

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

September 28, 2023

Decision No. 569

California State University, Northridge

Northridge, California

California State University, Northridge
APPEAL DECISION SUMMARY

Outcome

California State University, Northridge appealed to the NCAA Division I Infractions Appeals Committee the prescription of the following penalties by the NCAA Division I Committee on Infractions:

1. Penalty V.1 - three years of probation from December 16, 2022, through December 15, 2025; and
2. Penalty V.2 - a fine of \$5,000 plus one percent of the men's basketball budget.

Additionally, the institution challenged the application and weighting of four aggravating/mitigating factors in their appeal. Those factors and their application or weighting included:

- Affording of significant weight to [NCAA Bylaw 19.9.3-\(b\)](#) - a history of Level I, II or major violations by the institution;
- Application of [Bylaw 19.9.3-\(m\)](#) - intentional, willful or blatant disregard for the NCAA constitution and bylaws;
- Nonapplication of [Bylaw 19.9.4-\(e\)](#) - implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches' control standards; and
- Affording of normal weight to [Bylaw 19.9.4-\(f\)](#) - exemplary cooperation.

The Infractions Appeals Committee found that the hearing panel of the Committee on Infractions abused its discretion: (1) in the application of the aggravating factor in [Bylaw 19.9.3-\(m\)](#) (intentional, willful or blatant disregard for the NCAA constitution and bylaws); and (2) by failing to apply the mitigating factor in [Bylaw 19.9.4-\(e\)](#) (implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches' control standards). Therefore, penalties V.1 (probation) and V.2 (fine) are vacated and the case is remanded to the hearing panel for reclassification and reassessment of the probation and financial penalties under the requirements that [Bylaw 19.9.3-\(m\)](#) not be applied as an aggravating factor and [Bylaw 19.9.4-\(e\)](#) be applied as a mitigating factor.

Appellate Procedure

In considering the institution's appeal, the Infractions Appeals Committee reviewed the notice of appeal; the record and transcript of the institution's November 1, 2022, expedited virtual 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 virtually by the Infractions Appeals Committee June 7, 2023. The institution was present and was represented by its outside legal counsel, president, director of athletics, vice president for administration and finance/chief financial officer, former associate athletics director for compliance, a member of the general counsel's office and assisting outside counsel. The Committee on Infractions was represented by the appeals advocate for the Committee on Infractions, as well as the managing director of the Office of the Committees on Infractions, associate director of the Office of the Committees on Infractions, a member of the Committee on Infractions and an extern with the Office of the Committees on Infractions. Also present from the NCAA were the managing director of

enforcement, director of enforcement, associate director of enforcement, associate director of legal affairs, vice president of hearing operations and associate director of hearing operations. 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 Ellen M. Ferris, committee chair and senior associate commissioner for governance and compliance at the American Athletic Conference; Tom Goss, insurance chairman and executive; Alejandra Montenegro Almonte, attorney in private practice; David Shipley, law professor and faculty athletics representative at the University of Georgia; and Julie Vannatta, retired senior associate general counsel for athletics at The Ohio State University.

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I. INTRODUCTION.

California State University, Northridge appealed to the NCAA Division I Infractions Appeals Committee specific prescription of penalties by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by CSUN (hereinafter referred to as CSUN or appellant).

II. BACKGROUND.

On December 16, 2022, the Committee on Infractions issued Infractions Decision No. 569 in which the committee found violations of NCAA legislation in the men's basketball program.¹ On the basis of those findings, the Committee on Infractions determined that this was a Level II-Standard infractions case and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing recruiting.

After the Committee on Infractions issued its decision, CSUN filed a timely notice of appeal December 30, 2022. A written appeal was filed February 3, 2023. The Committee on Infractions filed its response March 8, 2023. CSUN filed its rebuttal to the Committee on Infractions response March 23, 2023. The case was considered by the Infractions Appeals Committee June 7, 2023 (see Section X below).

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

See Committee on Infractions decision for CSUN Page Nos. 3 through 7. 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 CSUN Page Nos. 7 through 17. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

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

CSUN did not appeal any of the findings of violations. For the violations found by the Committee on Infractions, see Committee on Infractions decision for CSUN Page Nos. 7 through 17. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

¹ 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 CSUN, which the institution objected to in part. After holding an expedited penalty hearing on the issue, the Committee on Infractions retained the contested penalties. ([Committee on Infractions Decision Page No. 27](#))

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

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

VII. APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.²

CSUN appealed some of the penalties prescribed by the Committee on Infractions. The appealed penalties are:

- V.1. Probation: three years of probation from December 16, 2022, through December 15, 2025; and
- V.2. Financial Penalty: CSUN shall pay a fine of \$5,000 plus one percent of the men's basketball budget.

For the other penalties prescribed by the Committee on Infractions, see Committee on Infractions decision for CSUN Page Nos. 17 through 30. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

VIII. APPEALED AGGRAVATING FACTOR AND MITIGATING FACTOR.

The institution challenged the application and weighting of four aggravating/mitigating factors in their appeal. Those factors included:

- a. Affording of significant weight to [Bylaw 19.9.3-\(b\)](#) - a history of Level I, II or major violations by the institution;
- b. Application of [Bylaw 19.9.3-\(m\)](#) - intentional, willful or blatant disregard for the NCAA constitution and bylaws;
- c. Nonapplication of [Bylaw 19.9.4-\(e\)](#) - implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches' control standards; and
- d. Affording of normal weight to [Bylaw 19.9.4-\(f\)](#) - exemplary cooperation.

For the application of other aggravating and mitigating factors, see Committee on Infractions decision for CSUN Page Nos. 17 through 30. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

² The descriptions of the penalties are copied from the Committee on Infractions decision.

IX. ISSUES RAISED ON APPEAL.

In its written appeal, CSUN asserted that the length of probation and additional one percent financial penalty prescribed by the Committee on Infractions constituted an abuse of discretion.

X. APPELLATE PROCEDURE.

In considering CSUN's appeal, the Infractions Appeals Committee reviewed the notice of appeal; the record and transcript of the institution's November 1, 2022, hearing before the Committee on Infractions; and the submissions by CSUN and the Committee on Infractions referred to in Section II of this decision.

The oral argument on the appeal was held virtually by the Infractions Appeals Committee June 7, 2023. The institution was present and was represented by its outside legal counsel, president, director of athletics, vice president for administration and finance/chief financial officer, former associate athletics director for compliance, a member of the general counsel's office and assisting outside counsel. The Committee on Infractions was represented by the appeals advocate for the Committee on Infractions, as well as the managing director of the Office of the Committees on Infractions, associate director of the Office of the Committees on Infractions, a member of the Committee on Infractions and an extern with the Office of the Committees on Infractions. Also present from the NCAA were the managing director of enforcement, director of enforcement, associate director of enforcement, associate director of legal affairs, vice president of hearing operations and associate director of hearing operations. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

XI. INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.³

In reviewing the decision in this case, both the application and weighting of aggravating and mitigating factors as well as the prescription of penalties by the Committee on Infractions may be set aside on appeal by the Infractions Appeals Committee on a showing by the appellant that the prescription of the penalty was 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](#)]

³ 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.

CSUN primarily focused its appeal on the application and weighting of several aggravating and mitigating factors, and the argument that if the aggravating and mitigating factors were appropriately applied and weighted, then the level classification could change, which would affect the penalties. Specifically, CSUN argued that it was a clear error in judgment by the hearing panel: (1) to apply the aggravating factor regarding the intentional, willful or blatant disregard for the NCAA constitution and bylaws;⁴ (2) to fail to apply the mitigating factor regarding implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches' control standards;⁵ (3) to afford significant weight to the aggravating factor regarding a history of Level I, II or major violations by the institution;⁶ and (4) to afford only normal weight to the mitigating factor regarding exemplary cooperation.⁷

The Committee on Infractions argued that its hearing panel's determinations were supported by agreed-upon information in the summary disposition report⁸ and statements made at the expedited hearing, including those from CSUN's current and former representatives.

a. Application of Aggravating Factor [Bylaw 19.9.3-\(m\)](#) - Intentional, Willful or Blatant Disregard for the NCAA Constitution and Bylaws.

CSUN argued that the Committee on Infractions' hearing panel incorrectly applied the aggravating factor of intentional, willful or blatant disregard for the NCAA constitution and bylaws after misreading the standard articulated by this committee in a previous appeals decision. Specifically, the hearing panel's interpretation of the standard was that "head coach responsibility violations 'by their nature... involve action or inaction by leaders of sports programs and demonstrate a culture of active or permissive noncompliance in the program – thus establishing an institutional nexus.'" The institution stated that "by this logic all cases with head coach responsibility violations and this aggravator for an individual should result in the institution also receiving that aggravator." Additionally, CSUN argued that there are no specific actions or inactions by CSUN relevant to the violations at issue to support application of the aggravating factor. The record clearly indicates that the men's basketball coaches and staff members had received education on the rule, the rule was clearly understood, and the involved individuals

⁴ [Bylaw 19.9.3-\(m\)](#).

⁵ [Bylaw 19.9.4-\(e\)](#).

⁶ [Bylaw 19.9.3-\(b\)](#).

⁷ [Bylaw 19.9.4-\(f\)](#).

⁸ "The submitted SDR fully details the parties' positions and includes the agreed-upon primary facts, violations, violation levels and aggravating and mitigating factors. After reviewing the parties' principal factual agreements and the respective explanations surrounding those agreements, the panel accept[ed] the parties' SDR." [Committee on Infractions Decision Page No. 7](#).

deliberately disregarded the rule in a manner designed to avoid detection of the violations.⁹

In response, the hearing panel presented two arguments to support the application of this aggravating factor to CSUN. First, the hearing panel stated that the finding of a head coach responsibility violation demonstrates the necessary institutional nexus, concluding that [Bylaw 19.9.3-\(m\)](#) applies due to the former head men's basketball coach's direct actions in the violations and passive inactions in failing to monitor his staff's involvement in the violations.

Second, there were several facts that the hearing panel believed showed CSUN's inactions contributed to the violations in this case. Specifically, the hearing panel pointed to:

- (1) Compliance personnel at the expedited hearing noted concerns about the compliance efforts of the men's basketball staff and the potential that members of the coaching staff could be hiding violations from compliance;
- (2) The limited attendance by men's basketball coaches at formal education sessions during the recruiting dead period and the determination to move to informal touchpoints for those coaches;
- (3) Claims by the former head coach that he requested meetings between the men's basketball staff and compliance, but those meetings did not occur;
- (4) Indication that there were no changes made to compliance efforts when COVID-19 guidelines required CSUN's compliance staff and other administrators to work from home;¹⁰ and
- (5) Statements by compliance staff indicating they had no reason to believe the former head coach was following advice pertaining to head coach responsibility, but never acting upon those concerns.¹¹

In the [Georgia Institute of Technology Infractions Appeals Committee Decision \(February 26, 2021\)](#), the Infractions Appeals Committee determined that when applying aggravating factor [19.9.3-\(m\)](#) to an institution due to the actions of a staff member "...there must be a nexus or connection of action or inaction by the institution relevant to the violation. The nexus must be beyond mere employment status of the individual at the institution when the violation occurred. For example, the institution's action or inaction will present itself in the context of an institution demonstrating a lack of control over, or a failure to monitor, its intercollegiate athletics program, or where the head coach fails to create an

⁹ CSUN Written Appeal Page Nos. 27 through 29.

¹⁰ Committee on Infractions Response Page Nos. 17 through 20.

¹¹ Committee on Infractions Response Page No. 9.

atmosphere of compliance or fails to monitor his/her staff. To be clear, these specific findings of violations are not required in an infractions case for the aggravating factor to apply to an institution. There must, however, be some specific factual findings of action or inaction by the institution relevant to the violation for the aggravating factor to apply to an institution.”¹²

The hearing panel’s position (that the presence of a head coach responsibility violation, in and of itself, constitutes an institutional nexus which supports the application of aggravating factor [19.9.3-\(m\)](#) to the *institution*) runs counter to the precedent set in the Georgia Tech case prohibiting applying the aggravating factor to the institution due to the mere employment status at the time of the violation(s) by those involved in the violation and would result in the strict liability assessment that the Georgia Tech decision specifically sought to avoid. To impute the intentional, willful and blatant disregard for NCAA bylaws by an individual to an institution, additional specific actions or inactions by individuals outside the sport athletics staff involved in the violations here (e.g., failure to provide adequate rules education, condoning the impermissible activity or unethical conduct) must be identified. More than just mere employment of the individuals who violated the rules must be demonstrated for the [Bylaw 19.9.3-\(m\)](#) aggravating factor to be applied to the institution. The purpose of the nexus requirement is to be fair to an institution where individuals outside of the sport athletics staff involved in the violations acted in good faith and took reasonable steps to educate, monitor and create an atmosphere of compliance across the department. The institution remains accountable through the finding of a Level I or Level II violation and the prescribed penalties, and the focus remains where it should be – on the individual(s) who knew and understood the rules but willfully and blatantly acted outside the scope of their employment in an effort to gain an advantage.¹³ In this case, (1) CSUN provided education to the coaches and staff about the rules involved in the violation over the course of the COVID-19 dead period; (2) CSUN personnel were able to determine that the actions of the basketball staff were violations of NCAA bylaws and report them to the NCAA within 72 hours of those actions occurring; (3) the violations did not involve persons with education responsibilities and/or oversight authority outside of the sport athletics staff; (4) the involved coaches failed to communicate with the compliance office and took steps to prevent detection (e.g., tryout was off campus); and (5) the involved coaches knowingly violated the rules, which exceeds the scope of their employment.

¹² [Georgia Tech Infractions Appeals Committee Decision Page Nos. 6 and 7.](#)

¹³ Consistent with the approach in our Georgia Tech infractions appeals decision, the NCAA Division I Board of Directors adopted infractions process changes as emergency legislation August 31, 2022, which reflected the membership’s determination to focus the infractions process on timely punishment of those most directly involved in violations. (NCAA Division I Proposal No. 2022-17 rationale states, “The Transformation Committee tasked the Board of Directors Infractions Process Committee with developing an infractions model that promotes fair and timely outcomes, focuses its time and resources, and that of member institutions, on a modernized set of shared principles and rules and holds accountable those who are directly involved in the relevant malfeasance.”)

While the hearing panel alternatively argued some generalized inaction regarding the education and monitoring efforts and relied heavily on the former head coach's hearing testimony regarding the educational efforts and his perceived ambiguity of the applicable rules, there is ample information in the record that demonstrates a clear error in judgment by the hearing panel in the determination that institutional inactions or actions contributed to the individual violations perpetuated in this case such that the application of the aggravating factor appears arbitrary. The men's basketball staff were fully educated about, and, most importantly, *were aware* of the application of the unambiguous dead period rule they were attempting to circumvent.¹⁴ The hearing panel acknowledged in its decision that "[t]he [former] head coach admitted he knowingly committed violations,"¹⁵ and that the "three experienced men's basketball coaches disregarded fundamental recruiting legislation."¹⁶ Further, the hearing panel noted that "[i]n the SDR, the [former] head coach admitted that he knew the timing of the prospects' visits did not comply with NCAA rules" and the "[former] head coach's desire to sign the prospects outweighed his desire to comply with the recruiting dead period and to ensure his staff complied with NCAA legislation."¹⁷ The case record clearly shows that the coaches received appropriate education as to the rule at issue, and the only ambiguity raised by the involved coaches was whether the COVID-19 dead period would be extended past the May 31, 2021, end date.¹⁸ The list of permissible and impermissible

¹⁴ The summary disposition report included the following information from the institution: "The institution's compliance office provided timely and regular updates to all coaches via email regarding the emergency dead period implemented by the NCAA and all subsequent extensions, including that it was scheduled to be lifted June 1, 2021. Communications from March 2020 through April 2021 include the following:

- Compliance notified the coaches of the extension of the dead period on no fewer than 10 occasions, namely: March 13, 2020; April 1, 2020; May 14, 2020; June 15, 2020; August 13, 2020; September 13, 2020; November 18, 2020; February 17, 2021; March 30, 2021; and April 15, 2021.
- A second reminder was sent to the men's basketball staff in multiple months as part of their monthly compliance update, including that dead period rules prohibited official or unofficial visits.
- In monthly virtual compliance education sessions that began when sports re-started at CSUN in 2020, compliance included dead period reminders and education on dead period rules." (Summary disposition report Page No. 15)

¹⁵ [Committee on Infractions Decision Page No. 16.](#)

¹⁶ [Committee on Infractions Decision Page No. 15.](#)

¹⁷ [Committee on Infractions Decision Page No. 12.](#)

¹⁸ The following education specific to the dead period and the prohibition on official and unofficial visits was provided to the men's basketball staff and other athletics department coaches and staff members.

- "April MBB Compliance Updates" sent April 7, 2020.
- Former assistant coach email sent February 17, 2021, in which he complains about the dead period being extended to May 31 and the inability to recruit.
- March MBB Compliance Updates sent March 2, 2021, which specifically notes that the dead period is through May 31 and no official visits/unofficial visits may occur.
- Compliance email regarding a camp - Reminder of dead period sent March 30, 2021, which notes the dead period is in place and unlikely to be lifted before June 1.

activities during the COVID-19 dead period remained consistent with all previous dead periods. The men's basketball staff knew the rules;¹⁹ they just questioned whether the dead period would be extended. In fact, the former assistant coach knew that they could not provide a shirt and shorts for a workout during a dead period, but still instructed a graduate assistant to find the gear, but have the prospective student-athlete "only wear it at the park" to escape detection.²⁰ The question of whether there would be an extension past May 31 is ultimately irrelevant, as the conduct occurred before May 31, which is well within the then-current dead period. Further, the unambiguous nature of this straightforward rule and institutional education efforts, including email notifications, social media, Zoom calls, text messages and phone calls, resulted in an understanding of the application of the dead period rule and restrictions on visits across the athletics department staff.²¹ This "compliance conscience" was demonstrated by the fact that

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- All Staff email - End of Dead Period sent April 15, 2021, which notes the NCAA Division I Council's action that "all sports will return to their legislated recruiting calendars on June 1" and states compliance is awaiting further guidance from campus regarding recruiting travel and activities.
 - Rules Ed Presentation - April (2021) which includes an April 2021 recruiting calendar showing the entire month of April as a dead period. (FI051 and CSUN Written Appeal Page Nos. 4 through 6)

¹⁹ The following text messages are included in the record:

- Director of basketball operations texts indicating that he knows there is a violation but doesn't stop it or report it. (FI012)
- Texts between a men's basketball graduate assistant and a former assistant coach where the graduate assistant asks the former assistant coach if it is ok to give prospective student-athlete a shirt and shorts for a workout. The former assistant coach responds "Technically no." "But find him something - only wear it at the park." (FI120)
- Texts between a former assistant coach and compliance: April 12 at 8:54 a.m. the former assistant coach asks compliance if they can have official visits starting June 1; April 12 at 9:09 a.m. compliance responds saying it's unclear, will make sure coaches know once we have clarity. (FI120) As noted above, April 15, compliance sends the All Staff email saying legislated calendars begin again June 1 and they are still awaiting guidance from campus regarding recruiting and travel.
- Text sent April 8, 2021, by a former assistant coach to the men's basketball graduate assistant and the director of basketball operations where the former assistant coach references the NCAA lifting the dead period June 1. (FI120)

²⁰ FI120.

²¹ The summary disposition report included the following information from the institution: "The institution's compliance office provided timely and regular updates to all coaches via email regarding the emergency dead period implemented by the NCAA and all subsequent extensions, including that it was scheduled to be lifted June 1, 2021. Communications from March 2020 through April 2021 include the following:

- Compliance notified the coaches of the extension of the dead period on no fewer than 10 occasions, namely: March 13, 2020; April 1, 2020; May 14, 2020; June 15, 2020; August 13, 2020; September 13, 2020; November 18, 2020; February 17, 2021; March 30, 2021; and April 15, 2021.
- A second reminder was sent to the men's basketball staff in multiple months as part of their monthly compliance update, including that dead period rules prohibited official or unofficial visits.
- In monthly virtual compliance education sessions that began when sports re-started at CSUN in 2020, compliance included dead period reminders and education on dead period rules." (Summary disposition report Page No. 15)

concerns regarding the conduct were appropriately and immediately elevated to compliance by other athletics department staff members who learned about the activities when the prospective student-athletes were on campus. The relevant issue here is whether the coaches and staff were provided education about the dead period (e.g., time period, permissible/impermissible activities) and whether those individuals received that information prior to the violations occurring. No in-person on- or off-campus contact during a dead period is a simple, long-standing, fundamental recruiting rule, and the case record clearly demonstrated that the coaches and basketball staff were educated about it and understood their actions were contrary to it.

The hearing panel also cited the compliance staff's failure to act on their concern that the former head coach was not following their advice pertaining to head coach responsibility. Head coach responsibility is just that...the head coach's responsibility. "The head coach ha[s] an independent, non-delegable duty,"²² and even where there may be some concerns about the "broader shortcomings" of a compliance office, "they in no way undermine the head coach's...duties and responsibilities....under Bylaw 11.1.1.1."²³ It is the head coach's responsibility to follow any advice from the compliance staff regarding the rebuttable presumption. By holding the compliance office (and by extension, the institution) in any way responsible for a coach's failure to follow the education and advice provided to them is to unreasonably shift the responsibility away from the coach, and it does not constitute an intentional, willful or blatant disregard of the rules by an institution.

Finally, the hearing panel expressed concern that no changes were made to compliance efforts when COVID-19 guidelines required the compliance staff and other administrators to work from home. The COVID-19 pandemic and its associated local, state and national restrictions resulted in many challenges and required institutions and individuals to pivot to new ways of doing business. Many grappled with how to abide by the restrictions and still provide a similar level of service, and the CSUN coaches and staff were no exception. The hearing panel declined to apply aggravating factor [19.9.3\(o\)](#) (based on violations occurring during the COVID-19 dead period) "because the institution took reasonable steps to comply with the dead period and promote health and safety on campus."²⁴ In declining to apply the factor, the panel, as its rationale, cited the [Louisiana State University Committee on Infractions Decision \(September 22, 2022\)](#) ("where the institution took appropriate measures to attempt to prevent violations of the COVID-19 recruiting dead period.")²⁵ To assess the steps taken by the institution and, by inference, the compliance staff during the COVID-19 recruiting dead period as sufficiently reasonable to avoid the application of an aggravating factor based on the violations

²² [Georgia Institute of Technology Committee on Infractions Decision \(September 21, 2021\) Page No. 13.](#)

²³ [Georgia Tech Committee on Infractions Decision Page No. 13.](#)

²⁴ [Committee on Infractions Decision Page No. 20.](#)

²⁵ [Committee on Infractions Decision Page No. 20.](#)

occurring during the COVID-19 dead period²⁶ but so insufficient as to be a contributing factor for conduct characterized as an intentional, willful or blatant disregard of the rules²⁷ is arbitrary and capricious.

For the reasons cited above, the application of aggravating factor [19.9.3-\(m\)](#) by the hearing panel was an abuse of discretion and it shall be vacated.

- b. Application of Mitigating Factor [Bylaw 19.9.4-\(e\)](#) - Implementation of a System of Compliance Methods Designed to Ensure Rules Compliance and Satisfaction of Institutional/Coaches' Control Standards.

CSUN argued that the hearing panel failed to adhere to the Committee on Infractions' articulated standard of applying the mitigating factor when an institution has compliance systems in place at the time of the violation and those systems detected the violations in a timely manner. Specifically, the hearing panel arbitrarily applied a requirement that CSUN's compliance systems ensure satisfaction of head coach control based on only the involvement of the former head coach. CSUN argued that it had education and monitoring systems in place which are similar to the most recent case precedent in the [LSU Committee on Infractions Decision](#) and that the institution's systems and personnel were able to determine that the actions of the men's basketball staff were violations of NCAA bylaws and report them to the NCAA within 72 hours of those actions occurring. Yet, CSUN was not treated similarly in the application of this mitigating factor.²⁸

The hearing panel argued that it was not applying a new or higher standard when it did not apply the mitigating factor, but rather relied on the text of the applicable bylaw. Additionally, the hearing panel believed that the facts of the case were distinguishable when reviewing case precedent. Specifically, the hearing panel noted that: (1) education and monitoring efforts by CSUN were form over substance rather than tailored and comprehensive; (2) the record of interactions between the compliance office and the men's basketball staff provided minimal insight into the substantive nature of those interactions; and (3) CSUN's efforts failed to promote a culture of compliance within its men's basketball program, rather the coaches' conduct evidenced a comfortableness in freely engaging in blatant violations of fundamental recruiting legislation. While acknowledging some level of the compliance staff's education efforts, the hearing panel noted a failure to pivot and enhance monitoring efforts during periods when on-campus compliance interactions were not available due to COVID-19 restrictions.²⁹

As an initial point, this committee noted that the hearing panel did not find a failure to monitor or that CSUN lacked institutional control. However, the hearing panel did

²⁶ [Bylaw 19.9.3-\(o\)](#).

²⁷ [Bylaw 19.9.3-\(m\)](#).

²⁸ CSUN Written Appeal Page Nos. 30 through 35.

²⁹ Committee on Infractions' Response Page Nos. 21 through 24.

question the specific monitoring decisions CSUN made regarding the men's basketball program in light of state and local COVID-19 restrictions limiting compliance staff's ability to remain on campus as it relates to the application of mitigating factor [19.9.4-\(e\)](#). Practical examples to support the hearing panels' blanket determination that CSUN should have pivoted and done "more" to prevent the violation at issue are lacking. This concept of an "open-faced" belief that more was needed becomes doubly confounding and arbitrary when the compliance environment created across the full athletics department resulted in the conduct being questioned by a noncoaching athletics staff member in real time and, after consultation with coaches for other sports, concerns were self-reported to compliance by that noncoaching athletics staff member and those coaches shortly after the conduct resulting in the violations took place (i.e., within 72 hours). When questioned by Infractions Appeals Committee members during the oral argument to articulate what more could have been implemented by CSUN to detect the violations as they happened, the hearing panel suggested daily review of on-campus security footage. Implementing this suggestion, however, would have resulted in significant time and expense, (e.g., the review of campus security footage during the investigation occurred only with the assistance of campus police and after they determined it was permissible under state law),³⁰ and would not have detected the violations that were deliberately undertaken off campus to purposely avoid detection.

Regardless, the information shows that the men's basketball staff was well aware that their actions and the actions they asked other staff to engage in were not permissible, and they deliberately used extensive, surreptitious methods in an attempt to avoid being caught.³¹ The compliance staff made efforts to be accessible to the coaches to answer questions, but the coaching staff seemed unwilling to adapt to the changing environment. The coaches preferred in-person interactions, and they were unhappy that state and local restrictions prevented the compliance staff from being in the office with them.³²

³⁰ Former associate athletics director for compliance Interview Transcript, August 26, 2021, Page No. 48.

³¹ The following text messages are included in the record:

- Director of basketball operations texts indicating that he knows there is a violation but doesn't stop it or report it. (FI012)
- Texts between a men's basketball graduate assistant and a former assistant coach where the graduate assistant asks the former assistant coach if its ok to give prospective student-athlete a shirt and shorts for a workout. The former assistant coach responds "Technically no." "But find him something - only wear it at the park." (FI120)
- Texts between a former assistant coach and compliance: April 12 at 8:54 a.m. the former assistant coach asks compliance if they can have official visits starting June 1; April 12 at 9:09 a.m. compliance responds saying it's unclear, will make sure coaches know once we have clarity. (FI120) As noted above, April 15, compliance sends the All Staff email saying legislated calendars begin again June 1 and they are still awaiting guidance from campus regarding recruiting and travel.
- Text sent April 8, 2021, by a former assistant coach to the men's basketball graduate assistant and the director of basketball operations where the former assistant coach references the NCAA lifting the dead period June 1. (FI120)

³² Former head coach commented that "it was always easier just to walk down the hall and talk to [compliance]." Former head coach Interview Transcript, August 19, 2021, Page No. 18.

Notwithstanding the compliance staff's remote work, they communicated with men's basketball staff about the recruiting dead period every few weeks from early March 2021 until April 15, 2021, one week before the coaches committed the violation and one day before the coaches started planning the impermissible visits.³³ The men's basketball compliance administrator "had four phone calls with [the former head coach] during [the time period when the coaches were] planning and participating in the prospects' impermissible visits."³⁴ While the coaches in their interviews and at the Committee on Infractions hearing lamented about the lack of availability of the compliance staff, the evidence clearly shows that there was regular interaction between the two staffs, and the coaches had the opportunity to ask questions of the compliance staff but chose not to do so. That is a failure of the coaching staff, not the compliance systems.

Additionally, the hearing panel attempted to distinguish the compliance systems in this case from its recent application of the mitigating factor in the [LSU Committee on Infractions Decision](#), which assisted its overall classification of Level II-Mitigated. The hearing panel noted LSU's specifically tailored education efforts immediately before the prospective student-athlete-led visit that resulted in the violations in that case as well as comprehensive steps to deter potential violations during the visit. The panel found these actions dissimilar from what they determined to be general reminder emails and informal conversations between compliance and the men's basketball staff that occurred around the time of the violations at issue in CSUN's case.³⁵

LSU's compliance staff was made aware of a group of prospective student-athletes planning to visit campus during the COVID-19 dead period, which would be permissible if there was no interaction with athletics staff. Based on that awareness, the compliance staff educated the football staff and highlighted the inability for any in-person athletics staff engagement with those prospective student-athletes and their families.³⁶ Despite that education, at least two members of the athletics staff engaged in activities contrary to that education on the following day, and those activities were not detected by LSU's compliance systems. The hearing panel in that case still awarded LSU the mitigating factor

Former assistant coach commented that the dead period continued to get extended but [they were] "not really being explained face-to-face what is going on with these rules." Committee on Infractions Hearing Transcript Page No. 106.

Former assistant coach also commented that at a previous institution where he worked with the former head coach, the compliance staff would "come in and sit down with us in our office. It was all face-to-face. There were no emails, there were no Zoom calls, there was nothing -- it was the best and most efficient way to get the rules." Committee on Infractions Hearing Transcript Page No. 115.

³³ CSUN Written Appeal Page No. 3.

³⁴ CSUN Written Appeal Page Nos. 3 and 4.

³⁵ Committee on Infractions Response Page No. 23.

³⁶ [LSU Committee on Infractions Decision Page No. 1.](#)

even though the education did not serve as a deterrent, no institutional compliance system detected the activities and LSU did not self-report the violations.³⁷

CSUN's compliance staff did not have advanced notice of the prospective student-athletes coming to campus, but they provided rules education about the dead period and visit restrictions to all coaches and staff (at least 19 times over the course of the dead period). Several coaches chose to ignore the education about those limitations, but the compliance conscience of the entire department resulted in several individuals coming forward to the compliance office to report the issues, and the institution was able to contact the NCAA enforcement staff within 72 hours of the violations occurring. As previously noted, the hearing panel acknowledged CSUN took reasonable steps to comply with the dead period in another portion of their decision analysis,³⁸ but for this mitigating factor related to compliance systems, the hearing panel appears to focus on the actions of the individuals who caused the violations, instead of looking at the systems in place and the overall compliance environment created, which resulted in a de facto nonapplication of the mitigating factor. This is an arbitrary means of analyzing and distinguishing systems of compliance across institutions when the case record clearly demonstrates comparable systems without the need to take into account the institutions varying compliance resources.

Therefore, the failure to apply this mitigating factor to CSUN was an abuse of discretion.

- c. Weighting of Aggravating Factor [Bylaw 19.9.3-\(b\)](#) - History of Level I, Level II or Major Violations by Institution and Weighting of Mitigating Factor [Bylaw 19.9.4-\(f\)](#) - Exemplary Cooperation.

In addition to arguing that the hearing panel abused its discretion in its application or nonapplication of one aggravating factor and one mitigating factor, CSUN also argued that the hearing panel abused its discretion in the heavy weight provided to the history of violations aggravating factor and the normal weight provided to the exemplary cooperation mitigating factor. CSUN argued that recent case precedent showed multiple institutions with a second major infractions case in a shorter amount of time than CSUN where the history of violations aggravating factor was not provided heavy weight. [[Youngstown State University Committee on Infractions Decision \(January 11, 2022\)](#), [The Ohio State University Committee on Infractions Decision \(April 19, 2022\)](#) and [University of Missouri, Columbia Committee on Infractions Decision \(January 31, 2019\)](#)]. Further, CSUN noted clear distinctions between itself and three cases specifically cited by the hearing panel in applying heavy weight to demonstrate a clear error of judgment.

³⁷ [LSU Committee on Infractions Decision Page No. 2](#) noting that in September 2020 the enforcement staff received information that violations may have occurred during a Labor Day weekend campus visit organized by a group of football prospective student-athletes and a collaborative investigation began after issuance of a notice of inquiry in January 2021.

³⁸ [Committee on Infractions Decision Page No. 20](#) [declining to apply aggravating factor [19.9.3-\(o\)](#)].

Specifically, CSUN noted case precedent supported heavy weight only in situations where the history of major infractions involved a prior case within two to four years or at least three cases in 10 years, involved violations systemic in nature across multiple sports, and/or the same bylaw across multiple cases. [[Georgia Tech Committee on Infractions Decision](#), [Florida A&M University Committee on Infractions Decision \(May 21, 2019\)](#) and [San Jose State University Committee on Infractions Decision \(September 6, 2018\)](#)]. As to the weighting of the mitigating factor, exemplary cooperation, CSUN argued that its actions mirror those in the [Ohio State Committee on Infractions Decision](#).³⁹

The hearing panel countered that the standard for setting aside its weighting determinations is deferential and that this committee has recognized that it may not substitute its judgment for that of the panel and mere disagreement with the hearing panel's outcome is not enough to demonstrate an abuse of discretion.⁴⁰ Here, the hearing panel noted that, despite the length of time between its two infractions cases being six years, it was significant to its application of additional weight that serious violations occurred in the same sport program by back-to-back men's basketball coaching staffs. As to the weighting of exemplary cooperation, the hearing panel highlighted the already high bar in obtaining the mitigating factor and its application regularly received normal weight. Further, the hearing panel noted its determination of the distinguishable scope and scale of exemplary cooperation in Ohio State versus CSUN infractions cases.⁴¹

Here, the Infractions Appeals Committee finds sufficient information in the case record to support the weighting determinations by the hearing panel and is not persuaded that the hearing panel clearly deviated from consistent prior case precedent to the contrary. Therefore, for the above reasons, we do not find that the panel abused its discretion in its weighting of these two factors.

Impact of the Infractions Appeals Committee's Determinations

The hearing panel failed to take into account two material factors when assessing the ultimate classification of the case for CSUN and resulting appealed penalties, both of which must weigh in the favor of CSUN. Due to the timing of this appeal, the Infractions Appeals Committee does not have legislated authority to reclassify this case based on our foregoing determinations.⁴² Additionally, while the Infractions Appeals Committee has the authority to vacate all or part of a penalty, the issue of determining the classification of the case for CSUN and reassessment of the probation and financial penalty is left to the hearing panel. Therefore, we vacate the appealed probation and financial penalties

³⁹ CSUN Written Appeal Page Nos. 22 through 27.

⁴⁰ Committee on Infractions Response Page No. 11 cites the [University of Missouri, Columbia Infractions Appeals Committee Decision \(November 26, 2019\)](#).

⁴¹ Committee on Infractions Response Page Nos. 12 through 16 and Page Nos. 25 through 27.

⁴² The Infractions Appeals Committee was provided reclassification authority for infractions cases appealed after January 1, 2023.

(V.1 and V.2) and remand the case for reclassification and reassessment of these penalties consistent with this decision. Further, remand should not result in a reweighting of each aggravating and mitigating factor previously applied and then an overall recalculation by the hearing panel. Rather, the original weight of the factors not appealed or vacated should remain the same as it was assessed in the decision, and the impact of the removal of aggravating factor [19.9.3-\(m\)](#) and the application of mitigating factor [19.9.4-\(e\)](#) should be evaluated to determine any change in classification and/or appealed prescribed penalties. Finally, any reassessment of the appealed penalties must account for the approval by this committee of the institution's request that the probation period and \$5,000 of the financial penalty not be stayed during the pendency of this appeal.

XII. CONCLUSION.

The hearing panel abused its discretion: (1) in the application of the aggravating factor in [Bylaw 19.9.3-\(m\)](#) (intentional, willful or blatant disregard for the NCAA constitution and bylaws); and (2) by failing to apply the mitigating factor in [Bylaw 19.9.4-\(e\)](#) (implementation of a system of compliance methods designed to ensure rules compliance

and satisfaction of institutional/coaches' control standards). Therefore, penalties V.1 and V.2 are vacated and the case is remanded to the hearing panel for reclassification and reassessment of the probation and financial penalties under the requirements that [Bylaw 19.9.3-\(m\)](#) not be applied as an aggravating factor and [Bylaw 19.9.4-\(e\)](#) be applied as a mitigating factor.

NCAA Infractions Appeals Committee

Ellen M. Ferris, chair
Tom Goss
Alejandra Montenegro Almonte
David Shipley
Julie Vannatta.