeals Committee (see Section IX below).

## **III. FINDING OF FACT AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.**

See Committee on Infractions decision for Brigham Young Page Nos. 5 through 12. A copy of the decision may be accessed via the NCAA Legislative Services Database for the Internet (LSDBi) at the following link: <https://web3.ncaa.org/lsdbi/>.

## **IV. ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.**

See Committee on Infractions decision for Brigham Young Page Nos. 5 through 12. A copy of the decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lsdbi/>.

## **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 findings of violations found by the Committee on Infractions, see the Committee on Infractions decision for Brigham Young Page Nos. 5 through 12. A copy of the decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lsdbi/>.

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<sup>2</sup> A panel of the Committee on Infractions considered this case through the cooperative summary disposition process, in which all parties agreed to the primary facts and violations as fully set forth in the Summary Disposition Report. The Committee on Infractions proposed additional penalties to Brigham Young, which the institution objected to in part. After holding an expedited penalty hearing on the issue, the Committee on Infractions retained the contested penalty [[Brigham Young University Committee on Infractions Decision \(November 9, 2018\)](#) Page No. 1]

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

See Committee on Infractions decision for Brigham Young Appendix One. A copy of the decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lstdbi/>.

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

Brigham Young appealed one penalty prescribed by the Committee on Infractions. The appealed penalty is Penalty V.7:

Vacation of records: BYU acknowledged that the student-athlete participated in the 2015-16 and 2016-17 men's basketball seasons while ineligible. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3, BYU shall vacate all regular season and conference tournament records and participation in which the ineligible student-athlete detailed in Violation No. 1 competed from the time he became ineligible through the time he was reinstated as eligible for competition. This order of vacation includes all regular season competition and conference tournaments. Further, if the ineligible student-athlete participated in NCAA postseason competition at any time he was ineligible, the institution's participation in the postseason shall be vacated. The individual records of the ineligible student-athlete shall also be vacated. However, the individual finishes and any awards for all eligible student-athletes shall be retained. Further, the institution's records regarding its men's basketball program, as well as the records of the head coach, shall reflect the vacated records and shall be recorded in all publications in which such records are reported, including, but not limited to, institutional media guides, recruiting material, electronic and digital media plus institutional, conference and NCAA archives. Any institution that may subsequently hire the affected head 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 contests shall be removed from the athletics department stationary, banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in men's basketball shall be returned to the Association.

Finally, to ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected in official NCAA publications and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA Media Coordination and Statistics office and

appropriate conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the NCAA Media Coordination and Statistics office with a written report detailing those discussions. This document will be maintained in the permanent files of the NCAA Media Coordination and Statistics office. This written report must be delivered to the office no later than 45 days following the release of this decision or, if the vacation penalty is appealed, at the conclusion of the appeals process. The sports information director (or designee) must also inform the Office of the Committees on Infractions (OCOI) of this submission to the NCAA Media Coordination and Statistics office.

For the other penalties prescribed by the Committee on Infractions, see Committee on Infractions decision for Brigham Young Page Nos. 12 through 17. A copy of the decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lstdbi/>.

#### **VIII. ISSUES RAISED ON APPEAL.**

In its written appeal, Brigham Young asserted that the Committee on Infractions abused its discretion by prescribing penalty V.7 (vacation of records) as related to its men's basketball program.

#### **IX. APPELLATE PROCEDURE.**

In considering Brigham Young's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the record and transcript of the institution's October 18, 2018, expedited hearing before the Committee on Infractions; and the submissions by Brigham Young and the Committee on Infractions.

The oral argument on the appeal was held by the Infractions Appeals Committee June 24, 2019, in Denver, Colorado. The institution was present and was represented by its attorney, president, director of athletics, assistant director of compliance, university counsel, deputy general counsel and assistant to the president and general counsel. The Committee on Infractions was represented by the appeal coordinator for the Committee on Infractions, the managing director of the Office of Committees on Infractions and the associate director of the Office of Committees on Infractions. Also present were the director of enforcement, associate director of enforcement, assistant coordinator of enforcement (all enforcement staff via videoconference), director of legal affairs and associate general counsel of the NCAA. 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.<sup>3</sup>**

In reviewing the decision in this case, the Infractions Appeals Committee may vacate a penalty prescribed by a panel of the Committee on Infractions only on a showing by the appealing party that the prescription of the penalty is an abuse of discretion.

As we stated in the Alabama State 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, Public Infractions Appeals Committee Report \(June 30, 2009\)](#) Page No. 23]

In this case, the appellant “agreed that four boosters<sup>4</sup> provided a prominent high school and college men's basketball student-athlete with over \$12,000 in benefits over a two-year period. From a monetary standpoint, the benefits fell into two general categories: (1) lower dollar benefits such as complimentary golf, free meals and cash; and (2) higher dollar benefits including all-inclusive vacations and the use of a car.” (Committee on Infractions Decision Page Nos. 1, 3-5) However, during the panel’s processing of the infractions case, the appellant contested the vacation of records penalty which was one of the proposed penalties for the infractions case. (Committee on Infractions Decision Page No. 2) An expedited hearing was held and the panel decided to prescribe a vacation of records penalty,

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<sup>3</sup> 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.

<sup>4</sup> In the materials related to this appeal, the word “booster” is used. The term “booster” is equivalent to a representative of athletics interest. Representatives of athletics interests, as defined in [Bylaw 13.02.15](#), are subject to NCAA legislation and an institution is subject to penalties for any violation of NCAA legislation by a representative of athletics interests, pursuant to [Bylaw 6.4.2](#). Within the context of previous infractions cases, member institutions have been routinely warned about the heightened responsibility for the impermissible actions of their boosters. [[University of Alabama Committee on Infractions Public Report \(February 1, 2002\)](#) Page Nos. 3-5] In Alabama, the Committee on Infractions did not conclude that there was a lack of institutional control; however, it warned the membership of the obligation to closely monitor "insider boosters" and the greater responsibility institutions bear for the impermissible activity in which these representatives of athletics interest engage.

Similarly, in this case, although the panel did not find that the institution had knowledge of, or involvement in the provision of impermissible benefits to the student-athlete, the fact remains violations occurred in this case that involved representatives of athletics interest. The institution cannot be absolved from the imposition of a penalty, even though the institution’s administration and staff were not directly involved and were unaware that violations occurred.

which required the appellant to vacate all regular season, conference tournament and NCAA postseason competition records in which the ineligible student-athlete competed from the time he became ineligible through the time he was reinstated as eligible for competition. [Committee on Infractions Decision Page No. 15]

The appellant argued that the panel abused its discretion when prescribing a vacation of records penalty by:

1. Applying incorrect legal standards and misconstruing relevant case precedent;
2. Prescribing a penalty that is so unfair and unprecedented that it is arbitrary, capricious and irrational;
3. Basing its decision on clearly erroneous factual findings that contradict the Summary Disposition Report (SDR); and
4. Failing to weigh material factors relevant to whether to impose vacation of records, as a sanction. (Written Appeal Page No. 6)

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 participates in competition while ineligible. Further, the panel argued that it appropriately exercised that discretion in this case given that it involved serious intentional violations and a large number of violations. [Committee on Infractions Response Page Nos. 11 and 12]

1. Applying Legal Standards and Relevant Case Precedent.

The appellant argued the panel misconstrued and ignored relevant case precedent when the panel prescribed the vacation of records penalty. The appellant also argued that in prescribing a vacation of records penalty, the panel applied an incorrect legal standard when it concluded that ineligible participation is a "starting point" for the vacation of records penalty, thereby creating a strict liability standard for the vacation of records penalty. (Written Appeal Page Nos. 6-10) Additionally, the appellant argued "the COI erred when it concluded that it cannot bifurcate violations or time periods in prescribing penalties, which is established by case precedent." (Written Appeal Page No. 10) The appellant asserted that the initial violations leading to the student-athlete's ineligibility were "less severe" and therefore should not result in a vacation of records penalty. [Written Appeal, Page No. 10]



In response to the appellant's arguments, the panel argued that it did not abuse its discretion when it prescribed a vacation of records penalty to address the competitive advantage gained by the appellant when it permitted an ineligible men's basketball student-athlete to compete in athletics contests, and when the institution failed to meet its obligation to withhold the student-athlete under [Bylaw 12.11.1](#). (Committee on Infractions Response Page No. 8) The panel also argued that pursuant to [Bylaw 19.9.7-\(g\)](#), the hearing panel has the discretion to prescribe a vacation of records penalty when a violation exists that involves ineligible student-athletes participating in competition. (Committee on Infractions Response Page No. 11) The panel stated that it did not create a strict liability approach for the prescription of a vacation of records penalty in that the language used in its decision was an acknowledgment of what [Bylaw 19.9.7-\(g\)](#) establishes as a trigger for the consideration of whether an additional penalty of vacation of records should be prescribed. [Committee on Infractions Response Page No. 15]

*Vacation of Records Standards and Case Precedent*

The Southeast Missouri State University decision and IOP 5-15-4 (currently IOP 5-15-6) provide guidance on the circumstances when the likelihood of the prescription of a vacation of records penalty is significantly increased.<sup>5</sup> Those circumstances include:

1. Academic fraud;
2. Serious intentional violations;
3. Direct involvement of a coach or high-ranking school administrator;
4. A large number of violations;
5. A recent history of Level I, Level II or major violations; or
6. Ineligible competition in a case that includes a finding of failure to monitor or a lack of institutional control.

While none of the listed circumstances above are required to be present for a vacation of records penalty to be prescribed<sup>6</sup>, the appellant previously agreed that at least one of the circumstances exist in this infractions case which increases the

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<sup>5</sup> Division I Committee on Infractions: Internal Operating Procedure 5-15-4 (currently IOP 15-5-6), [Southeast Missouri State University Public Infractions Report \(June 18, 2008\)](#) Page Nos. 10 and 11.

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

likelihood of the prescription of a vacation of records penalty. During the October 18, 2018, panel hearing, the appellant's representative acknowledged:

“...that for the serious, multiple violations in this case, we agree they are serious and we agree that there are numerous violations.” [Committee on Infractions Hearing Transcript Page No. 26]

A large number of violations is specifically enumerated to increase the likelihood of the prescription of a vacation of records penalty. Additionally, there is no requirement of institutional knowledge or involvement in the violations for the prescription of a vacation of records penalty.

As noted above, the appellant argued the panel misconstrued and ignored relevant case precedent when it prescribed a vacation of records penalty. In so doing, the appellant asserted that the panel “abused its discretion by errantly holding that it is normal precedent...to prescribe a vacation of records.” [Written Appeal Page No. 7] The appellant focused on four previous infractions cases to support its argument. [[Stanford University Public Infractions Decision \(September 15, 2016\)](#); [University of Miami \(Florida\) Public Infractions Report \(October 22, 2013\)](#); [University of Colorado, Boulder Public Infractions Report \(June 21, 2007\)](#) and [University of New Hampshire Public Infractions Report \(June 27, 2014\)](#)]

We are not persuaded by this argument. There is at least one distinguishing factor between the cases cited by the appellant and this infractions case. The infractions cases relied upon by the appellant did not include a violation of [Bylaw 12.11.1](#) (formerly Bylaw 14.11.1), which outlines an institution's obligation to withhold current ineligible student-athletes. In this case, appellant agreed that [Bylaw 12.11.1](#) was violated. (Summary Disposition Report Page No. 2) This Committee also recognizes that factors in infractions cases involving a vacation of records continue to evolve and expand, and that charging decisions and the circumstances of each infractions case may be factually unique. Further, there is case precedent in which the institution's administration and staff did not have involvement, or knowledge of the violations and a vacation of records penalty was nevertheless prescribed.<sup>7</sup> Finally, in this case, at least one of the representatives of athletics interests involved in the provision of impermissible benefits was introduced to the student-athlete through the Athletics' Endowed Scholarship Mentor-Mentee Program [Written Appeal Page No. 4 and *Final\_SDR\_051818\_BYU\_00803.pdf (Exhibit NCAA-4 Page Nos. 2 and 3)*] The program was created by the institution to match student-athletes with mentors, who could provide them with school, career and life advice. [Written Appeal Page No. 4] Therefore, the institution initially facilitated

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<sup>7</sup> [Princeton University Public Infractions Report \(September 8, 2010\)](#) and [University of Memphis Public infractions Report \(August 20, 2009\)](#).

at least one of the relationships that occurred between the representatives of athletics interests and the student-athlete.

We find that the panel did not apply an incorrect standard or misconstrue case precedent by prescribing the vacation of records penalty.

#### *Creation of Strict Liability Standard*

[Bylaw 12.11.1](#) places an affirmative obligation on institutions to withhold ineligible student-athletes from competition. The prescription of a vacation of records penalty is only considered when an institution has failed to withhold an ineligible student-athlete. Absent such a violation, a vacation of records penalty would not be considered. [Bylaw 19.9.7-\(g\)](#) supports this concept of when a vacation of records will be considered. We find the language used in the panel's decision was an attempt to articulate this concept. We do not find that the panel created a strict liability standard for the application of a vacation of records penalty in this case. Rather, decisions on vacation of records penalties are made on a case-by-case basis in light of the totality of facts and circumstances. [[Saint Mary's College of California Infractions Appeals Report \(October 14, 2013\)](#) Page No. 5]

#### *Bifurcation of Violations or Time Periods*

As noted above, the appellant argued that the panel erred by failing to bifurcate violations or time periods when prescribing the vacation of records penalty in this case. The appellant suggested that the initial violations leading to the student-athlete's ineligibility were "less severe" and therefore should not result in a vacation of records penalty. [Written Appeal Page No. 10]

We are not persuaded by this argument and find no legislated or policy requirement that the panel disaggregate institutional violations when prescribing appropriate institutional penalties. Moreover, the panel has the discretion to look at an infractions case in totality when determining the appropriate penalties to prescribe.

## 2. Fairness of the Vacation of Records Penalty.

The appellant argued that the panel abused its discretion by prescribing a vacation of records penalty that is arbitrary, capricious and irrational. (Written Appeal Page Nos. 11-13) The appellant does not believe the penalty fit the violations, where the institution's administration or staff had no involvement in or knowledge of the violations. The appellant believes that the penalty is particularly unfair to the men's basketball coach, uninvolved student-athletes and the institution. (Written Appeal Page No. 11) To support its position, the appellant points to the penalty being unprecedented in the history of men's basketball and the era of leveling violations,

when an institution lacked involvement or knowledge, and also to the number of wins vacated being in the top 10 of the number of vacated wins in the history of Division I men's basketball. [Written Appeal Page Nos. 11-13]

The panel argued that institutional involvement or knowledge is not required for the prescription of a vacation of records penalty. Further, the panel asserted that the arguments put forward by the appellant failed to demonstrate that the prescription of the vacation of records penalty was arbitrary, capricious or irrational.

Guidance regarding the likelihood of the prescription of the vacation of records penalty can be found in the Southeast Missouri State Public Infractions Report Page Nos. 10 through 11 and Committee on Infractions IOP 5-15-4. We have previously noted that the list of factors that increase the likelihood of vacation of records penalty is not exhaustive and does not require the existence of one of the factors for the prescription of the penalty.<sup>8</sup> Therefore, the prescription of a vacation of records penalty does not require an institution's administration or staff to have knowledge of or involvement in the violation.

The Division I membership has made a commitment to the collegiate model which includes a commitment to fair competition. ([Bylaws 20.9.1](#) and 20.9.1.3) One of the areas that affects fair competition is eligibility of student-athletes. ([Bylaw 20.9.1.3](#)) The participation of an ineligible student-athlete jeopardizes fair competition and provides the institution a competitive advantage. In this case, the prescription of the penalty requires the appellant to vacate all regular season and conference tournament records in which the student-athlete participated while ineligible during the 2015-16 and 2016-17 men's basketball seasons, resulting in 47 wins being vacated. (Written Appeal Page No. 6) The appellant agreed that from approximately August 2015 to August 2017, four representatives of the institution's athletics interests provided impermissible benefits in the form of all-expense-paid trips, use of an automobile, automobile insurance, golf fees, meals, cash and hotel lodging to the student-athlete. (Committee on Infractions Decision Page No. 3) The provisions of extra benefits occurred for two full seasons of men's basketball.

We recognize the impact the vacation of records penalty has on uninvolved staff and student-athletes, especially in the context of a team sport. However, under the facts and circumstances in this case and existing standards, this committee does not find the panel's prescription of the vacation of records penalty to be arbitrary, capricious or irrational.

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<sup>8</sup> [Georgia Tech Infractions Appeals Decision](#) Page No. 14.

3. Use of the Summary Disposition Report.

The appellant argued that the panel accepted and then ignored the SDR findings of proper monitoring and cooperation on the part of the institution and its head men's basketball coach. Additionally, the appellant argued that the panel relied on its "own inconsistent findings" that the institution failed to properly monitor or control its program. [Written Appeal Page No. 13]

The panel argued that it accepted the parties' agreements, and it did not penalize for a failure to monitor that did not exist. (Committee on Infractions Response Page No. 22) Additionally, the panel did not create a "de-facto failure to monitor violation conclusion" by noting that Brigham Young had not initially discovered the violations. Rather, the "lack of discovery and how interactions arose" were context for how the violations continued for two years and therefore why so many wins were implicated. [Committee on Infractions Response Page No. 22]

This committee has previously asked the Committee on Infractions to provide greater detail regarding the rationale for the prescription of penalties in their decisions. The additional information provided by the panel in this case was responsive to this Committee's request.

We do not find that the decision is based on erroneous factual findings that contradict the SDR.

4. Weighing Material Factors Relevant to the Prescription of the Vacation of Records Penalty.

The appellant argued that the panel failed to appropriately apply the framework set forth in the Southeast Missouri State infractions case and the Committee on Infractions IOP 5-15-4. The appellant further argued that none of the factors listed in the Southeast Missouri State infractions case or the internal operating procedure are present in this case. (Written Appeal Page No. 6) The appellant also argued that the violations in this case involved no institutional knowledge or involvement, which further demonstrates that the prescription of vacation of record penalty was an abuse of discretion.

As noted above on Page Nos. 6 through 8 of this decision, the guidance related to the vacation of records penalty was not misapplied by the panel; factors included in the guidance from the Southeast Missouri State infractions case and Committee on Infractions IOP are not required for the prescription of vacation of records penalty; and knowledge or involvement by institution's administration and staff is not required for the prescription of a vacation of records penalty.

We do not find that the panel failed to weigh material factors when prescribing the vacation of records penalty.

For the reasons above, we do not find that the panel abused its discretion when prescribing the vacation of records in this case.

**XI. CONCLUSION.**

Penalty V.7 is affirmed.

NCAA Infractions Appeals Committee

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