



WEBER STATE UNIVERSITY
PUBLIC INFRACTIONS DECISION
NOVEMBER 19, 2014

I. INTRODUCTION

The NCAA Division I Committee on Infractions is an independent administrative body of the NCAA comprised of individuals from the NCAA Division I membership and the public charged with deciding infractions cases involving member institutions and their staffs.¹ This case involves academic fraud at Weber State University.² It also involves a former developmental math instructor.³ The panel has considered the record including the parties' submissions, presentations and information developed at the September 12, 2014, hearing. The panel concludes that academic fraud occurred; however, the panel does not conclude that the institution failed to monitor. The panel prescribes core penalties in this case under NCAA Bylaw 19.9 and the new Figure 19-1 Penalty Guidelines, as well as other standard administrative penalties.

In this case, the institution, the math instructor and the NCAA enforcement staff substantially agreed that academic fraud violations occurred during spring 2013. Specifically, the parties agreed the math instructor completed online quizzes, tests and exams for five student-athletes, resulting in fraudulent academic credit. While the parties agreed that the violations occurred, they disagreed over the appropriate violations level. The panel concludes that academic fraud violations occurred and those violations are Level I.

The enforcement staff also alleged the institution failed to monitor the math instructor, the five student-athletes' academic activity and the rate at which coursework was completed. The institution disagreed that it failed to monitor. Based on the facts and circumstances presented to the panel, the panel concludes the institution did not fail to monitor.

¹ Infractions cases are decided by hearing panels comprised of NCAA Division I Committee on Infractions members. Decisions issued by hearing panels are made on behalf of the Committee on Infractions. Originally, the panel consisted of seven members, but one member was excused when he could not participate due to a scheduling conflict. Pursuant to NCAA Bylaw 19.3.3, a six-member panel considers this case.

² A member of the Big Sky Conference, Weber State University has a total enrollment is approximately 21,000. The institution sponsors seven men's and nine women's sports. This is the institution's third major infractions case. The institution also had previous infractions cases in 2006 (financial aid violations in all sports) and 1996 (men's basketball).

³ The former developmental math instructor is referred to as "math instructor." The math instructor held that position when the violations occurred. Her employment with the institution ended on May 3, 2014.

The academic fraud violations in this case are severe breaches of conduct because they seriously undermined and threatened the integrity of the NCAA Collegiate Model. After weighing the aggravating and mitigating factors and applying the new Figure 19-1 Penalty Guidelines, the panel prescribes the following principal core and administrative penalties: three years of probation; a fine; scholarship reductions in football; a five-year show-cause order for the math instructor; and standard administrative reporting requirement.

II. CASE HISTORY

The origin of the case began on April 24, 2013, when an adjunct instructor discovered an academic irregularity for one of his students, a football student-athlete. Concerned, the adjunct instructor brought the discovery to the attention of the institution, which immediately conducted a review and informed the president. On May 14, 2013, the institution self-reported potential violations to the enforcement staff. The self-report occurred only 21 days after the initial discovery.

On June 3, 2013, the enforcement staff issued a verbal notice of inquiry to the institution and the parties initiated a cooperative investigation. Based on information developed during the institution's internal review and the cooperative investigation with the enforcement staff, the institution identified three groups of student-athletes who possibly received improper academic assistance from the math instructor. Group I consisted of five student-athletes (at issue in this case) who allegedly permitted the math instructor to use their usernames and passwords to take quizzes, tests and exams. Group II consisted of three student-athletes who allegedly received substantial assistance, defined as more than 50 percent, on quizzes and tests. Group III consisted of six student-athletes who allegedly received substantially less than 50 percent assistance on quizzes and tests.

The institution determined that the student-athletes in Group I committed academic dishonesty under the institution's policy. The institution charged the student-athletes in Group II with academic dishonesty under the institution's policy, but they were ultimately found not responsible. The institution did not charge the student-athletes in Group III with academic dishonesty under the institution's policy.

On December 6, 2013, the institution and the enforcement staff requested an interpretation from the NCAA Academic and Membership Affairs (AMA) staff on the application of unethical conduct legislation on the facts of the case. Based in part on the information received from that request, the enforcement staff issued the first notice of allegations (NOA) on January 23, 2014. That NOA alleged the math instructor and the student-athletes from Groups I and II had engaged in academic fraud. That NOA also alleged the institution failed to monitor.

On April 16, 2014, AMA issued an official interpretation on academic misconduct, which in practice provided that the enforcement staff defer to the institution's determination on academic fraud.⁴ Based on the new interpretation and the results of the institution's academic and appeals processes, the enforcement staff issued an amended NOA on May 13, which removed the academic fraud allegation against the student-athletes from Group II.⁵

Because of the institution's on-going academic review and the enforcement staff's issuance of an amended NOA, the institution sought and received extensions to the response deadline. The institution submitted its response on June 16, 2014. One month later, the enforcement staff submitted its statement of the case and written reply. On August 18, 2014, the institution submitted a supplemental response. The next day, the math instructor submitted a response to the amended NOA.⁶

On September 12, 2014, the panel held an in-person hearing. The math instructor did not attend. At the request of the panel, representatives from the AMA staff attended the hearing. These staff members attended as a resource regarding the application of the April 2014 official interpretation on academic misconduct. At the hearing, an AMA staff member indicated that the language of the interpretation is consistent with a prospective application to conduct occurring after the issuance of the interpretation. The enforcement staff indicated that it believed it was required to apply the interpretation retroactively.⁷

III. FINDINGS OF FACT

The institution discovers a testing anomaly and investigates

During the 2010-11 academic year, the institution converted its developmental math program into an online platform. The institution offered developmental math for

⁴ The NOA alleged violations of "academic fraud." In the 2014-15 Division I Manual and the April 16, 2014, AMA official interpretation the terminology for violations changed to "academic misconduct." In this case, the panel refers to the violations as they were charged.

⁵ The enforcement staff dropped the allegation relating to the math instructor and Group II. By dropping the allegation pertaining to Group II, the amended NOA only alleged that the math instructor and five student-athletes engaged in academic fraud during the spring 2013 semester and that the institution failed to monitor.

⁶ The math instructor submitted her response to all parties by "replying all" to an earlier email exchange addressing a procedural issue related to the amended NOA. Neither the institution's supplemental response nor the math instructor's response met the deadline for written submissions. The chief hearing officer provided the parties with an opportunity to comment on whether the submissions should be added to the record. After neither party objected, the chief hearing officer admitted the submissions to the record.

⁷ Following a discussion on the application of the AMA interpretation, the enforcement staff indicated that, under the April 2014 official interpretation, it could have brought allegations of extra benefit violations for the conduct of the math instructor and student-athletes in Group II. The enforcement staff and the institution indicated that they would address violations associated with Group II in a separate Level III violations process handled between the enforcement staff and the institution. Those violations were not alleged and were not before the panel for consideration in this case.

incoming students who lacked fundamental math skills needed for college level math courses. The online platform allowed students to complete, among other tasks, homework, quizzes, comprehensive tests and a final exam using a username and password. The courses are self-paced.

At the conclusion of the spring 2013 semester, the adjunct instructor believed that he had discovered a testing anomaly for a student-athlete in his class. That concern led the institution to review its developmental math program. Specifically, the adjunct instructor noted that the student-athlete completed six quizzes and a final exam in less than one hour – an uncharacteristic pattern for the student-athlete. The adjunct instructor reported his concern to the lead instructor for the course, who immediately reviewed the student-athlete's course progress. Later that day, the lead instructor informed the director of developmental math of the situation. Over the course of nine days, representatives from developmental math conducted a complete review of the spring 2013 developmental math courses. They discovered five anomalies and identified those anomalies as football student-athletes. Then they informed the athletics department and conducted joint interviews of the student-athletes. Finally, they informed the institution's president.

At the direction of the president, the institution continued its internal review and reported potential NCAA violations to the enforcement staff. Thereafter, the enforcement staff and institution engaged in a cooperative investigation into the matter. During the cooperative investigation, the institution and the enforcement staff interviewed numerous individuals including football student-athletes and the math instructor. The student-athletes indicated that they received varying degrees of assistance. Some student-athletes received hints about the proper approach to a problem. Others received formulas or help on a few quiz or test questions. But for five student-athletes, the math instructor obtained the students-athletes' usernames and passwords, logged into their courses and completed quizzes, test and exams.

The math instructor's assistance to five football student-athletes in Group I

When interviewed, the math instructor admitted that during the spring 2013 semester she obtained the usernames and passwords for five student-athletes. Using that information, the math instructor logged in to their online math courses and completed quizzes, tests and exams. This conduct occurred over one week in late April 2013. In her interviews and response to the amended NOA, the math instructor also stated she had completed this work of her own volition and took responsibility for her actions. The math instructor noted the five student-athletes never requested that she complete their quizzes, tests and exams and were not present at the time she completed them.

The institution determined the math instructor and the five student-athletes' conduct violated institutional policies and the student code. In accordance with its procedures, the institution took action to address the conduct. The institution charged the five student-athletes with academic dishonesty and issued them failing grades. In accordance

with the student code, two of those student-athletes appealed their failing grades. Following procedures available to all students, a college hearing committee upheld the institution's grade changes.

In light of the testing anomalies discovered during the spring 2013 semester, the institution conducted an extensive review of developmental math from 2010-13. The review identified nine additional student-athletes who may have received improper assistance in previous years. The institution classified these student-athletes into Groups II and III. Through the institutional processes, the institution determined that the student-athletes in Groups II and III did not commit academic dishonesty.⁸

The institution's monitoring of student-athletes in developmental math

At the hearing, the institution indicated that after identifying challenges in the online developmental math program it developed proactive plans and tools to address these challenges. The institution utilized faculty to monitor student-athletes' progress in developmental math courses. In addition, the institution's athletics compliance staff developed a plan with specific requirements to help student-athletes maintain their weekly schedules, achieve satisfactory progress and avoid procrastination in the self-paced courses. The athletics department also created weekly progress reports, which were color coded to indicate which student-athletes were behind in their coursework. Finally, the institution depended on faculty members and system security measures to prevent and detect academic dishonesty. These efforts included, instructor monitoring, strict exam proctoring and utilizing usernames and passwords for students.

Shortly after the math instructor completed coursework for the first of five student-athletes, an adjunct math instructor discovered an irregularity, reported it internally and the institution took action. Specifically, on April 13, 2013, the math instructor completed two quizzes, a test and the final exam for the first of five student-athletes. The following week, the math instructor completed coursework for the other four student-athletes in Group I. Several days later, an adjunct instructor discovered an irregularity in the academic performance of one of his students and reported it to appropriate administrators, initiating the institution's review. Approximately one month after the math instructor's conduct, the institution self-reported possible rules violations to the enforcement staff.

⁸ The college hearing committee that heard the appeal of three student-athletes in Group II noted that normally their conduct would constitute academic dishonesty under the institution's policies. The college hearing committee decided, however, that the three student-athletes were not culpable because they were unduly influenced by the math instructor, a person of authority. In light of the college hearing committee's conclusion about the impropriety of the math instructor's conduct, the enforcement staff informed the hearing panel of its position that the April 2014 official interpretation precluded the staff from bringing an unethical conduct allegation against the math instructor because the student-athletes were absolved of academic dishonesty. It is unclear whether the 2014 official interpretation was intended to be an absolute bar to an unethical conduct violation if the institution's own process finds no academic misconduct with respect to an involved student-athlete but does find that an institutional employee engaged in academic misconduct.

IV. ANALYSIS

A. [NCAA BYLAWS 10.1 and 10.1-(b) (2012-13 NCAA Division I Manual)]

During the spring semester of the 2012-13 academic year, the math instructor provided impermissible academic assistance to five football student-athletes (Group I) when she completed online quizzes, tests and exams for them resulting in fraudulent academic credit.⁹

1. NCAA legislation relating to unethical conduct resulting in academic fraud.

10.1 Unethical Conduct. Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member, which includes any individual who performs work for the institution or the athletics department even if he or she does not receive compensation for such work, may include, but is not limited to, the following: (*Revised: 1/10/90, 1/9/96, 2/22/01, 10/5/10*)

(b) Knowing involvement in arranging for fraudulent academic credit or false transcripts for a prospective or an enrolled student athlete.

2. In spring 2013, the math instructor engaged in unethical conduct when she completed online quizzes and exams for five football student-athletes that resulted in those student-athletes receiving fraudulent academic credit.

The institution self-discovered and self-reported that the math instructor intentionally obtained usernames and passwords of five student-athletes and accessed their accounts to complete online quizzes, tests and exams. The math instructor did not attend the hearing but, in her interviews and response to the enforcement staff's amended NOA, she admitted to her conduct and took full responsibility. As a result of her actions, five student-athletes received fraudulent academic credit.

NCAA Bylaw 10.1 defines unethical conduct as knowing involvement in arranging for fraudulent credit. The parties presented and agreed that the math instructor obtained the usernames and passwords of five student-athletes enrolled in developmental math. Using that log in information, the math instructor completed quizzes, tests and exams for five student-

⁹ Procedurally, the hearing panel was only presented an allegation related to the math instructor and the five student-athletes of Group I. At the September 13, 2014, infractions hearing, the enforcement staff described events related to Groups II and III. However, because the panel concludes that the institution did not fail to monitor, that information relating to Groups II and III is not relevant to the hearing panel's infractions decision.

athletes, who received credit for that work. Based on the information developed from the institution's review of the 2010-13 developmental math records, the parties also presented information during the hearing regarding questionable assistance that the math instructor began providing as early as the 2011-12 academic year. That information, however, was presented as contextual and not in the form of alleged bylaw violations.¹⁰

Because the math instructor intentionally obtained the student-athletes' log in information and purposefully used that information to complete their coursework, she knowingly arranged for the student-athletes to receive fraudulent academic credit and violated NCAA Bylaw 10.1. The panel concludes that the math instructor engaged in unethical conduct.

V. VIOLATIONS NOT DEMONSTRATED

Failure to monitor

The enforcement staff alleged that the institution failed to monitor the academic coursework of student-athletes in developmental math. The panel, however, concludes that this violation is not demonstrated. The institution had a compliance system in place, that compliance system detected NCAA violations and the institution took swift, decisive action after discovering the violations. Although the enforcement staff presented - and the institution acknowledged-information that the math instructor engaged in improper academic assistance for an extended period of time, the panel does not conclude that a failure to monitor violation is warranted. The institution had compliance and monitoring systems in place. The institution identified the self-paced developmental math courses as problematic and developed a tracking system to monitor student-athletes' progressions through the courses.

When the math instructor's conduct escalated to academic fraud during the spring 2013 semester, the institution promptly detected an irregularity in the online test results, investigated the circumstances, and took decisive corrective actions, including self-reporting the incidents to the enforcement staff. Because the institution had compliance systems in place that monitored student-athletes in developmental math, detected violations when they occurred and took swift, meaningful corrective actions, the panel concludes that the institution did not violate NCAA Bylaw 2.8.1.

¹⁰ Although the parties expressed some confusion on whether the new official interpretation on academic misconduct applied, that confusion related to the application of the interpretation as it relates to the three student-athletes in Group II. That allegation was not presented to the panel. Additionally, the parties agreed that regardless of application of the interpretation, the academic fraud violations involving the math instructor and the five student-athletes violated NCAA bylaws under both the former and new official interpretations.

VI. PENALTIES

For the reasons set forth in Sections III and IV of this report, the panel concludes that this case involved Level I violations of NCAA legislation. Level I violations seriously undermine or threaten the integrity of the NCAA Collegiate Model and include any violation that provides or is intended to provide a substantial or extensive advantage. NCAA Bylaw 19.1.1 lists academic fraud as an example of a severe breach of conduct. The panel concludes that the facts of this case - an institutional instructor knowingly completing quizzes, tests and exams for student-athletes - establish a severe breach of conduct that seriously undermines and threatens the NCAA Collegiate Model.

This case involved allegations of academic fraud that occurred during spring 2013 and a failure to monitor. Pursuant to NCAA Bylaw 19.9.1, because the core violations predominated during the spring 2013 semester and the alleged failure to monitor was not linked to any alleged violations that occurred prior that time period, the panel prescribes appropriate penalties utilizing Figure 19-1.

The panel classifies this case as Level I – Standard. To determine the appropriate classification, the panel considered the institution's aggravating and mitigating factors. When reviewing a case under the penalty guidelines, the panel assesses aggravating and mitigating by weight, as well as number. The panel concludes the following factors apply in this case.

Aggravating Factors

- 19.9.3-(e)* Unethical conduct;
- 19.9.3-(f)* Violations were premeditated, deliberate or committed after substantial planning;
- 19.9.3-(h)* Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct;
- 19.9.3-(i)* One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospective student-athlete;
- 19.9.3-(j)* Conduct or circumstances demonstrating an abuse of a position or trust; and
- 19.9.3-(m)* Intentional, willful or blatant disregard for the NCAA constitution and bylaws.

Mitigating Factors

- 19.9.4-(a)* Prompt self-detection and self-disclosure of violation(s);

- 19.9.4-(b)* Prompt acknowledgement of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties;
- 19.9.4-(d)* An established history of self-reporting Level III or secondary violations; and
- 19.9.4-(f)* Exemplary cooperation.

All of the penalties prescribed in this case are independent and supplemental to any action that has been or may be taken by the Committee on Academic Performance through its assessment of postseason ineligibility, historical penalties or other penalties. The institution's corrective actions are contained in the Appendix. After considering all information relevant to the case, the panel finds that the number and nature of the aggravating factors in this case outweigh the mitigating factors. The case, however, does not rise to Level I – Aggravated. The panel prescribes the following:

Level I – Standard Core Penalties (NCAA Bylaw 19.9.5)

1. Probation: Three years from November 19, 2014, through November 18, 2017.
2. Competition limitations: 0.

Pursuant to NCAA Bylaw 19.9.6, the panel does not prescribe a competition penalty (postseason ban). The panel acknowledges that the institution quickly self-detected the violations and immediately declared the involved student-athletes ineligible, preventing any from competing while ineligible. The panel also notes the violations did not involve any athletics personnel.

3. Financial penalty: The institution shall pay a fine of \$5,000 plus two percent of the institution's football program's operating budget to the NCAA.
4. Scholarship reduction: 14.23 percent reduction (9 equivalencies) in football financial aid awards.

NCAA Bylaw 19.5.6.2 limits institutions participating in championship subdivision football to 63 equivalencies annually. The institution shall be limited to 60 equivalencies for the 2015-16, 2016-17 and 2017-18 academic years. Generally, the committee prescribes scholarship reductions annually; however, given the totality of circumstances in this case, the committee prescribes the reduction to be aggregated over the probationary period.

5. Show cause: Five-year show-cause order for the math instructor for positions with responsibilities in a member institution's athletics department.

The math instructor knowingly participated in academic fraud violations when she obtained five student-athletes usernames and passwords, logged in to their math courses and completed online quizzes, tests and exams. The panel concludes these actions undermined and threatened the NCAA Collegiate Model and were intended to provide the student-athletes with a substantial advantage. Further, because she was in a position of authority and participated in wrongful conduct, the panel elevates her violation to Level I-aggravated.

Therefore, the math instructor will be informed in writing by the NCAA that, due to her unethical conduct and involvement in violations of NCAA legislation, she will be under a five-year show-cause order from November 19, 2014, through November 18, 2019. If she secures a position with a member institution with responsibilities in the institution's athletics department during the time period of her show-cause order, upon employment she must inform that institution's athletics department that she is under a five-year show-cause order. In this circumstance, the involved institution shall be required to appear before a panel to consider whether the member institution shall be subject to the show-cause order set forth in NCAA Bylaw 19, which could limit the individual's ability to perform responsibilities in the institution's athletics department for the designated period of time.

6. Head coach restrictions: N/A.

Pursuant to NCAA Bylaw 19.9.6, because the violations at issue did not involve athletics staff members or staff members from the institution's football program, the panel does not prescribe restrictions applicable to the head football coach.

7. Recruiting visit restrictions: N/A.

Pursuant to NCAA Bylaw 19.9.6, because the violations at issue did not involve athletics staff members or staff members from the institution's football program, the panel does not prescribe recruiting restrictions on the football program.

Level I – Standard Additional and Administrative Penalties (NCAA Bylaw 19.9.7)

8. Public reprimand and censure.

Additionally, during this period of probation, the institution shall implement the following standard administrative penalties and measures:

9. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct the coaches, the faculty athletics representative, all athletics department personnel, student-athletes and all institutional staff members with responsibility for the certification of student-athletes' eligibility for admission, financial aid, practice or competition.

10. Submit a preliminary report to the Office of the Committees on Infractions by January 15, 2015, setting forth a schedule for establishing this compliance and educational program.
11. On September 1 during each year of probation, file with the Office of the Committees on Infractions an annual compliance report emphasizing compliance with academic integrity standards. The report must also include documentation of the institution's compliance with the penalties adopted and prescribed by the panel.
12. Inform all prospective student-athletes in the football program sports that the institution is on probation for three years and the violations committed. If a prospective student-athlete in football 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.
13. 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 athletics department's main webpage. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the major infractions case; and (iii) give members of the general public a clear indication of what happened in the major infractions case to allow the public (particularly prospective student-athletes and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient. The institution may meet its responsibility in a variety of ways.
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.

Notification of Regional Accrediting Agency (NCAA Bylaw 19.9.10)

15. In accordance with Bylaw 19.9.10, the NCAA president shall forward a copy of the public infractions report to the appropriate regional accrediting agency.
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The committee 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, prescribing more severe penalties or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Carol Cartwright

Thomas Hill

Roscoe Howard, Jr.

Greg Sankey

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Rodney Uphoff (Chief Hearing Officer)

APPENDIX

CORRECTIVE ACTIONS

(As set forth in the institution's June 16, 2014, Response to the Notice of Allegations)

1. The math instructor is no longer employed at Weber State. If she had not resigned abruptly upon learning of the developmental math investigation, her employment would have been terminated.
2. Developmental math has implemented the following changes to improve security:
 - a. All testing has been turned over to testing services;
 - b. A new process has been developed so that student employees are not aware of the "blind" password used to access exams;
 - c. All proctoring is now done by proctors who are trained by and work for testing services;
 - d. Testing is now restricted by IP address;
 - e. All testing must be completed in a campus testing center or by authorize[d] distance education proctors;
 - f. Faculty can no longer proctor tests in classrooms.
3. At the conclusion of each semester, the athletics graduate assistant responsible for monitoring the program of student-athletes in developmental math courses will now identify student-athletes who make significant progress at the end of a semester to check for potential improprieties. Athletics will ask that someone from the developmental math faculty review gradebook and tracker records for any student-athletes the athletics graduate assistant identifies.
4. The graduate assistant's job description will be amended to expressly include the responsibility to monitor student-athletes' academic performance for indications of possible academic fraud.
5. Members of the football staff attended an NCAA Regional Rules Seminar in 2014.
6. Coaches were reminded of the athletics department policy prohibiting them from speaking directly to professors about academic issues involving their student-athletes.
7. The three student-athletes still enrolled at Weber State University were declared ineligible and withheld from competition during the 2013 football season.
8. The student responsibilities section of the University Student Code was amended to add the following examples of cheating to more closely track NCAA language:

- (viii) Knowingly obtaining academic credit for work that is not one's own regardless of the source of the work;
- (ix) Knowingly involved in arranging fraudulent academic credit or false transcripts. WSU Student Code Section IV D 2 a (viii) and (ix) 2014.