

# KEY NCAA INFRACTIONS CASES FROM 2020-22

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## **A. Cases arising from SDNY criminal investigation and prosecutions**

Several NCAA infractions cases were initiated as a result of the criminal investigation and prosecutions made public in the Southern District of New York (SDNY) in September 2017. There were actually two distinct criminal schemes charged, one involving individuals affiliated with Adidas in which payments were allegedly funneled to prospective recruits and their families in exchange for their agreement to enroll at Adidas-sponsored universities. This scheme ensnared the University of Kansas, the University of Louisville, and North Carolina State University. Closely related to this scheme, but not involving Adidas specifically, was an infractions case filed against the University of Memphis, which involved allegations of improper payments to the family of a prospective recruit while he was in high school, and who later enrolled at the institution. This latter case also involved allegations of obstruction of the investigation due to the destruction of certain records and documents. Each of these four cases was subsequently referred to the Independent Accountability Resolution Process (IARP).

The second criminal scheme involved the alleged payment of bribes to assistant basketball coaches to induce them to steer recruits to certain agents / advisors once they turned professional, resulting in felony criminal charges against four coaches and a total of nine additional infractions cases. The coaches ultimately convicted and sentenced were:

- Chuck Person (Auburn University)
- Lamont Evans (Oklahoma State University)
- Tony Bland (University of Southern California)
- Emanuel "Book" Richardson (University of Arizona)

In addition to the infractions cases commenced against the four institutions that employed the coaches named above, related infractions cases (apparently lacking sufficient evidence to warrant the filing of criminal charges) were also brought against the following universities:

- University of Alabama
- University of South Carolina
- Creighton University
- Texas Christian University
- Louisiana State University

Of these cases, two of them were also referred to the IARP for handling, namely the University of Arizona and Louisiana State University cases.

Over the past two years, the Committee on Infractions (COI) has released decisions in a total of seven of these cases, including the following:

- Oklahoma State University (June 2020)
  - Case appealed and ruling affirmed by the IAC (November 2021)<sup>1</sup>
- University of Alabama (December 2020)
- University of South Carolina (February 2021)
- University of Southern California (April 2021)
- Creighton University (June 2021)
- Texas Christian University (June 2021)
- Auburn University (December 2021)

Of these cases, only Oklahoma State received a post-season ban as a penalty. The others resulted in a combination of a probationary term (usually 2-3 years), a monetary penalty / fine, recruiting and scholarship restrictions (often self-imposed), and a show-case order of some duration (ranging from 2 – 10 years) for the former assistant coaches who received the improper payments. In the Auburn case, the Head Coach (Bruce Pearl) also received a two-game suspension.

The variance in penalties across these cases was the result of several factors considered by the COI, including applicable aggravating and mitigating factors, instances of alleged unethical conduct by certain coaches involved, and the degree of investigative assistance and cooperation by the involved institution. In short, the institutions that displayed a prompt acknowledgement of bylaw violations and exemplary cooperation during the course of the investigation by NCAA Enforcement, achieved better outcomes.

## **B. IARP proceedings**

As noted above, of the infractions cases that arose due to the law enforcement actions in the SDNY, a total six of these actions have been referred to the IARP. Of these, only one has been decided to date, the case against North Carolina State University. Two others have had their hearings and are awaiting a decision, namely the University of Memphis and the University of Louisville, and three other institutions have hearings scheduled in the coming months. This would include the University of Arizona, the University of Kansas, and Louisiana State University.

The one decision rendered by the IARP, involving North Carolina State University, resulted in some surprises. Given the IARP's mandate and the reason it was created (to handle the more complex and challenging cases), most commentators

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<sup>1</sup> OSU officials were very outspoken in their criticism of the decisions against the institution by the COI and IAC, and regarding the investigative actions by the NCAA Enforcement staff. This resulted in the issuance of a statement by the NCAA on November 11, 2021, that such comments resulted in NCAA volunteer committee members and staff receiving “threatening and offensive messages” after being identified by name. The NCAA called such comments and behavior by OSU officials “unacceptable” and “potentially dangerous.”

expected the IARP to ratchet up the penalties against offending institutions. As compared with the penalties imposed in the SDNY cases decided by the COI (above), the IARP's ruling in the NC State case was actually less harsh, carrying only a one year probationary period and a one-year show cause for the former head coach.

It seems rather clear that once the last of the currently referred cases is decided, the IARP and its companion investigative arm known as the Complex Case Unit (CCU) will cease to exist. The process, a creation of the Rice Commission in 2018, has come under widespread criticism for the slow pace of the process and the associated expense. The expectation is that we will return to the more traditional approach of infractions investigations and charges being handled by the Enforcement staff, administrative hearings before the COI, and appeals before the IAC.

### **C. Academic Fraud cases**

There are several subject matter areas that (unfortunately) continue to generate bylaw violations and infractions cases nearly every year, including improper recruiting activities, extra benefit issues, playing and practice season violations, financial aid violations, and allegations of academic fraud. We expect that NIL violations may join this list in the near term. Make no mistake, however, that academic integrity continues to be focus area for the Enforcement staff and a matter that is viewed with great seriousness by the COI in all Divisions of the NCAA. See *King University (2020)* (concluding a major academic misconduct violation occurred when the associate head men's basketball coach substantially edited a student-athlete's take-home test, which was then submitted for course credit) and *University of Southern Indiana (2011)* (concluding a major academic misconduct violation occurred when an assistant men's basketball coach arranged for a booster to complete academic work for a student-athlete).

Here are two recent examples of academic fraud cases:

#### **1. Youngstown State University (January 2022) – Division I**

A former Youngstown State women's soccer head coach violated academic integrity rules when he arranged for false transcripts for three women's soccer prospects. The coach also arranged impermissible recruiting inducements for one of those prospects. As a result, the coach failed to promote an atmosphere of compliance, and — following his separation from the school — violated ethical conduct rules when he did not fully meet his obligation to participate in an NCAA investigation.

The penalties imposed were three years of probation, a \$5,000 fine, plus 2% of the women's soccer budget (self-imposed), a 2019-20 postseason ban for the women's soccer program (self-imposed), numerous recruiting and scholarship restrictions or reductions (self-imposed), a five-year show-cause order for the former head coach, and a vacation of all records in which student-athletes competed while ineligible.

## **2. Augusta University (May 2022) – Division II<sup>2</sup>**

Augusta men's basketball program violated NCAA academic misconduct rules when the head and former assistant coaches provided academic assistance to a men's basketball student-athlete, the student-athlete competed in 16 contests and received competition-related expenses while ineligible. The direct involvement by the head coach and former assistant coach demonstrated the head coach's failure to promote an atmosphere of compliance and failure to monitor. Additionally, the former assistant coach violated ethical conduct principles when he provided false or misleading information regarding his involvement in the violation.

The penalties imposed were three years of probation, a fine of \$5,000 (self-imposed), recruiting and scholarship restrictions or reductions (self-imposed), a vacation of individual, regular-season and conference tournament records (self-imposed), a suspension of two scrimmages and three regular-season contests for the head coach (self-imposed), an additional suspension of the head coach from the first five conference games of the upcoming season, required attendance by the head coach at the NCAA Regional Rules Seminars (with at least one session focused on academic integrity), required monthly meetings by the head coach with the school's senior compliance administrator for rules education, the creation by the head coach and compliance director of a "best practices" guide related to student-athlete academics, a two-year general show-cause order for the assistant coach, and a requirement that the director of athletics, compliance director and faculty athletics representative attend NCAA Regional Rules Seminars in 2022 and 2023.

### **D. Alleged sexual misconduct by student-athletes – excerpts from the decision of the COI in Baylor University (August 2021)**

Unlike in 2012 when the NCAA waded into the Jerry Sandusky scandal at Penn State and summarily sanctioned the University without any semblance of an investigation by the Enforcement staff or proceeding before the COI (and instead relied exclusively upon an outside investigation conducted under the supervision of former FBI Director Louis Freeh), the approach taken in the recent Baylor University case stands in stark contrast. Here are some relevant excerpts from the Introduction to the COI's written decision.

*"... the allegations at the heart of this case centered on conduct never before presented to the COI—namely, that Baylor shielded football student-athletes from the institution's disciplinary process and failed to report allegations of abhorrent misconduct by football student-athletes, including instances of sexual and interpersonal violence. Baylor admitted to moral and ethical failings in its handling of sexual violence on campus but*

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<sup>2</sup> This was a summary disposition case in which the institution and the head coach requested a hearing to review the proposed penalties outlined in the COI's initial draft ruling. Following the penalty hearing the COI did modify its general show cause order to permit the head coach to continue coaching, although added an additional five game suspension during the upcoming season.

*argued that those failings, however egregious, did not constitute violations of NCAA legislation. Ultimately, and with tremendous reluctance, this panel agrees.”*

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*“Make no mistake, the conduct that occurred on Baylor's campus between 2010 and 2015 was unacceptable. Young people were hurt. They were hurt because the campus leaders they trusted to provide a safe campus community failed. At times, these failures heavily intersected with Baylor's football program and Baylor football student-athletes. At other times, they did not. And that is perhaps the most disturbing aspect of this case—that a campus-wide culture of sexual violence went unaddressed due to ignorance and leadership failings across campus. Baylor itself acknowledged moral and ethical failings. Even Baylor's former president described the institution's handling of campus sexual violence during this time as a "colossal operational failure." In every infractions case, the COI must apply the legislation that existed at the time of the alleged violations. NCAA member institutions act collectively to adopt legislation and direct the enforcement of specific legislation through the membership's infractions process. The membership has not adopted legislation regulating how member institutions should respond to sexual and interpersonal violence involving student-athletes. In defining the NCAA's enforcement powers, member institutions have retained certain authority and responsibility for themselves (and government and law enforcement entities) to investigate and address allegations of sexual violence on campus. And when an institution fails to meet this responsibility, as Baylor did, it is accountable to multiple entities through multiple processes. Indeed, Baylor's response to sexual violence has been investigated by the United States Department of Education's Office of Civil Rights, the Texas Rangers and Baylor's accrediting body. The Big 12 Conference also conducted a review and levied significant financial penalties against the institution for reputational damage to the conference. Additionally, Baylor's response to sexual violence and Title IX issues has been the subject of multiple civil lawsuits, some of which are ongoing. In the absence of NCAA legislation, the COI does not have a role to play alongside these entities in investigating and sanctioning institutional responses to sexual and interpersonal violence.*