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FOR IMMEDIATE RELEASE
Tuesday, March 23, 2010

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NCAA DIVISION I INFRACTIONS APPEALS COMMITTEE UPHOLDS RECORDS PENALTY FOR UNIVERSITY OF ALABAMA, TUSCALOOSA

INDIANAPOLIS – The NCAA Division I Infractions Appeals Committee has upheld the vacation of records penalty for University of Alabama, Tuscaloosa.

In June 2009, the NCAA Division I Committee on Infractions penalized Alabama for major violations involving 16 sports in its athletics program. The violations included a failure to monitor by the university and impermissible benefits obtained by 201 student-athletes through misuse of the university's textbook distribution program.

Penalties in the case included three years' probation, vacation of records and a \$43,900 fine.

The university appealed only the vacation of records penalty, which affected its football, men's tennis and men's and women's track and field programs. The university argued on appeal that the vacation of wins penalty was excessive such that it was an abuse of discretion as it did not consider the university's cooperation. The university also argued that the penalty: (a) was not

consistent with past cases which included a vacation of records; and (b) did not follow previous textbook case precedent.

In its affirmation of the penalty, the Infractions Appeals Committee disagreed. It noted that the Committee on Infractions mentioned several times in the public report that it had considered the university's cooperation. Further, when discussing the role of case precedent in penalty decisions, the Infractions Appeals Committee noted that two cases are seldom exactly alike and that the Committee on Infractions must have latitude to tailor the penalties to the specific facts of each case.

In considering the university's appeal, the Infractions Appeals Committee reviewed the notice of appeal; the transcript of the university's Committee on Infractions' hearing; and the submissions by the university and the Committee on Infractions.

The members of the Infractions Appeals Committee who heard this case were Christopher L. Griffin, Foley & Lardner LLP, chair; Susan Cross Lipnickey, Miami University (Ohio); Jack Friedenthal, George Washington University; William Hoyer, Institute for the International Education of Students; and Allan A. Ryan Jr., Harvard University.

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

March 23, 2010

Report No. 299

University of Alabama, Tuscaloosa

Tuscaloosa, Alabama

This report is filed in accordance with NCAA Bylaw 32.11 and is organized as follows:

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I. INTRODUCTION.

University of Alabama, Tuscaloosa (hereinafter referred to as Alabama) appealed to the NCAA Division I Infractions Appeals Committee specific penalties as determined by the NCAA Division I Committee on Infractions. In this report, the Infractions Appeals Committee addresses the issues raised by Alabama.

II. BACKGROUND.

The Committee on Infractions issued Infractions Report No. 299 June 11, 2009, in which the committee found violations of NCAA legislation in the softball, baseball, women's gymnastics, football, men's basketball, women's basketball, men's golf, women's golf, men's swimming, women's swimming, men's tennis, women's tennis, men's track and field, women's track and field, women's soccer and women's volleyball programs. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [June 11, 2009, issue of The NCAA News.]

This case centered on violations of NCAA bylaws governing impermissible benefits and failure to monitor.

After the Committee on Infractions issued its report, Alabama filed a timely notice of appeal June 25, 2009. A written appeal was filed July 27, 2009. The Committee on Infractions filed its response August 27, 2009. Alabama filed its rebuttal to the Committee on Infractions response September 17, 2009. The case was considered by the Infractions Appeals Committee February 12, 2010 (see Section VI below).

III. VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. [Please note that the cites below are the cites as they appear in the Committee on Infractions report dated June 11, 2009.]

B-1. IMPERMISSIBLE BENEFITS.[NCAA Bylaws 15.2.3 and 16.11.2.1 (Note: Bylaw citation is to the 2008-09 NCAA Division I Manual.)]

Beginning in at least the 2005-06 academic year and continuing through the fall of 2007, the institution's textbook distribution system allowed approximately 200 student-athletes to obtain impermissible textbooks and supplies, with a total retail value of approximately \$40,000. Approximately \$21,950 of this total was obtained by student-athletes identified by the institution as "intentional wrongdoers."

B-2. FAILURE TO MONITOR. [NCAA Constitution 2.8.1 (Note: Bylaw citation is to the 2008-09 NCAA Division I Manual.)]

The scope and nature of the violations detailed in Finding B-1 demonstrates that the institution failed to monitor effectively the student-athlete textbook distribution system, and failed to assure compliance by not providing adequate NCAA rules education pertaining to athletics book aid to student-athletes and book store personnel.

IV. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS. [Please note that cites below are cites as they appear in the Committee on Infractions report dated June 11, 2009.]

The Committee on Infractions imposed additional penalties because of the involvement of the University of Alabama in a number of the violations. The penalties imposed on University of Alabama are set forth in Part C.

For the reasons set forth in Parts A and B of this report, the Committee on Infractions finds that this case involves major violations of NCAA legislation. In determining the appropriate penalties to impose, the committee considered the institution's self-imposed penalties and corrective actions. The committee determined that the institution's self-imposed penalties were not sufficient in light of the facts and circumstances of the case. The committee believes that additional penalties are necessary to address the severity of the case. However, the committee finds that the corrective actions are meaningful, and took those into account in not imposing more serious penalties such as a ban on postseason competition. [Note: The institution's corrective actions are contained in Appendix Two.] Further, the committee considered the institution's cooperation in this case and determined that the cooperation exhibited by the institution consistent with its obligation under Bylaw 32.1.4, Cooperative Principle, which requires member institutions to cooperate in investigations. The committee recognizes that the case was limited in terms of the NCAA legislation which was violated. Nevertheless, the scope was large in that more than 200 student-athletes were involved, 22 of whom were aware that they were receiving impermissible benefits through their actions. Moreover, the institution admittedly failed to effectively monitor its book distribution system which was a significant contributing factor in the violations occurring. Finally, because of the institution's status as a repeat violator, the Committee on Infractions considered both a ban on postseason competition and the enhanced penalties for repeat violators set forth in Bylaw 19.5.2.3.2. The committee decided against those penalties because the violations were spread across several sports and other penalties, such as vacation of records, were

more appropriate. It is for these reasons that the committee imposes the following penalties:

1. Public reprimand and censure.
2. Three years of probation commencing June 11, 2009, and concluding June 10, 2012.
3. The violations in this case involve three of the factors identified as relevant to imposition of a penalty in a major case in which records are vacated: 1) there were a large number of violations – the violations were committed by approximately 200 student-athletes in 16 separate sports and the violations in some instances were serious and involved amounts in the thousands of dollars; 2) at least 22 of the student-athletes committed willful and intentional violations; and 3) the institution admitted that it failed to monitor the student-athlete textbook distribution system. Therefore, pursuant to NCAA Bylaws 19.5.2.2-(e)-(2) and, 31.2.2.3-(b), the institution will vacate all wins in which any of the seven football student-athletes identified by the institution as “intentional wrongdoers” competed while ineligible during the 2005-06 through 2007-08 academic years. Further, in the sports of men’s tennis, men’s track and women’s track, the individual records of the 15 student-athletes identified as “intentional wrongdoers” shall be vacated and team point totals shall be reconfigured accordingly. This includes regular season contests, postseason contests and any NCAA championship competition. The institution's records regarding all of the involved sports, as well as the records of the head coaches of those sports will reflect the vacated records and will be recorded in all publications in which these records are reported, including, but not limited to, institution media guides, recruiting material, electronic and digital media plus institution and NCAA archives. Any public reference to tournament performances won during this time shall be removed, including, but not limited to, athletics department stationery and banners displayed in public areas such as the venues in which the specified teams compete. Any trophies won in the course of NCAA championship competition impacted by these penalties shall be returned to the NCAA national office. Finally, to ensure that all institutional and student-athlete statistics and records are accurately reflected in official NCAA publication and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA director of statistics to identify the specific student-athlete(s) and contest(s) impacted by the penalties. In addition, the institution must provide a written report to the NCAA statistics department detailing those discussions with the director of statistics. This document will be maintained in the permanent files of the statistics department. This written report must be delivered to the NCAA statistics department no later than 45 days

following the initial Committee on Infractions release or, if the vacation penalty is appealed, the final adjudication of the appeals process.

4. The institution shall pay a fine of \$43,900 to the NCAA. This figure represents the approximate value of the benefits obtained by the “intentional wrongdoers” (\$21,950) multiplied by a factor of two. ($\$21,950 \times 2 = \$43,900$).
5. During this period of probation, the institution shall:
 - a. Continue to develop and implement a comprehensive educational program on NCAA legislation, including seminars and testing, to instruct the coaches, the faculty athletics representative, all athletics department personnel and all institution staff members with responsibility for the certification of student-athletes for admission, retention, financial aid or competition;
 - b. Submit a preliminary report to the office of the Committees on Infractions by August 1, 2009, setting forth a schedule for establishing this compliance and educational program; and
 - c. File with the office of the Committees on Infractions annual compliance reports indicating the progress made with this program by February 15 of each year during the probationary period. Particular emphasis should be placed on monitoring of book store and related charges incurred by student-athletes. The reports must also include documentation of the institution's compliance with the penalties adopted and imposed by the committee.
6. The above-listed penalties are independent of and supplemental to any action that has been or may be taken by the Committee on Academic Performance through its assessment of contemporaneous, historical, or other penalties.
7. At the conclusion of the probationary period, the institution's president shall provide a letter to the committee affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

V. ISSUES RAISED ON APPEAL.

In its written appeal, Alabama asserted that penalty C-3 should be set aside as it is excessive such that it constitutes an abuse of discretion. (Bylaws 32.10.4 and 32.10.4.1)

VI. APPELLATE PROCEDURE.

In considering the institution's appeal, the Infractions Appeals Committee reviewed the notice of appeal; the transcript of the institution's February 20, 2009, hearing before the Committee on Infractions; and the institution's and Committee on Infractions' submissions referred to in Section II of this report.

The hearing on the appeal was held by the Infractions Appeals Committee February 12, 2010. The institution was present and was represented by its outside counsel, president, university counsel, athletic director, faculty athletics representative, associate athletic director for compliance and Southeastern Conference Commissioner. The Committee on Infractions was represented by the appeal coordinator for the Committee on Infractions, chair of the Committee on Infractions and the director of the Infractions Committee. Also present were the vice president of enforcement, director of enforcement, assistant director of enforcement and assistant general counsel of the NCAA. The hearing was conducted in accordance with procedures adopted by the Infractions Appeals Committee pursuant to NCAA legislation.

VII. INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.

The institution has appealed only the Committee on Infractions' imposition of a vacation of records in the football, men's tennis and men's and women's track and field programs, Penalty C-3, on the grounds that the penalty was excessive and constituted an abuse of discretion.

A penalty imposed by the Committee on Infractions may be set aside on appeal if the penalty is "excessive such that it constitutes an abuse of discretion." [Bylaw 32.10.4.1] As we stated in the Alabama State case:

"...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 Report (June 30, 2009) Page No. 23]

The institution's principal arguments on appeal were that the vacation-of-wins penalty imposed by the Committee on Infractions constituted an abuse of discretion because the penalty: (a) failed adequately to consider the institution's cooperation; (b) departed from textbook case precedent; and (c) departed from vacation-of-wins precedent.

The Institution's Cooperation

We disagree that that the Committee on Infractions failed adequately to consider and weigh the institution's cooperation. In fact, the Committee on Infractions noted at several places in its report that it had considered the institution's cooperation. While the institution may disagree as a matter of substance with the Committee on Infractions' conclusions regarding the level and nature of that cooperation, and its impact on the penalties imposed, we find no basis on which to conclude that the Committee on Infractions' determinations in that regard constituted an abuse of discretion.

Textbook And Vacations-of-Wins Case Precedents

As noted above, the institution argued that the vacation-of-wins penalty improperly departed from the Committee on Infractions' textbook and vacation-of-wins case precedents. We acknowledge, as the institution argued, that the facts presented in the University of Colorado, Boulder Committee on Infractions' case (2007) were generally similar to those present here, but the Committee on Infractions did not vacate any wins; and prior textbook cases did not include the imposition of a vacation of wins.

On the other hand, the Committee on Infractions has noted significant aggravating factors in this case, including the institution's status as a repeat offender. Seldom will two cases be exactly alike. And while we reiterate that the Committee on Infractions must maintain consistency among its decisions over time, we also recognize, as we have noted before, that the Committee on Infractions "must have latitude in tailoring remedies to the particular circumstances involved in each case." [Georgia Institute of Technology Infractions Appeals Report (May 18, 2006) Page No. 11]. We find no abuse of discretion in the Committee on Infractions' vacation of wins.

VIII. CONCLUSION.

Penalty C-3 is affirmed.

NCAA Infractions Appeals Committee¹

Christopher Griffin, Chair
Susan Cross Lipnickey
Jack Friedenthal
William Hoye
Allan Ryan

¹ Allan Ryan replaced David Williams who recused himself from this case. Additionally, William Hoye replaced Noel Ragsdale who recently resigned from the committee.