



September 24, 2020

Dear NCAA Legislative Relief Appeal Committee,

Please accept this document as the University of Pittsburgh's ("Pitt") appeal to reverse the decision of the waiver request for Men's Basketball student-athlete, Nike Sibande, to grant him eligibility to compete in the 2020-21 Men's Basketball season. This statement contains the University of Pittsburgh's assertions for the appeal.

Basis of the Appeal Request

Nike's waiver request was based on his role as a father to his one-year-old daughter, Oaklynn. The guidelines for the "Transfer of Male Student-Athletes Due to Notice of Pregnancy/Birth of his Child" assertion are listed below:

- Guidelines
 - A male student-athlete transfers from one four-year institution to a second four-year institution at the first opportunity after learning of the mother's pregnancy or transfers at the first opportunity after the birth of the child;
 - The male student-athlete will share in the day-to-day responsibilities of caring for the child. Applicant institution must submit a treatment plan detailing the student-athlete's caregiving responsibilities; and
 - Applicant institution is the closest institution to the male student-athlete's child to offer a participation opportunity.

The basis of the waiver's denial was that Nike did not transfer at the first opportunity following Oaklynn's birth. Nike did not transfer to a new institution at the spring term, because that would have presented an extra challenge to immediate eligibility due to **Bylaw 14.5.5.5 – Baseball and Basketball—Midyear Enrollee**. Nike desired to finish out the year with his team at Miami.

Additionally, case precedent supports overturning the original decision. Case number 1063325 presents a similar situation in which a student-athlete did not transfer at the first opportunity following the birth of his child. The child was born near the beginning of the academic year, similar to Oaklynn. The student-athlete ended up transferring at the end of the academic year. This case was originally denied because the student-athlete was not providing day-to-day care responsibilities for the child, which is not the case for Nike. On appeal, the original decision was overturned, and the student-athlete was granted immediate eligibility. Given that the timeline in Nike's case is incredibly similar, and Nike is providing day-to-day care responsibilities for Oaklynn, this precedent supports overturning the original decision, and granting Nike immediate eligibility.

Further, Pitt proved it was actually better prepared to deal with COVID-19 than Miami University. To date, the ACC has continued forward with all fall sports and has stringent COVID-19 protocols that are proving effective. Meanwhile, the Mid-American Conference cancelled football on August 8, 2020. We realize to this point, basketball is still moving forward in the MAC but this illustrates Nike's thought process. He felt that he could trust that Pitt would be a secure home, where he would be able to safely use his final season of competition and build a life with his family.

Pitt has included within this appeal statement the "Mitigating Circumstances" section, which was also included in the original waiver request. Pitt feels that the appeal committee would benefit from reviewing this information in full in order to understand the difficult circumstances that Nike has navigated on his journey. Pitt is confident that the appeal committee will agree that the totality of Nike's circumstances warrant a waiver of the one-time transfer exception to allow Nike to be immediately eligible for competition.

Mitigating Circumstances

The totality of the circumstances surrounding Nike and his decision to transfer should be taken into account when considering this waiver. Pitt has provided within this waiver request documented mitigating circumstances that led Nike to decide to transfer to Pitt.

1. Shared responsibilities raising Oaklynn: Nike and Oaklynn's mother share day-to-day childcare responsibilities for Oaklynn. Oaklynn and her mother moved to Pittsburgh shortly after Nike arrived. During July 2020, Nike drove back to Indianapolis in order to sign Oaklynn's birth certificate to be officially designated as her parent. Nike's unwavering commitment to his daughter and making sure she has a safe and steady life is apparent when he speaks about her. When Nike made the decision to transfer, he carefully considered every factor through the lens of "father."

2. COVID-19 concerns: earlier in 2020, Nike experienced some of the earliest effects of COVID-19. While the rest of the country had only heard whispers of the new, flu-like virus, Nike lived through an experience that came to be the norm for everyone in the intercollegiate athletics. The cancellation of a home game out of concern for COVID-19 presence was shocking and a grim indicator of things to come. This experience made Nike realize more than ever that he wanted to create a safe and nurturing environment for his daughter. Nike aimed to find a new home and school in an area that is prioritizing the health of its citizens. Pittsburgh and namely, Pitt, has one of the largest and prestigious hospital systems in the country. Compared to the locale of Nike's previous institution, Allegheny County's hospital bed ratio is higher than Butler County, OH. In Allegheny County, there is approximately one hospital bed for every 171 residents. In Butler County, there is approximately only one hospital bed for every 484 residents. Pittsburgh is much better equipped to handle an influx of COVID-19 cases, thus the basis of its appeal to Nike and his family. Additionally, Allegheny County has a lower number of confirmed COVID-19 cases per 100,000 residents (741) than Butler County does (777).
3. Timing: Nike transferred to Pitt at the first opportunity after the birth of Oaklynn. Nike began the fall 2019 term at Miami (OH) on August 26, 2019, and his daughter Oaklynn was born on September 5, 2019. By that stage, Nike could not leave Miami (OH) immediately, as it would have negatively affected his academic progress to transfer mid-term. Further, by leaving at semester, Nike would have been leaving his team mid-season.
4. Proximity: Oaklynn and her mother live with Nike in Pittsburgh. Therefore, Pitt is the closest institution to Oaklynn to offer a participation opportunity.

In closing, Pitt asks the Appeal Committee to consider whether the original decision to uphold the year-in-residence requirement is equitable in Nike's situation. Despite Miami's assertion that Nike sought a larger stage on which to perform, he holds his role as father to Oaklynn above all else. It was the safety of his daughter that drove his decision to transfer and to choose Pitt as his new home. During the panic and confusion that many experienced during Spring of this year, as COVID-19 spread rampantly through the country, Nike knew that he would no longer feel comfortable living apart from his daughter. This led him to enter the transfer portal to find a home where he felt safe, and where he felt completely comfortable building a life for his daughter. Through his research and conversations with the men's basketball staff, Nike made the decision to transfer to Pitt.

COVID-19 has changed everything. These unprecedented times warrant additional flexibility when assessing a student-athlete's reason for transferring. The transfer waiver guidelines are a helpful starting point, but the pandemic has forced many to make difficult decisions that do not necessarily fit neatly within the guidelines, but are still worthy of leniency. For this reason, Pitt asks the appeals committee to provide flexibility in Nike's case.

Pitt thanks the Appeal Committee for taking the time to review this appeal on behalf of Nike Sibande and asks the appeals committee to view this case with empathy and compassion.

Thank you,

Laura E. Fink