

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

**November 1, 2018**

Decision No. 487

University of Mississippi

Oxford, Mississippi

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

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## **I. INTRODUCTION.**

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

## **II. BACKGROUND.**

The Committee on Infractions issued Infractions Decision No. 487 December 1, 2017, in which the committee found violations of NCAA legislation in the football program.<sup>1</sup> On the basis of those findings of violations, the Committee on Infractions determined that this was a Level I Standard case for Ole Miss and prescribed penalties.

This case centered on violations of NCAA bylaws governing recruiting inducements, unethical conduct, extra benefits, head coach responsibility and institutional control.

After the Committee on Infractions issued its decision, Ole Miss filed a timely Notice of Appeal December 15, 2017. A Written Appeal was filed February 5, 2018. The Committee on Infractions filed its Response April 11, 2018. Ole Miss filed its Rebuttal to the Committee on Infractions' Response April 26, 2018. The case was considered by the Infractions Appeals Committee July 18, 2018 (see Section IX below).

## **III. FACTUAL FINDINGS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.**

See Committee on Infractions decision for Ole Miss Page Nos. 4 through 22. A copy of the decision may be accessed via the NCAA Legislative Services Database for the Internet (LSDBi) at the following link: <https://web3.ncaa.org/lstdbi/>.

## **IV. ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.**

See Committee on Infractions decision for Ole Miss Page Nos. 22 through 51. A copy of the decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lstdbi/>.

## **V. LEVEL III VIOLATIONS.**

See Committee on Infractions decision for Ole Miss Page Nos. 51 and 52. A copy of the decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lstdbi/>.

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<sup>1</sup> This case is the second part of a bifurcated case involving Ole Miss. The first part of the case involved women's basketball and women's track and field.

**VI. CORRECTIVE ACTIONS TAKEN BY THE INSTITUTION AND IDENTIFIED AT THE COMMITTEE ON INFRACTIONS HEARING.**

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

**VII. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.**

See Committee on Infractions decision for Ole Miss Page Nos. 53 through 61. A copy of the infractions decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lcdbi/>. The following penalties in Section VII of the infractions decision were identified on the Notice of Appeal as being appealed:

3. Postseason ban: Ole Miss shall end the 2017 football season with its last regular season game and shall not participate in postseason competition. (Self-imposed.) Ole Miss shall also end the 2018 football season with its last regular season football game and shall not participate in postseason competition.
  
- 5.c. Recruiting restrictions: Ole Miss prohibited all unofficial visits in fall 2017 from September 1 through October 19 and in fall 2016 for five weeks. (Self-imposed.) Additionally, for the full term of probation, Ole Miss shall limit all prospective student-athletes in the sport of football to one unofficial campus visit per academic year.
  
12. Vacation of records. Due to their receipt of impermissible inducements and benefits as described in Section IV, the student-athletes referenced in the violations were rendered ineligible for collegiate competition. Many of them enrolled at, and competed for, Ole Miss. The violations were Level I and Level II, intentional, numerous and occurred over multiple years. Many of the violations involved institutional staff members. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3, and consistent with IAC Report No. 306 in *University of Memphis* (2010) and IAC Report 414 in *Syracuse University* (2015), Ole Miss shall vacate all regular season and postseason 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 a grant of limited immunity. The individual records of the ineligible student-athletes shall also be vacated. Further, Ole Miss's records regarding football, as well as the record of the head coaches, shall reflect the vacated records and be recorded in all publications in which football 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 that may subsequently hire the individuals who served as head coaches when the ineligible participation occurred shall similarly reflect the vacated wins in the head coaches'

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 aid in accurately reflecting all institutional and student-athlete vacations, statistics and records 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, Ole Miss 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.

13. Disassociation: Ole Miss disassociated boosters 2, 6, 7, 8, 9, 10, 11 and 12. It has represented that the disassociation is in accordance with Bylaw 19.9.7-(i) and includes additional restrictions. For boosters 2, 6, 7, 8, 9, 10, the period of disassociation is indefinite and includes exclusion from institutional facilities and home athletics events. Boosters 11 and 12 cooperated at least in part with the institution, which therefore disassociated them for three years. During their three-year disassociation periods, Ole Miss also excluded them from institutional facilities and home athletics events. (Self-imposed.)<sup>2</sup>

Additionally, Ole Miss shall disassociate booster 5 for a period of not less than three years. Pursuant to Bylaw 19.9.7-(i), the disassociation shall include:

- a. Refraining from accepting any assistance from booster 5 that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes;

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<sup>2</sup> Pursuant to the Committee on Infractions Internal Operating Procedures, the Committee on Infractions does not prescribe periods of disassociation for longer than 10 years but does not prohibit institutions from self-imposing a period of disassociation longer than 10 years.

- b. Refusing financial assistance or contributions to Ole Miss's athletics program from booster 5 or his business interests;
- c. Ensuring that no athletics benefit or privilege is provided to booster 5, either directly or indirectly, that is not available to the public at large; and
- d. Implementing other actions that Ole Miss determines to be within its authority to eliminate the involvement of booster 5 in the institution's athletics program.

### **VIII. ISSUES RAISED ON APPEAL.**

In its written appeal and during the oral argument, Ole Miss asserted that the findings of violations IV.G and IV.P should be set aside in that the findings of violations are clearly contrary to the information presented and procedural errors occurred that impacted the determination of the findings of violations. Additionally, Ole Miss asserted that the Committee on Infractions abused its discretion in prescribing penalties VII.3 and VII.5.c.

### **IX. APPELLATE PROCEDURE.**

In considering Ole Miss's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the record and transcripts of the institution's September 11-12, 2017, hearing before the Committee on Infractions and the submissions by Ole Miss and the Committee on Infractions referred to in Section II of this decision.

In its Notice of Appeal, Ole Miss identified that it was appealing several violations [IV.G (recruiting inducements), IV.I (recruiting inducements), IV.J (recruiting inducements), IV.K (recruiting inducements), IV.O (head coach's responsibility) and IV.P (lack of institutional control)]; and penalties [VII.3 (postseason ban), VII.5.c (recruiting restriction – unofficial visits), VII.12 (vacation of records) and VII.13 (disassociation of representatives of athletics interests)]. In a letter dated January 4, 2018, from the chair of the Infractions Appeals Committee, Ole Miss was notified:

“Violation IV-O was found against the head football coach. An institution has standing to appeal only the findings of fact, violations and/or penalties that were found or prescribed on the institution. Therefore, Ole Miss does not have standing to appeal violation IV-O and it will not be reviewed as part of this appeal.

Additionally, Ole Miss identified violations IV-G, IV-I and IV-K. There is not enough information on the Notice of Appeal form to determine whether the Legislative Review and Interpretations Committee's July 29, 2010, interpretation impacts the institution's standing to appeal those violations. When the institution submits its written appeal, the committee will review and notify the institution (and

other parties) as to whether there are any issues related to the institution’s standing to the appeal of violations.”

In its written appeal, Ole Miss only presented arguments related to violations IV.G and IV.P as well as penalties VII.3 and VII.5.c. However, during the oral argument, Ole Miss was asked by the Infractions Appeals Committee chair to confirm whether it was appealing findings of violations IV.I, IV.J and IV.K as well as penalties VII.12 and VII.13. The institution stated that it rested its arguments on the specific issues raised in its papers and made during the oral argument. However, if there were impacts to the other findings of violations and penalties in the Notice of Appeal that would flow from vacation of the findings of violations and penalties addressed in its papers, the institution expected those other findings of violations and penalties to be addressed by the Infractions Appeals Committee. (Infractions Appeals Committee July 18, 2018, Oral Argument Transcript, Pages Nos. 39 and 40)

The oral argument on the appeal was held by the Infractions Appeals Committee July 18, 2018, in Indianapolis, Indiana. The institution was present and represented by its attorney, chancellor, director of athletics, faculty athletics representative, general counsel and senior advisor for university relations. Also present were two outside counsel representatives and the associate commissioner/legal affairs and compliance of the Southeastern Conference. 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, two associate directors of the Office of Committees on Infractions and two externs for the Office of Committees on Infractions. Also present were the vice president of enforcement, director of enforcement, associate director of enforcement and the deputy general counsel of the NCAA. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

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

**REVIEW OF FINDINGS OF VIOLATIONS**

The Infractions Appeals Committee may overturn on appeal factual findings and conclusions that one or more violations occurred only on a showing by the appealing party that:

- a.        A factual finding is clearly contrary to the information presented to the Committee on Infractions;
- b.        The facts found by the Committee on Infractions do not constitute a violation of the NCAA constitution and bylaws; or

- c. There was a procedural error and but for the error, the Committee on Infractions would not have made the finding or conclusion.

“A showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding nor will a showing that such information might have outweighed the information on which the committee based a finding. The Infractions Appeals Committee . . . will set aside a finding only on a showing that information that might have supported a contrary result clearly outweighed the information on which the Committee on Infractions based the finding.” [University of Mississippi, Public Infractions Appeals Committee Report (May 1, 1995) Page No. 10]

**Finding of Violation IV.G: Impermissible Recruiting Inducements (Clothing and Merchandise)**

The Committee on Infractions found that from January 2013 through 2015, assistant coach No. 4 and the assistant athletics director arranged impermissible recruiting inducements for student-athlete No. 13’s family and acquaintances, student-athlete No. 1 and student-athlete No. 15 by referring them to retail store to receive free clothing and free merchandise. [University of Mississippi Committee on Infractions Decision (December 1, 2017) Page Nos. 32 through 35]

The institution argued that finding of violation IV.G, related to the provision of free clothing and merchandise to then prospective student-athletes, their families and acquaintances, is clearly contrary to the evidence presented. (Written Appeal Page No. 35) It presented two arguments:

1. The Committee on Infractions erred in giving credit to witness accounts of student-athlete No. 13’s mother’s former boyfriend, student-athlete No. 1 and student-athlete No. 15, because the institution believed such accounts were biased and inconsistent; and
2. The Committee on Infractions ignored objective documentary evidence showing the witness accounts to be untrue.

Additionally, the institution believed that the Committee on Infractions committed procedural error by denying the institution’s requests to compel an interview with student-athlete No. 15 and to obtain information from enforcement staff from a simultaneous investigation of another NCAA institution which involved student-athlete No. 1. (Written Appeal, Page Nos. 35 through 40)

The Committee on Infractions focused its arguments in three areas. First, that it is the purview of the Committee on Infractions that determines the credibility of the evidence and the institution failed to demonstrate that information that might support a contrary result clearly outweighed the information on which the Committee on Infractions based this finding of violation. (Committee on Infractions Response Page No. 14) Second, there was no procedural error because enforcement may withhold information to protect the integrity of an investigation. (Committee on Infractions Response Page No. 19) And finally, the Committee on Infractions had no authority to compel enforcement to disclose information related to another institution's investigation or compel individuals to participate in interviews with another party. (Committee on Infractions Response Page No. 20)

*Credibility of Witnesses and Documentary Evidence*

The Committee on Infractions must base its decision on information that it determines to be credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs. [Bylaw 19.7.8.3] This committee has been “deferential to the Committee on Infractions in determining the credibility of the evidence before it, specifically in relation to weighing the veracity of individuals before it and is hesitant to overturn such determinations absent a clear demonstration to the contrary.” [The University of Southern Mississippi, Former Head Men's Basketball Coach Infractions Appeals Committee Public Decision (February 2, 2017) Page No. 5]

Additionally, as noted above, “showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding, nor will a showing that such information might have outweighed the information upon which the committee based a finding. The Infractions Appeals Committee . . . will set aside a finding only on a showing that information that might have supported a contrary result clearly outweighed the information on which the Committee on Infractions based the finding.” [Ole Miss Infractions Appeals Committee Public Report (May 1, 1995) Page No. 8]

This committee reviewed the entire record before the Committee on Infractions. Inconsistencies could be found in and between various witness accounts in the case record. If the other witness accounts, that contradicted the accounts relied on by the Committee on Infractions, were considered credible, it could have led a reasonably prudent person to a different interpretation of the facts. However, this committee found that the information presented did not clearly outweigh information upon which the Committee on Infractions relied.

Therefore, the finding of violation IV.G is not clearly contrary to the information presented.

*Procedural Error*

NCAA legislation allows this committee to overturn a finding of violation when procedural error occurred, and it is demonstrated that but for the error, the Committee on Infractions would not have made the finding of violation. As noted earlier, the institution identified as procedural error the failure to compel enforcement staff to provide information and to compel student-athlete No. 1 as well as student-athlete No. 15 and his mother to participate in interviews with the institution.

*Compelling Individuals to Participate in Interviews*

As related to student-athlete No. 15 and his mother, generally, NCAA legislation does not provide the authority to compel individuals to participate in interviews.<sup>3</sup> For student-athlete No. 1, Ole Miss noted that the Committee on Infractions could have included as a condition of him receiving immunity that he had to cooperate with the institution (e.g., participate in an interview conducted by the institution). [Infractions Appeals Committee July 18, 2018, Oral Argument Transcript Page No. 50] In this case, the enforcement staff requested limited immunity for student-athlete No.1 on two occasions related to assisting the enforcement staff in the investigation of new information provided during his interviews with the enforcement staff. [Student-athlete No. 1 Immunity Approval Letters] The immunity requests by the enforcement staff did not include participation in interviews and cooperation with the institution. The enforcement staff has the discretion, as guided by NCAA legislation and Internal Operating Procedures of both the Committee on Infractions and enforcement staff, on how to conduct an investigation.

Therefore, not compelling student-athlete No. 1, student-athlete No. 15 and student-athlete No. 15's mother to participate in interviews with the institution was not procedural error.

*Compelling Enforcement to Disclose Information*

Specifically, the institution requested information related to student-athlete No. 1 receiving \$10,000, on signing day 2015, from an individual connected to a teammate from another NCAA institution. The institution stated that it became aware of this information when student-athlete No. 1 disclosed this information during his testimony at the Committee on Infractions hearing.<sup>4</sup> The institution argued that if it had been aware of who provided the \$10,000 to student-athlete No. 1 prior to the hearing, it could have put forward additional evidence regarding the falsity of student-athlete No. 1's allegations and was prevented from fully investigating and presenting its case. (Written Appeal Page No. 41)

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<sup>3</sup> Bylaws 19.3.6, 19.3.7 and 19.3.8.

<sup>4</sup> Transcript of the Committee on Infractions September 12, 2017, hearing for University of Mississippi at Page Nos. 138 and 144. Post Hearing Response to NOA 100317.pdf.

In an August 16, 2017, letter from the institution to the chief hearing officer, the institution raised three issues: 1) access to all student-athlete No. 1 related investigative materials including those connected to another institution's infractions case; 2) preventing the sharing of case materials with student-athlete No. 1; and 3) coaches' attendance at the hearing.

In an August 18, 2017, letter addressed to the chief hearing officer from the vice president of enforcement, the vice president of enforcement specifically stated:

“...the enforcement staff has shared everything it can and should with all parties. The staff has not withheld or concealed any pertinent information and there are no investigative material in any other file that bears on student-athlete No. 1's credibility.”

The institution's request was denied by the Committee on Infractions in an August 25, 2017, letter from the chief hearing officer. In its appeal, as stated above, the institution argued that the denial of access to all student-athlete No. 1 related investigative materials, including those related to another NCAA institution's infractions case, was procedural error. The institution believed that such materials impacted student-athlete No. 1's claims and credibility.

To demonstrate that a procedural error occurred by failing to share or provide access to information, the institution would have to demonstrate that the information withheld was known by or in the possession of the Committee on Infractions or enforcement staff as well as that the information was pertinent to the case. After reviewing the case record before it, this committee did not find information that would support a determination that prior to disclosure by the student-athlete at the hearing, the Committee on Infractions or enforcement staff were aware or in possession of information showing/revealing the identity of the individual that was reported to have provided money to student-athlete No. 1 on signing day 2015.

Therefore, there was no procedural error related to finding of violation IV.G. Finding of violation IV.G is affirmed.

#### **Finding of Violation IV.P: Lack of Institutional Control**

The Committee on Infractions found that from 2010 through 2015, the institution lacked control of the football recruiting process, football representatives of athletics interests and football student-athletes' use of loaner vehicles from automobile dealerships. [Ole Miss Committee on Infractions Decision (December 1, 2017) Page Nos. 48 through 51]

The institution made several arguments demonstrating that the finding of lack of institutional control was contrary to the evidence presented and that the Committee on

Infractions committed procedural error. First, the institution argued that a lack of institutional control violation requires evidence of a specific institutional failure and that such a failure did not exist in this case. (Written Appeal Page Nos. 23 and 24) Second, the institution described evidence that it believed demonstrated that the institution exercised control over its football program and showed that the finding of violation is clearly contrary to the evidence (e.g., institution’s compliance program including education of coaches and representatives of athletics interests, setting expectations and swiftly taking corrective action). (Written Appeal Page Nos. 24 through 33) Finally, that the Committee on Infractions committed procedural error by considering the findings from the October 7, 2016, University of Mississippi Committee on Infractions decision (bifurcated case), involving women’s basketball and women’s track and field programs, when making this finding of violation. (Written Appeal Page Nos. 33 and 34)

The Committee on Infractions argued there were institutional failings in that multiple staff members engaged in activities that were violations, representatives of athletics interests were not tracked effectively and the system for tracking and detecting the use of loaner vehicles by student-athletes was insufficient. While the Committee on Infractions acknowledged the violations in the women’s basketball and women’s track and field demonstrated the institution’s lack of institutional control, it also stated that the violations in the football program alone were sufficient to demonstrate a lack of institutional control. [Committee on Infractions Response Page Nos. 20 through 25; Ole Miss Committee on Infractions Decision (December 1, 2017) Page No. 51]

There is no standard related to a finding of a lack of institutional control which requires specific elements or components to be present to make such a finding. However, there has been some guidance provided as to when a lack of institutional control may have or may have not occurred. There are generally four broad categories in which the actions and systems of the institution will be reviewed as a part of the lack of institutional control analysis: 1) review of the compliance systems; 2) review of the monitoring systems as well as systems for investigating/reporting violations; 3) review of rules education and training of institution’s staff about compliance; and 4) review of the commitment to compliance as well as the pursuit and reporting of circumstance related to NCAA violations. (1996-97 NCAA Guide to Rules Compliance Principles of Institutional Control) Within each of these broad categories, there is no checklist or certain number of issues in particular categories that is needed for a lack of institutional control violation to occur.

There have been infractions cases where activities that were “hidden” from compliance or done in a covert manner were included in the assessment and contributed to a finding of a lack of institutional control. In the University of Kentucky infractions case, a staff member committed violations “under the radar” of compliance. Yet, the Committee on Infractions considered those activities as contributing to a finding of a lack of institutional control. The Committee on Infractions was concerned by the “widespread nature of these undetected violations—in time, in frequency, and in the number of individuals who had

some knowledge of improper activities—and yet failed to report them to the proper authorities.”<sup>5</sup>

The assessment of whether there has been a lack of institutional control violation is a very fact-specific analysis.

In this case, there were a number of violations in the recruiting process and related to the representatives of athletics interests that occurred over a period of five years:

- Coaching staff directed prospective student-athletes to engage in test fraud. They, also, participated in the provision of impermissible inducements (meals, lodging and merchandise) to prospective student-athletes and their families.
- Football staff members falsified recruiting paperwork or failed to submit the required paperwork.
- The football staff failed to ask pertinent questions of the compliance staff.
- A staff member utilized a secret phone for recruiting purposes.
- A total of 12 representatives of athletics interests were involved in violations. These violations included arranging impermissible inducements and providing impermissible extra benefits. In some cases, the representatives of athletics interests acted at the request of or the knowledge of football staff members. [Ole Miss Committee on Infractions Decision (December 1, 2017) Page Nos. 49 through 51]

Again, for a finding of violation to be clearly contrary to the information presented, there must be more than a showing that the information supports a contrary result. The appellant must demonstrate that the information supporting a contrary result clearly outweighs the information relied on in making the finding. In this case, the violations, as described above,

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<sup>5</sup> The University of Kentucky 2002 infractions case involved a former recruiting coordinator who committed violations “under that radar” of a compliance office that the Committee on Infractions described as having a well-documented record of integrity, thoroughness and competence. [University of Kentucky Committee on Infractions Report (January 31, 2002) Page No. 28] Yet, the committee took into consideration the number and timing of violations when making a finding of a lack of institutional control. The committee expressed concern of “...widespread nature of these undetected violations—in time, in frequency, and in the number of individuals who had some knowledge of improper activities—and yet failed to report them to the proper authorities. ...This concern was compounded by the fact that the activities supporting the majority of these violations were occurring on campus and in the local community where heightened awareness should exist. ...there were simply too many people involved in too many activities for too long a period of time that knew or should have known of rules violated, or at least have known that very questionable practices were occurring and yet nothing was reported.” [Kentucky Committee on Infractions Report (January 31, 2002) Page Nos. 28 and 29]

connect to issues or insufficiencies related to the category of review involving monitoring systems and systems for investigating/reporting violations.

Additionally, the lack of institutional control finding was also connected to the institution's failure to detect the improper use of "loaner" vehicles by two student-athletes. [Ole Miss Committee on Infractions Decision (December 1, 2017) Page No. 50] The Committee on Infractions determined that the institution failed to properly investigate student-athlete No. 13's use of the vehicle, which it believes could have limited his violations and possibly avoided later violation by another student-athlete. [Ole Miss Committee on Infractions Decision (December 1, 2017) Page No. 50]

While the institution may disagree whether this information constitutes a finding of a lack of institutional control, this committee is unable to find information in the case record that clearly outweighed the information on which the Committee on Infractions relied. Therefore, the finding is not clearly contrary to information presented.

Finally, the institution argued that the Committee on Infractions committed procedural error by considering the violations from the bifurcated case related to women's basketball and women's track and field. However, in its decision the Committee on Infractions stated that the activities related to football were sufficient, on their own, for a finding of a lack of institutional control and that the violations in other sports further demonstrated the lack of institutional control. [Ole Miss Committee on Infractions Decision (December 1, 2017) Page No. 51] It is clear from the language of the decision that, in this case, the lack of institutional control finding was based on the violations related to the football program. The Committee on Infractions did not commit procedural error by acknowledging the violations in other sports.

Therefore, finding of violation VI.P is affirmed.

#### REVIEW OF PENALTIES

When reviewing penalties prescribed by the Committee on Infractions, this committee may set aside a penalty on appeal if by prescribing the penalty the Committee on Infractions abused its discretion. 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, Public Infractions Appeals Committee Report (June 30, 2009) Page No. 23]

**Penalty VII.5.c: Additional Restriction on Unofficial Visits**

The institution self-imposed a prohibition on all unofficial visits for five weeks in the fall of 2016 and seven weeks in the fall of 2017.<sup>6</sup> The Committee on Infractions prescribed a penalty related to unofficial visits that limited unofficial visits to one visit per prospective student-athlete per academic year for the full term of the institution's three years of probation. [Ole Miss Committee on Infractions Decision (December 1, 2017) Page No. 56]

The institution argued that the Committee on Infractions abused its discretion by prescribing core penalties related to unofficial visits which extend beyond 13 weeks maximum, as outlined in Figure 19-1 under Level I – Standard – Recruiting Visit Restrictions, without providing an explanation for the departure as required by Bylaw 19.9.6. Further, it argued that the Committee on Infractions failed to consider and weigh the material factors of its self-imposed recruiting restriction penalties. (Written Appeal Page Nos. 19 through 21)

The Committee on Infractions argued that the institution is incorrect to consider penalty VII.5.c as a core penalty prescribed using Figure 19-1. (Committee on Infractions Response Page No. 29) It was not a ban on unofficial visits, but a limitation on the number of unofficial visits. Further, the limiting of the number of unofficial visits was an additional penalty prescribed via Bylaw 19.9.7(l) which would be appropriate given the significant violations resulting from the institution's failure to control its unofficial visit process in football. (Committee on Infractions Response Page No. 30)

In the Ole Miss Committee on Infractions Decision (December 2017), there are two clearly distinct sections, one for the identification of the core penalties prescribed via Bylaw 19.9.5 and the other for identification of additional penalties prescribed via Bylaw 19.9.7. [Ole Miss Committee on Infractions Decision (December 1, 2017) Page Nos. 55 and 59] The limitation on unofficial visits in football was included in the section prescribing core penalties on Page No. 55 of the decision. Therefore, this committee concluded that a plain reading of the decision shows that the additional limitation on the number of unofficial visits to one per prospective student-athlete per academic year was prescribed as a core penalty under Bylaw 19.9.5 and would be subject to requirements of Bylaw 19.9.6.

Bylaw 19.9.6 states that if extenuating circumstances are found, the Committee on Infractions may depart from the core penalties in Figure 19-1, provided the Committee on Infractions explains, in its decision, the basis for its prescription of core penalties different than those set forth in Figure 19-1.

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<sup>6</sup> September 1, 2017, through October 19, 2017.

As stated above, this is a Level I Standard case for the institution. [Ole Miss Committee on Infractions Decision (December 1, 2017) Page No. 3] For cases with this classification, Figure 19-1 outlines penalties related to unofficial visits as seven to 13-week *ban* on unofficial visits (no scheduled unofficial visits and no complimentary tickets). (emphasis added) As related to the unofficial visits, prescription of penalties other than a ban, for example, a limitation on the number of unofficial visits, would be a departure from the penalty options found in Figure 19-1.

Per Bylaw 19.9.6, the Committee on Infractions should have included in its decision an explanation of the basis for prescribing penalties different than those in Figure 19-1. The Committee on Infractions failed to include such an explanation in its decision.<sup>7</sup> Without such an explanation, as required by Bylaw 19.9.6, the Committee on Infractions has misapplied the NCAA legislation in prescribing the additional limitation of the number of unofficial visits, penalty VII.5.c. The Committee on Infractions abused its discretion when prescribing penalty VII.5.c in that it was based in significant part on one or more irrelevant or improper factors (e.g., failure to accurately apply the NCAA legislation related to the prescription of infractions core penalties).

Therefore, the Committee on Infractions abused its discretion and the penalty limiting the number of unofficial visits during the probation period in penalty VII.5.c is vacated.

### **Penalty VII.3: Postseason Ban Imposed for Additional Year**

The institution self-imposed a one-year postseason ban for its football program and the Committee on Infractions prescribed an additional one-year postseason ban for the program. [Ole Miss Committee on Infractions Decision (December 1, 2017) Page No. 56]

The institution argued that the Committee on Infractions abused its discretion by prescribing an additional year of a postseason ban, in that it failed to provide an explicit reason for the imposition of this penalty; it assigned significant weight to an impermissible aggravating factor, history of Level I, Level II or other major violations by the institution; and the ban is inconsistent with and excessive given precedent. (Written Appeal Page Nos. 9 through 19)

The Committee on Infractions argued that it did not abuse its discretion by prescribing an additional year of a postseason ban in that this case included multiple level I violations

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<sup>7</sup> The following infractions decisions demonstrate how the Committee on Infractions has articulated departure from Figure 19-1 and the rationale for the departure: Southeast Missouri State University Public Infractions Decision (February 12, 2016), Weber State University Public Infractions Decision (November 19, 2014), Florida A&M University Public Infractions Decision (November 20, 2015) and Alcorn State University Public Infractions Decision (October 19, 2016).

over five years involving multiple staff and representatives of athletics interests. Further, a second year of a postseason ban falls squarely with the penalty guidelines and would not require an explicit explanation. (Committee on Infractions Response Page Nos. 25 through 28)

In this case, the Committee on Infractions classified this case as Level I standard for the institution. Therefore, the penalty range identified in Figure 19-1 for this case classification is one to two years postseason ban. This committee is “hesitant to delineate any penalty within the appropriate matrix options as an abuse of discretion absent a clearly arbitrary imposition...” [Southern Methodist University Infractions Appeals Committee decision (April 21, 2016) Page No. 4] Further, since the Committee on Infractions did not depart from the penalty options in Figure 19-1, Bylaw 19.9.6 was not triggered and the Committee on Infractions was not required to identify extenuating circumstances for the prescription of the penalty or an explanation for a departure from Figure 19-1. We find nothing in the case record that supports that the prescription by the Committee on Infractions of an additional year of postseason ban was an abuse of discretion.

Therefore, Penalty VII.3 is affirmed.

## **XI. CONCLUSION.**

Findings of violations IV.G and IV.P as well as penalty VII.3 are affirmed. Penalty VII.5.c is vacated.<sup>8</sup>

NCAA Infractions Appeals Committee

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

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<sup>8</sup> According to the Division I Infractions Appeals Committee Policies and Procedures [See 3. b. (2) (d) at Page No. 4], any penalty that is appealed is automatically stayed through the course of the appeal process. This stay is triggered with the filing of the Notice of Appeal by the appellant and ends with the public release of the committee’s decision. Therefore, the appellant’s affirmed penalty VII.3 (additional one-year postseason ban for the football program) shall be applied and Ole Miss shall end 2018-19 football season with its regular season football game and shall not participate in postseason competition.