



MOREHEAD STATE UNIVERSITY
PUBLIC INFRACTIONS DECISION

February 10, 2017

I. INTRODUCTION

The NCAA Division I Committee on Infractions (COI) is an independent administrative body of the NCAA comprised of individuals from the Division I membership and the public. The committee decides infractions cases involving member institutions and their staffs.¹ This case involved progress-toward-degree violations in several sport programs at Morehead State University.² A panel of the committee considered this case through the cooperative summary disposition process in which all parties agreed to the primary facts and violations, as fully set forth in the summary disposition report (SDR).³ The panel proposed further penalties to the institution, including probation. Because the institution agreed to the violations and penalties, there is no opportunity to appeal.

The agreed-upon violations in this case centered on multiple years of the institution failing to properly certify student-athletes in multiple sports. Specifically, the institution failed to properly certify 49 student-athletes in nine sports as eligible for competition under progress-toward-degree legislation over four academic years. Because of the improper certifications, the student-athletes competed while ineligible. Forty-eight of the violations were the unintentional result of a flawed software system that the institution used to calculate progress-toward-degree requirements for its student-athletes. One of the violations was the result of human error. There was no lack of institutional control or failure to monitor in the case. There are no unresolved issues of eligibility. The parties agreed the violations are Level II. The panel concurs.

The panel accepts the parties' factual agreements and that violations occurred in this case. After considering the aggravating and mitigating factors, the panel classifies this case as Level II – Mitigated. Because the violations predominated after October 30, 2012, the effective date of the current NCAA Bylaw 19, the new penalty guidelines apply. After considering the aggravating and mitigating factors, the panel prescribes the following principal penalties: one year of probation and a \$5,000 financial penalty.

¹ Infractions cases are decided by hearing panels comprised of NCAA Division I COI members. Decisions issued by hearing panels are made on behalf of the COI.

² A member of the Ohio Valley Conference, Morehead State University has an enrollment of 6,068 students. The institution is a member of the Pioneer Football League for football only. It sponsors eight women's, seven men's sports and one mixed gender sport. This was the institution's second major, Level I or Level II infractions case with the institution most recently appearing before the committee in 2010 for a case involving its men's basketball program.

³ Pursuant to COI Internal Operating Procedure (IOP) 4-15-4, hearing panels may view violations established through the summary disposition process as less instructive than a decision reached after a contested process.

II. CASE HISTORY

This case began in May 2015 when the institution was selected for an NCAA Division I Academic Performance Program (APP) audit by the NCAA Academic and Membership Affairs (AMA) staff. On June 9, 2015, the AMA staff notified the institution that it had not properly certified the eligibility of multiple student-athletes, primarily those who were transfers. The institution subsequently recertified all its current and former student-athletes and discovered 49 student-athletes in nine sports competed while ineligible. Those student-athletes also received actual and necessary travel expenses for practice and competition while ineligible. On January 6, 2016, the institution submitted a self-report to the NCAA enforcement staff detailing the institution's APP review and resulting eligibility violation. The enforcement staff and the institution began a cooperative investigation. The enforcement staff issued a written notice of inquiry on May 2, 2016. The parties submitted the SDR to the COI on December 7, 2016. The hearing panel reviewed the SDR on January 11, 2017, and sent a letter proposing additional penalties to the institution on January 20, 2017. The institution accepted the proposed additional penalties on January 25, 2017.

III. PARTIES' AGREEMENT

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

The parties jointly submitted an SDR that identified an agreed-upon factual basis, violations of NCAA legislation and violation levels. The SDR identified:

- 1. [NCAA Division I Manual Bylaws 14.4.3.2 (2011-12 through 2014-15); 14.11.1 and 16.8.1.2⁴ (2011-12 and 2012-13); 14.4.3.1-(b), 14.4.3.1-(c), 14.4.3.1.7-(b) and 14.10.1 (2013-14); 16.8.1 (2013-14 and 2014-15); and 12.11.1 (2014-15)] (Level II)**

The institution and enforcement staff agree that during the 2011-12 through 2014-15 academic years, the institution improperly certified 49 student-athletes in nine sports as eligible for competition. As a result, the student-athletes competed while ineligible. Specifically:

- a. During the 2011-12 through 2014-15 academic years, 48 student-athletes in the sports of baseball, men's and women's basketball, men's cross country, football, men's golf, women's soccer, softball, and women's tennis competed

⁴ Bylaw 16.8.1.2 was revised and renumbered to 16.8.1, effective August 1, 2013, to state, "an institution may provide actual and necessary expenses to a student-athlete to represent the institution in practice and competition (including expenses for activities/travel that are incidental to practice or competition). In order to receive competition-related expenses, the student-athlete must be eligible for competition." The revision had no substantive effect on the violations in this case because the student-athletes were still ineligible to receive such expenses.

without successfully completing their percentage-toward-degree requirements. As a result, the student-athletes received actual and necessary travel expenses for competition while ineligible. [NCAA Division I Manual Bylaws 14.4.1 and 14.4.3.2 (2011-12 through 2014-15), 14.11.1 and 16.8.1.2 (2011-12 and 2012-13); 14.10.1 (2013-14); 16.8.1 (2013-14 and 2014-15); and 12.11.1 (2014-15)]

- b. During the 2013-14 academic year, one football student-athlete competed without satisfactory completion of at least 18 semester hours since the beginning of the previous fall term and at least six semester hours of degree credit toward his designated degree program during the preceding regular academic term. Additionally, the student-athlete received actual and necessary travel expenses for competition while ineligible. [NCAA Division I Manual Bylaws 14.4.1, 14.4.3.1-(b), 14.4.3.1-(c), 14.4.3.1.7-(b), and 16.8.1 (2013-14)]

B. PARTIES' AGREED-UPON AGGRAVATING AND MITIGATING FACTORS

Pursuant to Bylaw 19.6.2-(g), the parties agreed to the following aggravating and mitigating factors for the institution:

Agreed-upon aggravating and mitigating factors. [Bylaws 19.9.3 and 19.9.4]

- a. Aggravating factors. [Bylaw 19.9.3]
 - (1) A history of Level I, Level II or major violations by the institution, sport program(s) or involved individual. [Bylaw 19.9.3-(b)]
- b. Mitigating factors. [Bylaw 19.9.4]
 - (1) Prompt acknowledgement of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties. [Bylaw 19.9.4-(b)]
 - (2) An established history of self-reporting Level III or secondary violations. [Bylaw 19.9.4-(d)]⁵
 - (3) The violations were unintentional, limited in scope and represent a deviation from otherwise compliant practices. [Bylaw 19.9.4-(g)]

⁵ From 2011-2016, the institution reported 32 Level III and/or secondary violations.

IV. REVIEW OF CASE

The SDR fully detailed the parties' positions in the infractions case and included the agreed-upon primary facts, violations, violation levels and aggravating and mitigating factors. After reviewing the parties' principal factual agreements and respective explanations surrounding those agreements, the panel accepts the parties' SDR and concludes that the facts constitute Level II violations.

The institution's use of a flawed software system to assist in certifying student-athletes led to 48 student-athletes in nine sports being erroneously certified as eligible for intercollegiate athletics competition after failing to meet progress-toward-degree requirements. Additionally, due to human error, one football student-athlete failed to have at least six semester hours during the preceding regular academic term. The institution also permitted these student-athletes to compete and receive travel expenses. The certification errors in this case violated eligibility legislation under Bylaws 12, 14 and 16.

Bylaw 12 governs amateurism and athletics eligibility in college athletics. Bylaw 12.11.1 generally requires a member institution to withhold student-athletes from all competition if a student-athlete is ineligible under the NCAA constitution, bylaws or other regulations.⁶ Additionally, the bylaw permits member institutions to appeal to the Committee on Student-Athlete Reinstatement to restore a student-athlete's eligibility. Bylaw 14 governs eligibility and the academic and general requirements for eligibility. Bylaw 14.4.1 generally requires student-athletes to maintain progress toward a baccalaureate degree or equivalent degree to represent an institution in competition. Bylaws 14.4.3.1-(b) and 14.4.3.1-(c) detail fulfillment of credit-hour requirements for competition eligibility be based on satisfactory completion of certain semester-hours or quarter-hours in a certain period of time. Bylaw 14.4.3.1.7-(b) requires that by the beginning of the third year of enrollment, a student-athlete shall have a designated program of studies leading toward a specific baccalaureate degree. The credits used to meet progress-toward-degree requirements must be degree credit toward the student-athlete's designated degree program. Bylaw 14.4.3.2 generally requires student-athletes fulfill a graduated percentage of degree requirements in a student-athlete's specific degree program beginning in their third year of collegiate enrollment. Finally, Bylaw 16.8.1 permits institutions to provide actual and necessary travel expenses only to eligible student-athletes.

In order to properly certify student-athletes' eligibility under progress-toward-degree requirements, the athletics department obtained academic information from the registrar's office. Prior to the spring of 2008, the registrar's office used a proprietary software system to store and manage such information. The institution specifically designed this system to distinguish courses by degree applicability for NCAA eligibility certification purposes. The system used only degree-applicable credit hours and specifically identified student-athletes' progress-toward-degree hours in a designated degree program and total hours completed. In the spring of 2008, the institution

⁶ Bylaw 14.11.1 (2011-13) was re-codified as Bylaw 14.10.1 in the 2013-14 NCAA Division I Manual. Bylaw 14.10.1 (2013-14) was re-codified as Bylaw 12.11.1 beginning in the 2014-15 NCAA Division I Manual.

decided to upgrade its proprietary software system. The institution then purchased a new software system from an outside provider and was assured that the new software could be enhanced to meet its needs by reproducing the degree-audit functionality of its prior system. After adopting the new platform, the institution believed that the new system would operate like the prior system and distinguish courses by degree applicability for eligibility certification purposes.

However, in June 2015, the institution discovered through an NCAA APP audit that the new system erroneously used the total number of credit hours earned, not just those applicable to the student-athletes' designated degree program for progress-toward-degree purposes. The institution thus relied on flawed degree audits to calculate student-athletes' progress toward a degree. Moreover, the institution failed to have a manual calculation of hours earned toward a degree as a check on the computerized calculations, leading to the violations in this case.

Consequently, from 2011-12 through 2014-15, the institution failed to withhold 49 ineligible student-athletes in nine sports from intercollegiate competition. When the institution failed to withhold the student-athletes, it therefore violated Bylaw 12. Those violations are Level II because they represent multiple eligibility violations that do not amount to a lack of institutional control.

The institution's violations also involved participation after an erroneous certification of academic eligibility. Human error and the flawed software system led the institution to erroneously declare student-athletes academically eligible. The 49 student-athletes failed to attain required academic eligibility benchmarks in violation of Bylaw 14.

Specifically, the institution permitted 48 student-athletes to compete while erroneously certified as academically eligible in violation of Bylaws 14.4.1 and 14.4.3.2. The institution also permitted one student-athlete to compete without satisfactory completion of at least 18 semester hours since the beginning of the previous fall term and at least six semester hours during the preceding regular academic term. This violated Bylaws 14.4.1, 14.4.3.1-(b) and (c), 14.4.3.1.7-(b). Those violations are Level II because they represent multiple eligibility violations that do not amount to a lack of institutional control.

Finally, the institution provided actual and necessary expenses to student-athletes who were ineligible for competition in violation of Bylaw 16. Bylaw 16 governs awards, benefits, and expenses for enrolled student-athletes. Bylaws 16.8.1.2 (2011-13) and 16.8.1 (2013-14 and 2014-15) provide that an institution may provide actual and necessary expenses to a student-athlete to represent the institution in practice and competition as long as the student-athlete is eligible for competition.

From 2011-12 through 2014-15, the institution erroneously certified 49 student-athletes eligible for competition and then provided them with actual and necessary expenses to represent the institution in practice and competition. By so doing, the institution violated Bylaw 16.8.1. Those violations are Level II.

The panel believes that most, if not all, of the improper certifications in this case could have been avoided by having a system of checks and balances in place at the institution. This case provides a prime example of the value of manually cross-checking these progress-toward-degree data regularly to identify any potential issues in the final calculations. Member institutions should make every effort to cross-check the data to ensure its accuracy because student-athletes and coaches rely on the data to make sure they are in compliance with NCAA legislation and on track to receive their college degrees.

V. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the panel accepts the parties' agreed-upon factual basis and violations and concludes that this case involved Level II violations of NCAA legislation. The panel then determined the applicable penalty classification. Level II violations are significant breaches of conduct as the violations in this case involved conduct that compromised the integrity of the NCAA Collegiate Model.

The parties agreed that one aggravating factor and three mitigating factors were present in this case for the institution. The panel accepts all of the parties' proposed aggravators and mitigators. Thus, after determining the appropriate aggravating and mitigating factors, the panel classifies this case as Level II - Mitigated for the institution.

The COI has decided several recent cases involving improper certification of student-athletes that inform the panel's decision in this case. Those cases involved improper certifications of multiple athletes in multiple sports and the institution's failure to monitor. *See, e.g., Campbell University* (2016) (the institution failed to monitor and improperly certified 34 student-athletes in 10 sports as eligible when they failed to meet certain progress-toward-degree requirements); *University of North Carolina at Greensboro* (2015) (the institution failed to monitor its initial eligibility certification process and squad list requirements over multiple years while improperly certifying 57 student-athletes in 13 sports). The hearing panels in both cases prescribed vacation of wins in which student-athletes competed while ineligible.

By contrast, the *Indiana University-Purdue University Fort Wayne (IPFW)* (2015) case involved a failure to monitor certain aspects of the institution's financial aid program and the institution's provision of excess financial aid to 52 student-athletes who subsequently competed while ineligible. Penalties included two years of probation and a financial penalty of \$15,000 which was self-imposed. However, the COI panel did not vacate wins and records and enumerated four reasons why it did not: (1) the violations were inadvertent; (2) there was no competitive or recruiting advantage; (3) the violations did not result in team financial aid limits being exceeded; and (4) the student-athletes and coaches were completely unaware of the violations.

This case and its facts, however, are unique. While the panel would customarily prescribe vacation of wins and records because of the ineligible competition of dozens of student-athletes in this case, the panel declines to apply the penalty here. The panel views this case in a similar context as the

panel viewed the *IPFW* case. Because there was no failure to monitor in this case, the violations were inadvertent, and the student-athletes and coaches in this case were completely unaware of the violations resulting from the flawed software system and one instance of human error in this case, vacation is not warranted.

Because the violations in this case occurred both before and after October 30, 2012, the panel assessed whether the violations predominated before or after the effective date of current Bylaw 19. The panel determined the violations predominated after the effective date. Therefore, the panel prescribed penalties pursuant to the new penalty structure under present Bylaw 19.9. These penalties are independent of and supplemental to any action that has been or may be taken by the Committee on Academics through its assessment of postseason ineligibility, historical penalties or other penalties.

The institution's corrective actions are contained in the Appendix. The panel adopts the institution's self-imposed penalties, which are identified below, and prescribes the following additional penalties pursuant to NCAA Figure 19-1:

Core Penalties for Level II – Mitigated Violations by the Institution (NCAA Bylaw 19.9.5)

1. Probation: One year of probation from February 10, 2017, to February 9, 2018, or completion of the final penalty, whichever is later.⁷

Pursuant to Bylaw 19.9.6, the panel prescribes one year of probation beyond the guideline maximum of zero years for a Level II-Mitigated case. The panel believes that the integration of the new software program in this case was problematic and that the institution's failure to detect the problem occurred over several years without any manual cross-check features. The panel believes the foregoing circumstances warrant a departure from the penalty guidelines contained in Bylaw 19-1. Because of these factors, the panel believes the institution needs the additional time for oversight and monitoring by the Association.

2. Financial penalty: The institution shall pay a \$5,000 fine. (Institution imposed)

Additional Penalties for Level II – Mitigated Violations by the Institution (NCAA Bylaw 19.9.7)

3. Public reprimand and censure. (Institution imposed)

⁷ Probationary periods always commences with the release of the infractions decision. Pursuant to Bylaws 19.3.6-(e) and 19.9.5.7 and COI IOP 2-1-1, the committee tethers probationary periods to the prescribed penalties.

4. The institution shall require all involved parties to attend NCAA Regional Rules Seminars for at least two years (2017-18) (registrar, assistant registrar, compliance, assistant compliance, faculty athletics representative, athletic director/Academic Services). (Institution imposed).⁸
5. The institution shall complete an Academic Progress Rate audit at the end of 2017-18 (all student-athletes). (Institution imposed)
6. During this period of probation, the institution shall:
 - a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institution staff members with responsibility for ensuring compliance with NCAA progress toward degree legislation;
 - b. Submit a preliminary report to the Office of the Committees on Infractions by March 31, 2017, setting forth a schedule for establishing this compliance and educational program;
 - c. File with the Office of the Committees on Infractions annual compliance reports indicating the progress made with this program by January 15, 2018. Particular emphasis should be placed on NCAA progress-toward-degree legislation. The report must also include documentation of the institution's compliance with the penalties adopted and prescribed by the committee;
 - d. In writing, inform prospective student-athletes in the involved sport programs that the institution is on probation for one year and detail the violations committed. If a prospective student-athlete takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospective student-athlete signs a National Letter of Intent; and
 - e. Publicize specific and understandable information concerning the nature of the infractions by providing, at a minimum, a statement to include the types of violations and the affected sport programs and a direct, conspicuous link to the public infractions decision located on the athletic department's main "landing" webpage. The information shall also be included in institutional media guides and in an alumni publication. The institution's statement must: (1) clearly describe the infractions; (2) include the length of the probationary period associated with the Level II infractions case; and (3) give members of the general public a clear indication of what happened in the Level II infractions case to allow the public (particularly, prospective student-athletes and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.

⁸ The staff member in the registrar's office identified as having primary responsibility for athletic certification attended the NCAA Regional Rules seminar in summer 2016.

7. Following the receipt of the final compliance report and prior to the conclusion of probation, the institution's president shall provide a letter to the committee affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.
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The COI advises the institution that it should take every precaution to ensure that it observes the terms of the penalties. The COI will monitor the penalties during their effective periods. Any action by the institution contrary to the terms of any of the penalties or any additional violations may be considered grounds for prescribing more severe penalties or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Michael Adams
Carol Cartwright, Chief Hearing Officer
Bobby Cremins
Thomas Hill
Jill Pilgrim
Dave Roberts

APPENDIX

THE INSTITUTION'S CORRECTIVE AND OTHER REMEDIAL ACTIONS AS IDENTIFIED IN THE DECEMBER 7, 2016, SUMMARY DISPOSITION REPORT.

1. Morehead State University has recently invested over one million dollars to purchase modules of updated software to provide a means to closely track the progress toward degree for all students, including specifically athletes. The need for and purchase of this software came about as a direct result of NCAA findings during the APP audit. This software consists of a Student Plan module and a Student Advise module. The Student Plan module sets out a specific roadmap of courses required for a student to complete his/her degree of choice. This module maps the complete four years of study to graduate the student in eight semesters. The Student Advise module, among other features, provides information to individually track students for early warning signals of at risk behaviors including attendance, difficulties in class and personal issues. Included in this investment is ongoing training and professional development to ensure faculty and staff understand the system and are proficient in its use.
2. An individual, the athletics eligibility certification and records processing coordinator, within the Registrar's Office has been identified as the person to certify athletic eligibility. Currently, the registrar serves in an oversight position and personally reviews the certification of each athlete. All athletic certification will now be in Registrar's Office.
3. Procedures are in place to include cross-departmental involvement to further review the athletic certifications. The athletic director, the director of compliance and the faculty athletic representative meet with the Registrar's Office as a group for another level of oversight to ensure all certifications are compliant with NCAA rules. The review process includes a copy of the student-athlete's current transcript, a copy of the program evaluation form, and the eligibility spreadsheet used by the institution.
4. The university has scheduled another complete review of the certification process and the APP for the end of 2017-18 academic year. During this process, the institution will review selected eligibility certification samples, including all two and four-year transfers in men's basketball and baseball.
5. The university is in the process of creating an APR and Certification Review Committee. For the APR submission, those persons involved in certification and its review, along with the Academic Athletic staff will review and revise APR policies as necessary. All members of this committee will be knowledgeable of APR policies sufficient to provide guidance for improving academic performance.