



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

October 27, 2009

Report No. 297

Eastern Washington University

Cheney, Washington

This report is filed in accordance with NCAA Bylaw 32.11 and is organized as follows:

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I. INTRODUCTION.

Eastern Washington University (hereinafter referred to as Eastern Washington) appealed to the NCAA Division I Infractions Appeals Committee specific penalties as determined by the NCAA Division I Committee on Infractions. In this report, the Infractions Appeals Committee addresses the issues raised by Eastern Washington.

II. BACKGROUND.

The Committee on Infractions issued Infractions Report No. 297 February 11, 2009, in which the committee found violations of NCAA legislation in the football program. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [February 11, 2009, issue of The NCAA News.]

This case centered on violations of NCAA bylaws governing coaching limits; eligibility for practice; coaching limitations; institutional control; failure to monitor; and promotion of an atmosphere of compliance.

After the Committee on Infractions issued its report, Eastern Washington filed a timely notice of appeal February 23, 2009. A written appeal was filed March 26, 2009. The Committee on Infractions filed its response April 24, 2009. Eastern Washington filed its rebuttal to the Committee on Infractions response May 11, 2009. The case was considered by the Infractions Appeals Committee August 17, 2009 (see Section VII below).

III. VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. [Please note that cites below are the cites as they appear in the Committee on Infractions report dated February 11, 2009.]

B-1 IMPERMISSIBLE PARTICIPATION. [NCAA Bylaws 13.7.2.1, 14.01.1, 14.3.2.1.1, 14.3.2.2, 14.3.5.1.1, 14.3.5.1.2, 14.5.4.2, 14.11.1 and 16.2.1.3.1 (Note: Bylaw citations are to the 2008-09 NCAA Division I Manual.)]

During the 2003-04 through the 2006-07 academic years, 13 football student-athletes were permitted to participate in practice activities even though they were NCAA nonqualifiers, they did not have their eligibility certified by the institution and/or the NCAA Initial-Eligibility Clearinghouse, or did not meet NCAA transfer requirements. Additionally, two of the student-athletes were provided

housing and meals during preseason practice prior to the first day of classes even though they were not eligible to receive such benefits. Further, in September 2007, the institution failed to withhold one of the student-athletes from competition after discovering the young man's involvement in the NCAA violations.

B-2 EXCEEDING COACHING LIMITS. [NCAA Bylaws 11.01.4, 11.7.1.1.1 and 11.7.3 (Note: Bylaw citations are to the 2008-09 NCAA Division I Manual.)]

During the 2003-04 through the 2006-07 academic years, the football program exceeded the maximum number of 11 countable coaches.

B-3 FAILURE TO MONITOR AND PROMOTE AN ATMOSPHERE OF COMPLIANCE. [NCAA Constitution 2.8.1 and Bylaw 11.1.2.1 (Note: Bylaw citations are to the 2008-09 NCAA Division I Manual.)]

The scope and nature of the violations detailed in Findings B-1 and B-2 demonstrate that, during the 2003-04 through the 2006-07 academic years, the former head coach failed to promote an atmosphere of compliance within the football program and failed to monitor the program.

B-4 LACK OF INSTITUTIONAL CONTROL AND FAILURE TO MONITOR. [NCAA Constitution 2.1.1, 2.8.1 and 6.01.1 (Note: Bylaw citations are to the 2008-09 NCAA Division I Manual.)]

The scope and nature of Findings B-1 and B-2 demonstrate that during the 2003-04, 2004-05, 2005-06 and 2006-07 academic years, the institution lacked control and monitoring in the conduct and administration of its athletics program.

IV. SECONDARY VIOLATIONS. [Please note that cites below are cites as they appear in the Committee on Infractions report dated February 11, 2009.]

C. In September 2005, an enrolled student-athlete purchased a meal for student-athlete 1, who at the time was a prospect visiting campus to observe preseason football practice.

V. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS. The Committee on Infractions imposed additional penalties because of the involvement of Eastern Washington in a number of the violations. The penalties in which the Eastern

Washington was cited are in section D. [Please note that cites below are cites as they appear in the Committee on Infractions report dated February 11, 2009.]

For the reasons set forth in Parts A and B of this report, the Committee on Infractions found that this case involved several major violations of NCAA legislation. The institution did not have in place a comprehensive compliance program, leading to violations of rules that should have been well-known to athletics personnel. In addition, the former head coach and the institution did not adequately monitor the football program or establish an atmosphere of compliance, and the institution failed to control certain aspects of the athletics program.

In determining the appropriate penalties to impose, the committee considered the institution's self-imposed penalties and corrective actions, noting particularly that the institution has made significant improvement in its athletics compliance program. [Note: The institution's corrective actions are contained in Appendix Two.] The committee determined that the contest in which student-athlete 4 competed on September 29, 2007, after he was discovered to be ineligible, was subject to vacation; however, the institution lost the game. In no other situation was vacation appropriate. Further, the committee determined that the cooperation exhibited by the institution was consistent with Bylaw 32.1.4, Cooperative Principle. The committee imposes the following penalties, with the institution's self-imposed penalties so noted:

1. Public reprimand and censure.
2. Three years probation from February 11, 2009, through February 10, 2012.
3. The institution will limit the number of overall equivalencies awarded in football to 61 for the 2008-09 through 2010-11 academic years. (Institution imposed).
4. The institution will reduce the number of full-time coaches per Bylaw 11.7.3 by one from 11 to 10 for three years (the 2008-09 through 2010-11 academic years). (Institution imposed).
5. The institution will limit the number of incoming freshmen who are non-qualifiers to no more than three per year for all three years of probation (the academic years 2009-10, 2010-11 and 2011-12). The institution previously averaged seven incoming freshman non-qualifiers per year over

a four year period. (Institution imposed a reduction to five per year for the academic years 2008-09, 2009-10 and 2010-11).

6. The institution will not allow the recruitment of non-qualifiers from two-year institutions for three years. (the 2008-09 through 2010-11 academic years). (Institution imposed).
7. The institution will prohibit incoming student athletes who have not been certified by the NCAA Eligibility Center from attending preseason football camp for a period of two years to include 2009-10 and concluding in the 2010-11 academic year (even though rules permit a 10-day grace period). For 2008-09 only, recruited student-athletes who have sent their final transcripts and test scores to the NCAA Eligibility Center and are coded HO2 will be allowed to attend preseason camp. (Institution imposed).
8. The violations set forth in Part B above bestowed a significant competitive advantage on the institution. Ineligible student-athletes were able to practice, and the football team had the benefit of extra coaches. The institution also lacked control over its athletics program. Therefore, the institution's football team shall end its 2009 season with the playing of its last regularly scheduled, in-season contest and shall not be eligible to participate in any postseason competition.
9. The former head coach shall attend, at his own cost, an NCAA Regional Rules Seminar during each of the three years of probation. He shall certify in writing which sessions of the seminars he attended and, within 30 days of his return to the campus of his present employer, his present employer shall send a letter to the committee certifying the attendance of the former head coach at the seminar.
10. The former head coach shall not be allowed to have any contact with his present institution's football squad during the first three days of practice (for the full squad) prior to the 2009 season. During these three days he cannot be present on the practice fields, in team meetings for any purpose, in the weight room or any location where athletically related team or individual activities (as defined by NCAA Bylaw 17.02.1) are occurring.
11. The institution shall attach a copy of its present athletics policies and procedures manual to the preliminary report (See Penalty 12-b below).

12. During this period of probation, the institution shall:
 - a. Continue to develop and implement a comprehensive educational program on NCAA legislation, including seminars and testing, to instruct the coaches, the faculty athletics representative, all athletics department personnel and all institution staff members with responsibility for the certification of student-athletes for admission, retention, financial aid or competition;
 - b. Submit a preliminary report to the office of the Committees on Infractions by April 1, 2009, setting forth a schedule for establishing this compliance and educational program; and
 - c. File with the office of the Committees on Infractions annual compliance reports indicating the progress made with this program by December 1 of each year during the probationary period. Particular emphasis should be placed on eligibility certification, monitoring prospects that arrive in the vicinity of campus prior to initial enrollment, monitoring student-athletes who are housed and fed on campus at times other than when school is in session, monitoring those engaged in coaching activities and maintaining a viable system of athletics compliance. The reports must also include documentation of the institution's compliance with the penalties adopted and imposed by the committee.
13. The above-listed penalties are independent of and supplemental to any action that has been or may be taken by the Committee on Academic Performance through its assessment of contemporaneous, historical, or other penalties.
14. At the conclusion of the probationary period, the institution's president shall provide a letter to the committee affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

ISSUES RAISED ON APPEAL.

In its written appeal, Eastern Washington asserted that penalty D-8 should be set aside as it is excessive such that it constitutes an abuse of discretion. (Bylaws 32.10.4 and 32.10.4.1)

VI. APPELLATE PROCEDURE.

In considering Eastern Washington's appeal, the Infractions Appeals Committee reviewed the notice of appeal; the transcript of the institution's December 6, 2008, hearing before the Committee on Infractions and the submissions by Eastern Washington and the Committee on Infractions referred to in Section II of this report.

The hearing on the appeal was held by the Infractions Appeals Committee August 17, 2009. Eastern Washington was present and was represented by its attorney, consultant, president, director of athletics, vice provost/faculty athletics representative and associate athletics director/COO/NCAA compliance officer. The Committee on Infractions was represented by the appeal coordinators for the Committee on Infractions, the director of the Infractions Committees and the associate director of the infractions Committees. Also present were the vice president of enforcement, director of enforcement and associate director of enforcement. The hearing was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

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

The institution has appealed only the Committee on Infractions' imposition of a postseason competition ban -- Penalty D-8 -- on the grounds that "based on the facts and circumstances in this case," the penalty was excessive and constituted 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."

In imposing the postseason competition ban in this case, the Committee on Infractions stated in pertinent part:

“The violations set forth in Part B above bestowed a significant competitive advantage on the institution. Ineligible student- athletes were able to practice, and the football team had the benefit of extra coaches. The institution also lacked control over its athletics program.” Committee on Infractions Report, Section D-8 at Page No. 8.

Thus, it is clear that the Committee on Infractions based its imposition of the postseason ban substantially on its judgment that the violations provided the institution with a significant competitive advantage. We find that the particular circumstances of this case do not justify that conclusion. While the violations provided some competitive advantage, the conclusion that the advantage was “significant” was a clear error of judgment, such that the imposition of the postseason ban was arbitrary.

With respect to the violations involving impermissible participation in practice activities by nonqualifiers (Finding B-1), we note that: (a) of the 13 persons involved, seven never competed for the team, only four of the remaining six competed for more than one season and only three of those four competed in more than one game; and (b) except for one student-athlete in one game, none of the student-athletes competed until after their eligibility had been reinstated. With respect to the coaching limits violations, we note that all but two of the coaches were students who primarily performed administrative duties and, had they been enrolled in the requisite number of units, could have been classified properly as student-assistant coaches. Further, had these students been classified properly, the other two impermissible coaches who performed very limited coaching duties, would not have caused the institution to exceed the coaching limits because, at the time, the institution was well under its limit for full-time assistant coaches.

The postseason competition penalty (Penalty D-8) is vacated.

IX. CONCLUSION.

NCAA Infraction Appeals Committee

Christopher L. Griffin, chair
Susan Cross Lipnickey
Noel M. Ragsdale
David Williams
Jack Friedenthal.