

NEGOTIATED RESOLUTION¹

Texas A&M University, College Station – Case No. 00928

July 2, 2020

I. CASE SYNOPSIS

Texas A&M University, College Station; head football coach, (head coach); assistant football coach (assistant coach); and the NCAA enforcement staff agree that between January 2018 and February 2019, violations of NCAA legislation occurred in the institution's football program. The violations involved impermissible recruiting activity, impermissible countable athletically related activities (CARA) and a failure to satisfy the responsibilities of a head coach. The parties agree that this case is Level II-Mitigated for the institution, Level II-Standard for the head coach and Level II-Mitigated for the assistant coach.

In August 2018, the enforcement staff received information regarding possible violations of NCAA legislation involving the institution's football program. See Section II-B-2-a for details. Shortly thereafter, the institution and enforcement staff began a collaborative investigation.

In January 2019 and as the institution and enforcement staff's investigation of the initial allegations was ending, the enforcement staff learned that the head coach and assistant coach made an impermissible recruiting contact with a 2020 football prospective student-athlete at his high school. In addition to confirming the violation with the prospective student-athlete and two of his high school football coaches, the enforcement staff obtained video evidence of events surrounding the impermissible contact. The parties agree that this violation is Level II.

The institution and enforcement staff determined that the football program also exceeded weekly CARA limits for multiple weeks during the spring and summer of 2018. During approximately seven weeks of the spring and summer of 2018, the institution's football program unintentionally required football student-athletes to participate in CARA for periods ranging from 13 minutes to more than two hours beyond NCAA legislated weekly limitations. The seven weeks of overages resulted in approximately seven hours of impermissible CARA. The football student-athletes did not exceed the daily or total amount of CARA permitted for this 21-week period. The institution and enforcement staff agree that this violation is Level III.

Finally, the institution, head coach and enforcement staff agreed that the head coach failed to promote an atmosphere of compliance and monitor the institution's football program. The head coach was personally involved in the impermissible recruiting contact with the prospective student-athlete, and he failed to demonstrate that he monitored the football program's CARA limits during the spring and summer of 2018. The institution, head coach and enforcement staff agree that this violation is Level II.

¹In reviewing this agreement, the hearing panel made editorial revisions pursuant to NCAA Division I COI Internal Operating Procedure (IOP) 4-9-1-2. These modifications did not affect the substance of the agreement. In addition, pursuant to NCAA Bylaw 19.5.12.4, this agreement has no precedential value.

II. PARTIES' AGREEMENTS

A. Agreed-upon findings of fact, violations of NCAA legislation and violation levels.

1. [NCAA Division I Manual Bylaw 13.1.1.1 (2018-19)] (Level II)

On January 22, 2019, the head coach and assistant coach had an impermissible off-campus recruiting contact with the prospective student-athlete at his high school before July 1 following the completion of the prospective student-athlete's junior year in high school. Specifically, the head coach and assistant coach met impermissibly with the prospective student-athlete in his high school football coaches' office for 15 to 20 minutes and discussed the institution's interest in the prospective student-athlete enrolling as a football student-athlete.

2. [NCAA Division I Manual Bylaws 17.1.7.1, 17.1.7.2-(b), 17.1.7.2.1.5.2 and 17.10.6.1.1-(b) (2017-18)] (Level III)

Between January 1 and July 31, 2018, the football program unintentionally engaged football student-athletes in CARA beyond NCAA legislated weekly limitations. Specifically, during approximately seven of the 21 permissible weeks of the spring and summer of 2018, one or more position groups within the institution's football program participated in CARA for periods ranging from 13 minutes to more than two hours beyond NCAA legislated weekly limitations resulting in approximately seven hours of impermissible CARA. During the other 14 weeks of this period, the football student-athletes participated in CARA for less than the permissible number of hours and never exceeded daily or weekly limitations.

3. [NCAA Division I Manual Bylaw 11.1.1.1 (2017-18 and 2018-19)] (Level II)

Between January 1, 2018, and January 23, 2019, the head coach is presumed responsible for the violations detailed in Findings of Fact Nos. 1 and 2 and did not rebut the presumption of responsibility. Specifically:

- a. The head coach did not demonstrate that he promoted an atmosphere of compliance due to his personal involvement in the impermissible recruiting contact violation detailed in Finding of Fact No. 1. [NCAA Bylaw 11.1.1.1 (2018-19)]
- b. The head coach did not demonstrate that he monitored his staff because he failed to ensure that members of his football staff were not requiring football student-athletes to participate in CARA beyond NCAA legislated weekly limitations as detailed in Finding of Fact No. 2. [NCAA Bylaw 11.1.1.1 (2017-18)]

B. Agreed-upon aggravating and mitigating factors.

Pursuant to NCAA Bylaw 19.5.12.1.3-(e), the parties agree that the aggravating and mitigating factors identified below are applicable. The parties assessed the factors by weight and number and agree that this case is Level II-Mitigated for the institution, Level II-Standard for the head coach and Level II-Mitigated for the assistant coach.

Institution:

1. Aggravating factors (Bylaw 19.9.3).
 - a. A history of Level I, Level II or major violations by the institution [Bylaw 19.9.3-(b)].
 - b. Multiple Level II violations by the institution [Bylaw 19.9.3-(g)].
 - c. Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct [Bylaw 19.9.3-(h)].
2. Mitigating factors (Bylaw 19.9.4).
 - a. Prompt acknowledgement of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties [Bylaw 19.9.4-(b)].
 - b. Affirmative steps to expedite final resolution of the matter [Bylaw 19.9.4-(c)].
 - c. An established history of self-reporting Level III or secondary violations [Bylaw 19.9.4-(d)].
 - d. Implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches' control standards [Bylaw 19.9.4-(e)].

Involved Individual (Head Coach):

1. Aggravating factors (Bylaw 19.9.3).
 - a. Multiple Level II violations by the involved individual [Bylaw 19.9.3-(g)].
 - b. Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct [Bylaw 19.9.3-(h)].

2. Mitigating factors (Bylaw 19.9.4).
 - a. The absence of prior conclusions of Level I, Level II or major violations committed by the involved individual [Bylaw 19.9.4-(h)].
 - b. Affirmative steps to expedite final resolution of the matter [Bylaw 19.9.4-(c)].

Involved Individual (Assistant Coach):

1. Aggravating factors (Bylaw 19.9.3).

None.
2. Mitigating factors (Bylaw 19.9.4).
 - a. The absence of prior conclusions of Level I, Level II or major violations committed by the involved individual [Bylaw 19.9.4-(h)].
 - b. Affirmative steps to expedite final resolution of the matter [Bylaw 19.9.4-(c)].

III. OTHER VIOLATIONS OF NCAA LEGISLATION SUBSTANTIATED; NOT ALLEGED

None.

IV. REVIEW OF OTHER ISSUES

The enforcement staff considered alleging that the institution failed to monitor the football program's off-campus recruiting and CARA between January 2018 and February 2019. Regarding off-campus recruiting, the institution had adequate systems in place to monitor the coaching staff's off-campus recruiting activity, which included the proper level of rules education and an electronic monitoring system that required staff members to accurately and timely report their off-campus recruiting activities. The head coach and assistant coach's failure to ensure that their off-campus recruiting activity was accurately reported hindered the institution from discovering their impermissible contact with the prospective student-athlete rather than a failure by the institution to monitor the coaches' recruiting activities.

Similarly, the institution utilized electronic monitoring devices and daily calendars to adequately monitor and confirm that football student-athletes' weekly CARA did not exceed legislated limits. However, unbeknownst to the institution's athletics compliance staff, new football staff members were operating and conducting meetings without using the compliance software or reporting the meetings to athletics compliance representatives or other football program staff members responsible for monitoring weekly CARA.

V. PARTIES' AGREED-UPON PENALTIES²

All penalties agreed upon in this case are independent and supplemental to any action that has been or may be taken by the NCAA Division I Committee on Academics through its assessment of postseason ineligibility, historical penalties or other penalties.

Pursuant to Bylaw 19.5.12.1.3-(e), the parties agree to the following penalties:

Core Penalties for Level II – Mitigated Violations (Bylaw 19.9.5)

1. Probation: One year of probation from July 2, 2020 through July 1, 2021.
2. Financial Penalty: The institution shall pay a fine of \$5,000 to the NCAA.
3. Recruiting Restrictions: The institution shall reduce official paid visits for football by one during the 2019-20 academic year.
 - a. The institution shall reduce unofficial visits for football by 17 days for the 2019-20 academic year.
 - b. The institution imposed an off-campus recruiting ban for the entire football coaching staff for November 2019, which reduced the permissible evaluation days for the 2019-20 academic year by 19.
 - c. The institution shall impose a seven-day off-campus recruiting ban for the entire football coaching staff for the 2020 spring off-campus recruiting period and a 10-day off-campus recruiting ban for the entire football coaching staff for the 2020 fall off-campus recruiting period.

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

4. Public reprimand and censure.

² The panel recognizes that circumstances surrounding the COVID-19 pandemic could impact how the institution is able to implement penalties. If Texas A&M finds that any penalty cannot be served due to the ongoing pandemic, it should report any challenges through the probation compliance process.

5. The institution ceased the recruitment of the prospective student-athlete.³
6. The institution shall ban the recruitment of any football prospective student-athletes at the prospect's high school for the 2019-20, 2020-21 and 2021-22 academic years.
7. During this period of probation, the institution shall:
 - a. Continue to develop and implement a comprehensive compliance and educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for NCAA recruiting legislation;
 - b. Submit a preliminary report to the Office of the Committees on Infractions (OCOI) by **August 31, 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 **May 15, 2021**. Particular emphasis shall be placed on the institution's compliance measures taken to ensure adherence with NCAA recruiting legislation and related rules education;
 - d. Inform prospects in all affected sports programs in writing that the institution is on probation for one year 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 violations by providing, at a minimum, a statement to include the types of violations and the involved sports program(s) and a direct, conspicuous link to the public infractions decision located on the athletics department's main webpage "landing page" and in the media guides of the involved sports program(s) for the entire term of probation. The institution's statement must: (i) clearly describe the violations; (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.
8. Following the receipt of the compliance report and prior to the conclusion of probation, the institution's president shall provide a letter to the Committee on Infractions (COI)

³ In most instances, the cessation of a prospect's recruitment would be considered a corrective action. However, the panel defers to the parties' agreement to categorize this as penalty.

affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

Core Penalties for Level II – Standard Violations (Bylaw 19.9.5)

9. Show-Cause Order – Head Coach: shall be subject to a six-month show-cause order from July 2, 2020, (date negotiated resolution is released) through December 31, 2020.⁴ The terms of the show-cause are as follows:
 - a. The institution banned the head coach from completing any phone calls, emails or text messages with prospects for nine days in January 2020.
 - b. The institution reduced the head coach's off-campus recruiting contact days by three for the December 2019 through January 2020 contact period.
 - c. The institution shall ban the head coach from all off-campus recruiting activities for the entire fall of 2020 contact period, which will begin late November or early December 2020 and end mid-December 2020, and align with the FBS recruiting calendar.⁵
 - d. The institution shall provide additional one-on-one rules education for the head coach.
 - e. The head coach shall issue a public statement in coordination with the institution addressing the violations.

Core Penalties for Level II – Mitigated Violations (Bylaw 19.9.5)

10. Show-Cause Order – Assistant Coach: shall be subject to a six-month show-cause order from July 2, 2020, (date negotiated resolution is released) through December 31, 2020.⁶ The terms of the show-cause are as follows:
 - a. The institution banned the assistant coach from completing any phone calls, emails or text messages with prospects for nine days in January 2020.

⁴ Historically, show-cause orders begin the date of the infractions decision or NR release, as in this case. However, the panel noted that the conditions of the head coach's show-cause order began in January 2020.

⁵ At the time of this agreement, the NCAA had not published the 2020-21 Division I FBS recruiting calendar. Therefore, specific dates were not available.

⁶ Historically, show-cause orders begin the date of the infractions decision or NR release, as in this case. However, the panel noted that the conditions of the assistant coach's show-cause order began in January 2020.

- b. The institution reduced the assistant coach's off-campus recruiting contact days by three for the December 2019 through January 2020 contact period.
- c. The institution shall ban the assistant coach from all off-campus recruiting activities for the entire fall of 2020 contact period, which will begin late November or early December 2020 and end mid-December 2020, and align with the FBS recruiting calendar.⁷
- d. The institution shall provide additional one-on-one rules education for the assistant coach.

VI. OTHER AGREEMENTS

The parties agree that this case will be processed through the NCAA negotiated resolution process as outlined in Bylaw 19.5, and a hearing panel comprised of members of the NCAA Division I COI will review the negotiated resolution. The parties acknowledge that the negotiated resolution contains agreed-upon findings of fact of NCAA violations and agreed-upon aggravating and mitigating factors based on information available at this time. Nothing in this resolution precludes the enforcement staff from investigating additional information about potential rules violations. The parties agree that, pursuant to Bylaw 19.1.2, the violations identified in this agreement should be classified as Level II-Standard for the head coach and Level II-Mitigated for the institution and assistant coach.

If a hearing panel approves the negotiated resolution, the institution, head coach and assistant coach agree that they will take every precaution to ensure that the terms of the penalties are observed. The institution, head coach and assistant coach acknowledge that they have or will impose and follow the penalties contained within the negotiated resolution, and these penalties are in accordance with those prescribed in Bylaws 19.9.5, 19.9.6, 19.9.7 and 19.9.8. The OCOI will monitor the penalties during their effective periods. Any action by the institution, head coach or assistant coach contrary to the terms of any of the penalties or any additional violations may be considered grounds for prescribing more severe penalties or may result in additional allegations and violations.

The parties acknowledge that this negotiated resolution may be voidable by the COI if any of the parties were aware or become aware of information that materially alters the factual information on which this negotiated resolution is based. Additionally, the parties acknowledge that this negotiated resolution will not be binding if the case is referred to the independent accountability resolution process (Bylaw 19.11).

The parties further acknowledge that the hearing panel, subsequent to its review of the negotiated resolution, may reject the negotiated resolution. Should the hearing panel reject the negotiated resolution, the parties understand that the case may be submitted through a summary disposition report

⁷ See Footnote No. 5.

(Bylaw 19.6) or notice of allegations (Bylaw 19.7) and prior agreed-upon terms of the rejected negotiated resolution will not be binding.

VII. DIVISION I COMMITTEE ON INFRACTIONS APPROVAL

Pursuant to NCAA Bylaw 19.5.12, the panel approves the parties' negotiated resolution agreement. The panel's review of this agreement is limited. Panels may only reject a negotiated resolution agreement if the agreement is not in the best interests of the Association or if the agreed-upon penalties are manifestly unreasonable. See Bylaw 19.5.12.2. In this case, the panel determines the agreed-upon facts, violations, aggravating and mitigating factors, and classifications are appropriate for this process. Further, the parties classified this case as Level II-Mitigated for the institution and the assistant coach and Level II-Standard for the head coach. The agreed-upon penalties align with the ranges identified for core penalties for Level II-Standard and Level II-Mitigated violations in Figure 19-1 and Bylaw 19.9.5 and the additional penalties available under Bylaw 19.9.7. Pursuant to Bylaw 19.5.12.4, this negotiated resolution has no precedential value.

The COI advises Texas A&M University, the head coach and the assistant coach that they should take every precaution to ensure that they observe the terms of the penalties. The COI will monitor the institution while it is on probation and the show-cause orders to ensure compliance with the penalties and terms of probation and may extend the probationary period, among other action, if the institution does not comply or commits additional violations. Likewise, any action by the institution, and/or the head coach and the assistant coach 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
Alberto Gonzales, Chief Hearing Officer
Joel Maturi
Joe Novak