

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

February 20, 2018

Decision No. 473

University of Louisville

Louisville, Kentucky

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

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I. INTRODUCTION.

The University of Louisville appealed to the NCAA Division I Infractions Appeals Committee specific penalties as determined by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by the University of Louisville (hereinafter referred to as Louisville).

II. BACKGROUND.

On June 15, 2017, the Committee on Infractions issued Infractions Decision No. 473 in which the committee found violations of NCAA legislation in the men's basketball program. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing recruiting and impermissible extra benefits.

After the Committee on Infractions issued its decision, Louisville filed a timely Notice of Appeal June 30, 2017. A written appeal was filed August 9, 2017. The Committee on Infractions filed its Response October 13, 2017. Louisville filed its Rebuttal to the Committee on Infractions Response October 31, 2017. The case was considered by the Infractions Appeals Committee December 13, 2017 (see Section VIII below).

III. PARTIES' AGREED-UPON FACTUAL BASIS, VIOLATIONS AND VIOLATION LEVELS OF NCAA LEGISLATION.

See Committee on Infractions decision Page Nos. 1 through 13. A copy of the infractions decision may be accessed via the NCAA Legislative Services Database for the Internet (LSDBi) at the following link: <https://web3.ncaa.org/lstdbi/>.

IV. REVIEW OF CASE BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision Page Nos. 13 through 28. A copy of the infractions decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lstdbi/>.

V. CORRECTIVE ACTION TAKEN AND PENALTIES (PROPOSED OR SELF-IMPOSED) BY THE UNIVERSITY [AND CONFERENCE].

See Appendix One in the Committee on Infractions decision for appellant. A copy of the infractions decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lstdbi/>.

VI. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for appellant Page Nos. 21 through 28. A copy of the infractions decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lbdbi/>. In this case, penalties VI -3 and VI-12 were appealed:

Financial penalties (VI-3): The institution shall pay a financial penalty of \$5,000 (institution imposed). The former operations director knew that his actions violated NCAA legislation. The student-athletes who participated in the striptease dances, prostitution and "tipping" of the strippers became ineligible for competition. They knew or should have known that their actions were contrary to NCAA legislation. Therefore, consistent with former Bylaw 19.5.2-(i) and Bylaw 31.2.2.4, the IAC's report in *Purdue University* (2000), IAC Report No. 306 in *University of Memphis* (2010) and IAC Report No. 414 in *Syracuse University* (2015), the institution shall return to the NCAA all of the monies it has received to date through conference revenue sharing for its appearances in the 2012, 2013, 2014 and 2015 NCAA Men's Basketball Tournaments. Future revenue distributions that are scheduled to be provided to the institution from those tournaments shall be withheld by the conference and forfeited to the NCAA. A complete accounting of this financial penalty shall be included in the institution's annual compliance reports and, after the conclusion of the probationary period, in correspondence from the conference to the Office of the Committees on Infractions.

Vacation of records (VI-12): The COI has not previously dealt with a case like this. A team staff member arranged striptease dances and acts of prostitution for enrolled student-athletes and prospects who eventually enrolled at the institution. Some of the prospects were minors. By his actions, the former operations director rendered those student-athletes and prospects ineligible for competition. The violations were serious, intentional, numerous and occurred over multiple years. Therefore, pursuant to former Bylaw 19.5.2-(h) and Bylaw 31.2.2.3, and consistent with IAC Report No. 306 in *University of Memphis* (2010) and IAC Report 414 in *Syracuse University* (2015), the institution shall vacate all regular season and conference tournament wins in which ineligible student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition through either the student-athlete reinstatement process or through a grant of limited immunity. Further, if any of the student-athletes competed in the NCAA Division I Men's Basketball Championships at any time they were ineligible, the institution's participation in the championships shall be vacated. The individual records of the ineligible student-athletes shall also be vacated. Further, the institution's records regarding men's basketball, as well as the record of the head coach, will reflect the vacated records and will be recorded in all publications in which men's basketball records are reported, including, but not limited to, institutional media guides, recruiting material, electronic and digital media plus institutional, conference and NCAA archives. Any institution which may subsequently hire the head

coach shall similarly reflect the vacated wins in his career records documented in media guides and other publications cited above. Head coaches with vacated wins on their records may not count the vacated wins to attain specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to these vacated contests shall be removed from athletics department stationery, banners displayed in public areas and any other forum in which they may appear. Any trophies or other team awards attributable to the vacated contests shall be returned to the Association.

To ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected in official NCAA publication and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA media coordination and statistics staff and appropriate conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the NCAA media coordination and statistics staff a written report detailing those discussions. This document will be maintained in the permanent files of the NCAA media coordination and statistics department. This written report must be delivered to the NCAA media coordination and statistics staff no later than 45 days following the initial infractions decision release or, if the vacation penalty is appealed, at the conclusion of the appeals process. A copy of the written report shall also be delivered to the Office of the Committees on Infractions (OCOI) at the same time.

VII. ISSUES RAISED ON APPEAL.

In its written appeal, Louisville asserted that the Committee on Infractions abused its discretion when prescribing penalties VI-3 and VI-12.

VIII. APPELLATE PROCEDURE.

In considering Louisville's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the transcript of Louisville's June 15, 2017, hearing before the Committee on Infractions and the submissions by Louisville and the Committee on Infractions referred to in Section II of this decision.

The oral argument on the appeal was held by the Infractions Appeals Committee December 13, 2017. Louisville was present and represented by its president, director of athletics, general counsel, outside consultant and two outside counsel representatives. The Committee on Infractions was represented by the appeals coordinator for the Committee on Infractions, the managing director of the Office of Committees on Infractions (via teleconference) and two associate directors of the Office of Committees on Infractions. Also present were the managing director of enforcement, associate directors of enforcement (one via teleconference) and the deputy general counsel for the NCAA. There was one silent observer on behalf of the former director of men's

basketball operations. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

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

In reviewing this case, a penalty prescribed by the hearing panel, including determinations regarding the existence and weighing of any aggravating or mitigating factors, shall not be set aside on appeal except on a showing by the appealing party that the hearing panel abused its discretion. The hearing panel determines the credibility of the evidence. [University of Mississippi, Public Infractions Appeals Committee Report, May 1, 1995, Page No. 10].

As we stated in the Alabama State University case:

“...we conclude that an abuse of discretion in the imposition of a penalty occurs if the penalty: (1) was not based on a correct legal standard or was based on a misapprehension of the underlying substantive legal principles; (2) was based on a clearly erroneous factual finding; (3) failed to consider and weigh material factors; (4) was based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational; or (5) was based in significant part on one or more irrelevant or improper factors.” [Alabama State University, Infractions Appeals Committee Public Report, June 30, 2009, Page No. 23].

Louisville challenged the vacation of records from the 2011-12, 2012-13, 2013-14 and 2014-15 academic years, as well as having to return the revenue earned from its appearances in the 2012, 2013, 2014 and 2015 NCAA Men’s Basketball Tournaments. It argued these penalties, based on the participation of student-athletes who were not culpable in the violations, received negligible benefits as a result, and for whom reinstatement would likely have been granted, were excessive and constituted an abuse of discretion by the Committee on Infractions. [Written Appeal, Page Nos. 16, 21]. Louisville also argued the Committee on Infractions did not consider material mitigating factors when determining an appropriate penalty. [Written Appeal, Page No. 44]. Finally, it argued there were sufficient questions of fact related to three student-athletes who competed during the 2011-12 and 2012-13 academic years, such that the vacation of records penalty for those years should be overturned. [Written Appeal, Page No. 57].

The Committee on Infractions argued the vacation of records and financial penalties were based on serious, intentional and numerous violations orchestrated by an institutional staff member for nearly four years. [Committee on Infractions Response, Page No. 8]. It argued the vacation of records for contests involving ineligible student-athletes is routine,

and student-athletes do not have to be culpable for the vacation penalty to be appropriate. Rather, the serious nature of these violations resulted in the participation of ineligible student-athletes, and for this reason the vacation penalty was appropriate and not an abuse of discretion. [Committee on Infractions Response, Page No. 12]. The Committee on Infractions determined the 2011-12 and 2012-13 academic years should not be disaggregated from the overall institutional violation and therefore the penalties from those years should also be upheld. [Committee on Infractions Response, Page No. 14]. With respect to the financial penalties, the Committee on Infractions argued it exercised the appropriate authority under the legislation for the imposition of the same. It argued the financial penalties were particularly appropriate given the nature of the violations at issue in the case leading to the ineligible participation of multiple student-athletes during four men's basketball tournaments. [Committee on Infractions Response, Page No. 24]. The Committee on Infractions argued it appropriately considered the mitigating factors, including the corrective actions taken by the institution, in determining the penalties imposed. [Committee on Infractions Response, Page No. 20]. For these reasons, the Committee on Infractions argued the vacation of records and financial penalties should be upheld. [Committee on Infractions Response, Page No. 3].

In its review of the case, the committee agreed with the Committee on Infractions that the involved student-athletes knew or should have known they were receiving improper benefits in violation of NCAA legislation. In fact, the institution conceded the student-athletes received improper benefits during the oral argument. [Infractions Appeals Committee Oral Argument Transcript, Page Nos. 8, 19-23]. Because the student-athletes received improper benefits, it follows they competed while ineligible, which in turn supports the vacation of records and financial penalties imposed by the Committee on Infractions. In response to the institution's argument that one of the involved student-athletes who competed while ineligible would have been reinstated, it is the committee's position there is no guarantee regarding the reinstatement process. [Georgia Institute of Technology Infractions Appeals Committee Public Report March 9, 2012, Page No. 14]. The institution is not free from punishment now based on an assumption regarding the reinstatement process with respect to other student-athletes at different institutions.

Pursuant to Bylaw 19.9.7-(g), a vacation of records penalty is appropriate when there are ineligible student-athletes involved in competition. The Committee on Infractions has significant discretion to fashion appropriate penalties for the overall infractions at issue in a case. [St. Mary's College of California Infractions Appeals Committee Public Report October 14, 2013, Page No. 6]. While the Committee on Infractions retains discretion to apply (or not apply) the vacation penalty under any circumstances it believes appropriate, this committee has indicated the likelihood of such a penalty is significantly increased when any of the following aggravating factors are present:

1. Academic fraud;

2. Serious intentional violations;
3. Direct involvement of a coach or high-ranking school administrator;
4. A large number of violations;
5. Competition while academically ineligible;
6. Ineligible competition in a case that includes a finding of failure to monitor or a lack of institutional control; or
7. When vacation of a similar penalty would be imposed if the underlying violations were secondary.

[Georgia Tech Infractions Appeals Committee Public Report Page No. 14].

This committee recognizes the factors involved in vacation of records cases continue to evolve and expand. Because this case involved serious and intentional violations, which Louisville agreed were reprehensible and inexcusable [Infractions Appeals Committee Oral Argument Transcript, Page No. 9], direct involvement of an institutional staff member, and a large number of violations, the Committee on Infractions was within its legislated authority to impose the vacation of records penalty. Given the reprehensible nature of the violations, which resulted in ineligible student-athletes competing over a four-year time period, the Committee on Infractions was also within its authority to impose the financial penalties assessed in this case. For this reason, the committee did not find an abuse of discretion in the imposition of the penalties in this case.

Notwithstanding this committee's outcome in this case, we are concerned the Committee on Infractions did not sufficiently articulate how it balanced the mitigating factors, including the institution's self-imposed penalties, with the aggravating factors. A thorough articulation of mitigating and aggravating factors helps the institution appearing before the Committee on Infractions to understand the reasons underlying the penalties imposed as an element of fundamental fairness; it informs the NCAA membership for general deterrence and educational purposes; and helps this committee better evaluate on appeal whether the Committee on Infractions has appropriately weighed all the factors relevant to setting penalties in order to determine whether a penalty imposed is excessive and an abuse of discretion. We consider this component of the Committee on Infractions' decision-making process and the Committee on Infractions' written decision of critical importance. [Florida State University Infractions Appeals Committee Public Report January 5, 2010, Page Nos. 11-12].

X. CONCLUSION.

The penalties are affirmed.

NCAA Infractions Appeals Committee

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