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UNIVERSITY OF ALABAMA PUBLIC INFRACTIONS APPEALS COMMITTEE REPORT

OVERLAND PARK, KANSAS--This report is organized as follows:

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III. Penalties Imposed By the Committee on Infractions.

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I. Introduction.

On January 17, 1995, following a lengthy investigation, the University of Alabama, Tuscaloosa, and the NCAA enforcement staff jointly submitted to the Committee on Infractions a summary disposition report under the provisions of NCAA Bylaw 32.6. That report contained a description of two violations in the institution's football program that the institution and enforcement staff agreed had occurred, the corrective actions taken by the university, and the penalties self-imposed and proposed by the institution.

On February 20, 1995, the Committee on Infractions notified the institution and the enforcement staff that it was unable to accept the findings in the summary disposition report. The committee directed the institution and the enforcement staff to reconsider the information provided to the committee to determine the nature of individual responsibility as a factor in the institution's failure to properly investigate and report significant violations of NCAA legislation.

On March 20, 1995, the institution and enforcement staff submitted an amended summary disposition report identifying the individual responsibilities of the head football coach, the director of athletics, the director of compliance and the faculty athletics representative for the athletics certification failures. These four individuals signed and submitted summary disposition agreement forms indicating their agreement with the violations.

On April 24, 1995, the Committee on Infractions notified the institution, the four individuals and the enforcement staff that it had again rejected the findings in the

amended summary disposition report and had determined that the case should be submitted under the official inquiry and hearing procedures as set forth in Bylaws 32.5 and 32.7. Accordingly, on April 28, 1995, the enforcement staff sent a revised official inquiry to the institution, the head football coach, the director of athletics, the director of compliance and the faculty athletics representative. The allegations essentially were the findings acknowledged by the institution and involved individuals in the amended summary disposition report submitted March 20, 1995.

On May 15, 1995, the institution submitted its response to the amended official inquiry. On June 3, 1995, representatives of the institution and the enforcement staff appeared at a hearing before the Committee on Infractions. The head football coach, the director of athletics, the director of compliance and the faculty athletics representative were included among the institution's representatives.

On August 2, 1995, the Committee on Infractions issued Infractions Report No. 120, in which the committee found three violations of NCAA legislation in Alabama's football program. On the basis of these findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [Reference: August 30, 1995, edition of the NCAA Register, page 8.]

After the Committee on Infractions issued its infractions report, the institution and its former faculty athletics representative filed separate timely notices of appeal August 17, 1995. The institution and the former faculty athletics representative submitted additional information in support of their appeals to the Infractions Appeals Committee September 20, 1995. The Committee on Infractions submitted its response in the form of an expanded infractions report October 20, 1995. The institution and the former faculty athletics representative filed rebuttals to the Committee on Infractions' response November 6, 1995.

II. Violations of NCAA Legislation as Determined by the Committee on Infractions.

Violations found by the Committee on Infractions are set forth in Appendix A of this report. The violations were summarized by the committee as follows:

1. A football student-athlete obtained six impermissible deferred-payment loans, totaling \$24,400, that were based on his future earnings as a professional athlete. These loans were facilitated by representatives of the institution's athletics interests. The institution failed to obtain the required documentation for the student-athlete's purchase of disability insurance. These records would have revealed the existence of at least one impermissible loan.

2. The institution lacked institutional control in the review, investigation and communication of information concerning the amateur status of a second football student-athlete. By failing to obtain essential information, corroborate it and share it with one another, the head football coach, director of athletics, director of compliance and faculty athletics representative permitted the student-athlete to participate in 11 regular-season football games when he was ineligible.

3. The institution's faculty athletics representative violated NCAA standards of ethical conduct by providing false and misleading information to the NCAA eligibility appeals staff.

III. Penalties Imposed by the Committee on Infractions.

Prior to the hearing before the Committee on Infractions, the institution took several steps to strengthen its administrative policies and procedures. The institution reduced by four the total number of permissible financial aid awards in football during the 1995-96 academic year, issued a written letter of admonishment to the head football coach and written letters of reprimand to the former director of athletics and the former faculty athletics representative, and disassociated two representatives of the institution's athletics interests. The director of compliance previously had retired.

In addition to the disassociation of the two representatives of the institution's athletics interests, the penalties adopted by the Committee on Infractions are listed in Appendix B of this report. The penalties imposed by the committee were summarized as follows:

1. Public reprimand and censure;
2. Three years of probation;
3. Prohibition from participating in postseason competition in football during the 1995-96 academic year;
4. Reduction by four in the total number of permissible financial aid awards in football during each of the 1995-96 and 1996-97 academic years. (The institution had self-imposed this reduction for the 1995-96 academic year.);
5. Reduction in the number of initial financial aid awards in football by 13 during the 1996-97 academic year, and by nine during the 1997-98 academic year;

6. Forfeiture of 11 regular-season football games in which an ineligible student-athlete participated during the 1993-94 academic year;

7. Requirement that the institution continue to develop a comprehensive athletics compliance education program, with annual reports to the committee during the period of probation;

8. Requirement that the institution send four individuals to an NCAA rules seminar each year of the probation; and

9. Recertification of current athletics policies and practices.

IV. Issues Raised on Appeal.

1. Both the institution and the former faculty athletics representative appealed the finding that the letter to the eligibility staff requesting restoration of a football student-athlete's eligibility "violated NCAA standards of ethical conduct by providing false and misleading information to the NCAA eligibility appeals staff."

2. The institution appealed the following penalties imposed by the Committee on Infractions:

a. The third year of probation;

b. Prohibition from participating in postseason competition in football during the 1995-96 academic year; and

c. Reduction in the number of initial financial aid awards in football by nine during the 1997-98 academic year.

V. Appellate Procedures.

In considering the appeals of the institution and the former faculty athletics representative, the Infractions Appeals Committee reviewed the notices of appeal; the transcript of the institution's June 3, 1995, hearing before the Committee on Infractions; responses submitted by the institution and the former faculty athletics representative; the Committee on Infractions' response in the form of an expanded report; rebuttals submitted by the institution and the former faculty athletics representative; and two amicus filings. The hearing on the appeal was held by the Infractions Appeals Committee November 16, 1995, in Atlanta, Georgia. The president, president's executive assistant (who also serves as the interim faculty athletics representative), interim director of athletics, university general counsel and independent legal counsel appeared on behalf of the institution. The former faculty athletics representative appeared through legal counsel and was available upon call by the Infractions Appeals Committee. The chair of the Committee on

Infractions, another member of that committee and the administrator for the committee appeared on behalf of the Committee on Infractions.

The chair of the Infractions Appeals Committee recused himself from this matter after the notices of appeal were filed because he is being represented in an unrelated personal legal matter by a member of the same law firm with which the institution's independent legal counsel is associated. The chair took no part in the consideration or decision of the appeals. In his absence, the hearing before the Infractions Appeals Committee was chaired by another member of the committee.

In the course of the hearing before the Infractions Appeals Committee, questions and concerns were voiced about the summary disposition process and its application in this instance. That subject will be addressed in Section No. VI-C of this report.

Following the hearing, the parties and all staff were excused. The Infractions Appeals Committee then deliberated and reached its decision.

VI. Infractions Appeals Committee's Resolution of Issues Raised on Appeal.

A. Appeal of Finding. Although phrased somewhat differently, the institution and the former faculty athletics representative urged the Infractions Appeals Committee to set aside the unethical conduct finding on each of the three grounds specified in Bylaw 32.10.2.

1. That a procedural error affected the reliability of the information that was used to support the finding; specifically, that no notice was given that Bylaw 10.1-(d) (unethical conduct) was at issue and, as a result, there was no opportunity to present a defense to such a charge.

2. That the facts found by the Committee on Infractions did not constitute a violation of the Association's rules; specifically, that the committee's finding did not state that the former faculty athletics representative acted "knowingly" and, absent such a finding, there was no violation of Bylaw 10.1-(d).

3. That the finding clearly was contrary to the evidence presented to the committee.

The Infractions Appeals Committee first considered the assertion that a procedural error -- lack of notice -- affected the reliability of the information that was used to support the finding. It is agreed that the former faculty athletics representative never was formally charged with a possible violation of Bylaw 10.1-(d). The summary disposition reports submitted by the institution and the enforcement staff to the Committee on Infractions January 17 and March 20,

1995, did not include an allegation of an unethical conduct violation. To the contrary, the institution and the enforcement staff reported that the evidence did not support a conclusion that the actions of university officials were willful or intentional. The revised official inquiry that was sent by the enforcement staff April 28, 1995, set forth allegations that essentially were the findings set forth in the amended summary disposition report submitted March 20, 1995. That revised official inquiry, which was the basis for the Committee on Infractions' hearing June 3, 1995, did not allege an ethical conduct violation. At no point during that hearing were the parties specifically advised that a possible unethical conduct violation by the former faculty athletics representative or any other individual was at issue. The first unequivocal statement that this case included such a violation was made by the Committee on Infractions in its August 2, 1995, Infractions Report.

The Committee on Infractions asserted that it had provided notice that this case could result in an unethical conduct finding. It pointed to several communications in which it advised the parties that it was concerned about individual responsibility for the violations agreed upon in the summary disposition reports, that the committee's authority to find violations of NCAA rules is not limited to allegations in an official inquiry, and that the committee is empowered under Bylaws 19.5.3 (new findings) and 32.7.5.6 (scope of inquiry) to find violations resulting from information developed or discussed during a hearing, particularly those that relate to compliance with the principles of ethical conduct and institutional control. The Committee on Infractions also noted that member institutions and their officers and employees are charged with knowledge of NCAA regulations, including those cited.

Counsel for the institution and the former faculty athletics representative questioned the adequacy of the notice relied on by the Committee on Infractions. They noted that a representative of the institution and a representative of the enforcement staff made a specific inquiry to the chair of the Committee on Infractions as to the basis for the committee's February 20, 1995, rejection of the initial summary disposition report and were told that the "letter was self-explanatory." That response was not inappropriate. As discussed in Section No. VI-C of this report, the Committee on Infractions is an adjudicatory body. It is not an investigative or charging body; however, its response in this instance to the request for clarification, though not inappropriate, was not sufficient to give adequate notice of a possible ethical conduct violation. Counsel for the institution and the former faculty athletics representative emphasized that the communications from the Committee on Infractions referred to in the preceding paragraph also encouraged parties to limit their presentations to the allegations in the official inquiry. In this case, as previously noted, the official inquiry did not include an unethical conduct allegation. Also, the Committee on Infractions' prehearing expression of concern regarding individual responsibility referred to four individuals, with no indication that the former faculty athletics representative might be singled out as the subject of an unethical conduct finding.

The NCAA is required by Constitution 2.7.2 to provide "fair procedures in the consideration of an identified or alleged failure in compliance." Numerous provisions in Bylaw 19 (enforcement) and in Bylaw 32 (enforcement policies and procedures) emphasize the importance of notice. Bylaw 19.5.1 specifically requires that:

"A member under investigation for major violations shall be given the following:

"(a) Notice of any specific charges against it and the facts upon which such charges are based, and

"(b) An opportunity to appear...to answer such charges by the production of evidence."

Although the NCAA is not bound by the due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution, there was agreement by all parties present at the Infractions Appeals Committee's hearing that the enforcement program, as a matter of policy, should provide those protections that generally are necessary to fairness. That policy is reflected in Constitution 2.7.2 and Bylaws 19 and 32. Notice and an opportunity to defend are especially important in cases involving a possible violation of Bylaw 10 (ethical conduct). A finding that an individual's action or inaction constitutes unethical conduct under Bylaw 10.1 is, in and of itself, a severe sanction. If an individual is to be found in violation of Bylaw 10.1, he or she must first be given notice of the specific charge and an opportunity to appear and answer that charge by the production of evidence. The various communications from the Committee on Infractions to the institution and to the former faculty athletics representative in this case did not include actual notice of a specific Bylaw 10.1-(d) charge. The references by the Committee on Infractions to Bylaws 19.5.3 and 32.7.5.6 and the obligation of institutional staff members to be knowledgeable about NCAA legislation, including those bylaws, did not remedy that absence of actual notice of a specific charge.

The findings by the Infractions Appeals Committee regarding the effect and application of Bylaws 19.5.3 and 32.7.5.6 are limited to the facts of this case. In other situations that do not involve a failed summary disposition effort and a subsequent finding of a Bylaw 10.1-(d) violation, these "new findings" bylaws will be applied as written.

For the reasons stated, the Infractions Appeals Committee concludes that in the present case, a procedural error (i.e., lack of adequate notice) affected the reliability of the information that was used to support the finding that the institution's faculty athletics representative violated NCAA standards of ethical conduct by providing false and misleading information to the NCAA eligibility appeals staff. For that reason, it hereby vacates that finding.

Having vacated the finding, the Infractions Appeals Committee does not find it necessary to decide the questions of whether the facts found by the Committee on Infractions constituted a knowing violation of NCAA rules and whether the committee's finding clearly was contrary to the evidence presented to it.

B. Appeal of Penalties. In the summary disposition reports submitted by the institution and the enforcement staff to the Committee on Infractions, the institution admitted the two violations that ultimately were found by the Committee on Infractions and not appealed by the institution. In those summary disposition reports the institution also proposed, as appropriate penalties for those violations, the following sanctions: public reprimand and censure; probation for one year; report to the Committee on Infractions prior to the end of the probationary period; disassociation of specified representatives of the institution's athletics interests; written admonishments to the head football coach, the director of athletics and the faculty athletics representative; and a limitation of 81 total football grants-in-aid during the 1995-96 academic year. That proposal was part of the summary disposition reports that were rejected by the Committee on Infractions, which directed that the case be submitted under the official inquiry and hearing procedures of Bylaws 32.5 and 32.7.

Following the hearing before the Committee on Infractions, the committee imposed penalties that were more severe in several respects than those proposed early by the institution, as follows:

1. Three years probation rather than one;
2. Limitation of 81 on the total number of financial aid awards in football for two years (1995-96 and 1996-97) rather than one year (1995-96);
3. A reduction in the number of initial financial aid awards in football as follows:
 - a. 1996-97 -- a reduction of 13 awards; and
 - b. 1997-98 -- a reduction of nine awards.
4. Forfeiture of all 1993-94 football contests in which an ineligible student-athlete participated.

The institution appealed the penalties imposed by the Committee on Infractions on the ground that they are excessive and inappropriate based on all the evidence and circumstances. However, as previously noted, the institution limited its appeal to the following penalties:

1. The third year of probation;

2. Prohibition from participation in postseason competition in football during the 1995-96 academic year; and

3. Reduction in the number of initial financial aid awards in football by nine during the 1997-98 academic year.

The institution and the Committee on Infractions were in agreement "that the NCAA membership approved the current penalty structure, including the presumptive penalties, to provide the committee greater flexibility in imposing penalties for each infractions case." In this case, the committee applied some, but not all, of the presumptive penalties. The institution and the Committee on Infractions were not in agreement regarding the severity of the penalties imposed by the committee.

The Committee on Infractions described this case as "extremely unique" because the admitted lack of institutional control resulted from failures on the part of the head football coach, the director of athletics, the compliance officer and the faculty athletics representative. It characterized the case as one that "demonstrates the consequences of a distressing failure of institutional control," noting that "had the institution acted proactively, the violations might have been resolved in a timely manner" rather than evolving into a major infractions case. In the judgment of the committee, this "distressing failure" warranted the sanctions imposed.

The Committee on Infractions also argued that the penalties should stand even if the finding of unethical conduct on the part of the former faculty athletics representative is overturned on appeal. The committee stated in its response to the appeals that:

"[T]hose penalties were imposed in direct response to the lack of institutional control and the competitive advantage described in Finding II-B."

The institution acknowledged that this case involved a serious breakdown in institutional control but pointed to the conclusion reached jointly by the institution and the enforcement staff that the evidence did not support a conclusion that the mistakes were willful or intentional, or that they represented a systemic absence of institutional control. In the view of the institution, the sanctions imposed by the Committee on Infractions would be appropriate in a case involving willful violations or malfeasance, but not in a case such as this involving negligence or nonfeasance.

In determining whether the specific penalties imposed in a case are "excessive or inappropriate," the Infractions Appeals Committee must consider factors such as the nature, number and seriousness of the violations; the conduct and motives of the individuals involved in the violations; corrective action taken by the institution; proportionality of the penalty or penalties imposed; institutional

cooperation in the investigation; the impact of penalties on innocent student-athletes and coaches; and the purposes of the NCAA enforcement program. In its earlier decisions, such as those involving appeals from the University of New Mexico and the University of Mississippi, this committee considered those factors and upheld severe penalties imposed by the Committee on Infractions. Those penalties included probationary periods that exceeded the two-year probationary period specified in Bylaw 19.6.2.1 as one of the presumptive penalties for a major violation. Considering this case in the context of those earlier decisions, the committee notes that those cases involved numerous or repeated violations, active participation of head coaches or other staff members in those violations, violations that were flagrant and deliberate and violations of recruiting rules that were intended to provide the institution a competitive advantage. The failure of institutional control in this case, while serious, did not present those elements. Also, the institution in this case took appropriate corrective action and cooperated fully in the investigation, as seen in its efforts to resolve the case through the summary disposition process.

After weighing all of these considerations, the Infractions Appeals Committee concludes that the third year of probation (1997-98) and the reduction in the number of initial financial aid awards in football by nine during the academic year (1997-98) are excessive and inappropriate. It, therefore, sets aside the third year of probation and the 1997-98 limitation on initial financial aid awards.

The Infractions Appeals Committee also concludes that the third penalty appealed by the institution -- prohibition from participation in postseason competition in football during the 1995-96 academic year -- is neither excessive nor inappropriate. Bylaw 19.6.2.1-(f) provides that one of the presumptive penalties for a major violation shall be:

"Sanctions precluding postseason competition in the sport, particularly in those cases in which:

"(1) Involved individuals remain active in the program;

"(2) A significant competitive advantage results from the violation(s); or

"(3) The violation(s) reflect a lack of institutional control."

Any one of these factors would be adequate to warrant a one-year prohibition on postseason competition. In this case, all three factors were present.

Except as otherwise provided in this report, the penalties imposed by the Committee on Infractions remain in full force and effect.

C. Summary Disposition Process. As indicated in Section No. V of this report, questions and concerns regarding the summary disposition process, and its application in this case, were voiced during the hearing before the Infractions Appeals Committee. Most of those questions and concerns involved the role and function of the enforcement staff and the Committee on Infractions. The Infractions Appeals Committee's response to those questions and concerns, while not necessary to its disposition of this appeal, is intended to clarify the issues that might otherwise discourage continued use of the summary disposition process by member institutions.

Bylaw 32.6 (summary disposition and expedited hearing) was adopted by the NCAA membership to provide an alternative procedure for treating major violations that would eliminate the need for a full hearing before the Committee on Infractions. Since the summary disposition process was adopted, 45 percent of all major infractions cases have been resolved as summary disposition cases. Under Bylaw 32.6.1.4, the Committee on Infractions, in each summary disposition case, must decide whether to approve the findings developed in the course of an investigation conducted jointly by the institution and the enforcement staff. This case was the first case in which the committee did not accept the findings in the summary disposition report and directed that the case be presented under the official inquiry and hearing procedures of Bylaws 32.5 and 32.7.

Bylaw 32.6.1.4 reflects the basic policy of the NCAA enforcement process that the authority to investigate and prosecute and the authority to adjudicate should not be vested in the same entity. Thus, the enforcement staff is authorized to investigate and charge and the Committee on Infractions is authorized to adjudicate. In the summary disposition process, the enforcement staff investigates in a cooperative endeavor with the institution and involved individuals in an effort to develop a report that sets forth an agreed upon statement of findings. If the Committee on Infractions decides that it cannot accept those findings, it cannot direct the enforcement staff to make different or additional findings nor can it usurp the enforcement staff's authority and make different or additional findings on its own motion. Under Bylaw 32.6.1.4, it can recommend that the enforcement staff and the institution reconsider the agreed upon statement of findings or it can direct that the case be presented under the official inquiry and hearing procedures.

In the present case, the regulations were not administered so as to provide the institution and the former faculty athletics representative with the notice of the ethical conduct violation required by other NCAA policies and legislation. Nonetheless, in the judgment of the Infractions Appeals Committee, the summary disposition and expedited hearing process provided by Bylaw 32.6 provides a beneficial alternative to the official inquiry and hearing procedures. Such a process is consistent with the NCAA policy of separating prosecutorial and adjudicative powers in the NCAA enforcement process, has worked well, and its use, when appropriate in future cases, is encouraged.

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