

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

November 26, 2019

Decision No. 513

University of Missouri, Columbia

Columbia, Missouri

UNIVERSITY OF MISSOURI, COLUMBIA APPEAL DECISION SUMMARY

Outcome

University of Missouri, Columbia appealed to the NCAA Division I Infractions Appeals Committee the NCAA Division I Committee on Infractions' conclusion that this infractions case was a Level I-Standard case and the prescription of the following penalties:

1. Penalty V.2 – one-year postseason bans in football, baseball and softball;
2. Penalty V.4 – scholarship reduction by five percent of the amount of grant-in-aid awarded in baseball, football and softball; and
3. Penalty V.5 – recruiting restrictions in baseball, football and softball.

The Infractions Appeals Committee affirmed penalties V.2, V.4 and V.5.

Appellate Procedure

In considering Missouri's appeal, the Infractions Appeals Committee reviewed the Notice of Intent to Appeal; the record and transcript of the institution's June 13, 2018, 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 July 18, 2019, in Indianapolis, Indiana. The institution was present and represented by its attorneys, chancellor, director of athletics, faculty athletics representative, executive associate athletics director for compliance, general counsel and university counsel. Also present were the head softball coach, head baseball coach and head football coach. The associate commissioner of the Southeastern Conference was also in attendance. 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, associate director of the Office of Committees on Infractions and two externs for the Office of Committees on Infractions. The NCAA enforcement staff was represented by the vice president of enforcement, director of enforcement and assistant director of enforcement. Also present were the vice president of hearing operations, the associate general counsel of the NCAA and business analyst/technologist for infractions process. 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 W. Anthony Jenkins, committee chair and attorney in private practice; Ellen M. Ferris, associate commissioner for governance and compliance at the American Athletic Conference; Jonathan Alger, president at James Madison; Patricia Ohlendorf, retired special advisor in the office of legal affairs at Texas; and Allison Rich, senior associate athletics director and senior woman administrator at Princeton.

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I. INTRODUCTION.

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

II. BACKGROUND.

The Committee on Infractions issued Infractions Decision No. 513 January 31, 2019, in which the committee found violations of NCAA legislation in the football, baseball and softball programs. On the basis of those findings, the Committee on Infractions determined that this was a Level I-Standard case and prescribed penalties accordingly.

This case centered on violations of NCAA bylaws governing academic misconduct, impermissible academic assistance and fraudulence in connection with placement exams.

After the Committee on Infractions issued its decision, Missouri filed a timely Notice of Appeal February 14, 2019. A written appeal was filed March 25, 2019. The Committee on Infractions filed its Response April 25, 2019. Missouri filed its Rebuttal to the Committee on Infractions Response May 17, 2019. The case was considered by the Infractions Appeals Committee July 18, 2019 (see Section X below).

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

See Committee on Infractions decision for Missouri Page Nos. 2 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 Missouri Page Nos. 7 through 10. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

V. VIOLATIONS FOUND BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for Missouri Page Nos. 7 through 10. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

VI. CONCLUSIONS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

Missouri appealed the conclusion by the Committee on Infractions to classify the case as Level I-Standard case. A copy of the Committee on Infractions' decision may be accessed via LSDBi by clicking [HERE](#).

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

See Committee on Infractions decision for Missouri APPENDIX ONE. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

VIII. PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.¹

Missouri appealed some of the penalties prescribed by the Committee on Infractions. The appealed penalties are:²

- V.2. Competition penalty: During the 2018-19 academic year, the baseball and softball programs shall end their seasons with playing their last regularly-scheduled in-season contest and shall not be eligible for participation in any postseason championships, including conference tournaments, NCAA championships, foreign tours or any exceptions to the limitation on the number(s) of contests that are provided in Bylaw 17. During the 2019-20 academic year, the football program shall end its season with the playing of its last regularly scheduled in-season contest and shall not be eligible to participate in any postseason championships, including conference tournaments, bowl games, foreign tours or any exceptions to the limitations on the number of contests that are provided in Bylaw 17.

In accordance with Bylaw 14.7.2-(c), the COI recommends that the Committee for Legislative Relief waive the one-year residency requirement for student-athletes whose institution was placed on probation which included a postseason ban penalty.

- V.4. Scholarship reductions: During the 2019-20 academic year, Missouri shall reduce by five percent the amount of grants-in-aid awarded in the football, baseball and softball programs. The reductions shall be based on the average amount of aid awarded in each sport program over the past four academic years.

- V.5. Recruiting restrictions
During the 2019-20 academic year, Missouri shall restrict recruiting as follows:

¹ Note, the information in this section is a copy of the information as it appears in the Committee on Infractions decision.

² In Missouri's written appeal (Page No. 3, footnote 4), the university stated that it is withdrawing the appeal of penalties V.1. (probation) and V.3. (financial penalty). At the oral argument for this appeal, the university confirmed its withdrawal of its appeal related to those penalties. (Infractions Appeals Committee oral argument transcript at Page No. 7)

- a. A seven week ban on unofficial visits, including no scheduled unofficial visits and no complimentary tickets, in the football, baseball and softball programs.
- b. A 12.5 percent reduction in official visits in the football, baseball and softball programs. This amounts to reductions of seven visits in football and four visits in baseball. For the softball program, this reduction shall be based on the average number of official paid visits provided during the previous four academic years.
- c. A seven week ban on recruiting communications in the football, baseball and softball programs.
- d. A seven week ban on all off-campus recruiting contacts and evaluations in the football, baseball and softball programs.
- e. A 12.5 percent reduction in recruiting-person or evaluation days for the football, baseball and softball programs. This amounts to six fall 2019 and 21 spring 2020 evaluation days in football.

For the other penalties prescribed by the Committee on Infractions, see Committee on Infractions decision for Missouri Page Nos. 10 through 18. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

IX. ISSUES RAISED ON APPEAL.

In its written appeal, Missouri asserted that the Committee on Infractions abused its discretion by concluding that the infractions case was a Level I-Standard case and prescribing penalties V.2, V.4 and V.5.

X. APPELLATE PROCEDURE.

In considering Missouri's appeal, the Infractions Appeals Committee reviewed the Notice of Intent to Appeal; the record and transcript of the institution's June 13, 2018, hearing before the Committee on Infractions and the submissions by Missouri 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 July 18, 2019, in Indianapolis, Indiana. The institution was present and represented by its attorneys, chancellor, director of athletics, faculty athletics representative, executive associate athletics director for compliance, general counsel and university counsel. Also present

were the head softball coach, head baseball coach and head football coach. The associate commissioner of the Southeastern Conference was also in attendance. 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, associate director of the Office of Committees on Infractions and two externs for the Office of Committees on Infractions. The NCAA enforcement staff was represented by the vice president of enforcement, director of enforcement and assistant director of enforcement. Also present were the vice president of hearing operations, the associate general counsel of the NCAA and business analyst/technologist for infractions process. 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.³

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

In the Alabama State case, we stated:

“...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, Page No. 23, June 30, 2009](#)]

The appellant argued that the panel abused its discretion by classifying this case as a Level I-Standard infractions case, failing to consider and weigh the severity of violations and prescribe appropriate and fair punishment.

Determining and Weighing Aggravators and Mitigators to Classify the Case.

The appellant made three arguments regarding the determination of the level for this infractions case. First, the appellant challenged the panel’s determination and weighing of aggravating and mitigating factors. (Written Appeal, Page Nos. 27 and 44) Second, the appellant argued that the panel mischaracterized and erroneously relied on a statement in the rejected summary disposition report. (Written Appeal Page No. 42) Third, the appellant

³ 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.

argued that the panel did not adhere to applicable bylaws and standards. (Written Appeal Page No. 42)

Additionally, the appellant argued that two additional mitigating factors should have been applied to its infractions case. One factor is the prompt self-detection and self-disclosure of the violation(s), and the other factor is the implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches' control standards. To support these arguments, the appellant focuses on what it describes as contradiction and inconsistency with case precedent and its perception that the panel “creates a new operational duty” for institutions to spot-check metadata. (Written Appeal Page Nos. 28 through 39)

In response to the appellant’s arguments, the panel stated that it acknowledged throughout the case that Missouri preferred that its case be classified as Level I-Mitigated; however, the panel disagreed with this classification for this case. (Committee on Infractions Response Page Nos. 13 and 14) Further, the panel argued that it did not err in determining the mitigating factors or in weighing the mitigating and aggravating factors in this case. (Committee on Infractions Response Page No. 16) The panel concluded that the facts do not support prompt detection as required by [Bylaw 19.9.4-\(a\)](#). (Committee on Infractions Response Page No. 18) The panel also stated that it applies [Bylaw 19.9.4-\(e\)](#) as a mitigating factor when an institution’s current compliance system⁴ led to the detection of the violations. (Committee on Infractions Response Page No. 23) Finally, the panel stated it is within its discretion to determine whether the mitigating and aggravating factors apply and assign weight to those factors. (Committee on Infractions Response Page No. 26)

Pursuant to [Bylaw 19.9.2](#), the panel weighs factors and determines whether parties are subject to standard, aggravated or mitigated penalties. In the panel’s infractions decision, it provided a rationale to explain why the panel did not apply these mitigating factors in this case. For example, the panel stated that “the record...did not demonstrate that Missouri had systems in place designed for prompt self-detection associated with this mitigating factor [[Bylaw 19.9.4-\(a\)](#)].” ([Committee on Infractions Decision Page No. 12](#)) Additionally, in previous cases, the Committee on Infractions has “declined to apply this mitigating factor when an institution becomes aware of violations after a significant passage of time.” ([Committee on Infractions Decision Page No. 12](#)) For the mitigating factor in [Bylaw 19.9.4-\(e\)](#), the panel explains that “the COI has routinely concluded that this mitigating factor applies only when an institution’s compliance system is in place at the time the violation occurred and led to the detection of the violations.” ([Committee on Infractions Decision Page No. 13](#))

⁴ The Committee on Infractions has stated that compliance systems must be in place at the time the violations occurred and should lead to the detection of the violations. (Committee on Infractions Response Page No. 22)

The Committee on Infractions decision, and appeal submissions⁵ by the appellant and the panel, include citations and comparisons to a number of previous infractions cases. There are previous infractions cases that support each party's arguments – some support applying the mitigating factors in this case, while others support not applying the two mitigating factors.⁶ This mix of precedent made this committee's decision in this case a difficult one. We have carefully reviewed the case precedent identified and the arguments put forward by the parties of the appeal.

The NCAA legislation gives the panel discretion to determine whether mitigating and aggravating factors, included and not included in [Bylaws 19.9.3](#) and [19.9.4](#), are present and how they are weighed in an infractions case. In this case, the panel's decision provides an analysis and rationale for its decision to not apply mitigating factors in [Bylaws 19.9.4-\(a\)](#) and [19.9.4-\(e\)](#). (Committee on Infractions Response Page Nos. 12 and 13) In reviewing the panel's analysis and rationale, this committee may not substitute its judgment for that of the panel. Disagreement with the panel's outcome is not enough. The appellant was unable to demonstrate that the panel's analysis and/or rationale failed to consider and weigh mitigating factors; was based on a clear error in judgment; was based on irrelevant or improper factors; or was based on an incorrect standard or misapprehension of standards. Therefore, we do not find that the panel improperly determined and weighed mitigating factors.

The appellant also pointed to the panel's use of statements from the rejected summary disposition report as a basis to challenge the panel's classification of the case as Level I-Standard. The Division I Committee on Infractions Internal Operating Procedure 4-10-3 states that any party may rely on statements and information in a rejected summary disposition report and that a rejected summary disposition report becomes part of the record before the panel. Further, the parties have the opportunity to change positions taken in the summary disposition report, including an explanation of how the position had changed. In an attachment to the rejected summary disposition report, the appellant stated:

“...in a worst-case analysis, this is a low-end (tending toward mitigated) standard case and, in a best-case analysis, this is an upper-end mitigated case.” (Attachment *Statement-Missouri.pdf* to the summary disposition report)

In the panel decision, the panel recognized that “[t]hroughout the processing of the case, Missouri continued to assert that it believed the case to fall on the Level I-Mitigated side.” ([Committee on Infractions Decision Page No. 13](#)) However, the panel determined this case

⁵ The appeal submissions include the appellant's Written Appeal, Committee on Infractions Response and appellant's Rebuttal.

⁶ Examples include [Southeast Missouri State University \(2017\)](#), [University of Northern Colorado \(2017\)](#), [Lamar University \(2016\)](#), [Rutgers, The State University of New Jersey, New Brunswick \(2017\)](#), [Alcorn State University \(2016\)](#), [University of Virginia \(2017\)](#), [University of Oregon \(2018\)](#), and [Georgia Southern University \(2016\)](#).

should be classified as a Level I-Standard. ([Committee on Infractions Decision Page No. 13](#)) Finally the panel stated that it “agrees with Missouri’s original analysis and, in prescribing penalties, the panel notes significant overlap in the ranges associated with low-end Level I-Standard penalties and upper-end Level I-Mitigated penalties under the penalty guidelines.” ([Committee on Infractions Decision Page No. 13](#)) The appellant argued that this statement demonstrates that the panel misconstrued the appellant’s statement attached to the summary disposition report as a concession by the appellant that the case was a Level I-Standard case. (Written Appeal Page Nos. 43 and 44)

When the panel’s statements are read in their totality, the statements in the infractions decision are intended to reflect an acknowledgement that the penalty options of a low-end Level I-Standard case and high-end Level I-Mitigated case overlap. It should be noted that the panel does have the discretion and authority to disagree with the parties’ position on level and classification and thus can make its own determination of such. We do not find that the panel mischaracterized or erroneously relied on a statement in the rejected summary disposition report.

The appellant argues that the case was incorrectly classified as a Level I-Standard case as the panel did not consider two additional mitigating factors that should have been applied. After a review of the relevant cases presented by the appellant and the panel, this committee agrees that the factors could have been applied, which might have led to the case’s classification as a Level I-Mitigated case. However, as noted above, disagreement with the panel’s outcome is not enough. The appellant was unable to demonstrate that the panel’s failure to apply the two additional mitigating factors was based on a clear error in judgment such that it was arbitrary, capricious or irrational. In addition, as noted in the previous paragraph the penalty options for Level I-Standard and Level I-Mitigated cases overlap, and the institution’s penalties could have been the same under either Level classification.

Based on the reasons above, we find that the panel did not abuse its discretion when classifying this case as a Level I-Standard case.

We are concerned, however, by the differing approaches used for the application of mitigating and aggravating factors based on whether the parties (institution and enforcement) are in agreement. In the Committee on Infractions Response, the panel states that “although the COI has the authority to make final decisions regarding applicable [mitigating and/or aggravating] factors, it generally gives deference to the parties’ agreements without further comment.” It appears that the “deference” provided in circumstances where the parties agree on the appropriate mitigating factors has resulted in case precedent in which mitigating factors were applied differently than in cases where the parties were not in agreement. Further, per the Committee on Infractions operating procedures and in its response to the institution’s appeal, the Committee on Infractions

notes that summary disposition reports “offer limited precedential value.”⁷ (Committee on Infractions Response Page No. 21) And yet, the Committee on Infractions continues to cite summary disposition reports in its analysis and rationale in the infractions process. The instructive or precedential value becomes difficult to discern and creates the potential for inconsistent application and assessment of mitigating and aggravating factors in infractions cases.

Further, the role, impact and use of precedent in the infractions process, as well as what guidance infractions decisions provide for the membership,⁸ may be perceived as inconsistent and become more confusing given the varying processes and approaches for resolving infraction issues.⁹ This committee believes it is critical for the NCAA membership to discuss and evaluate the application, assessment and precedential value of infractions cases not only when parties agree on mitigating and aggravating factors, but also the appropriate precedential value and approach for cases in the entirety of the infractions processes. Doing so would better equip this committee and the Committee on Infractions in discharging its duties, and in turn improve the infractions process and yield better guidance for the membership as a whole.

Weighing the Severity of Violations and Prescription of Penalties.

The appellant made three arguments to support its position that the panel abused its discretion when prescribing penalties in this case. First, the appellant argued that the penalties prescribed by the panel exceeded those in infractions cases with conduct most similar to the conduct in this case. Second, the appellant argued that the penalties in this case far exceed penalties prescribed in academic misconduct cases with significantly more severe violations. Third, the appellant asserted that the penalties in this case are comparable to the penalties imposed in infractions cases that involved the most egregious and extensive misconduct and violations. (Written Appeal Page Nos. 50 and 51) The panel argued that because each case is unique, variances among past cases do not meet the high bar of the abuse of discretion. (Committee on Infractions Response Page No. 33) The panel stated that it looked primarily to Level I-Standard cases involving academic violations and found that this case involves more student-athletes and more sport programs than prior cases. (Committee on Infractions Response Page No. 33)

⁷ The Division I Committee on Infractions Internal Operating Procedure 5-14-4 states that panels may view decisions through the summary disposition report process as less instructive than decisions through the contested hearing process because the violations through the summary disposition process constitute the parties’ agreement.

⁸ The appellants in the process also cite infractions cases from the various processes and approaches to bolster their arguments for vacation of findings of violations and penalties.

⁹ Currently infractions cases may be resolved through negotiated resolution, summary disposition, Committee on Infractions hearings and Independent Resolution Panel hearings. Note that [Bylaw 19.5.12.4](#) specifically states that negotiated resolution decisions have no precedential value.

We have previously noted that the Committee on Infractions has significant discretion in its ability to fashion appropriate penalties for infractions in any case. [[Saint Mary's College of California Infractions Appeals Decision \(October 14, 2013\) Page No. 5](#)] Additionally, when the case is classified without an abuse of discretion by the panel, "this committee is hesitant to delineate any penalty within the appropriate matrix options as an abuse of discretion absent a clearly arbitrary imposition in light of consistent prior application to the contrary." [[Southern Methodist University, Infractions Appeals Decision \(April 21, 2016\) Page No. 4](#)] After reviewing the record in this case, we do not find information that supports a determination that the panel abused its discretion when prescribing the penalties related to postseason competition ban, scholarship reductions and recruiting restrictions.¹⁰

XII. CONCLUSION.

Penalties V.2, V.4 and V.5 are affirmed.¹¹

NCAA Infractions Appeals Committee

W. Anthony Jenkins, chair
Jonathan Alger
Ellen M. Ferris
Patricia Ohlendorf
Allison Rich.

¹⁰ It should also be noted that even if this infractions case was classified as Level I-Mitigated, these prescribed penalties would be within the penalty guidelines for such a classification.

¹¹ According to the NCAA Division I Infractions Appeals Committee Internal Operating Procedures (IOP 4-4, Page Nos. 8 and 9), 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 Intent to Appeal by the appellant and ends with the public release of the committee's decision. See the Appendix of this decision for the impact the stay has on the application of the affirmed penalties.

APPENDIX
TO NCAA DIVISION I INFRACTIONS APPEALS COMMITTEE
DECISION NO. 513 – UNIVERSITY OF MISSOURI, COLUMBIA

According to the NCAA Division I Infractions Appeals Committee Internal Operating Procedures (IOP 4-4, Page Nos. 8 and 9), 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 Intent to Appeal by the appellant and ends with the public release of the committee's decision. Therefore, the appellant's affirmed:

- competition penalty for baseball and softball (penalty V.2) shall be applied during the 2019-20 academic year;
- competition penalty for football (penalty V.2) shall be applied during the 2019-20 academic year;
- scholarship reduction for football, baseball and softball (penalty V.4) shall be applied during the 2020-21 academic year; and
- the recruiting restrictions for football, baseball and softball (penalty V.5) shall be applied during the 2020-21 academic year.