

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

July 20, 2018

Decision No. 490

Morgan State University

Baltimore, Maryland

This decision is filed in accordance with NCAA Article 19 and is organized as follows:

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I. INTRODUCTION.

Morgan State University appealed to the NCAA Division I Infractions Appeals Committee specific findings of violations and penalties as determined by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by the institution (hereinafter referred to as Morgan State).

II. BACKGROUND.

On December 19, 2017, the Committee on Infractions issued Infractions Decision No. 490 in which the committee found violations of NCAA legislation in 10 sport programs over multiple years. On the basis of those findings, the Committee on Infractions determined this was a Level I-Standard case and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing academic eligibility and financial aid.

After the Committee on Infractions issued its decision, the institution filed a timely Notice of Appeal January 3, 2018. A written appeal was filed February 5, 2018. The Committee on Infractions filed its Response March 7, 2018. The institution filed its Rebuttal to the Committee on Infractions' Response March 22, 2018. The case was considered June 12, 2018, by the Infractions Appeals Committee (see Section VII below).

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

See Committee on Infractions decision Page Nos. 2 through 6. A copy of the decision may be accessed via the NCAA Legislative Services Database for the Internet (LSDBi) at the following link: <https://web3.ncaa.org/lstdbi/>.

IV. ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision Page Nos. 7 through 14. A copy of the decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lstdbi/>.

V. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

After considering all information relevant to this case, the panel prescribes the following penalties (self-imposed penalties are noted):

Core Penalties for Level I-Standard Violations (Bylaw 19.9.5)

1. Probation: Four year of probation from December 19, 2017, through December 18, 2021.

2. During the 2017-18 academic year, the softball and women's tennis teams shall end their seasons with playing of their last regularly-scheduled in-season contest and shall not be eligible to participate in any post-season championships, including conference tournaments, NCAA championships, foreign tours or any exceptions to the limitation on the numbers of contests that are provided in Bylaw 17. During the 2018-19 academic year, the football team shall end its season with the playing of its last regularly scheduled in-season contest and shall not be eligible to participate in any post-season championships, including conference tournaments, NCAA championships, foreign tours or any exceptions to the limitations on the number of contests that are provided in Bylaw 17.
3. The institution shall pay a fine of \$5,000 (self-proposed) plus one percent of each of the 2017-18 budgets of the football, softball and women's tennis programs.¹²
4. During the 2018-19 academic year, the institution shall reduce by five percent the amount of grants-in-aid awarded in the 10 sports in which the violations occurred. The reductions shall be based on the average amount of aid awarded in each sport over the past four academic years (the institution has reported its intent to impose the following reductions: six football counters in 2016-17; one men's basketball counter in 2017-18; two women's basketball counters in 2016-17 and 2017-18; 1.65 men's track equivalencies in 2016-17 and 2017-18; and .73 women's bowling equivalencies in 2018-19).
5. During the 2017-18 academic year, the institution shall restrict recruiting opportunities in the 10 sports in which the violations occurred as follows:
 - a. A seven-week ban on unofficial visits to campus, including no complimentary tickets;
 - b. A 12.5 percent reduction in official paid visits to campus, based on the average number provided during the previous four academic years (The institution reduced official paid visits to a maximum of 15 for the men's and women's basketball programs for the 2017-18 and 2018-19 academic years. The football program is limited to 30 total official paid visits for the 2017-18 and 2018-19 academic years);
 - c. A seven-week ban on recruiting communications with prospective student-athletes; and
 - d. A seven-week ban in off-campus recruiting (The institution imposed a fall 2017 semester off-campus recruiting ban for the sports of men's basketball, women's basketball, softball, men's and women's tennis, bowling and men's

and women's track and cross country. Regarding football, the institution limited the program to 21 evaluation days during the month of November only).

Additional Penalties for Level I. Violations (Bylaw 19.9.7)

6. Public reprimand and censure.
7. Over four academic years, the institution allowed 94 student-athletes in 10 sports to compete while ineligible or not properly certified as eligible. Over the same period, the institution improperly awarded financial aid in nine sports. The institution lacked control of the conduct and administration of its athletics program. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3, and COI IOP 4-15-4, the institution shall vacate all contests in which student-athletes competed while ineligible. The vacation shall apply to all regular season and conference tournament wins in which ineligible student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition through the student-athlete reinstatement process. Further, if any of the student-athletes competed in NCAA Championships at any time they were ineligible, the institution's participation in the championships shall be vacated. The individual records of the ineligible student-athletes shall also be vacated. Further, the institution's permanent records as well as the record of the head coaches will reflect the vacated records and will be recorded in all publications in which athletics 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 which may subsequently hire any of the head coaches shall similarly reflect the vacated wins in his or 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 to attain specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to these vacated contests shall be removed from athletics department stationery, banners displayed in public areas and any other forum in which they may appear. Any trophies or other team awards attributable to the vacated contests shall be returned to the Association.

To ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected in official NCAA publication and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA media coordination and statistics staff and appropriate conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the NCAA media coordination and statistics staff a written report detailing those discussions. This

document will be maintained in the permanent files of the NCAA media coordination and statistics department. This written report must be delivered to the NCAA media coordination and statistics staff no later than 45 days following the initial infractions decision release or, if the vacation penalty is appealed, at the conclusion of the appeals process.

A copy of the written report shall also be delivered to the Office of the Committees on Infractions (OCOI) at the same time.

8. During the time of probation, the institution shall:
 - a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct the coaches, the faculty athletics representative, all athletics department personnel and all institution staff members with responsibility for NCAA recruiting and certification legislation;
 - b. Submit a preliminary report to the OCOI by February 1, 2018, 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 November 15 during each year of probation. Particular emphasis shall be placed on establishing a viable and comprehensive rules compliance system and adhering to all NCAA bylaws regarding initial, continuing and transfer eligibility;
 - d. Inform in writing prospective student-athletes in all sports that the institution is on probation for four years and detail the violations committed. If a prospective student-athlete 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 prospective student-athlete signs a National Letter of Intent; and
 - 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 report located on the athletic department's main or "landing" webpage. The information shall also be included in media guides and in an alumni publication. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the infractions case; and (iii) provide a clear indication of what happened in the infractions case. A statement that refers only to the probationary period with nothing more is not sufficient.

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 affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations

VI. ISSUES RAISED ON APPEAL.

In its notice of appeal, Morgan State appealed penalties V.2, specific to the postseason bans in softball and women's tennis, and V.3.

VII. APPELLATE PROCEDURE.

In considering Morgan State's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the record and transcript of the institution's October 26, 2017, expedited hearing before the Committee on Infractions; and the submissions by the institution and the Committee on Infractions referred to in Section II of this decision.

The oral argument on the appeal was held by the Infractions Appeals Committee June 12, 2018, in Indianapolis, Indiana. The institution was present and represented by its president, director of athletics, deputy director of athletics/senior woman administrator and faculty athletics representative. The commissioner of the Mideastern Athletic Conference, to which the institution belongs, was also present. The Committee on Infractions was represented by the appeals coordinator for the Committee on Infractions and associate director of the Office of Committees on Infractions. Two externs for the Office of Committees on Infractions attended as observers. Also present were the managing director of enforcement, associate director of enforcement, an extern for enforcement and the director/assistant general counsel for the NCAA. The oral argument 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.

Morgan State appealed the one-year postseason ban for women's tennis and softball as well as the customary application of the financial penalty. [Written Appeal Page No. 1].

A penalty imposed by the Committee on Infractions may be set aside on appeal if the imposition of the penalty is an abuse of discretion.

As we stated in the Alabama State case:

“...we conclude that an abuse of discretion in the imposition of a penalty occurs if the penalty: (1) was not based on a correct legal standard or was based on a misapprehension of the underlying substantive legal principles; (2) was based on a clearly erroneous factual finding; (3) failed to consider and weigh material factors;

(4) was based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational; or (5) was based in significant part on one or more irrelevant or improper factors.” [Alabama State University, Public Infractions Appeals Committee Report (June 30, 2009) Page No. 23.]

At an expedited hearing, Morgan State disagreed with some of the additional penalties imposed by the Committee on Infractions Panel, including a one-year postseason ban for all 10 involved sports. [Committee on Infractions Decision Page No. 12] The panel provided relief for seven sports, but left the postseason ban in place for football, women’s tennis and softball. [Committee on Infractions Decision Page No. 13] On appeal, Morgan State argued the standard was not consistently applied to all 10 sports responsible for the underlying violations, resulting in an inequitable postseason ban for women’s tennis and softball. The institution did not appeal the postseason ban for football. [Written Appeal Page No. 1 and Rebuttal Page No. 1] More specifically, the institution disagreed with the panel that the number of student-athletes involved in the violations for softball and women’s tennis constituted a significant percentage of the roster in those sports in any given year, especially when compared with those sports afforded relief from the postseason ban. [Rebuttal Page Nos. 2 and 3]. For these reasons, Morgan State argued the panel unequally applied its discretion by maintaining the postseason ban in women’s tennis and softball, and that those bans should be set aside. [Infractions Appeals Committee Oral Argument Transcript Page Nos. 9, 10 and 12 through 18]

On appeal Morgan State also argued it should be permitted to retain the financial penalties assessed by the panel to be used for compliance purposes. In support of this position, it cited to the Committee on Infractions’ decisions for *Alcorn State University (2016)* and *Florida A&M University (2015)*. [Written Appeal Page Nos. 1 and 2.] In those cases, the Committee on Infractions redirected financial penalties back to the institutions to support compliance education of institutional staff members, external compliance reviews, and the hiring of additional compliance staff. The institution argued the panel should have afforded it the same benefit as its circumstances substantially aligned with the previous cases. [Written Appeal Page Nos. 2 and 3]

In response to Morgan State’s appeal, the panel argued the postseason bans in softball and women’s tennis, as well as the customary application of the financial penalties to those sports and football did not constitute an abuse of discretion. The panel noted the systemic, large scale failure of the institution to properly certify eligibility or award financial aid, and its overall lack of institutional control. It also noted the postseason ban and financial penalties were at the low end of penalty guidelines and narrowly tailored to apply only to the three sports with the most violations. [Committee on Infractions Response Page Nos. 2 and 3] Finally, the panel noted it exercised appropriate discretion in imposing the financial penalties with no requirement to redirect the fines back to the institution. [Committee on Infractions Response Page No. 12]

In reviewing the penalties in this case and the arguments on appeal, the Committee recognized the work done by the institution to improve its compliance systems after the discovery of the violations. However, given the potential postseason ban for 10 sports based on the severity of the violations, the panel did not abuse its discretion in making a downward departure and deviating from the core penalties for these violations.

In the *Former Assistant Football Coach University of Alabama's* appeal decision, the Committee recognized a panel's discretion to deviate from core penalties. The panel narrowly tailored a two-year show-cause order to permit a former assistant coach to participate in all coaching activity, except off-campus recruiting. The two-year show-cause order was also a downward departure from the core penalties for the former assistant coach's violations, which carried a minimum five-year show-cause period. In upholding the panel's decision on appeal, this Committee noted the substantial leniency afforded the former assistant coach by the Committee on Infractions. [Former Assistant Football Coach University of Alabama Infractions Appeals Committee Decision (December 14, 2017) Page No. 4.]

The Infractions Appeals Committee noted the panel in this case afforded substantial leniency to the institution in a manner similar to the former assistant football coach Alabama case, and does not find that leniency, or the failure to deviate further from the core penalties at issue, to be an abuse of discretion.

While Morgan State cited a limited number of examples in which the Committee on Infractions deviated from the customary application of a financial penalty and redirected a fine back to campus, it is within the panel's discretion to determine whether such relief is warranted based on the specific circumstances of a case. The record before the Infractions Appeals Committee does not support a determination that the panel abused its discretion by not following the cited cases and redirecting the fine back to campus for compliance education.

IX. CONCLUSION.

The appealed penalties (one-year postseason ban in softball and women's tennis and financial penalties) are affirmed.¹

NCAA Infractions Appeals Committee

Patti Ohlendorf, chair
Ellen Ferris
W. Anthony Jenkins
Allison Rich
David Shipley.

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. Therefore, the appellant's affirmed postseason ban penalties shall be applied to the 2018-19 academic year.