

PUNISHMENT EQUALITY

Kelley Killorin

The National Collegiate Athletic Association's (NCAA) stated mission is, "to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports."¹ One way the NCAA sets out to accomplish this mission is by enforcing penalties against member institutions which break the NCAA's rules of conduct. The penalties are not only a means of deterring an institution from violations, but also serve to deter an institution from repeating violations once they have been sanctioned.

The NCAA has created a two-committee system for investigations and appeals. Once a potential violation is detected and investigated, the Committee on Infractions (COI) will review the case.² They discuss the severity of the violations, determine whether there is enough evidence to prove that these violations did in fact occur, and then determine an appropriate punishment for the violating institution.³ If a school decides to appeal their punishments, they will appeal to the Infractions Appeals Committee (IAC), which reviews the notes and punishments delivered by the COI and determines if the punishment given was fair.⁴ In general, schools rarely have punishments overruled on appeal. Historically, this two-tier review system has been seen as the most effective way to monitor and punish NCAA member schools, however, recent cases have called the NCAA's punishment system into question.

¹ See NCAA, 2016-2017 DIVISION I MANUAL art. 1.3.1 (2017) available at <http://www.ncaapublications.com/productdownloads/D117.pdf>.

² See, supra note 1 at art. 19.3.6 (Information regarding an alleged failure to comply with the NCAA constitution and bylaws or to meet the conditions and obligations of membership shall be provided to the enforcement staff.)

³ *Id.*

⁴ See, supra note 1 at art. 19.4.

The NCAA's constitution has set forth general guidelines as to what category a violation fits into and the nature of the punishment that institution should receive for that violation.⁵ However, equal violations do not receive equal punishments. The problem with this current system is that while the NCAA's constitution has prescribed punishments, not every violation is given the same punishment.⁶ In the NCAA's constitution, Section 19.9.5 on Core Penalties states that "[i]f a hearing panel concludes that an institution or involved individual committed one or more Level I or Level II violations, and after determining the appropriate classifications based on aggravating and mitigating factors, the hearing panel shall prescribe core penalties..."⁷ The NCAA constitution gives the COI room to decide which of the core penalties they wish to enforce upon the violating school. There is no standard punishment for any violation. This wiggle room leads to a variety of punishments for the same violation.

For example, School A could illegally violate recruiting rules for three years and be given one punishment, while School B could illegally violate recruiting rules for five years, pay players in clothing, and commit academic fraud, and still receive the same exact punishment as School A, even though they committed more infractions. Or, as in some situations, School B could have less punishments than School A, even though they violated more rules. The NCAA can justify the inconsistencies in punishment because of schools being more cooperative with the NCAA during their investigation. Therefore, some institution's athletic teams who are not cooperative are hurt for years, even decades, while others simply lose the "National Championship" banner hanging in their gym and receive a slap on the wrist with no long term affects. The solution is simple: the NCAA should have set, and published punishments for each type of violation. As a result, the violating institution will always receive the prescribed punishment.

As the NCAA fights to ensure that collegiate member institutions are held to certain standards and to provide that no

⁵ See, *supra* note 1.

⁶ Matt Norlander, *NCAA Punishment is inefficient, inconsistent, compromised; here's how to fix it*, CBSSPORTS.COM (October 25, 2012), <http://www.cbssports.com/college-basketball/news/ncaa-punishment-is-inefficient-inconsistent-compromised-heres-how-to-fix-it/>.

⁷ *Id.* at art. 19.9.5.

school has a leg up on the competition, the punishments dispensed by the COI and IAC are not all equal. The NCAA's enforcement program is developed to assure that schools receive punishment for their violations and are deterred from becoming repeat offenders. Yet, through multiple high profile cases, it appears that in practice the NCAA does not in fact distribute punishments equally.

After a previous recruiting scandal against the Southern Methodist University (SMU) Mustangs in 1985, another investigation was announced.⁸ The 1987 Committee on Infractions was tasked to investigate claims that SMU football players were receiving monthly payments from boosters as promised during their recruiting processes.⁹ During the 1985-1986 academic year, thirteen football players received payments totaling approximately \$47,000.¹⁰ Eight football players continued to receive payments until December 1986 totaling \$14,000.¹¹ Despite the SMU faculty representative's model cooperation with the NCAA and the investigators, the football team received a 'death penalty' cancelling their 1987 football season.¹² The NCAA has administered the death penalty only three times.¹³ The effect of the 1987 season death penalty was so stringent that SMU cancelled their 1988 football season as well.¹⁴ In the now thirty years that has passed since this death penalty was issued, the SMU football team has never been able to return to its previous status. The team has managed just one winning season from 1989 to 2008 after being previously undefeated and ranked No. 2 in the nation in 1982¹⁵ The NCAA 'dropping' the death penalty onto the SMU football program has

⁸ *Southern Methodist University Public Infractions Report* (NCAA, NCAA Comm. on Infractions, Indianapolis, IN.) Feb. 25, 1987

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 5.

¹³ Greg McFarlane, *NCAA Sports Programs that were Given the Death Penalty*, Investopedia.com, August 10, 2012, <http://www.investopedia.com/financial-edge/0812/ncaa-sports-programs-that-were-given-the-death-penalty.aspx?lgl=bnnull-baseline-below-content>.

¹⁴ Eric Dodds, *The 'Death Penalty' and How the College Sport Conversation has Changed*, TIME.COM, Feb 25, 2015, <http://time.com/3720498/ncaa-smu-death-penalty/>.

¹⁵ *Id.*

been described as having the same effect as an atomic bomb being dropped during World War II.¹⁶

In the 2012 infraction report on the University of North Carolina at Chapel Hill (UNC), the NCAA investigated claims of academic fraud by the football team.¹⁷ During the 2008-2009 season, an academic tutor was found to be committing academic fraud and providing impermissible benefits to three members of the football team.¹⁸ During the 2009-2010 season, the same tutor was doing the same with eleven members of the football team, along with providing impermissible benefits to student-athletes. During the same time period an assistant coach was charged with unethical conduct, and the institution for failure to monitor.¹⁹

The Committee on Infractions found UNC guilty of all of the accusations and punished them with a public reprimand and censure, three-years of probation, the football team vacating all victories from the 2008 and 2009 seasons, a fine of \$50,000, and a reduction in the number of grants-in-aid.²⁰ However, a 2011 article by *The News & Observer* reported that the transcript of an incoming freshman football player showed that he had not only taken an upper-level African Studies class, but also, that he had received a high grade in the class.²¹ This report blew the doors open to reveal an academic scandal that was potentially eighteen years old.²² Further investigations revealed that two professors in the African Studies department had been teaching a variety of “paper classes,” which consisted of little if any school work and high grades, and that nearly 3,100 UNC students had completed these classes over the years.²³ Football and basketball players were reportedly almost half of all students enrolled in these paper classes.²⁴

¹⁶ *Id.*

¹⁷ *University of North Carolina Public Infractions Report* (NCAA, NCAA Comm. on Infractions, Indianapolis, IN.) March 12, 2012.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 10-12.

²⁰ *Id.* at 22-23.

²¹ Dan Kane, *Latest NCAA allegations against UNC broaden the scope of potential penalties*, NEWSOBSERVER.COM, Dec. 22, 2016, <http://www.newsobserver.com/sports/college/acc/unc/article122420449.html>.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

This newly unfolded chapter of academic scandal at UNC has major educational accrediting agencies outraged and in disbelief, as well as considering whether probation or even loss of accreditation is an appropriate measure, thus creating a problem that has troubled more than just the NCAA.²⁵ However, when UNC called to report these findings to the NCAA, the NCAA failed to open an immediate infractions case.²⁶ It was stated that “officials did not view the scandal as athletics-related because non-athletes had gotten into the classes and received the same high grade.”²⁷ The NCAA only changed their mind about this once an NCAA investigation was undertaken by a prosecutor.²⁸

Considering that student-athletes’ academic endeavors are at the heart of what the NCAA stands for, it seems unjust that UNC was not more heavily punished for its wrong doings in the Committee on Infractions’ report from 2012. It seems even more outrageous that once the “paper class” scandal surfaced that the NCAA did not take action immediately.

The solution proposed is to re-organize the NCAA’s punishments for Level I violations, therefore creating a set punishment for each particular infraction. For example, if a team has one recruiting violation, they will receive a set punishment, but if they have two of that same violation, they will receive double the punishment. This new system will ensure that all violators receive equal penalties, and that no athletics program is at a greater disadvantage. This way programs are punished on an “equal playing field” and every single violation will be recognized, instead of the current system of having blanket punishments for the violations.

²⁵ Dennis Dodd, *UNC academic scandal leaves university in peril beyond athletics*, CBSSPORTS.COM, May 1, 2016, <http://www.cbssports.com/college-football/news/unc-academic-scandal-leaves-university-in-peril-beyond-athletics/>.

²⁶ Kane, *supra* note 15.

²⁷ *Id.*

²⁸ *Id.*