

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

November 25, 2015

Infractions Decision No. 414

Syracuse University

Syracuse, New York

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

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I. INTRODUCTION.

Syracuse University appealed to the NCAA Division I Infractions Appeals Committee specific findings of violations and penalties as prescribed by a panel of the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by Syracuse University (hereinafter referred to as Syracuse).

II. BACKGROUND.

The Committee on Infractions issued Infractions Decision No. 414 March 6, 2015, in which the committee found violations of NCAA legislation in the men's basketball and football programs. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly.

This case centered on violations of NCAA bylaws governing academic fraud, instances of extra benefits, the institution's failure to follow its written drug policy, impermissible activities surrounding the conduct of a representative of the institution's athletics interest and student-athletes' involvement in promotional activities and outside competition. Additionally, the case also involved a former staff member's failure to cooperate with the NCAA enforcement staff's investigation.

After the Committee on Infractions issued its decision, Syracuse filed a timely Notice of Appeal March 20, 2015. A Written Appeal was filed April 24, 2015. The Committee on Infractions filed its Response May 28, 2015. Syracuse filed its Rebuttal to the Committee on Infractions Response June 16, 2015. The case was considered by the Infractions Appeals Committee August 3, 2015 (see Section VIII below).

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

See Committee on Infractions report for Syracuse, Page No. 3, Section III.A. A copy of the report may be accessed via the NCAA Legislative Services Database for the Internet (LSDBi) at the following link: <https://web1.ncaa.org/LSDBi/exec/homepage>.

IV. ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions report for Syracuse, Page No. 29, Section IV.A. A copy of the report may be accessed via LSDBi at the following link: <https://web1.ncaa.org/LSDBi/exec/homepage>.

V. CORRECTIVE ACTION TAKEN AND PENALTIES (PROPOSED OR SELF-IMPOSED).

See Committee on Infractions report for Syracuse, Page No. 93, Appendix Three. A copy of the report may be accessed via LSDBi at the following link: <https://web1.ncaa.org/LSDBi/exec/homepage>.

VI. PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions report for Syracuse, Page No. 62, Section V. A copy of the report may be accessed via LSDBi at the following link: <https://web1.ncaa.org/LSDBi/exec/homepage>.

VII. ISSUES RAISED ON APPEAL.

The appellant asserts that the hearing panel abused its discretion in prescribing Penalties V.3, V.5 and V.6.

VIII. APPELLATE PROCEDURE.

In considering Syracuse's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the transcript of the institution's October 30-31, 2014, hearing before the Committee on Infractions and the submissions by Syracuse and the Committee on Infractions referred to in Section II of this report.

The oral argument on the appeal was held by the Infractions Appeals Committee August 3, 2015, in Indianapolis, Indiana. Syracuse was present and was represented by its attorneys, chancellor, general counsel, director of athletics and vice president and chief of staff. The Committee on Infractions was represented by the appeal coordinator for the Committees on Infractions, managing director – Committees on Infractions, director – Committees on Infractions, associate director – Committees on Infractions, assistant director – Committees on Infractions, assistant coordinator – Committees on Infractions and law extern – Committees on Infractions. Also present were the vice president of enforcement, managing director of enforcement, director of enforcement and the director of legal affairs and deputy general counsel of the NCAA. The attorney for Syracuse's head men's basketball coach attended as a silent observer. A member of the Committee on Infractions observed the oral argument but did not participate in any deliberations or discussions of this case. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

IX. INFRACTIONS APPEALS COMMITTEE’S RESOLUTION OF THE ISSUES RAISED ON APPEAL.

In reviewing this case, the Infractions Appeals Committee may overturn factual findings and conclusions that one or more violations occurred only if:

- a. The hearing panel’s finding clearly is contrary to the evidence presented to the panel;
- b. The facts found by the hearing panel do not constitute a violation of the NCAA constitution and bylaws; or
- c. There was a procedural error and but for the error, the hearing panel would not have made the finding or conclusion. [Bylaw 19.10.1.2]

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

The hearing panel determines the credibility of the evidence.

A penalty prescribed by the hearing panel, including determinations regarding the existence and weighing of any aggravating or mitigating factors, shall not be set aside on appeal except on a showing by the appealing party that the hearing panel abused its discretion. [Bylaw 19.10.1.1]

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 Public Report, June 30, 2009, Page No. 23]

This case involved 14 violations, two of which were Level III and 12 of which were Level I or Level II, including academic extra benefits, ineligible competition, and lack of institutional control. These are very serious violations, as the institution recognized and acknowledged. The institution accepted responsibility for the majority of the violations.

However, the institution appealed Violation IV.C (academic extra benefits) as well as three penalties prescribed by the hearing panel:

1. Penalty V.3 - vacation of all wins from the academic years 2004-05, 2005-06, 2006-07, 2010-11 and 2011-12 in men's basketball and 2004-05, 2005-06 and 2006-07 in football in which student-athlete Nos. 1 through 10 competed while ineligible;
2. Penalty V.5 - the institution shall return to the NCAA all of the monies it has received to date through the former Big East Conference revenue sharing for its appearances in the 2011, 2012 and 2013 NCAA Men's Basketball Tournament and that are scheduled to be provided to the institution shall be withheld by the conference and forfeited to the NCAA; and
3. Penalty V.6 - the total number of athletically related financial aid awards in men's basketball shall be reduced by three awards during each of the 2015-16, 2016-17, 2017-18 and 2018-19 academic years.

Violation IV.C – Academic Extra Benefits.

During the oral argument, the appellant’s counsel acknowledged that the institution was no longer pursuing the appeal of violation IV.C. Therefore, this committee will not review this violation and it will remain in place.

Penalty V.3 – Vacation of Wins.

This penalty requires the institution to vacate all wins from the academic years 2004-05, 2005-06, 2006-07, 2010-11 and 2011-12 in men's basketball and 2004-05, 2005-06 and 2006-07 in football in which student-athlete Nos. 1 through 10 competed while ineligible.

The appellant argued that factors articulated in the Georgia Institute of Technology's report [Georgia Tech Infractions Appeals Committee Public Report, March 9, 2012, Page Nos. 14-15] that would significantly increase the likelihood of vacation of wins, should

also be considered in evaluating whether a particular violation involving a particular student-athlete requires vacation of wins for games in which the student-athlete participated. (Written Appeal Page No. 28)

In the institution's view, the hearing panel abused its discretion in that the vacation of wins, related to the extra benefit received by student-athlete No. 4, student-athlete No. 8 and student-athlete No. 9, in that penalty V.3 is inconsistent with the recent Committee on Infractions cases in which the vacation of record is "imposed in limited circumstances, and it frequently is not applied in cases involving extra benefit violations"; that virtually none of the factors articulated in the Georgia Tech case exist for student-athlete No. 4; and inadequate evidence to support a determination that student-athlete Nos. 8 and 9 were rendered ineligible. (Written Appeal Page Nos. 27-37)

The Committee on Infractions argued that the prescription of the Penalty V.3 is not an abuse of discretion in this case where there are at least five factors that make vacation of wins particularly appropriate: academic fraud, serious intentional violations, a large number of violations, competition while academically ineligible and lack of institutional control. (Committee on Infractions' Response Page Nos. 36 and 37) Further, the factors articulated in the Georgia Tech case are not used to determine whether a vacation of wins is appropriate, but "merely increases the likelihood of a vacation penalty." (Committee on Infractions Response Page No. 37)

In reviewing the record before us, we find that the hearing panel did not abuse its discretion by prescribing Penalty V.3. As we noted in the Georgia Tech case:

"...it must be stated that the factors listed in the Southeast Missouri State case should not be seen as the only factors in which vacating can be imposed. In fact, a close reading of that decision suggests that "the likelihood of such a penalty is significantly increased when any of the aggravating factors are present." [Southeast Missouri State University Committee on Infractions Report, June 18, 2008, Page No. 10] This does not require that any of them be present." [Georgia Tech Infractions Appeals Committee Public Report, March 9, 2012, Page No. 15]

These factors are not requirements to identify when a vacation of wins penalty is appropriate in a particular case. They signal an increased likelihood of an imposition of a vacation of records penalty.

Penalty V.5 – Financial Penalty.

Penalty V.5 required the institution to return to the NCAA all of the monies it has received to date through the former Big East Conference revenue sharing for its appearances in the 2011, 2012 and 2013 NCAA Men's Basketball Tournament and that

are scheduled to be provided to the institution shall be withheld by the conference and forfeited to the NCAA.

The Committee on Infractions submitted a letter to this committee June 24, 2015, requesting permission to correct Penalty V.5 due to an error regarding the dates to which it applied. This request was granted and Penalty V.5 modified to state:

“...the institution shall return to the NCAA all of the monies it has received to date through the former Big East Conference revenue sharing for *its appearances in the 2011 and 2012 NCAA Men's Basketball Tournament* and that are scheduled to be provided to the institution shall be withheld by the conference and forfeited to the NCAA.” (Committee on Infractions Decision Page No. 64) (Emphasis added)

With this modification of Penalty V.5 and based on appeal submissions, we find that the hearing panel did not abuse its discretion in prescribing Penalty V.5.

Penalty V.6 – Reductions In Athletics Awards.

Penalty V.6 requires the institution’s total number of athletically related financial aid awards in men's basketball be reduced by three awards during each of the 2015-16, 2016-17, 2017-18 and 2018-19 academic years.

The institution argued that (1) the penalty is disproportionate to the specific context of the case; (2) the penalty is inconsistent with prior infractions cases; (3) the hearing panel failed to explain why it was appropriate to deviate from precedent; and (4) this resulted in the hearing panel abusing its discretion when prescribing Penalty V.6. (Written Appeal)

The Committee on Infractions argued that each case has its own unique facts and the outcomes in other cases do not dictate the outcomes in this case; the percentage of the scholarship reduction in this case is commensurate, and in some cases lower than, with the percentage of scholarship reduction in other cases; and per Bylaw 19.9.91, the hearing panel prescribed more lenient penalties using the old penalty structure. (Committee on Infractions Response)

Central to the resolution of whether the hearing panel abused its discretion is the role and effect of precedent – whether it was considered and weighed in this case. In the appeal submissions, the appellant and the Committee on Infractions compared and contrasted this case with a number of previous major infractions cases. This committee has reviewed those cases and believes that given the violations found in this case, the scholarship reduction is a departure from precedent.

Previously, the longest period of scholarship reduction is four years. In the University of Michigan case, a case described by the Committee on Infractions as “one of the most serious ever to come before the committee,” the scholarships in the men’s basketball program were reduced by four total scholarships which could be spread over up to four years. [Michigan Committee on Infractions Public Report, May 8, 2003, Page No. 14].

The highest number of scholarship reductions occurred in the Texas Tech University (1998) case. In that case, there were violations related to eligibility certification, extra benefits, recruiting, unethical conduct, failure to monitor and lack of institutional control over seven years. [Texas Tech Committee on Infractions Public Report, August 4, 1998, Page Nos. 6 and 7] In the men’s basketball program, the Committee on Infractions imposed a scholarship reduction of seven scholarships over three years. (Texas Tech Committee on Infractions Public Report, August 4, 1998, Page No. 35)

In the current case, the imposition of a scholarship reduction of a total of 12 scholarships over four years (three per year) is a deviation from precedent.

We recognize that the Committee on Infractions should not be strictly bound to previous decisions when circumstances of intercollegiate athletics were qualitatively different than those which presently obtain. However, this does not mean that prior decisions provide no restraint on or guidance to the Committee on Infractions and this committee, or that changes in the environment in which NCAA member institutions operate, alone, can justify ignoring those prior decisions. It means only that the guidance provided by prior decisions is, and always has been, a matter of judgment. [University of Southern California Infractions Appeals Committee Public Report, May 26, 2011, Page No. 21].

In appeals, this committee looks to the Committee on Infractions’ infractions decisions for explanation of the rationale for prescribed penalties, especially in the circumstances where there is a departure from precedent. In reviewing, the infractions decision in this case, we were unable to determine how the Committee on Infractions weighed precedent when prescribing the scholarship reduction penalty. Further, there appears to be no qualitative distinction in the record, as compared to the Michigan and Texas Tech cases, that would warrant the extent of the departure from prior precedent that was undertaken by the Committee on Infractions in this case.

The hearing panel failed to consider and weigh material factors and therefore, abused its discretion in the imposition of Penalty V.6.

X. CONCLUSION.

Penalties V.3 and V.5 are affirmed. Penalty V. 6 is modified to a total of eight (8) scholarship reductions with two (2) scholarship reductions in each of the next four (4) years.¹ The removal of one scholarship per year reflects a penalty in line with the outer limits of penalties previously imposed for similar cases by the Committee on Infractions.

NCAA Infractions Appeals Committee

David Williams, chair
Susan Cross Lipnickey
Jack Friedenthal
W. Anthony Jenkins
Patti Ohlendorf.

¹ According to the Division I Infractions Appeals Committee Policies and Procedures [See 3. b. (2) (d) at Page No. 4], any penalty that is appealed is automatically stayed through the course of the appeal process. This stay is triggered with the filing of the Notice of Appeal by the appellant and ends with the public release of the committee's decision. The Infractions Appeals Committee granted Syracuse's request for relief from the stay. Therefore, the applicable academic years for the modified Penalty V. 6 are 2015-16, 2016-17, 2017-18 and 2018-19 academic years.