

NEGOTIATED RESOLUTION¹

University of Findlay – Case No. 020224

September 13, 2023

I. CASE SYNOPSIS

The University of Findlay (institution) and NCAA enforcement staff agree with the violations and penalties detailed below.

In April 2022, the conference office notified the institution that it had not submitted required NCAA eligibility checklists. Previously, the conference contacted the former compliance director requesting the eligibility checklists and did not receive a response. After the conference contacted then director of athletics about the delinquent submissions, the institution immediately worked with the conference to secure a blueprint review of its compliance procedures. The institution learned during the compliance review that the former compliance director had permitted student-athletes to practice, compete and receive financial aid prior to receiving final certification for initial eligibility and/or amateurism by the NCAA Eligibility Center. As a result, the institution engaged a NCAA certification consultant to conduct a full certification review and notified the enforcement staff.

The institution and enforcement staff agreed that the certification consultant would review data and records for three academic years (2020-21 through 2022-23) for certification errors or other possible violations.² Specifically, the certification consultant verified transcripts of both initial and transfer student-athletes' eligibility and amateurism certification and cross-referenced the certification date of every student-athlete with countable athletically related activities (CARA) logs, participation reports and game schedules to determine if violations had occurred and ensured the scope of the violations were limited to initial-eligibility and amateurism. The results of these reviews are the violations included in Agreed-Upon Findings of Facts and violations of NCAA legislation subparts a-d. Subpart e includes the eligibility checklist violations that the institution self-reported and are described above.

Recently, in the spring of 2023, the institution discovered the single violation included in subpart f. Specifically, in the fall of 2021, former compliance director manually entered the wrong number of credit hours into compliance assistant for this student-athlete who had achieved 21 credit hours, short of meeting the 24 credit hours required for good academic standing. The registrar certified the student-athlete as eligible based on the credit hours in compliance assistant for the 2021-22 and 2022-23 academic years. The institution has requested reinstatement for the

¹ In reviewing this agreement, the committee made editorial revisions pursuant to NCAA Division II Committee on Infractions (COI) Internal Operating Procedure (IOP) 4-7-1-2. These modifications did not affect the substance of the agreement.

² The institution and enforcement staff agreed the institution would review data and records for the 2019-20 academic year due to the challenges of accessing the former student information system at the time of the consultant's review. The institution followed the same review process for the 2019-20 academic year records as the consultant's review for the 2020-21 through 2022-23 academic years as outlined above.

student-athlete, and the student-athlete achieved good academic standing at the end of spring of 2023. The institution and enforcement staff agree that the continuing eligibility violation in subpart f is limited and not indicative of any larger or continuing issue.

In May 2023, the enforcement staff began a collaborative investigation with the institution and confirmed the self-reported violations. In his interview with the enforcement staff, former compliance director reported feeling overwhelmed by his job responsibilities due to the COVID-19 pandemic virtual working conditions and the institution's transition to a new student information system. Former compliance director acknowledged failing to inform his supervisor, then director of athletics, of the delinquent checklists or being overwhelmed and took responsibility for his compliance shortcomings. Ultimately, due to the institution's lack of oversight and checks and balances in the eligibility certification process, the violations went undetected.

II. PARTIES' AGREEMENTS

A. Agreed-upon findings of fact and violations of NCAA legislation.

1. [NCAA Division II Manual Bylaws 12.1.1.1, 12.1.1.1.3, 12.1.1.1.3.1,³ 14.3.2.1⁴ and 15.1.1 (2019-20 through 2022-23); 14.12.1 and 16.8.1 (2020-21 through 2022-23); 14.11.1, 14.11.2, 14.11.2.1, 31.2.2.4 and 31.2.2.5 (2021-22); 14.4.3.2 (2021-22 and 2022-23); and 14.3.1.2.1 (2022-23)]

The institution and enforcement staff agree that during the spring 2020 semester through the 2022-23 academic year, the institution improperly certified 82 student-athletes in 11 sports. This resulted in 90 amateurism, initial eligibility certification and financial aid violations. As a result, 29 student-athletes across eight sport programs competed in 136 contests and received actual and necessary expenses while ineligible or not certified.⁵ Specifically:

³ Effective April 21, 2020, for any violations occurring on or after August 1, 2020, NCAA Bylaws 12.1.1.1.3.1.1 and 14.3.2.1.1 (2022-23) specified that Bylaw 12.1.1.1.3 violations involving a student-athlete's participation in practice or competition without final amateurism certification from the Eligibility Center, who are subsequently certified without conditions, shall be considered de minimis violations and do not impact a student-athlete's eligibility; further, Bylaw 14.3.2.1 violations involving a student-athlete's receipt of financial aid and/or participation in practice or competition without final academic certification from the Eligibility Center, who are subsequently certified as a qualifier, shall be considered de minimis violations and do not impact a student-athlete's eligibility.

⁴ Effective August 1, 2021, for student-athletes enrolling in a Division II institution on or after August 1, 2021, the nonqualifier qualification status was eliminated and an incoming student-athlete who did not meet qualifier requirements was then permitted to receive athletics aid and participate in practice during their first academic year in residence.

⁵ Of the 136 contests, 119 were regular season contests, 15 were postseason contests and two were NCAA championships.

- a. During the spring 2020 semester through the 2022-23 academic year, 53 student-athletes in 10 sports practiced prior to receiving final amateurism and/or academic certification from the Eligibility Center. In addition, these student-athletes practiced beyond the 45-day period without receiving final amateurism and/or academic certification. [NCAA Bylaws 12.1.1.1, 12.1.1.1.3, 12.1.1.1.3.1 and 14.3.2.1 (2019-20 through 2021-22)]
 - b. During the 2020-21 through 2022-23 academic years, 28 student-athletes in eight sports practiced and competed beyond the 45-day certification period without final amateurism and/or academic certification from the Eligibility Center. [NCAA Bylaws 12.1.1, 12.1.1.1.3, 12.1.1.1.3.1 and 14.3.2.1 (2020-21 through 2022-23)]
 - c. During the 2022-23 academic year, one men's swimming student-athlete competed as a partial qualifier. [NCAA Bylaw 14.3.1.2.1 (2022-23)]
 - d. During the spring 2020 semester through the 2022-23 academic year, six student-athletes in four sports received impermissible athletics financial aid without receiving final initial eligibility certification. [NCAA Bylaw 15.1.1 (2019-20 through 2022-23)]
 - e. During the 2021-22 academic year, the institution did not complete and retain on file 33 eligibility checklists for 19 sports. [NCAA Bylaws 14.11.1, 14.11.2 and 14.11.2.1 (2021-22)]
 - f. During the 2021-22 and 2022-23 academic years, one men's track and field student-athlete competed without completing 24 semester-hours in the preceding regular two semesters. [NCAA Bylaw 14.4.3.2 (2021-22 and 2022-23)]
2. [NCAA Division II Manual Constitution 2.8.1 (2019-20 through 2021-22) and Bylaw 7.01.10 (2022-23)]

The institution and enforcement staff agree that from the spring 2020 semester through the 2022-2023 academic year, the scope and nature of the violations detailed above demonstrate that the institution failed to adequately monitor its initial eligibility and amateurism certification processes to ensure compliance with NCAA amateurism and initial eligibility legislation. Specifically, the institution did not establish adequate oversight of its NCAA certification system when it did not have the proper checks and balances in place to verify the accuracy and completion of student-athlete certification. This resulted in multiple student-athletes participating while ineligible or not certified and receiving impermissible athletics aid.

III. OTHER VIOLATIONS OF NCAA LEGISLATION SUBSTANTIATED; NOT ALLEGED

None.

IV. REVIEW OF OTHER ISSUES

The enforcement staff considered whether to allege a lack of institutional control in this case and/or name the former compliance director as having responsibility for the certification violations. The enforcement staff determined neither were appropriate. The institution agreed it fell short of its monitoring responsibilities when it placed all certification responsibilities with the institution's sole compliance officer, who acknowledged the COVID-19 pandemic and extra demands associated with compliance during that unprecedented time hampered his ability to certify student-athletes. The institution hired a new compliance officer, who, with an outside consultant, conducted a full audit of its compliance systems for the past four years, including a review of its certification and financial aid systems. No other major violations were identified during the course of the investigation; therefore, the enforcement staff determined this was a single point of failure, which did not amount to a lack of institutional control or merit naming the former compliance director.

V. PARTIES' AGREED-UPON PENALTIES⁶

Pursuant to Bylaw 19.10.3-(e), the parties agree to the following penalties:

Penalties for Major Violations (Bylaw 19.12)

1. Public reprimand and censure through the public release of the negotiated resolution agreement.
2. Three years of probation from September 13, 2023, through September 12, 2026.⁷
3. During this period of probation, the institution shall:
 - a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics

⁶ All penalties must be completed during the time periods identified in this decision. If completion of a penalty is impossible during the prescribed period, the institution shall make the Committee on Infractions aware of the impossibility and must complete the penalty at the next available opportunity.

⁷ Institutions must serve probation during the prescribed penalty period.

- department personnel and all institutional staff members with responsibility for recruiting and certification legislation.
- b. Submit a preliminary report to the Office of the Committees on Infractions (OCOI) by October 31, 2023, setting forth a schedule for establishing this compliance and educational program.
 - c. File with the OCOI annual compliance reports indicating the progress made with this program by August 1st, during each year of probation. Particular emphasis shall be placed on rules education and monitoring related to amateurism and initial academic eligibility.
 - d. Inform prospects in the baseball, football, men's basketball, men's tennis, men's soccer, men's wrestling, men's and women's swimming, men's and women's track and field and women's lacrosse in writing that the institution is on probation for three years and detail the violations committed. If a prospect takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospect signs a National Letter of Intent.
 - e. Publicize specific and understandable information concerning the nature of the infractions by providing, at a minimum, a statement to include the types of violations and the affected sport programs and a direct, conspicuous link to the public infractions decision located on the athletics department's main webpage "landing page" and in the media guides for the baseball, football, men's basketball, men's tennis, men's soccer, men's wrestling, men's and women's swimming, men's and women's track and field and women's lacrosse programs. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the case; and (iii) give members of the general public a clear indication of what happened in the case to allow the public (particularly prospects and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.
4. The institution shall pay a fine of \$2,500 to the NCAA.⁸
 5. Vacation of team and individual records: Ineligible participation in the football, men's basketball, men's soccer, men's and women's swimming, men's and women's track and field and women's lacrosse occurred over a three-year time period as a result of violations in this case. Therefore, pursuant to NCAA Bylaw 19.12.4-(g) and Executive Regulations 31.2.2.4

⁸ The institution expended funds for both a full compliance review and certification consultant totaling approximately \$13,000 to review the issues in this matter, therefore the institution and enforcement staff agree that a \$2,500 fine is appropriate.

and 31.2.2.5⁹ (2022-23), the institution 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, the institution'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, the institution's records regarding the affected sport programs, as well as the records of the head coaches, shall reflect the vacated records and be recorded in all publications in which such records are reported, including, but not limited to, institutional media guides, recruiting material, electronic and digital media plus institutional, conference and NCAA archives. Any institution that may subsequently hire the affected head coaches shall similarly reflect the vacated wins in his/her 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 the affected sport programs 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 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 media coordination and statistics office with a written report detailing those discussions. This written report will be maintained in the permanent files of the media coordination and statistics office. The 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 OCOI at the same time.

6. During each year of the term of probation, the compliance officer shall attend NCAA Regional Rules Seminars. The institution shall provide in its annual compliance reports a list of the sessions the compliance office attends at these seminars.
7. Following the receipt of the final compliance report and prior to the conclusion of probation, the institution's president shall provide a letter to the Committee on Infractions affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

⁹ For ineligible competition violations that occurred on or after August 1, 2023, the legislative cites are Bylaws 19.12.4.5 and 19.12.4.6.

VI. OTHER AGREEMENTS

The parties agree that this case will be processed through the NCAA negotiated resolution process as outlined in Bylaw 19.10, and the NCAA Division II Committee on Infractions (COI) will review the negotiated resolution. The parties acknowledge that the negotiated resolution contains agreed-upon findings of fact of NCAA violations based on information available at this time. Nothing in this resolution precludes the enforcement staff from investigating additional information about potential rules violations. The parties agree that the violations identified in this agreement occurred and should be classified as major.

If the COI approves the negotiated resolution, the institution agrees that they will take every precaution to ensure that the terms of the penalties are observed. The institution acknowledges that they have or will impose and follow the penalties contained within the negotiated resolution, and these penalties are in accordance with those prescribed in Bylaw 19.12.

The OCOI will monitor the penalties during their effective periods. Any action by the institution contrary to the terms of any of the penalties or any additional violations may be considered grounds for prescribing more severe penalties or may result in additional allegations and violations. Additionally, as required by NCAA legislation for any institution involved in a major infractions case, the institution shall be subject to the provisions of Bylaw 19.12.4.3 concerning repeat violators for a five-year period beginning on the effective date of the penalties in this case, insert date.

The parties acknowledge that this negotiated resolution may be voidable by the COI if any of the parties were aware or become aware of information that materially alters the factual information on which this negotiated resolution is based.

The parties further acknowledge that the COI, subsequent to its review of the negotiated resolution, may reject the negotiated resolution. Should the COI reject the negotiated resolution, the parties understand that the case may be submitted through a summary disposition report (Bylaw 19.9) or notice of allegations (Bylaw 19.8) and prior agreed-upon terms of the rejected negotiated resolution will not be binding.

Should the COI approve the negotiated resolution, the parties agree that they waive NCAA hearing and appellate opportunities.

VII. DIVISION II COMMITTEE ON INFRACTIONS APPROVAL

Pursuant to Bylaw 19.10.6, the COI approves the parties' negotiated resolution agreement. The COI's review of this agreement is limited. The COI may reject a negotiated resolution agreement only if the agreement is not in the best interests of the Association or if the agreed-upon penalties are manifestly unreasonable. *See* Bylaw 19.10.4. In this case, the COI determines that the agreed-

upon facts, violations, and type of violations are appropriate for this process. The agreed-upon penalties align with the penalties available under Bylaw 19.12 and with past case guidance. Pursuant to Bylaw 19.10.6, this negotiated resolution has no precedential value.

The COI advises Findlay that it should take every precaution to ensure that it observes the terms of the penalties. The COI will monitor the institution while it is on probation to ensure compliance with the penalties and terms of probation and may extend the probationary period, among other action, if the institution does not comply or commits additional violations. Likewise, any action by the institution contrary to the terms of any of the penalties or any additional violations shall be considered grounds for prescribing more severe penalties and/or may result in additional allegations and violations.

NCAA DIVISION II COMMITTEE ON INFRACTIONS

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