



BRIGHAM YOUNG UNIVERSITY- HAWAII
PUBLIC INFRACTIONS REPORT

August 26, 2009

A. INTRODUCTION.

On June 3, 2009, officials from Brigham Young University – Hawaii (BYU-Hawaii), including the head men's and women's tennis coach ("head tennis coach") appeared before the Division II Committee on Infractions to address allegations of NCAA violations in the institution's athletics program.

The violations in this case arose as a result of the institution's failure to monitor certain aspects of its athletics program. From the 2005-06 academic year through 2007-08, the institution certified transfer student-athletes without discerning whether the incoming transfers had completed six hours of transferable degree credit during their most recent full-time term of enrollment at their previous institutions. Further, the institution during the same time frame was certifying transfer student-athletes as eligible to compete prior to the student-athletes designating a degree program in the manner required by NCAA bylaws. The institution's method of documenting declared degree programs was flawed. Further, in the sport of tennis, the institution gave the head tennis coach the responsibility of determining whether information provided by tennis student-athletes on their NCAA General Amateurism and Eligibility Forms for International and Select Students (ISA forms) was complete, accurate, and presented any possible eligibility issues. This is a compliance responsibility that cannot be passed to members of the coaching staff. Finally, the institution failed to ensure that all student-athletes had received final amateurism certification prior to practicing, competing and receiving athletically related financial aid.

A number of secondary violations occurred as a result of the deficiencies in the institution's compliance system. In the aggregate, the violations constituted a major infractions case.

A main cause of the deficiencies in the compliance program was the failure of certain institutional personnel to be fully educated regarding NCAA eligibility rules. As this committee has stated on numerous occasions, member institutions have a duty to establish and maintain thorough and comprehensive campus-wide compliance systems

operated by trained and competent personnel. See e.g. *Cheyney University*, Case No. M248, (2007); *Kentucky Wesleyan College*, Case No. M235, (2006); *Lincoln University*, Case No. M212, (2005); *Benedict College*, Case No. M216, (2005); *Oklahoma Panhandle State University*, Case No. M175 (2002). It is imperative that all individuals involved in the process of certifying eligibility of student-athletes have knowledge of applicable NCAA legislation.

A member of the Pacific West Conference, the institution has an enrollment of approximately 2,400 students. The institution sponsors five men's and six women's intercollegiate sports. This was the institution's first major infractions case.

B. FINDINGS OF VIOLATIONS OF NCAA LEGISLATION.

1. FAILURE TO MONITOR. [NCAA Constitution 2.8.1, NCAA Bylaws 12.1.1.1.3, 12.1.1.1.3.1, 14.4.3.1, 14.4.3.1.1, 14.4.3.1.5, 14.4.3.1.5.1 and 16.8.1.2]

During the 2003-04, 2006-07 and 2007-08 academic years, the institution failed to monitor the athletics program in that it did not 1) track whether incoming transfer student-athletes had passed at least six hours in the preceding semester at their prior institutions; 2) ensure that student-athletes had designated a degree by the beginning of their third year of enrollment or fifth full-time semester; 3) ensure that ISA Forms were complete, accurate, and did not present any eligibility concerns about the student-athletes filling out the forms; and 4) ensure that student-athletes did not practice, compete or receive travel expenses prior to receiving final amateurism certification from the NCAA Initial Eligibility Center.

Committee Rationale

The enforcement staff and institution were in substantial agreement as to the facts of the finding, but the institution disagreed that the facts constituted violations of NCAA legislation. The committee finds that the violation occurred.

Credit Hour Requirement. NCAA Bylaw 14.4.3.1-(a) requires that, as part of eligibility for competition, a continuing student-athlete must satisfactorily complete either six-semester or six-quarter hours of academic credit during the preceding academic term in which the student-athlete has been enrolled as a full time student at any collegiate institution. Bylaw 14.4.3.1.1 provides that, in the case of transfer student-athletes, the six-semester or six-quarter hours must be transferable degree credit.

During the 2005-06 through 2007-08 academic years, the institution failed to apply Bylaws 14.4.3.1-(a) and 14.4.3.1.1 when certifying eight student-athletes who transferred into the institution. Two of the student-athletes participated in softball, two in women's basketball, and one each in the sports of men's basketball, women's soccer, men's soccer and men's tennis.

At the time of the violations, the process of certifying transfer eligibility at the institution began with coaches obtaining an unofficial transcript of potential transfers in his or her sport. The transcript was first referred to the compliance office, where an eligibility check was performed. At times admissions personnel did a review for the coaches, but they considered the review preliminary until an official transcript from the previous institution arrived. Once an official transcript arrived, a formal evaluation of the transfer documentation was performed. Any and all credits accepted for transfer were then entered onto the transfer's official institutional transcript. Until the formal evaluation was completed, the credits were not officially part of the transfer's institutional record.

This situation involving the eight transfer student-athletes is unusual in that all eight in fact had enough degree transferable hours from their previous institutions to meet the requirements of the applicable bylaws cited above. However, for two reasons, the committee finds that violations occurred. The first of those reasons is that the institution, to its credit, acknowledged that personnel performing transfer evaluations were unaware of the six-hour requirement. Therefore, compliance with Bylaws 14.4.3.1-(a) and 14.4.3.1.1 was, by definition, not being monitored by the institution as a part of the certification process. That the transfer student-athletes eventually were shown to have earned the requisite six hours of transferable degree credit in their final semester at their former institutions is not the issue.

The second reason these situations involved violations, in spite of the transfers having actually earned the needed credits, is that the institution's formal evaluation of the transfer student-athletes' official transcripts and, therefore, the acceptance of the transfer credits, had not taken place prior to the student-athletes being allowed to compete for the institution. The institution offered various reasons why the formal evaluations were not done, including problems with new software, delays in obtaining official transcripts from previous institutions, and the fact that some of the transfer student-athletes left BYU-Hawaii after only short periods of enrollment. But the fact remains that the formal evaluations of the eight student-athletes' official transcripts--and, therefore, the analysis of whether all NCAA eligibility requirement had been met--were not done until requested by the enforcement staff during the course of the investigation, which was well after the transfer student-athletes enrolled and competed.

As Bylaw 14.4.3.1.1 only states that the six hours be "*transferable* degree credit" (emphasis added), rather than "transferred," the institution asserted that the credits do not

actually have to be accepted by the institution prior to transfer student-athletes competing; instead, the credits just have to eventually be found to count toward the transfer's degree. The committee rejects such a narrow reading of the bylaw and specifically finds that, not only do the credits have to be transferable, they actually have to be accepted and transferred pursuant to institutional protocols prior to the bylaw being satisfied. The analysis and acceptance of the credits per institutional policies must take place prior to the transfer student-athletes competing. Such a policy allows for confirmation that the bylaw requirements have been met and the transfer student-athletes are eligible.

Finally, although each of the eight separate situations, standing alone, may be viewed as secondary infractions, collectively they constitute a major violation.

Degree Designation. NCAA Bylaw 14.4.3.1.5 provides that a student-athlete shall designate a program of studies leading to a specific baccalaureate degree at the institution by the beginning of the third year of enrollment at a collegiate institution. This designation can be accomplished in one of two ways: 1) formal enrollment in a specific baccalaureate program; or 2) approval by an appropriate academic official of the student-athlete's program. If the designation is done pursuant to (1) above, the official enrollment record (the student-athlete's official transcript) of the institution serves as documentation. If the designation is done per (2) above, the record of the program designation, approved by the appropriate academic official, serves as documentation. The records must be retained for inspection by the NCAA upon request. See Bylaw 14.4.3.1.5.1.

During the course of the investigation, the enforcement staff looked into whether Bylaw 14.4.3.1.5 had been satisfied. The investigation identified four situations in which degree designation rules were not followed and, more important, it revealed that the institution was not specifically tracking the applicable bylaws. Three of the student-athletes participated in softball ("student-athletes 1, 2 and 3," respectively) and were required to declare their majors at the beginning of the fall, 2006 semester. The fourth individual ("student-athlete 4") was a men's basketball student-athlete who was required to declare a major as of the fall 2007 semester.

A violation of Bylaws 14.4.3.1.5 and 14.4.3.1.5.1 was evident, as degree designations were not made in a timely fashion or documented as required. Further, similar to the issue with the six-hour requirement discussed above, the institution certified the four student-athletes as eligible before there was official confirmation that Bylaw 14.4.3.1.5 had been satisfied.

Regarding student-athlete 4, the institution presented evidence that the young man met with his academic advisor and declared a major of business at the beginning of the fall

2007 semester, when he transferred to the institution. Had contemporaneous documentation of that declaration been retained and produced, this activity would have satisfied subsection (b) of Bylaw 14.4.3.1.5. The institution claimed that student-athlete 4's advisor kept a record of the designation in the student-athlete's file but was "too busy" at the time to record the designation into official university records. Therefore, no record of a major appeared in his records until December 2007, when he changed his major. The second declaration was properly entered into his records. However, even though no major designation appeared anywhere in student-athlete 4's records at the beginning of his fifth semester of full time enrollment (the fall 2007 semester), the institution certified student-athlete 4 as eligible in the fall of 2007. It did so without confirming that Bylaws 14.4.3.1.5 and 14.4.3.1.5.1 had been satisfied, which constituted failure to monitor.

Student-athletes 1, 2 and 3 all transferred to the institution for the 2006-07 academic year, and all were required to declare a major as they enrolled in August 2006. Even though the institution presented an affidavit from an academic counselor ("the counselor") that all three declared a major at that time, no record of the designations were produced. The institutional records of the student-athletes do not substantiate the counselor's account; to the contrary, the available records show that no such designations were made at that time. The institution insisted that the information regarding their majors could not be entered into official records because of problems with the installation of new software in the fall of 2006. However, the committee noted that degree designations of certain student-athletes at the institution were entered in August 2006, including one for student-athlete 1. On August 30, 2006, a major of "undeclared" was entered on her official transcript. However, as she was beginning her fifth semester of college enrollment, declaring a major of "undeclared" did not satisfy Bylaw 14.4.3.1.5.

Regarding student-athletes 2 and 3, their official institutional transcripts do not indicate majors being declared at the beginning of the fall 2006 semester, and no contemporaneous documentation of the designations was produced. The committee considered the affidavits of the counselor and a second academic official at the institution that student-athletes 2 and 3 had in fact declared majors in a timely fashion, but their statements were not confirmed by any records of the institution, including those of the academic officials. Institutional records show that student-athletes 2 and 3 only stayed at the institution through the winter 2007 semester before departing, and it was not shown that, while on campus, they took the action necessary to satisfy Bylaw 14.4.3.1.5. As there was no record of them having declared majors, this also means that, as in the case of student-athletes 1 and 4, the institution certified student-athletes 2 and 3 as eligible without determining whether they had declared majors as required. A certification system that does not track all NCAA eligibility requirements fails to meet the monitoring standard set forth in NCAA Constitution 2.8.1.

Monitoring Forms of International Student-Athletes. The institution also failed to monitor the completion of the ISA forms in the sport of tennis. Specifically, it delegated the responsibility of monitoring the forms to the head tennis coach, even though the tracking of the forms, and the information on them, is a compliance function. Further, the institution failed to verify or investigate certain information on the forms.

The institution acknowledged that the compliance staff conducted no independent review of the information contained on the ISA forms of tennis student-athletes. If the compliance staff had any question about information on the forms, it asked the head tennis coach for clarification. In 2002, when there was a question regarding what information should be included on the form, it was the head tennis coach, rather than a member of the compliance staff, who made a call to NCAA Membership Services for guidance. The head tennis coach was given this autonomy because of his extensive knowledge of international tennis.

The institution's practice did not meet the standard required of NCAA Constitution 2.8.1. While it is proper to include coaches in the discussions regarding eligibility determinations and to get their input regarding prospects, final eligibility certifications cannot be left solely to individuals not charged with that responsibility in an official, documented, compliance role. Besides the obvious conflict of interest that may arise when a coach is asked to determine if certain information might cause an eligibility issue for a prospect the coach is recruiting, final eligibility decisions cannot be left solely to individuals not charged with that responsibility in an official capacity. In the present matter, some tennis prospects reported on their ISA forms that they had participated in tournaments during high school and in the period between graduation and initial collegiate enrollment. In certain situations, such participation can affect eligibility. The compliance staff at this institution deferred to the head tennis coach when those questions arose. Such deference, without follow-up, constituted failure to monitor.

A number of related secondary violations were found to have occurred during the period in which the head tennis coach was given the responsibility of monitoring the forms of tennis student-athletes. In 2006-07, a women's tennis student-athlete ("student-athlete 5") was allowed to compete even though she had not signed her Student-Athlete Statement. More significant, during the same time frame she was allowed to compete in four contests when she should have been serving a year in residence.

Further, the institution failed to ensure that student-athlete 5 and three other student-athletes ("student-athletes 6, 7 and 8," respectively) listed post-high school tournament participation on their ISA forms. While the institution had been informed by Membership Services that it was not necessary to list tournament participation *during* high school, the institution understood that all post-graduation, pre-enrollment participation had to be on the form. In the case of each of the four student-athletes, the

head tennis coach certified that the ISA forms were accurate even though they were incomplete as they did not include post-high school tournaments. Had student-athlete 5 fully disclosed her post-high school graduation participation, and had the institution fully investigated the information, it would have been discovered that student-athlete 5 needed to spend 2006-07 in residence prior to competing. Instead, as noted above, she was allowed to compete in four matches before being declared ineligible. The information that caused her to be pulled from competition was reported to BYU-Hawaii by another institution; it was not discovered by any action of BYU-Hawaii.

Finally, the institution failed to ensure that two other tennis student-athletes ("student-athletes 9 and 10," respectively) disclosed tournament participation subsequent to initial collegiate enrollment on their ISA forms. The institution knew that such participation had to be disclosed. The head tennis coach certified the accuracy of the ISA forms of student-athletes 9 and 10 even though the forms did not contain this information. As a result of the faulty certification, it was not discovered in a timely fashion that a tennis team in student-athlete 9's home country had accepted prize money on her behalf following a tournament (student-athlete 9 stated she was unaware that the money had been awarded). Once the information was known, the fact that money was accepted on her behalf gave rise to a possible eligibility issue for student-athlete 9.

Participation prior to final amateurism certification.

During the 2007-08 academic year, three student-athletes ("student-athletes 11, 12 and 13," respectively) were allowed to practice, compete and receive travel expenses prior to receiving final amateurism certification from the NCAA Initial Eligibility Center. Student-athlete 11, a member of the women's basketball team, participated in 33 practices beyond the permissible 45-day grace period and competed in five contests prior to receiving final amateurism certification. Student-athlete 12, a men's golf student-athlete, participated in five practices beyond the permissible 45-day grace period and competed in eight dates of competition prior to receiving final amateurism certification. Student-athlete 13, a men's soccer student-athlete, participated in 58 practices beyond the 45-day grace period and competed in 16 dates of competition prior to receiving final amateurism certification. While, standing alone, each violation may be viewed as secondary; in the aggregate they constitute part of a pattern of failure to monitor.

The institution asserted that student-athlete 11 was certified on August 30, 2007, prior to her engaging in any practices, competitions or travel. While it is true that student-athlete 11 filled out the online questionnaire required by the Eligibility Certification Center at that time, records reflect she did not receive preliminary certification until November 29, 2007. Approximately a week later, on December 6, she electronically signed her statement and received final certification. Only then was she formally and finally certified to participate. By then, she had practiced 33 times beyond the 45-day period

allowed by Bylaw 12.1.1.1.3.1, and she had taken part in five competitions. The institution's compliance officer ("the compliance officer") recalled student-athlete 11 receiving final certification in September; however, available records confirm that final certification was not granted until December.

The institution acknowledged the violations regarding student-athletes 12 and 13.

C. PENALTIES.

For the reasons set forth in Parts A and B of this report, the Committee on Infractions found that this case involved major violations of NCAA legislation. Deficiencies in the institution's compliance system led to a number of secondary infractions; cumulatively, the infractions and the deficient system that caused them constitute a major case.

In determining the appropriate penalties to impose, the committee considered the institution's corrective actions, which are contained in Appendix Two. Further, the committee determined that the cooperation exhibited by the institution was consistent with Bylaw 32.1.4, Cooperative Principle, which requires member institutions to cooperate in investigations. The committee imposes the following penalties [note: the institution did not self-impose any penalties]:

1. Public reprimand and censure.
2. Three years of probation from August 26, 2009, through August 25, 2012.
3. It is imperative that the institution fully understand that its commitment to compete as a member of NCAA Division II comes with a responsibility to commit sufficient resources to its compliance effort and implement a campus-wide system of rules compliance administered by knowledgeable staff members. Therefore, in its preliminary compliance report (see Penalty C-5-(b) below), the institution shall identify to the committee specific individuals in the following campus departments who will have compliance oversight in that department: admissions, registrar, housing, academic services and financial aid. It shall also include the faculty athletics representative (FAR) in the compliance effort. The specific individuals identified from each campus office, as well as the FAR and all members of the compliance staff, shall attend an NCAA Regional Rules Compliance Seminar during the first two years of the probation period.
4. The institution shall contact the NCAA Academic and Membership Affairs staff at the earliest opportunity and request that the staff conduct a Blueprint

Compliance Review as soon as one can be scheduled. The institution shall comply with all recommendations made by the reviewer.

5. 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 FAR, 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 October 15 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 June 15 of each year during the probationary period. Particular emphasis should be placed on establishing a comprehensive compliance and certification system at the institution. The reports must also include documentation of the institution's compliance with the penalties imposed by the committee.
6. 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.

As required by NCAA legislation for any institution involved in a major infractions case, Brigham Young University, Hawaii shall be subject to the provisions of NCAA Bylaw 19.5.2.3, concerning repeat violators, for a five-year period beginning on the effective date of the penalties in this case, August 26, 2009.

Should Brigham Young University, Hawaii appeal either the findings of violations or penalties in this case to the NCAA Infractions Appeals Committee, the Committee on Infractions will submit a response to the appeals committee.

The Committee on Infractions advises the institution that it should take every precaution to ensure that the terms of the penalties are observed. The committee 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 shall be considered grounds for

extending the institution's probationary period or imposing more severe sanctions or may result in additional allegations and findings of violations.

Should any portion of any of the penalties in this case be set aside for any reason other than by appropriate action of the Association, the penalties shall be reconsidered by the Committee on Infractions. Should any actions by NCAA legislative bodies directly or indirectly modify any provision of these penalties or the effect of the penalties, the committee reserves the right to review and reconsider the penalties.

NCAA COMMITTEE ON INFRACTIONS

Jean Paul Bradshaw

Bruce Kirsh

Bridget E. Lyons

Julie A. Rochester

Wendy Taylor May, chair

APPENDIX ONE

CASE CHRONOLOGY.

2007

March - The major NCAA received additional information from a confidential source reporting possible violations in the eligibility certification of the institution's student-athletes.

August 27 - The enforcement staff sent a letter to the president noting what appeared to be a pattern of violations involving international student-athletes and transfer student-athletes at the institution. The enforcement staff requested eligibility files for all international student-athletes and transfer student-athletes at the institution from August 2005 to August 2007.

October 12 - The institution provided the enforcement staff with documentation regarding the certification of international student-athletes and transfer student-athletes.

December 14 - The enforcement staff requested additional information regarding the transfer and international student-athletes involved in the August 2007 request from the institution.

December 17 - The enforcement staff performed a follow-up call with the institution regarding the information requested and agreed to a mid- to late January response.

2008

January 26 - The institution requested additional time to comply with the enforcement staff's December 14, 2007, information request.

February 11 - The institution submitted the additional information requested by the enforcement staff December 14, 2007.

March and April - The enforcement staff requested additional information regarding multiple student-athletes under review.

July - The enforcement staff and institution agreed that on-campus interviews would be conducted during the week of August 18, 2008.

August 18-21 - The enforcement staff conducted 18 interviews on the campus of Brigham Young-Hawaii.

August 27 through September 10 - The enforcement staff requested and the institution provided additional documents related to information reported during the on-campus interviews.

October 7 - The enforcement staff sent the president the notice of inquiry.

October 17 - The enforcement staff requested further documentation from the institution. On October 27 and 28, 2008, the institution provided its response.

November 24 - The enforcement staff provided institution's counsel with a draft of the notice of allegations, as the institution had indicated an interest in pursuing the summary disposition process.

December 11 - The enforcement staff and the institution's counsel participated in a teleconference to discuss the draft notice of allegations that was provided to the institution's counsel November 24, 2008. The enforcement staff agreed to create a Web custodial so the institution can have access to all of the interview recordings, interview transcripts and interview summaries.

2009

January 6 - The enforcement staff contacted the institution's counsel to discuss whether the institution intends to pursue summary disposition. The institution's counsel requested more time to make a decision in regard to summary disposition.

January 30 - After the institution's decision not to pursue summary disposition, the enforcement staff sent the institution and the head tennis coach the notice of allegations.

May 5 - The institution provided its response, including a response on behalf of the head tennis coach, to the notice of allegations.

May 12 - The enforcement staff conducted a prehearing conference with the institution and the head men's and women's tennis coach.

May 19 - The enforcement staff requested a waiver of the 14-day deadline for submission of the case summary.

May 20 - The enforcement staff's request was granted.

June 3 - An infractions hearing was held

August 26 - Infractions Report No. 303 was released.

APPENDIX TWO

CORRECTIVE ACTIONS AS IDENTIFIED IN THE INSTITUTION'S MAY 4, 2009, RESPONSE TO THE NOTICE OF ALLEGATIONS.

- Financial Aid, Admission / Registrar / Academic Advisors department are involved in all student-athletes' certifications.
- System information personnel are upgrading the use of PeopleSoft to help monitor student-athletes' eligibility information.
- We are currently putting in place training for all personnel using the NCAA CAi online program to help track information.
- Regularly scheduled (every month or every two months) rules education meeting monthly for all coaches. (No meeting after winter semester.)
- Ongoing drafting and revision of policy and procedures for NCAA compliance.
- Validating International forms with internet search for all sports and especially for tennis. As of winter 2008 will include all competition not only after high school graduation.
- Contracted an outside firm to help get BYU-H compliance policy and procedures integrated with the right entities across campus.