

February 5, 2015

Dear Division I Committee on Academics Subcommittee on Penalties and Appeals:

Please accept this memorandum as an appeal to the NCAA staff's decision on University of Central Arkansas' (UCA) request for a waiver of Level Two APP Penalties and Post-Season Ineligibility. Per an email received from Susan Britsch, NCAA Assistant Director of Academic and Membership Affairs on January 30th, UCA was notified that it would not receive *any* relief from APP penalties or post-season ineligibility.

Per the Division I Committee on Academics policies, UCA may appeal any portion this decision to the Subcommittee on Penalties and Appeals. UCA is choosing to appeal the NCAA staff's decision, and is requesting the following relief:

- Reversal of the NCAA staff's decision on post-season ineligibility for the 2015-16 academic year.
- Reversal of the NCAA staff's decision on the reduction of 10% of the contests and playing and practice season for the 2015-16 academic year.

We strongly encourage the Subcommittee to review our original waiver documentation to receive a full understanding of UCA's basis for requesting relief. Those documents, which should be included in your appeal materials, lay out the basis for the original request, and offer a compelling account of the drastic changes that UCA has made in men's basketball over the past year to improve its APR for both the short and long-term.

This memorandum serves as a supplement to that original request, focusing solely on the reason why UCA is requesting a reversal of the staff decision. UCA has four distinct rationales for its appeal, each of which we believe merits close consideration by the Subcommittee.

- I. Use of the incorrect mitigation standard for the post-season ineligibility waiver request.
- II. The misuse of Graduation Success Rate data as the basis for the decision.
- III. Disregard for UCA's partial conditional request for relief.
- IV. Academic performance of the current UCA men's basketball cohort.

I. Use of the incorrect mitigation standard for the post-season ineligibility waiver request

The first, and perhaps most compelling, rationale for a reversal of the staff's decision is based on the standard the staff used in making its determination of UCA's request for a waiver of post-season ineligibility.

Per the official decision received on January 30th, the NCAA staff stated "In reviewing the institution's request for a waiver of the Men's Basketball team's NCAA Division I Academic Performance Program (APP) ineligibility for postseason competition, the staff considered the following factors:

- a. Mitigation presented by the institution and the NCAA Division I Committee on Academic Performance's definition of "extraordinary mitigation" set forth in the APP Penalty Waiver Directive;" (*emphasis added*).

When we received this language from the NCAA staff we were quite confused. It had been our understanding that the *second time* a team is subject to post-season ineligibility that its waiver request is no longer reviewed under the extraordinary mitigation standard¹. As the Subcommittee is likely aware, the "extraordinary" mitigation standard was set by the predecessor Committee on Academic Performance, and is an extremely high standard, and to our understanding has never been met by an institution requesting relief the first time they are ineligible for post-season competition.

Extraordinary mitigating circumstances is defined in the Committee's procedures as follows:

The institution's cited mitigation must be clearly out of the control of the institution, the athletics department and the team's student-athletes. It must pertain to matters not previously addressed in the APP (e.g., small squad size, institutional mission, adjustments to APP data). Finally it must have impacted the team over the multiple years that make up the four-year APR. An example of mitigation that would be considered extraordinary is a natural disaster that impact a team's APR over multiple years. An example of mitigation that would not be considered extraordinary would be head coaching change, significant leadership change at the institution, or institutional reclassification or institutional dismissal of student-athletes.

The Committee could understand our alarm, therefore, when we received a decision from the NCAA citing the lack of "extraordinary mitigation".

¹ UCA men's basketball is currently under a post-season competition restriction for the 2014-15 academic year due to its multi-year APR after the 2012-13 academic year.

Under the Committee's policies, the second time a team is subject to post-season ineligibility, a team's waiver should be reviewed "using the same factors used in considering an APP penalty waiver." This is a much less stringent standard, which many institutions have been able to use to avoid post-season competition and/or Level Two penalties (of which we are requesting only partial relief).

We believe that the NCAA staff's use of the "extraordinary mitigation" standard in our appeal is clearly an abuse of discretion as defined in the Committee's policies. Per the policies, abuse of discretion occurs when the staff "fails to follow NCAA legislation and/or established APP policies or procedures, and the failure to adhere to legislation or policies that reasonably could have resulted in a different decision". It is clear that the NCAA staff did not follow APP procedures by employing a remarkably higher standard for UCA's appeal than was warranted. Also, given that no institutions have received relief under the extraordinary mitigation standard, while many have received relief under the less stringent penalty waiver standard, it is obvious that that this failure to adhere to the policies reasonably could have resulted in a different decision.

We believe this error alone justifies a reversal of the staff's decision on post-season competition.

II. The misuse of Graduation Success Rate data as the basis for the decision.

Under the Committee's policies and procedures, and the APP waiver directive for 2014-15, the NCAA staff will consider the historical academic performance of the penalized team in making its decision. UCA understands and appreciates the logic of this directive. However, we believe the NCAA staff incorrectly considered the Graduation Success Rate (GSR) data for the UCA men's basketball team in its review.

Per the decision received from the NCAA on January 30th, it was stated "The team's NCAA Division I Graduation Success Rate (GSR), 71 percent, compared to the GSR for all of the institution's teams, 72 percent, and the GSR national average for all Division I Men's Basketball teams, 72 percent, indicated the Men's Basketball team had not academically outperformed all student-athletes at the institution and throughout Division I, in terms of graduation." This statement appeared in both the decision for post-season ineligibility and Level-two penalties.

The basketball team's GSR is only one (1) percentage point below the national average for Division I men's basketball and all other teams at our institution. To use this miniscule difference as a basis for the denial of relief appears unwarranted. In fact, we are actually quite proud of our GSR in men's basketball. Given the APR struggles that we have had over the four-year cohort, it is actually quite remarkable that the GSR has remained above the 70% threshold.

According to the Committee's own policies, "The central purpose of the NCAA Division I Academic Performance Program (APP) is to ensure that the membership is dedicated to providing student-athletes with an exemplary educational and intercollegiate athletics experience in an environment that recognizes and supports the primacy of the academic mission of its member institutions, while enhancing the ability of student-athletes to earn a degree."

UCA believes that, despite the team's low APR scores, it has demonstrated a steadfast commitment to the purpose of the APP, by graduating its student-athletes at over a 70% mark. This should not have been held against the team, but instead should have factored into potential relief.

III. Disregard for UCA's partial conditional request for relief.

As the Subcommittee can see in the original appeal request, UCA did not request full relief from the Level Two APP penalties. In fact, we requested relief only from the contest portion of the playing and practice season reductions, willing to take both the in-season and out-of-season practice time reductions without requesting relief. In addition, for all of the relief requested, UCA asked that it be conditioned upon the following:

- Central Arkansas men's basketball team receiving a 960 single-year APR or higher in the 2014-15 academic year as well as full implementation of its 2014-15 APR Improvement Plan.
- All practice penalties immediately self-imposed in spring 2015 and ongoing.
- All NCAA men's basketball tournament-related distributions received from the Southland Conference in 2015 directed towards funding of academic support and advisement resources.
- The men's basketball staff will reduce the number of coaches allowed to recruit during the April evaluation period in Division I Bylaw 13.1.7.8.1(b) to two at any time.

However, despite these numerous offerings by UCA, in the decision provided by the NCAA on January 30th, not one mention was made about the proposed alternative penalties and/or conditions! In fact, within the Committee's policies and the APP waiver directive, it clearly states the staff and the Subcommittee *must* take into consideration alternative penalties offered by the institution. Despite this mandate, no mention of the requested conditions and alternative penalties was provided to UCA within the NCAA's decision. UCA exhausted a great deal of time and consideration in preparing these conditions and alternative penalties. From the staff's decision, it appears that they were not provided any weight in the decision-making process. We believe the Subcommittee can rectify this mistake by more closely scrutinizing UCA's original request, and providing relief based on the conditions and alternative penalties originally offered.

IV. Academic performance of the current UCA men's basketball cohort.

As the Subcommittee will quickly glean from its review of the original waiver request, the UCA administration took drastic steps in the 2013-14 academic year for the purposes of its long-term academic health. Clearly, these drastic steps resulted in an exceptionally low single-year APR. However, those steps were made with the understanding that a new cohort of truly academically-prepared student-athletes were going to enter our campus during the 2014-15 academic year. The academic performance of the men's basketball team during the summer and fall semesters of 2014 was nothing short of remarkable. The team finished the fall semester with 3.07 GPA, easily outpacing any previous semesters in the last four years.

Despite this excellent summer and fall performance, and the fact the team had a 1000 APR during the fall semester, *none of this was mentioned in the NCAA staff's decision* provided to UCA. We believe the academic performance of these newly-recruited student-athletes must be taken into account in the waiver process, as they are going to be the young men who bear the brunt of these penalties going forward.

UCA has made a renewed commitment to recruiting, enrolling and retaining quality student-athletes in its men's basketball program. This could only have been fully realized by beginning with a completely clean slate. We realize this resulted in our poor APR for 2013-14, but we also think it is crucial to note that *not one member of this team has ever lost an APR point*. Yet, despite this fact, the current freshmen face the specter of *not being eligible for post-season competition until the end of their junior season!* This just doesn't seem like an equitable outcome for a group of young men that were brought in to help turn around the team's academic performance.

UCA has paid the price for its APR strategy on the court as well. The men's basketball team currently possesses a 0-19 record, with 41 starts for freshmen. UCA has concerns that if these young men are informed that they won't be eligible for post-season competition until their junior year, they will be both disheartened and disillusioned. We have genuine concern that we could be facing **another exodus of players** from the program; this time from a group of young men that have done everything they have been asked to do both on and off the court.

Given that the NCAA staff did not note the performance of these student-athletes in its decision, we are left to surmise that it was not considered in the decision. We respectfully request that the Subcommittee consider the academic performance of these young men, as well as the heavy price they are already paying with 2014-15 post-season ineligibility and Level One penalties, and provide the partial relief requested by UCA.

I hope that this memorandum has provided the Subcommittee with an overview of the issues we believe warrant reconsideration by this body. Again, we encourage you to review the original waiver request for a full understanding of our APR situation in men's basketball. I stand prepared to address any follow-up questions that you may have regarding this appeal, and I look forward to discussing further with the Committee on our teleconference.

Sincerely,

Dr. Brad Teague, Ph. D
Director of Athletics