

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

**March 12, 2020**

Decision No. 519

Florida A&M University

Tallahassee, Florida

## **FLORIDA A&M UNIVERSITY APPEAL DECISION SUMMARY**

### Outcome

Florida A&M University appealed to the NCAA Division I Infractions Appeals Committee the prescription of the following penalty by the NCAA Division I Committee on Infractions.<sup>1</sup>

- Penalty VI.3 - a fine of \$5,000 plus three percent of the institution's total athletics budget.

The Infractions Appeals Committee affirmed penalty VI.3.

### Appellate Procedure

In considering Florida A&M's appeal, the Infractions Appeals Committee reviewed the following: Notice of Intent to Appeal; the record and transcript of the institution's April 19, 2019, expedited hearing before the Committee on Infractions, and the submissions by the institution and the Committee on Infractions.

The oral argument on the appeal was held by the Infractions Appeals Committee November 14, 2019, in Indianapolis, Indiana. The institution was present and was represented by its outside legal counsel, president, director of athletics and the institution's vice president and general counsel. The commissioner of the Mid-Eastern Athletic Conference, to which the institution is a member, was also present during this oral argument. The Committee on Infractions was represented by the appeals coordinator for the Committee on Infractions, the managing director, director and associate director of the Office of Committees on Infractions. The enforcement staff was represented by an associate director of enforcement. Also in attendance were the director of legal affairs and associate general counsel and the vice president of hearing operations. Two externs from the Office of the Committees on Infractions and a current member of the Division I Committee on Infractions attended as observers. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

### Members of the Infractions Appeals Committee

The members of the Infractions Appeals Committee who heard this case were: Jonathan Alger, President at James Madison; Ellen M. Ferris, associate commissioner for governance and compliance at the American Athletic Conference; W. Anthony Jenkins, committee chair and attorney in private practice; Allison Rich, senior associate athletics director and senior woman administrator at Princeton; and David Shipley, law professor and faculty athletics representative at Georgia.

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<sup>1</sup> For the full details of Penalty VI.3, please go to Section VIII of this Infractions Appeals Committee decision or the Florida A&M University Infractions Decision (November 9, 2018) via the NCAA Legislative Services Database for the Internet (LSDBi) by clicking [HERE](#).

## TABLE OF CONTENTS

I.	INTRODUCTION. ....	1
II.	BACKGROUND. ....	1
III.	FINDINGS OF FACT AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. ....	1
IV.	ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. ....	1
V.	APPEALED VIOLATIONS FOUND BY THE COMMITTEE ON INFRACTIONS. ....	1
VI.	LEVEL III VIOLATIONS. ....	1
VII.	CORRECTIVE ACTION TAKEN AND PENALTIES (PROPOSED OR SELF- IMPOSED) BY THE UNIVERSITY [AND CONFERENCE]. ....	2
VIII.	APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS. .....	2
IX.	ISSUES RAISED ON APPEAL. ....	2
X.	APPELLATE PROCEDURE. ....	2
XI.	INFRACTIONS APPEALS COMMITTEE’S RESOLUTION OF THE ISSUES RAISED ON APPEAL. ....	3
XII.	CONCLUSION. ....	7

## **I. INTRODUCTION.**

Florida A&M University appealed to the NCAA Division I Infractions Appeals Committee a specific penalty as determined by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by Florida A&M (hereinafter referred to as Florida A&M or appellant).

## **II. BACKGROUND.**

The Committee on Infractions issued Infractions Decision No. 519, May 21, 2019, in which the committee found violations of NCAA legislation in 12 sport programs. Based on those findings, the Committee on Infractions determined this was a Level I-Aggravated case and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing certification of eligibility of student-athletes and lack of institutional control.

After the Committee on Infractions issued its decision, Florida A&M filed a timely notice of intent to appeal June 5, 2019. A written appeal was filed July 26, 2019. The Committee on Infractions filed its Response August 30, 2019. Florida A&M filed its Rebuttal to the Committee on Infractions Response September 18, 2019. The oral argument was held by the Infractions Appeals Committee November 14, 2019 (See Section X below).

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

See Committee on Infractions decision for Florida A&M Page Nos. 4 through 7. A copy of the decision may be accessed via the NCAA Legislative Services Database for the Internet (LSDBi) by clicking [HERE](#).

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

See Committee on Infractions decision for Florida A&M Page Nos. 7 through 13. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

## **V. APPEALED VIOLATIONS FOUND BY THE COMMITTEE ON INFRACTIONS.**

The appellant did not appeal any of the findings of violations in this infractions case. For the findings of violations found by the Committee on Infractions, see the Committee on Infractions decision for Florida A&M Page Nos. 7 through 13. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

## **VI. LEVEL III VIOLATIONS.**

See Committee on Infractions decision for Florida A&M Page Nos. 13 and 14. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

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

See Committee on Infractions decision for Florida A&M Appendix One. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

**VIII. APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.<sup>2</sup>**

Florida A&M appealed one of the penalties prescribed by the Committee on Infractions. The appealed penalty is:

VI.3. Financial Penalty: Florida A&M shall pay a \$5,000 plus three percent of the total athletics budget fine to the NCAA.

For the other penalties prescribed by the Committee on Infractions, see Committee on Infractions decision for Florida A&M Page Nos. 14 through 19. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

**IX. ISSUES RAISED ON APPEAL.**

In its written appeal, Florida A&M asserted that the Committee on Infractions abused its discretion by prescribing penalty VI.3 (financial penalty), as it relates to institution's requirement to pay \$5,000 plus three percent of the total athletics budget to the NCAA.

**X. APPELLATE PROCEDURE.**

In considering Florida A&M's appeal, the Infractions Appeals Committee reviewed the Notice of Intent to Appeal; the record and transcript of the institution's April 19, 2019, expedited hearing before the Committee on Infractions; and the submissions by the institution and the Committee on Infractions.

The oral argument on the appeal was held by the Infractions Appeals Committee November 14, 2019, in Indianapolis, Indiana. The institution was present and was represented by its outside legal counsel, president, director of athletics and the institution's vice president and general counsel. The commissioner of the Mid-Eastern Athletic Conference, to which the institution is a member, was also present during this oral argument. The Committee on Infractions was represented by the appeals coordinator for the Committee on Infractions, the managing director, director and associate director of the Office of Committees on Infractions. The enforcement staff was represented by an associate director of enforcement. Also in attendance were the director of legal affairs and associate general counsel and the

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<sup>2</sup> The description of the penalty is copied from the Committee on Infractions decision.

vice president of hearing operations. Two externs from the Office of the Committees on Infractions and a current member of the Division I Committee on Infractions attended as observers. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

## **XI. INFRACTIONS APPEALS COMMITTEE’S RESOLUTION OF THE ISSUES RAISED ON APPEAL.<sup>3</sup>**

In reviewing the decision in this case, the Infractions Appeals Committee may vacate a penalty prescribed by a hearing panel of the Committee on Infractions only on a showing by the appealing party that the prescription of the penalty is an abuse of discretion.

As we stated in the Alabama State 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 Report \(June 30, 2009\) Page No. 23](#)]

In this case, the appellant agreed that for a six-year period, the appellant improperly certified the eligibility of 93 student-athletes in 12 sport programs. This improper certification resulted in ineligible student-athletes competing and receiving actual and necessary expenses. The appellant also agreed that failures in the eligibility certification process demonstrated a lack of institutional control over the administration of its athletics department. [[Florida A&M University Infractions Decision \(May 21, 2019\) Page Nos. 2-3](#)] The institution agreed to the level of violations and that three aggravating factors existed in this case.

After the submission and review of the summary disposition report for this infractions case, the panel proposed additional penalties including the prescription of a financial penalty of \$5,000 plus three percent of the appellant’s total athletics department budget. [[Florida A&M Infractions Decision Page Nos. 1 and 2](#)] The appellant contested the proposed financial penalty, an expedited hearing was held, and the panel prescribed the financial penalty which required the appellant to pay a fine of \$5,000 plus three percent of the total athletics budget to the NCAA. [[Florida A&M Infractions Decision Page Nos. 1 and 2](#)]

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<sup>3</sup> In this section of the decision, the cites to other infractions cases and NCAA bylaws will be linked to the full text of the infractions decisions and bylaws in LSDBI.

The appellant made several arguments to explain how the panel abused its discretion when it prescribed the financial penalty in this case, as follows. First, the financial penalty “imposed” by the panel was based on a misapprehension of the underlying substantive legal principles as the panel failed to consider new facts addressed at the expedited hearing. [Written Appeal Page Nos. 3 through 6] Second, the panel failed to consider and weigh material factors when imposing the penalty. [Written Appeal Page Nos. 7 through 13] Finally, the panel’s financial penalty was arbitrary, capricious or irrational. [Written Appeal Page Nos. 14 through 16]

In response to the appellant’s written appeal, the panel argued that the appellant’s case was a serious Level I-Aggravated case with widespread systemic failures in core membership obligations. The panel also argued that at the time the panel considers what aggravating and mitigating factors apply in a case, only factors relevant to the case are applicable. Finally, the panel argued the facts presented in this case do not support the application of any mitigating factors, or a deviation from the core penalties identified in the penalty guidelines in [NCAA Bylaw 19.9.5](#). [Committee on Infractions Response Page Nos. 13 through 17]

#### Determination or Weighing of Mitigating Factors.

The appellant argued that there were “new facts” addressed at the expedited hearing that the panel could have considered when determining whether Bylaw 19.9.4-(i) applied in this case. The first “new” fact, for the appellant, was the panel’s resolution that the case was a Level I-Aggravated case, after the submission of the summary disposition report. The classification of the case had a direct impact on the financial penalty that was prescribed. The appellant argued that had it known that the panel considered this case a Level I-Aggravated, it would have argued different mitigating factors in order for the panel to reconsider the case as a Level I-Standard. [Written Appeal Page Nos. 3 and 4]

The appellant argued that the second new fact, for the panel, was the imposition of the requirement by the State University System of the Florida Board of Governors to be a self-supporting auxiliary program. As such, the money for the fine would have to come from the athletics department’s budget. [Written Appeal Page Nos. 3 and 4] The final “new” fact, for the panel articulated by the appellant, was that the appellant was a grant recipient through the NCAA Accelerating Academic Success Program (AASP), and the financial penalty would have a detrimental effect on the student-athletes’ academic success that has been made at the institution since the AASP grant dollars were received.<sup>4</sup> [Written Appeal Page Nos. 4 and 5]

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<sup>4</sup> In 2015, the appellant was awarded \$675,000 by the NCAA through its Accelerating Academic Success Program. For the past three years, semi-annual payments of \$112,500 have been used to fund a portion of the institution’s summer bridge program for incoming student-athletes, enhance the athletics academic learning center and fund

In reviewing the financial penalty prescribed in this case, the committee considered NCAA bylaws related to penalties and [Figure 19-1](#). [Bylaw 19.9.2](#) states that in order for the panel to determine whether a party is subject to mitigated, aggravated or standard penalties, it must first assess whether any mitigating and/or aggravating factors are present and then weigh those factors to determine the classification of a case. After determining the appropriate classification based on the aggravating and mitigating factors, the panel then prescribes core penalties, as set forth in [Figure 19-1](#). The legislation does not require the panel to reassess the application of mitigating and/or aggravating factors after the prescription of penalties in a case.

Further, the creation of the penalty guideline in [Figure 19-1](#), was designed by the membership to increase the predictability and transparency of the penalties that could be prescribed given the types of violations in an infractions case.<sup>5</sup> This committee believes the appellant knew or should have known the possible penalties when it agreed that this case should be classified as Level I.<sup>6</sup>

We find that there was no abuse of discretion when the panel did not reassess the mitigating factors after concluding that this infractions case was a Level I-Aggravated case.

#### Consideration of Case Precedent and the Prescription of Penalties.

The appellant argued that the Committee on Infractions failed to consider and weigh the stark contrast between the financial penalties prescribed here and the financial penalties prescribed in recent and similar cases. [Written Appeal Page Nos. 7 through 12] The appellant argued that since 2016, a total of nine Division I infractions cases have been processed concerning eligibility cases which demonstrate that “The COI has never imposed a financial penalty of this magnitude *in any other infractions case*, much less an eligibility certification case involving a limited resource institution.” [Written Appeal at Exhibit A (Memorandum in Advance of April 19, 2019, Expedited Hearing on Penalties) Page Nos. 3 through 5] However, the appellant focused its arguments around four cases which it believes had similar fact patterns to this case. [Written Appeal Page Nos. 8 through 13] [[Southern University, Baton Rouge Infractions Decision \(November 16, 2016\)](#); [Alabama A&M University Infractions Decision \(September 11, 2018\)](#); [Morgan State University Infractions Decision \(December 19, 2017\)](#); and [Charleston Southern University Infractions Decision \(October 16, 2018\)](#)].

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additional academic support personnel and student-athlete development initiatives. [Written Appeal, Exhibit A, Page No. 6]

<sup>5</sup> Final Report NCAA Working Group on Collegiate Model – Enforcement October 2012 [Page No. 28].

<sup>6</sup> The appellant appealed only the financial penalty and did not appeal the classification, as Level I-Aggravated.

Although this case may have some similar characteristics to the cases cited by the appellant, there are distinct and significant differences, as well. First, each case cited by the appellant has a different level classification than this case. The level classification of an infractions case identifies the penalty range that could be prescribed by the panel from the penalty guidelines. [[Figure 19-1](#)] Second, the appellant has a history of previous infractions cases, not found in cases cited by the appellant. [[Florida A&M University Infractions Decisions \(February 1, 2006 and November 20, 2015\)](#)]. Third, the cases cited by the appellant did not involve institutions that committed violations while on probation from a previous infractions case. In this case, the violations occurred while the appellant was on probation, as the result of a 2015 infractions case.<sup>7</sup> [[Florida A&M Infractions Decision \(November 20, 2015\) Page No. 9](#)] Finally, in all four of the cited cases, the panel determined that mitigating factors should be applied to the case, and no mitigating factors were applied in this case.

While we recognize there are past cases that demonstrate that the panel has deviated from the penalty guidelines<sup>8</sup>, this committee has noted that earlier decisions of the Committee on Infractions in which leniency was granted, or there was a departure from core penalties, do not require the Committee on Infractions to do so in future cases. Given the distinctions between the cited case precedent and this case, the appellant failed to demonstrate that the panel improperly weighed or applied case precedent.

Regarding the prescription of the penalty, the penalty guidelines, as referenced in [Article 19](#) are articulated in such a way to fairly distribute penalties based upon the financial earnings of the institution. In this case, the penalty prescribed by the panel was within the penalty range, as set forth for Level I-Aggravated cases. Additionally, of the penalties that could have been prescribed in this case, the appellant received the lowest penalty for a Level I-Aggravated case.<sup>9</sup>

This committee has previously stated that the Committee on Infractions has significant discretion in its ability to fashion appropriate penalties for an overall infractions case. [[Saint Mary's College of California Infractions Appeals Decision \(October 14, 2013\) Page No. 5](#)] Additionally, it is within the panel's discretion to determine whether a deviation from a core penalty is warranted based on the specific circumstances of any given case. In this case, the penalty prescribed by the panel was within the penalty range as set forth for Level I-Aggravated cases. We are hesitant to deviate from any penalty within the appropriate matrix options as an abuse of discretion absent a clearly arbitrary imposition.

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<sup>7</sup> The probationary period of Florida A&M's 2015 infractions case was November 20, 2015, through November 19, 2019. [[Florida A&M Infractions Decisions \(November 20, 2015\) Page No. 9](#)] In December 2017, the academic and membership affairs staff notified the enforcement staff of progress-toward-degree violations within the institution's APP data review.

<sup>8</sup> [Florida A&M Infractions Decision \(November 20, 2015\)](#), [Alcorn State University Infractions Decision \(October 19, 2016\)](#) and [Morgan State Infractions Decision \(December 19, 2017\)](#).

<sup>9</sup> [Article 19, Figure 19-1](#).

[\[Head Men's Golf Coach Southern Methodist University Infractions Appeal Decision \(April 21, 2016\) Page No. 4\]](#)

For the above reasons, we do not find that the panel abused its discretion in prescribing a financial penalty of \$5,000 plus three percent of the appellant's total athletics budget.

**XII. CONCLUSION.**

Penalty VI.3 is affirmed.

NCAA Infractions Appeals Committee

W. Anthony Jenkins, chair  
Jonathan Alger  
Ellen M. Ferris  
Allison Rich  
David Shipley.