

NEGOTIATED RESOLUTION¹

University of Notre Dame – Case No. 01023

January 21, 2021

I. CASE SYNOPSIS

The University of Notre Dame (Notre Dame); former assistant football coach (assistant football coach); and the NCAA enforcement staff agree that on January 15, 2019, violations of NCAA legislation occurred in the institution's football program involving impermissible recruiting activity. The parties agree that this case is Level II-Mitigated for the institution and Level II-Mitigated for the assistant football coach.

In August 2018, the enforcement staff received information regarding possible violations of NCAA legislation involving the institution's football program. See Agreed-Upon Findings of Fact No. 1 for details. Shortly thereafter, the institution and enforcement staff began a collaborative investigation.

In January 2019, the enforcement staff learned that the assistant football coach made an impermissible in-person recruiting contact with a 2020 football prospective student-athlete at his high school. In addition to confirming the violation with the football prospective student-athlete, the impermissible contact was also confirmed with his high school head football coach. The institution terminated the assistant football coach in January 2020. The parties agree that this violation is Level II.

This case also includes two Level III violations detected and reported by the institution involving impermissible recruiting activities by the assistant football coach and the head football coach. See Agreed-Upon Findings of Fact Nos. 2 and 3 for details. The parties agree that these violations are Level III.

II. PARTIES' AGREEMENTS

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

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

On January 15, 2019, the assistant football coach had an impermissible off-campus recruiting contact with the football prospective student-athlete at his high school, in Seattle, before July 1

¹In reviewing this agreement, the hearing panel made editorial revisions pursuant to NCAA Division I Committee on Infractions (COI) Internal Operating Procedure (IOP) 4-9-1-2. These modifications did not affect the substance of the agreement.

following the completion of his junior year in high school. Specifically, the assistant football coach met in person with the football prospective student-athlete privately and discussed the institution's interest in him enrolling as a football student-athlete, the value of an education at the institution and defensive schemes used by the institution.

2. [NCAA Division I Manual Bylaw 13.4.1 (2018-19)] (Level III)

Between July 17 and August 9, 2019, the assistant football coach violated NCAA recruiting communication legislation by sending 10 impermissible text messages to a 2021 football prospective student-athlete prior to September 1 of the beginning of his junior year in high school. Specifically, the assistant football coach mistakenly believed him to be a 2020 prospect and sent him one text message July 17, 2019; three text messages August 7, 2019; and six text messages August 9, 2019.

3. [NCAA Division I Manual Bylaw 13.1.1.1 (2019-20)] (Level III)

On October 18, 2019, the head football coach had an impermissible off-campus recruiting contact with a 2021 football prospective student-athlete at his high school in Pickerington, Ohio, before July 1, following the completion of his junior year in high school. Specifically, while visiting Pickerington during the fall football evaluation period, the head football coach was being escorted through the high school's cafeteria when the football prospective student-athlete recognized the head football coach and requested a photo with him. The head football coach initially declined, but ultimately allowed the photo.

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 should be properly resolved as Level II-Mitigated for the institution and Level II-Mitigated for the assistant football coach.

Institution:

1. Aggravating factor (Bylaw 19.9.3).

A history of Level I, Level II or major violations by the institution [NCAA Bylaw 19.9.3-(b)].

2. Mitigating factors (Bylaw 19.9.4).

- a. Prompt acknowledgement of the violation, acceptance of responsibility and (for an institution) imposition of meaningful corrective measures and/or penalties [Bylaw 19.9.4-(b)].
- b. Affirmative steps to expedite the final resolution of the matter [Bylaw 19.9.4-(c)].
- c. An established history of self-reporting Level III or secondary violations [NCAA Bylaw 19.9.4-(d)].²
- d. Implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches' control standards [NCAA Bylaws 19.9.4-(e)].

Involved Individual (Assistant Football Coach):

1. Aggravating factor (Bylaw 19.9.3).

None.

2. Mitigating factors (Bylaw 19.9.4).

- a. Prompt acknowledgement of the violation, and acceptance of responsibility [Bylaw 19.9.4-(b)].
- b. The absence of prior conclusions of Level I, Level II or major violations committed by the involved individual [Bylaw 19.9.4-(h)].

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 in January 2019. Regarding off-campus recruiting, the institution had adequate systems in place to monitor the coaching staff's off-campus recruiting activity, which

² The institution reported 89 Level III or secondary violations from 2015 to 2020, approximately 17 violations each year.

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 assistant football coach's failure to ensure that his off-campus recruiting activity was accurately reported hindered the institution from discovering his impermissible contact with the football prospective student-athlete, rather than a failure by the institution to monitor the coaches' recruiting activities.

V. PARTIES' AGREED-UPON PENALTIES³

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 January 21, 2021 through January 20, 2022.⁴
2. Financial Penalty: The institution shall pay a fine of \$5,000 to the NCAA.
3. Recruiting Restrictions:
 - a. The institution shall reduce the number of official visits for football by one during the 2020-21 academic year.
 - b. The institution shall reduce the number of unofficial visits for football by 14 days during the 2020-21 academic year.
 - c. The institution shall impose a seven-day off-campus recruiting ban for the entire football coaching staff for the 2021 spring off-campus recruiting period.

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

4. Public reprimand and censure.

³ 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.

⁴ Institutions must serve probation during the prescribed penalty period. The COVID-19 next available opportunity penalty methodology does not apply.

5. The institution ceased the recruitment of the football prospective student-athlete.
6. The institution shall ban the recruitment of any football prospective student-athlete 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 March 15, 2021, setting forth a schedule for establishing this compliance and educational program;
 - c. File with the OCOI annual compliance report indicating the progress made with this program by November 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 affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

9. Show-cause order:⁵ The former assistant football coach was personally involved in an impermissible contact with a prospective student-athlete. Therefore, the former assistant football coach shall be subject to a six month show-cause order from January 21, 2021 through July 20, 2021. In accordance with Bylaw 19.9.5.4 and NCAA Division I Committee on Infractions Internal Operating Procedure 5-15-3, any employing member institution shall require the assistant football coach to serve a one-game suspension, including all athletically related activities on the day of the game and be suspended from all recruiting activity during the next available recruiting period. The employing member institution shall provide the assistant football coach additional one-on-one rules education. Any member institution that employs the former assistant football coach in an athletically related position during the six month show-cause period shall abide by the terms of the show-cause order unless it contacts the office of the Committees on Infractions to make arrangements to show cause why the terms of the order should not apply.

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 Committee on Infractions 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-Mitigated for the institution and the assistant football coach.

If a hearing panel approves the negotiated resolution, the institution and the assistant football coach agree that they will take every precaution to ensure that the terms of the penalties are observed. The institution and the assistant football 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 office of the Committees on Infractions will monitor the penalties during their effective periods. Any action by the institution or the assistant football 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.

⁵ The individual is subject to the show-cause order during the prescribed penalty period. The COVID-19 next available opportunity penalty methodology does not apply.

The parties acknowledge that this negotiated resolution may be voidable by the Committee on Infractions 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 (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 Bylaw 19.5.12, the hearing panel approves the parties' negotiated resolution agreement. The hearing panel's review of this agreement is limited. Hearing 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 hearing panel determines that 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 Notre Dame and the assistant coach's violations. The agreed-upon penalties align with the ranges identified for core penalties for Level II-Mitigated violations in Figure 19-1 and Bylaw 19.9.5 and with 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 Notre Dame and the assistant football 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 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 or the assistant football 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

Carol Cartwright

Greg Christopher, chief hearing officer

Richard Ensor