



**UNIVERSITY OF MASSACHUSETTS, AMHERST
PUBLIC INFRACTIONS DECISION
October 16, 2020**

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 public. The COI decides infractions cases involving member institutions and their staffs.¹ This case involved financial aid errors that resulted in student-athletes receiving payments in excess of their full cost of attendance. The violations primarily occurred in the men's basketball program but also involved the women's tennis program at the University of Massachusetts, Amherst (UMass).² These overages occurred as a result of the misunderstanding of financial aid rules and administrative error. The NCAA enforcement staff and UMass agreed to the facts but disagreed on the application of a bylaw, the level of the violations and whether a failure to monitor occurred. There were no involved individuals in the case.

Over three academic years, UMass provided impermissible financial aid on 13 instances to 12 student-athletes in two sport programs when it awarded them financial aid in excess of their full cost of attendance. The impermissible financial aid rendered the student-athletes ineligible. Thereafter, the student-athletes competed while ineligible in 186 contests and UMass provided them with impermissible actual and necessary expenses associated with those competitions. UMass failed to meet its obligation to withhold ineligible student-athletes from competition.

The circumstances surrounding the impermissible financial aid are unique in that they occurred when student-athletes moved off-campus after the start of the semester and UMass did not readjust their financial aid. The student-athletes fell into two categories: (1) student-athletes who continued to receive a telecom fee associated with dorm phones after they moved off-campus and (2) student-athletes whose on-campus housing was more expensive than their off-campus housing. Eight student-athletes received the impermissible telecom fee. Four student-athletes received the impermissible higher housing rate. One student-athlete received both. In total, UMass provided a little over \$9,100 in impermissible aid to the 12 student-athletes. The panel concludes that the violations are Level II.

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

² A member of the Atlantic 10 Conference for 18 of its 21 sport programs, UMass sponsors 10 men's and eleven women's sports. UMass also participates in football as an FBS independent, men's ice hockey as a member of the Hockey East Conference and men's lacrosse as a member of the Colonial Athletic Association. UMass has a total undergraduate enrollment of approximately 22,000. This is UMass' second Level I, Level II or major infractions case. UMass' prior case occurred in 1970 (men's basketball).

The NCAA enforcement staff alleged that the financial aid violations occurred due to the former associate athletics director for compliance's misapplication of financial aid legislation and a flawed monitoring process. Although UMass' compliance program was not perfect, the panel concludes that a failure to monitor violation was not demonstrated. The associate director of athletics made an error in interpreting permissible financial aid legislation, which caused student-athletes to exceed their cost of attendance. Further, although UMass' financial aid monitoring process did not detect the financial aid overages for 12 student-athletes over a three-year period, UMass financial aid distribution and monitoring processes properly awarded aid 98 percent of the time during the relevant time period. Although there is not a percentage threshold attached to when a failure to monitor is demonstrated and when one is not, based on the totality of circumstances of *this case*, UMass did not fail to monitor. Although UMass' financial aid distribution was imperfect, UMass implemented reasonable monitoring practices, including real-time review and end-of-year audits. On 13 occasions involving unique circumstances, UMass failed to identify and correct financial aid over payments.

Although UMass did not fail to monitor, it did provide impermissible aid to 12 student-athletes in two sport programs over three years. In part due to misunderstanding of financial aid legislation by the associate director of athletics, the violations were not discovered for roughly three years, which led to additional violations in subsequent years. As a result, UMass' mistakes caused all 12 student-athletes to become ineligible and impermissibly compete in athletic contests. Institutions have an affirmative obligation to withhold any ineligible student-athletes from competition until their eligibility is restored, regardless of the reason for or knowledge of the ineligibility or the circumstances required for reinstatement. As a result, UMass is responsible for the student-athletes' ineligibility and failed to meet its affirmative obligation to permit only eligible student-athletes to compete.

The panel classifies this case as Level II-Mitigated. Utilizing the current penalty guidelines and bylaws authorizing additional penalties, the panel adopts and prescribes the following principal penalties: two years of probation, a \$5,000 fine, a vacation of records associated with the ineligible competition and NCAA Regional Rules attendance for institutional staff members.

II. CASE HISTORY

This case arose from a Spring 2017 institutional inquiry into potential extra benefits in the UMass' men's basketball program. UMass immediately obtained outside counsel and initiated an internal investigation. On August 14, 2017, outside counsel notified the NCAA enforcement staff of potential violations. After a September 21, 2017, verbal notice of inquiry, the parties began a collaborative inquiry into potential extra benefit violations. During the investigation, the enforcement staff requested financial aid information for men's basketball student-athletes, and in August 2018 UMass confirmed potential financial aid errors related to men's basketball student-athletes. The enforcement staff requested UMass conduct further review of its other head count sports. As a result of the additional inquiry, UMass identified additional financial aid issues

involving two women's tennis student-athletes. The parties' initial investigation into potential extra benefits resulted in unsubstantiated violations or separately processed Level III conduct.

During winter and spring 2019, UMass and the enforcement staff discussed resolving the case via negotiated resolution (NR). The parties were unable to reach agreement and on March 28, 2019, the enforcement staff issued a notice of allegations (NOA). Three months later, the enforcement staff withdrew the NOA and resumed discussions aimed at resolving the case via NR. On August 1, 2019, the parties submitted an NR to the COI for preliminary assessment of the penalties. Although the parties' agreement identified ineligible student-athlete competition, the agreed-upon penalties did not include a vacation of records. For that reason, the panel did not approve the agreement. Thereafter, on October 1, 2019, the enforcement staff issued a second NOA. UMass and the enforcement staff submitted timely written submissions, and the chief hearing officer set a hearing date for April 16, 2020.³

On March 17, 2020, the chair and vice chair of the COI sent a master letter regarding changes in infractions processing logistics due to the COVID-19 pandemic, postponing all contested cases through May to all parties in pending infractions. On May 18, 2020, the panel invited the parties to resolve the case via videoconference. UMass declined, stating its preference for an in-person hearing and noted COVID-19 related restrictions in Massachusetts and other campus-related circumstances that required immediate attention. On June 5, 2020, the chair and vice chair of the COI sent a second master scheduling letter to all parties in pending infractions cases stating the COI's desire to hear appropriate cases via videoconference. In light of this direction, the chief hearing officer informed the parties that the panel would resolve this case via videoconference. The panel held a videoconference on September 24, 2020.⁴

III. FINDINGS OF FACT

The facts giving rise to this case are largely agreed upon. They stem from student-athletes moving off-campus after the start of the semester and UMass not properly adjusting the student-athletes' scholarship awards to reflect their changed circumstances and expenses. By not making the proper reduction adjustments, UMass awarded financial aid in excess of the cost of attendance for 12 student-athletes. The over-awards fell in two categories: (1) a telecom fee associated with on-campus communication services and (2) housing costs. One student-athlete received both in the

³ During the scheduling phase of this case, the composition of the panel changed on two occasions due to calendar conflicts. Ultimately, a seven-member panel considered this case. Pursuant to Bylaw 19.5.12.3.1, two members from the original three-member panel that conducted the preliminary assessment of penalties were included in the seven-member panel.

⁴ The panel appreciates the parties' professionalism and participation in the videoconference. Although the COI has historically held in-person hearings for contested cases, Bylaw 19.7.7 contemplates the use of videoconference to resolve most infractions cases. The COI has previously utilized videoconference as a mode for infractions cases, and the circumstances related to the COVID-19 pandemic necessitates the use of videoconference to resolve pending matters. The UMass case serves as an example for how active infractions cases can be resolved in a fair and efficient manner through the use of videoconferencing.

same academic year. The same student-athlete continued to receive excessive housing costs the following academic year.⁵

UMass' financial aid processes relied on working spreadsheets and coordination between the financial aid, Bursar's and compliance offices. During the relevant period, UMass distributed financial aid to its student-athletes twice per year, at the beginning of each semester. Thereafter, the Bursar's office would send the compliance department weekly working spreadsheets that identified when a student-athlete was due disbursements or adjustments. In addition to their other responsibilities, one of the two compliance staff members manually reviewed the spreadsheets to ensure that the disbursements complied with NCAA legislation. Depending on the time of the year, this could involve reviewing upwards of 300 transactions per week.

If the compliance staff identified an impermissible distribution, it would alert the financial aid office to adjust the aid and would place a hold on the account to stop the Bursar's distribution. Similar to its collaboration with the Bursar's office, UMass' compliance and financial aid offices shared working spreadsheets that tracked student-athletes' financial aid. On occasion, some distributions were made prior to the compliance office's review. At other times, the compliance office failed to detect the impermissible payments that exceeded full cost of attendance. Throughout the academic year, UMass made adjustments, distributions and refunds related to any number of issues including, but not limited to, adding and dropping classes, lab fees, material fees, meal plans and housing changes.

Most of the time, UMass' system worked. As part of the investigation, UMass reviewed records over a five-year period for student-athletes who received at least a 70 percent scholarship.

UMass' review involved 619 scholarship student-athletes and uncovered 13 instances involving 12 student-athletes where a disbursement resulted in a student-athlete's aid exceeding the cost of attendance limit.⁶ The review demonstrated that 98 percent of the time, UMass properly awarded financial aid. The two percent of the time that UMass incorrectly awarded aid fell into two categories: (1) a telecom fee and (2) the difference in on-campus vs. off-campus housing costs.

As part of on-campus living expenses, UMass student-athletes incurred a telecom fee associated with on-campus communication services. The telecom fee was \$242 during the 2014-15 academic year and \$252 during the 2015-16 academic year. UMass acknowledged in its response to the NOA and at the infractions hearing that the telecom fee should not have been provided to student-athletes living off-campus. However, UMass provided five men's basketball student-athletes living off-campus with the telecom fee during the 2014-15 academic year and one men's basketball

⁵ Thus, UMass awarded aid in excess of the full cost of attendance on 13 instances to 12 student-athletes.

⁶ UMass' review involved over 5,000 line item transactions for the 619 student-athletes.

and two women's' tennis student-athletes living off-campus with the telecom fee during the 2015-16 academic year.⁷ UMass discontinued the telecom fee after 2015-16.

The telecom fee error appears to have occurred due to a misunderstanding of financial aid legislation. In her interview with the enforcement staff and UMass, the compliance coordinator stated that the associate director of athletics for compliance believed that student-athletes who moved off-campus should still receive the telecom fee as part of their financial aid package because they would have "some kind of telephone charge they would need to pay anyway." At the infractions hearing, UMass disagreed and stated that the award occurred due to human error because the value was small and overlooked. Regardless, UMass agreed that it provided six men's basketball student-athletes and two women's tennis student-athletes with the telecom fee after they moved off-campus and the fee no longer applied to their living situation. As a result, each of the student-athletes exceeded their full cost of attendance and became ineligible.⁸ Thereafter, they competed and received actual and necessary expenses.

In addition to the telecom fee, UMass also provided four men's basketball student-athletes with housing expenses that exceeded full cost of attendance when they moved from more expensive on-campus housing to less expensive off-campus housing during the semester. This too resulted in the four student-athletes exceeding their allowable full cost of attendance. One of the men's basketball student-athletes received housing expenses exceeding the allowable full cost of attendance during both the 2015-16 and 2016-17 academic years.⁹ The other three only received higher housing expenses during the 2016-17 academic year.

At the infractions hearing, UMass stated that all men's and women's basketball student-athletes live in suites that have their own individual bedrooms. Although not the most expensive living option available, a single room was more expensive than nearly half of the twenty different living options offered by UMass.¹⁰ At some point during the semester, the men's basketball student-athletes moved from their on-campus singles to less expensive off-campus housing and UMass never adjusted the student-athletes' financial aid awards.

⁷ During the 2015-16 academic year, UMass provided a second men's basketball student-athlete with the telecom fee after he moved off-campus. Therefore, UMass provided a total of seven men's basketball student-athletes with the telecom fee. However, because he also received excessive housing expenses, his cumulative financial aid overages are addressed below. Based on when they moved off-campus, the value of the telecom fee for the eight student-athletes ranged from \$135 to \$252.

⁸ At the infractions hearing, both UMass and the enforcement staff acknowledged that there were other instances where student-athletes moved off-campus and received the telecom fee. However, the receipt of those additional funds did not cause those student-athletes to exceed their full cost of attendance. Therefore, the telecom fee fell within permissible financial aid limits and the student-athletes did not become ineligible.

⁹ During the 2015-16 academic year, he also received the telecom fee when he moved off-campus.

¹⁰ At the hearing, UMass' director of athletics stated that the men's basketball living arrangements were the eighth least expensive option out of the 20 available options. Stated differently, UMass offered 12 living arrangements that were more expensive than the men's basketball student-athletes' living arrangements.

The hearing panel questioned UMass about the reason the men's basketball student-athletes moved off-campus. The director of athletics stated, to the best of his recollection, the four men's basketball student-athletes were involved in the same student misconduct issue and moved off-campus due to disciplinary action taken by the university. He also confirmed that the head men's basketball coach changed his policy that required all men's basketball student-athletes to live on campus, and the combination of the two led to one student-athlete staying off-campus and receiving higher expenses for two academic years. As a result, the individual student-athletes received financial aid that exceeded their cost of attendance by roughly \$1,000 to \$2,000 per student-athlete. Based on his receipt of the telecom fee and the two consecutive years of receiving the higher on-campus rate, the one men's basketball student-athlete received roughly \$3,700 over his cost of attendance over the two academic years. The additional financial aid rendered the men's basketball student-athletes ineligible. Thereafter, they competed and received actual and necessary expenses.

Although the UMass athletics department did not initially identify that its provision of the telecom fee and higher housing costs exceeded 12 student-athletes' full cost of attendance, it did have proactive and back-end compliance practices in place specifically targeted at the financial aid process. In addition to the shared spreadsheets, the UMass compliance office maintained a working relationship with the financial aid office including identifying possible compliance issues, answering compliance-related questions, and sharing regular email updates and newsletters. Further, UMass sent a representative from the financial aid office to the NCAA Regional Rules Seminars yearly. In his interview and again at the infractions hearing, the associate director of financial aid also identified that he was (and continues to be) a member of the UMass compliance committee that meets once a semester to discuss ongoing and shared compliance-related issues. Other representatives included the FAR, compliance staff, academic support services, the Bursar's office and the Registrar. Finally, from 2014 through 2018 and in addition to other regular internal rotating audits, the athletics department commissioned an annual audit with external independent auditors who reviewed all of the department's financial transactions, including financial aid transactions. However, none of the audits flagged any of the 13 overages.

IV. ANALYSIS

This case involved financial aid payments in excess of the full cost of attendance in the men's basketball and women's tennis programs over a three-year period that resulted in ineligible competition and UMass' impermissible provision of actual and necessary expenses. UMass agreed that financial aid violations occurred but asserted that the violations should be Level III. UMass also contested the applicability of Bylaw 12.11.1, requiring institutions to withhold ineligible student-athletes from competition, based on its claim of "lack of knowledge" of the impermissible financial aid. The panel concludes the violations are Level II, which includes the institution's failure to withhold ineligible student-athletes from competing.

IMPERMISSIBLE FINANCIAL AID IN EXCESS OF FULL COST OF ATTENDANCE [NCAA Division I Manual Bylaws 12.11.1, 15.01.2, 15.1 and 16.8.1 (2014-15 through 2016-17)]

Over three academic years, UMass provided financial aid packages that aligned with on-campus living expenses even though the student-athletes moved off-campus during the semester. The higher on-campus living expense payments caused the student-athletes to exceed their full cost of attendance and constituted impermissible financial aid. As a result, the student-athletes became ineligible and UMass did not withhold them from competition. UMass also provided them with actual and necessary expenses associated with those competitions. The violations are Level II.

1. NCAA legislation relating to financial aid, impermissible competition and ineligible expenses.

The applicable portions of the bylaws may be found at Appendix Two.

2. UMass did not make proper adjustments to 12 student-athletes' financial aid packages after they moved from more expensive on-campus housing to less expensive off-campus housing resulting in the student-athletes receiving financial aid in excess of their full costs of attendance, competing while ineligible and receiving actual and necessary expenses reserved for eligible student-athletes.

Beginning with the 2014-15 academic year and continuing through the 2016-17 academic year, UMass provided financial aid in excess of full cost of attendance on 13 instances to 12 student-athletes. The excessive financial aid totaled over \$9,100 and ranged from \$135 to roughly \$3,700 per student-athlete. The overages occurred because UMass staff members did not understand financial aid legislation and/or detect financial aid over-awards when the student-athletes moved off-campus *after* the start of the semester. As a result of the impermissible aid, student-athletes competed and received expenses while ineligible. The financial aid errors violated Bylaws 15, 16 and 12. The institution agreed with the Bylaw 15 and 16 citations but contested a violation of Bylaw 12.

Bylaw 15 governs financial aid. Bylaw 15.01.2 expressly declares that student-athletes who receive financial aid other than that permitted by the Association shall not be eligible for college athletics. Similarly, Bylaw 15.1 specifically states that student-athletes are ineligible from competition if they receive financial aid that *exceeds the value of the cost of attendance*. Bylaw 16.8.1 permits institutions to provide actual and necessary expenses to student-athletes representing the institution in practice or competition but reserves those expenses to eligible student-athletes only. Finally, institutions are obligated to withhold ineligible student-athletes from competition, regardless of the reason for, or knowledge of, their ineligibility, pursuant to Bylaw 12.11.1.

UMass agreed that on 13 occasions over three years it provided 10 men's basketball student-athletes and two women's tennis student-athletes with financial aid that exceeded their full cost of attendance. The overages occurred because the student-athletes moved from on-campus housing to off-campus housing after the semester had begun. At that time, UMass had already awarded the student-athletes their financial aid in accordance with their on-campus living situations and then did not adjust the financial aid to account for their new, less expensive off-campus living situations.

Generally, the overages resulted from one of two scenarios: (1) student-athletes who received the telecom fee associated with on-campus communication services or (2) student-athletes who moved from more expensive on-campus "singles" to less expensive off-campus housing arrangements. The majority of the student-athletes' overages were limited to one category and one academic year. However, one men's basketball student-athlete received both the telecom fee and more expensive housing rate during the 2015-16 academic year and continued to receive a more expensive housing rate during the 2016-17 academic year. When UMass provided the student-athletes with aid that exceeded their cost of attendance, it violated Bylaw 15.1 and immediately rendered the student-athletes ineligible under both Bylaws 15.01.2 and 15.1. UMass then permitted those student-athletes to compete and provided them with actual and necessary expenses in violation of Bylaws 12.11.1 and 16.8.1, respectively.

Although UMass agreed that it violated Bylaws 15 and 16, it argued that it did not violate Bylaw 12.11.1 because (1) it did not *knowingly* permit any ineligible student-athletes to compete and (2) Bylaw 12.11.1 is not commonly cited in Level III cases if there is no knowledge of ineligibility and has only recently been cited with more frequency in Level I and Level II cases. UMass' positions, however, are not supported by the plain language of the Bylaw nor the COI's past decisions.

Bylaw 12.11.1 contains no knowledge requirement. To the contrary, it places an affirmative obligation on all institutions to withhold ineligible student-athletes from competition. In this way, Bylaw 12.11.1 memorializes the membership's commitment to fair play, and a level playing field, as a bedrock principle of intercollegiate competition. Simply stated, it is a standard of fair play.

The COI expressly stated that violations of Bylaw 12.11.1 occur regardless of whether an institution has knowledge of the student-athletes' ineligibility. *See University of Washington* (2020) (concluding, among other bylaws, that Washington violated Bylaw 12.11.1 when it provided impermissible travel costs to parents of prospects on their official visits and the student-athletes later enrolled and then competed for the institution) and *Texas Christian University* (2019) (concluding that a Bylaw 12.11.1 violation occurred and stating the bylaw "does not expressly differentiate between circumstances under which an institution knew (or should have known) of the ineligibility from those where there is no knowledge"). Like *Washington* and *TCU*, Bylaw 12.11.1 is appropriate and it applies.

UMass' observations of past Level I, Level II and Level III cases provide context, but do not make the application of Bylaw 12.11.1 any less appropriate based on the facts of this case. The Level

III process is a separate process and not binding on Level I or Level II cases. More relevantly, in *TCU* the COI observed that recent cases and charging guidance may demonstrate an evolution of Bylaw 12.11.1. The fact that Bylaw 12.11.1 may have been cited with less frequency years ago, does not make it any less applicable today.

UMass' actions, or in some instances inaction, directly caused the student-athletes' ineligibility. UMass has an obligation to ensure that it meets all requirements of NCAA membership, including correctly administering financial aid and ensuring that only eligible student-athletes compete on behalf of the institution. When an institution makes a mistake, it is accountable for the consequences of that mistake. Here, the mistake was providing excessive aid and the consequence was the requirement to withhold ineligible student-athletes from competition.

Pursuant to Bylaw 19.1.2 and based on the guidance of past COI cases involving financial aid violations, the panel concludes that the violations are Level II. Bylaw 19.1.2-(d) specifically identifies multiple financial aid violations that do not amount to a lack of institutional control as an example of a Level II violation. This case involved multiple instances, student-athletes, sport programs, and years of impermissible financial aid. Further, the conduct was not isolated or limited.¹¹ Additionally, the value of the impermissible aid was more than minimal, with one student-athlete receiving over \$3,700. Recently, the COI concluded that financial aid violations that occur over multiple years and involve a number of student-athletes constitute Level II violations. *See California Polytechnic State University* (2019) (concluding the violations were Level II when 256 student-athletes received \$800 cash stipends that were not equal to the actual cost of books and the stipend caused 30 of those student-athletes to exceed their individual financial aid limits and the overages ranged from \$5 to \$734). Although guidance from past contested cases is limited, the COI has also accepted parties' agreements that Level II violations occur when multiple student-athletes receive impermissible financial aid over multiple years. *See Charleston Southern University* (2018) (accepting agreed-upon Level II violations in an SDR when the institution allowed 34 student-athletes to use their financial aid book scholarships to purchase non-course related material) and *University of Arkansas, Pine Bluff* (2014) (concluding, among other violations, that Level II violations occurred when the institution provided 15 student-athletes with book scholarships when their financial aid packages did not include them). Consistent with Bylaw 19 and case guidance, the panel concludes the violations are Level II.

V. VIOLATIONS NOT DEMONSTRATED

The enforcement staff alleged that UMass failed to monitor its financial aid disbursement system and ensure compliance with financial aid legislation. The panel does not conclude that a violation occurred because pertinent individuals involved in the financial aid process received proactive education, UMass had real-time collaborative monitoring systems in place and commissioned annual independent audits on its athletics financial transactions. Despite these measures, UMass

¹¹ When considering UMass' arguments that the violations should be Level III, the panel weighed heavily the fact that the violations affected more than one sport program and continued for more than one year.

made mistakes with respect to 12 student-athletes' financial aid awards. UMass is accountable for these mistakes through the underlying violations and core and additional penalties. Albeit not perfect, its systems were not inadequate under the facts and circumstances of this case. The panel concludes that a failure to monitor violation was not demonstrated.

Among other things, the NCAA Constitution sets forth principles by which institutions are to conduct their intercollegiate athletics programs. Constitution 2.8.1 obligates institutions to comply with all applicable rules and regulations of the Association, to monitor their programs to assure compliance and to report instance of noncompliance.

Constitution 2 does not require perfection. But it does require institutions to commit adequate resources to compliance programs and systems that deter, detect and report violations. UMass did not detect the violations in the case. Rather, the enforcement staff discovered them while investigating other potential issues in the men's basketball program. However, in reviewing the facts of this case, UMass' compliance program and systems for distributing and monitoring financial aid, the panel determines UMass' system were not inadequate. UMass proactively educated and collaborated with those involved in the financial aid process, including sending representatives from the financial aid office to the NCAA Regional Rules Seminars annually and involving them in broader institutional compliance discussions. Similarly, the compliance, financial aid and Bursar's office engaged in collaborative monitoring of financial aid packages, disbursements and manual approvals through a series of working spreadsheets. On 13 occasions involving 12 student-athletes, the compliance office got it wrong. However, 98 percent of the time, UMass got it right. UMass also actively audited the athletics department's financial transactions. This included rotating internal audits and annual outside independent audits that reviewed all athletic department transactions, including financial aid.

There is no single threshold that establishes when a failure to monitor violation is appropriate and when one is not. It is a fact specific, case-by-case analysis. In this case, whether a failure to monitor violation occurred was a difficult and close call. The panel is concerned that UMass did not identify potential problems earlier. First, the associate director of athletics for compliance believed student-athletes could continue receiving the telecom fee, even if it exceeded the cost of attendance. Had UMass appropriately addressed the telecom fee in the 2014-15 academic year, other violations could have been prevented. Further, UMass should have more closely scrutinized the four men's basketball student-athletes' living arrangements when they were forced to move off-campus due to student misconduct and disciplinary issues. Despite these oversights, UMass had a reasonable monitoring system with respect to financial aid and based on the totality of circumstances unique to this case, the panel determines that the institution did not fail to monitor.

VI. PENALTIES

For the reasons set forth in Sections III, IV and V of this decision, the panel concludes that this case involved Level II violations of NCAA legislation. Level II violations are significant breaches of conduct that provide or are intended to provide more than a minimal but less than a substantial

or extensive advantage, include more than a minimal but less than a substantial or extensive impermissible benefit, or involve conduct that may compromise the integrity of the Collegiate Model.

In considering penalties, the panel first reviewed aggravating and mitigating factors pursuant to Bylaws 19.9.2, 19.9.3 and 19.9.4 to determine the appropriate classifications for UMass. The panel then used the current penalty guidelines (Figure 19-1) and Bylaws 19.9.5 and 19.9.7 to prescribe penalties.

The panel determined that the below-listed factors applied and assessed the factors by weight and number. Based on its assessment, the panel classifies this case as Level II-Mitigated for UMass.

Aggravating Factor for UMass

19.9.3-(b): A history of Level I, Level II or major violations.

UMass disagreed with Bylaw 19.9.3-(b) because its last infractions case occurred almost 50 years ago and involved an outdated financial aid rule. When institutions have an infractions history, the COI has regularly determined that Bylaw 19.9.3-(b) applies but has attributed little weight when significant time has passed since the institution's most recent case and/or when cases are substantively different. *See DePaul* (assigning minimal weight when 25 years passed since DePaul's most recent case) and *Cal Poly* (assigning minimal weight when over 20 years had passed since the most recent case and the substance of those cases were different). Here, UMass' last infractions case was nearly a half-century ago. Thus, although the factor applies, the panel assigns it no weight.

The enforcement staff also identified Bylaw 19.9.3-(g), *Multiple Level II violations*. Because the panel determines that the failure to monitor violation is not demonstrated, this case only involves one Level II violation. Therefore, Bylaw 19.9.3-(g) does not apply. UMass' argued, however, that if the panel did find a failure to monitor violation, then Bylaw 19.9.3-(g) should not apply because it was a derivative violation from the underlying conduct. That position is not supported by past COI guidance. The COI has regularly determined that Bylaw 19.9.3-(g) applies when the violations at issue involve one underlying and a derivative violation (e.g., failure to monitor, head coach responsibility, etc.). *See DePaul University* (2019) and *Cal Poly*. However, because there is only one Level II violation, the factor does not apply.

Mitigating Factor for UMass

19.9.4-(d): An established history of self-reporting Level III or secondary violations.¹²

¹² UMass self-reported 37 Level III violations from the 2014-15 through 2019-20 academic years, an average of approximately six per year.

The parties also jointly presented Bylaw 19.9.4-(i), *Other facts warranting a lower penalty range*, as a potential mitigating factor and UMass proposed Bylaw 19.9.4-(h), *An absence of prior conclusions of Level I, Level II or major violations*. The panel determines that neither applies.

With respect to Bylaw 19.9.4-(i), the panel does not find that this case involves any other facts that warrant lower penalties. As further explained below, the panel prescribes penalties at the lowest end available for Level II-Mitigated penalties and addresses the ineligible competition with the vacation of records penalty. In support of the factor, the parties noted the total number of student-athletes (12), sport programs (two) and amount of impermissible excessive aid (\$9,187) as potential mitigating facts.¹³ The panel determines these facts more appropriately Level II conduct; and, at the same time, distinguish it from Level III conduct rather than provide mitigation. Although these facts may support the violation being on the lower end of the Level II scale, they do not support further mitigation.

Bylaw 19.9.3-(i) is not commonly applied. Previously, the COI applied the factor when an institution's response to a particular incident went above and beyond expectations or the facts of the case were unique. *See University of Oregon* (2018) (applying Bylaw 19.9.3-(i) when the Oregon identified a potential issue with a grade change and acted quickly by rescinding the grade, revoking the diploma, self-reporting the potential violations and pulling the student-athletes from NCAA postseason competition moments before her scheduled event) and *University of Tennessee at Chattanooga* (2018) (applying Bylaw 19.9.3-(i) when the violations were committed by an atypical booster who provided student-athletes with reduced rent and the use of an automobile at a time when some of those student-athletes had exhausted their eligibility). This case does not involve other facts similar to past cases where the COI applied this factor. The panel determines this factor does not apply.

Similarly, Bylaw 19.9.3-(h) does not apply. This factor is reserved for institutions that have not previously had a Level I, Level II or major infractions case. The COI has regularly declined to apply the factor when an institution has past cases, even if those cases are dated. *See Cal Poly* and *St. John's University (New York)* (2018).

Among other penalty considerations, the panel considered what additional penalties most appropriately held UMass accountable for the violations and particularly the 186 contests in which ineligible student-athletes participated. To directly address the competitive advantage gained as a result of the UMass' errors, the panel prescribes a vacation of records penalty.

Pursuant to Bylaw 19.9.7-(g), the COI may prescribe vacation of records any time a student-athlete competes while ineligible. Since February 2016, COI IOP 5-15-7 has also identified circumstances where a vacation of wins is more appropriate. The IOP memorialized factors developed in collaboration with the NCAA Division I Infractions Appeals Committee (IAC) and identified in *Southeast Missouri State University* (2008). However, both the COI and the Division I IAC have

¹³ The enforcement staff relied on the same facts to support a Level II designation and, in part, as facts supporting a failure to monitor.

regularly stated that vacation can occur without any of the factors present. *See Siena College* (2020); *Brigham Young University* (2018); *Brigham Young University*, IAC Report No. 506 (2019); and *North Carolina Central University (NCCU)*, IAC Report No. 499 (2018). In fact, the COI has previously prescribed a vacation of records penalty when none of the factors were present. *See Arkansas State University* (2016). In this case, and based on the totality of the circumstances including the fact that the violations involved 12 student-athletes in two sport programs, occurred and went undetected over three academic years and resulted in student-athletes competing while ineligible in 186 contests, the vacation of records penalty is appropriate.

UMass argued that vacation of records was inappropriate. The panel disagrees. Although there may be a limited number of cases where the COI declined to prescribe a vacation of records for unique and fact-specific reasons, the facts of this case support a vacation of records even in the absence of a failure to monitor violations (and other IOP factors).

UMass' misapplication of financial aid bylaws and/or its inattention to the Bursar's distributions directly caused the 12 student-athletes' ineligibility. The institution then did not detect the violations or the ineligibility and permitted the student-athletes to compete. Further, despite the four basketball student-athletes departing on-campus housing for student misconduct reasons, it appears that no additional athletic department and compliance scrutiny was directed to the four student-athletes, their financial aid or their eligibility status.

In this way, UMass' errors are similar to administrative errors that occur in certification cases. Previously, the COI has not accepted arguments that but for an administrative error, student-athletes would have been eligible for competition. *See NCCU* (2018) (vacating records for all student-athletes, including those whose ineligibility resulted from clerical errors where but for those improper designations, the student-athletes would have been eligible) and *Florida A&M University (FAMU)* (2019) (vacating records for all student-athletes, including student-athletes who became ineligible as a result of the institution failing to enter student-athletes degree declarations on time). Neither NCCU nor FAMU knew their clerical errors resulted in student-athletes' ineligibility. However, the student-athletes competed without formally being reinstated for competition and the institutions received the competitive advantage of their participation when they should have been withheld until they were reinstated. The same is true here. UMass' errors led to the student-athletes' ineligibility. The student-athletes should have been withheld until they were officially reinstated. They were not. As a result, UMass received a competitive advantage when those ineligible student-athletes competed. Thus, the vacation of records penalty is appropriate in that it holds the institution accountable for its violations and restores the competitive inequity that UMass benefitted from when it permitted ineligible student-athletes to compete.

All the penalties prescribed in this case are independent and supplemental to any action the NCAA Division I Committee on Academics has taken or may take through its assessment of postseason ineligibility, historical penalties or other penalties. In prescribing penalties, the panel considered UMass' cooperation in all parts of this case and determines it was consistent with institutional obligations under Bylaw 19.2.3. The panel also considered UMass' corrective actions, which are contained in Appendix One. The panel prescribes the following penalties:

Core Penalties for Level II-Mitigated Violations (Bylaw 19.9.5)¹⁴

1. Probation: Two years of probation from October 16, 2020, through October 15, 2022.¹⁵
2. Financial penalty: UMass shall pay a fine of \$5,000. (Self-imposed.)

Additional Penalties for Level II-Mitigated Violations (Bylaw 19.9.7)

3. Public reprimand and censure through the release of the public infractions decision.
4. Vacation of team and individual records: Ineligible participation in the men's basketball and women's tennis programs occurred over portions of three academic years as a result of UMass awarding financial aid to 12 student-athletes in excess of their full cost of attendance. Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3 and COI Internal Operating Procedure 5-15-7, UMass shall vacate all regular season and conference tournament wins, records and participation in which the ineligible student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition. Further, if the ineligible student-athletes participated in NCAA postseason competition at any time they were ineligible, UMass' participation in the postseason contests in which the ineligible competition occurred shall be vacated. The individual records of the ineligible student-athletes shall also be vacated. However, the individual finishes and any awards for all eligible student-athletes shall be retained. Further, UMass' records regarding its men's basketball and women's tennis programs, as well as the records of their head coaches, shall reflect the vacated records and be recorded in all publications in which such records are reported, including, but not limited to, institutional media guides, recruiting material, electronic and digital media plus institutional, conference and NCAA archives. Any institution that may subsequently hire the affected head coaches shall similarly reflect the vacated wins in their career records documented in media guides and other publications cited above. Head coaches with vacated wins on their records may not count the vacated wins toward specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to the vacated records shall be removed from the athletics department stationery, banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in men's basketball and women's tennis shall be returned to the Association.

Finally, to aid in accurately reflecting all institutional and student-athlete vacations, statistics and records in official NCAA publications and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA Media

¹⁴ If an opportunity to serve a penalty will not be available due to circumstances related to COVID-19, the penalty must be served at the next available opportunity. With the exception of postseason bans, probation and general show-cause orders, this methodology applies to all penalties, including institutional penalties, specific restrictions within show-cause orders and head coach restrictions, unless otherwise noted.

¹⁵ The COI's methodology for penalties impacted by COVID-19 does not apply to probation.

Coordination and Statistics office and appropriate conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the NCAA Media Coordination and Statistics office with a written report detailing those discussions. This written report will be maintained in the permanent files of the NCAA Media Coordination and Statistics office. This written report must be delivered to the office no later than 14 days following the release of this decision or, if the institution appeals the vacation penalty, at the conclusion of the appeals process. A copy of the written report shall also be delivered to the Office of the Committees on Infractions (OCOI) at the same time.

5. During the probationary period, the UMass compliance staff members and a representative from the Financial Aid Office shall be required to attend one in-person NCAA Regional Rules Seminar. The sessions attended shall be identified in the annual compliance report and, at a minimum, should include sessions specific to awarding financial aid.
6. During the period of probation, UMass 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 institutional staff members with responsibility for recruiting and certification legislation;
 - b. Submit a preliminary report to the OCOI by **November 30, 2020**, setting forth a schedule for establishing this compliance and educational program;
 - c. File with the OCOI annual compliance reports indicating the progress made with this program by **August 31**, during each year of probation. Particular emphasis shall be placed on educating those involved in the financial aid process and monitoring financial aid distributions and adjustments to student-athletes;
 - d. Inform prospects in the men's basketball and women's tennis programs in writing that UMass is on probation for two years and detail the violations committed. If a prospect 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 prospect 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 webpage "landing page" and in the media guides for men's basketball and women's tennis. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the case; and (iii) give members of the general public a clear indication of what happened in the case to allow the public (particularly prospects and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.

7. Following the receipt of the final compliance report and prior to the conclusion of probation, UMass' president shall provide a letter to the COI affirming that UMass' current athletics policies and practices conform to all requirements of NCAA regulations.
-

The COI advises UMass it should take every precaution to ensure that they observe the terms of the penalties. The COI will monitor UMass while it is on probation to ensure compliance with the penalties and terms of probation and may extend the probationary period, among other action, if UMass does not comply or commits additional violations. Likewise, any action by UMass contrary to the terms of any of the penalties or any additional violations shall be considered grounds for prescribing more severe penalties and/or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

Norman Bay

Thomas Hill

Jason Leonard

Vince Nicastro

Joe Novak

Larry Parkinson

David M. Roberts, chief hearing officer

APPENDIX ONE

**UMASS' CORRECTIVE ACTIONS IDENTIFIED IN ITS
RESPONSE TO THE NOTICE OF ALLEGATIONS**

The institution believed there was an opportunity to bolster the compliance program upon the arrival of the Associate Athletics Director for Governance & Compliance in July of 2017. The discovery of NCAA violations caused by administrative errors within the financial aid operation further incentivized the Department of Athletics to take corrective action. As a result, the following corrective measures have been put in place.

- Since the discovery of the misapplication of NCAA Bylaw 15, monitoring of student-athlete financial aid is now shared between the Compliance office (both the Associate AD and Compliance Assistant monitor financial aid) and the Financial Aid office (primarily the assistant director of financial aid with oversight by the associate director of financial aid), with assistance from the bursar's office. – January 2018¹⁶
- After learning of the potential violations, the institution had an external compliance audit performed by an outside, independent third party. The institution has begun to incorporate the recommendations made as a result of that audit. – January 2018
- The institution has increased rules education for its coaching staff, athletics administration and student-athletes. Specifically, the Associate AD for Governance and Compliance provides monthly rules education sessions as well as two additional education sessions per term to athletics staff and administration. The Associate AD for Governance and compliance is also the sport administrator for men's basketball. He regularly attends men's basketball practices and provides "drive-by" education to the student-athletes approximately four times per semester. – September 2017
- The institution has implemented new compliance software to assist with record keeping and monitoring efforts. – October 2018
- With regard to attendance at NCAA Regional Rules, the institution has required the following attendance during the previous conferences:
 - June 2016 – Regional Rules was attended by: Assistant AD for Compliance, Compliance Assistant, Associate Director of Financial Aid

¹⁶ Often times in major infractions, institutions implement increased quality controls, above industry norms, to ensure that the specific violations do not occur again. As it relates to the institution, while the previous policies and procedures were solid, the institution has since enhanced monitoring practices requiring an additional review post-aid adjustment to essentially triple check any aid adjustments.

- June 2017 – Regional Rules was attended by: Assistant AD for Compliance, Compliance Assistant, Associate Director of Financial Aid
 - June 2018 – Regional Rules was attended by: Associate AD for Compliance, Assistant AD for Compliance, Compliance Assistant and the Associate Director of Financial Aid
 - May 2019 – Regional Rules was attended by: Associate AD for Compliance, Assistant AD for Compliance, Compliance Assistant and the Associate Director of Financial Aid.
-
- The institution has updated the written policies and procedures for the administration of financial aid to student-athletes. Procedures shall include regular meetings between athletics compliance, financial aid, and the bursar offices to ensure knowledge is shared among the offices. – March 2019.

 - The institution has hired a new Associate Athletics Director for Compliance.

APPENDIX TWO
Bylaw Citations

2014-15 Manual

12.11.1 Obligation of Member Institution to Withhold Student-Athlete From Competition.

If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Committee on Student-Athlete Reinstatement for restoration of the student-athlete's eligibility as provided in Bylaw 12.12 if it concludes that the circumstances warrant restoration.

15.01.2 Improper Financial Aid. Any student-athlete who receives financial aid other than that permitted by the Association shall not be eligible for intercollegiate athletics.

15.1 Maximum Limit on Financial Aid—Individual. A student-athlete shall not be eligible to participate in intercollegiate athletics if he or she receives financial aid that exceeds the value of the cost of attendance as defined in Bylaw 15.02.2. A student-athlete may receive institutional financial aid based on athletics ability (per Bylaw 15.02.4.2) and educational expenses awarded per Bylaw 15.2.6.4 up to the value of a full grant-in-aid, plus any other financial aid up to the cost of attendance.

16.8.1 Permissible. An institution, conference or the NCAA 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.

2015-16 Manual

12.11.1 Obligation of Member Institution to Withhold Student-Athlete From Competition.

If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Committee on Student-Athlete Reinstatement for restoration of the student-athlete's eligibility as provided in Bylaw 12.12 if it concludes that the circumstances warrant restoration.

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financial aid based on athletics ability (per Bylaw 15.02.4.2) and any other financial aid up to the value of his or her cost of attendance.

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2016-17 Manual

12.11.1 Obligation of Member Institution to Withhold Student-Athlete From Competition.

If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Committee on Student- Athlete Reinstatement for restoration of the student-athlete's eligibility as provided in Bylaw 12.12 if it concludes that the circumstances warrant restoration.

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