

## NEGOTIATED RESOLUTION<sup>1</sup>

University of Nebraska, Lincoln – Case No. 01000

April 28, 2020

### **I. CASE SYNOPSIS**

The violations in this case arose out of payments to a former outside consultant, who later became a volunteer women's gymnastics coach, by individual student-athletes for floor exercise choreography and by the institution for floor exercise music through a surreptitious scheme arranged by the volunteer coach and the former head women's gymnastics coach (head coach). NCAA bylaws permit individual gymnastics student-athletes to pay an outside consultant for the cost of floor exercise choreography, but only if the institution is not involved in any way in arranging for the activity, institutional coaching staff members do not observe the activity and the activity does not occur at the institution's facility. Alternatively, institutions may use a paid or volunteer coach to create floor exercise choreography and music. However, neither the institution nor a student-athlete may compensate a volunteer coach for floor exercise choreography or music.

Beginning in 2011, the volunteer coach, then an outside consultant, permissibly developed floor exercise choreography and music for use by certain women's gymnastics student-athletes at the University of Nebraska, Lincoln (Nebraska). While the volunteer coach was acting as an outside consultant, the student-athletes permissibly compensated him for floor exercise choreography and Nebraska permissibly compensated him for floor exercise music design.

In 2014, the head coach encouraged the outside consultant to become a volunteer coach so he could assume a greater role with the women's gymnastics program. As a volunteer coach, he would be able to instruct student-athletes in Nebraska facilities, which he was precluded from doing as an outside consultant. Further, the volunteer coach could bring his full expertise by coordinating with others on the Nebraska coaching staff as well as have a presence at practices and competitions. In September 2014, Nebraska named the outside consultant a volunteer coach.

Despite this new role, the women's gymnastics student-athletes continued to pay the volunteer coach for floor exercise choreography. These student-athletes made direct payments to the volunteer coach of \$300 per student-athlete, per year. However, because the volunteer coach was now a member of the coaching staff, this constituted impermissible compensation. The student-athletes did not realize this. Additionally, the head coach urged his associate coach to provide the volunteer coach with lodging at her home when the volunteer coach, who resided in New York City, traveled to Lincoln, Nebraska, for certain practices and competitions. Uncomfortable declining the head coach's direction and unaware that the provision of lodging to a volunteer coach was impermissible, the associate coach provided lodging to the volunteer coach of approximately three weeks per year during his tenure as volunteer coach.

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<sup>1</sup>In 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.

Further, the head coach and the volunteer coach devised an arrangement so the volunteer coach could continue to receive compensation from the institution for floor exercise music. To prevent Nebraska from detecting payments ultimately paid to the volunteer coach as impermissible compensation to a volunteer coach, the head coach and the volunteer coach coordinated with a third party to submit invoices for floor exercise music to Nebraska from that third party, not the volunteer coach. Specifically, in 2015, the volunteer coach submitted an invoice from a fictitious entity named "Fantasy Floor Music" and requested the check be made payable to an associate of the volunteer coach (the associate). In later years, the volunteer coach submitted invoices from the associate, still disguising that the payment was ultimately for the volunteer coach. Instead of submitting the Fantasy Floor Music and the associate's invoices directly to the institution via a purchase requisition form, as he had done in previous years with the volunteer coach invoices, the head coach paid the associate via a check from an account the head coach controlled and then requested reimbursement from the institution using an employee nontravel expense voucher, allowing the associate to pay the volunteer coach.

Although Nebraska's policies permitted reimbursement to the head coach via employee nontravel expense vouchers, the institution's preferred method of processing such transactions was by direct submission of the third party invoices via a purchase requisition form. The Nebraska business office and, later, the senior woman administrator and women's gymnastics sport supervisor, admonished the head coach to submit the third-party floor exercise music invoices directly to the institution for payment. After the head coach expressed dissatisfaction with this request, Nebraska interviewed the head coach and others and uncovered the arrangement involving the volunteer coach, the head coach and the volunteer coach's associate. The head coach and the volunteer coach were separated from employment with the women's gymnastics program in October 2018.

Following Nebraska's self-report, the NCAA enforcement staff collaborated with the institution on an investigation that substantiated the violations set forth in this agreement. Both the head coach and the volunteer coach participated in the investigation and interviews. However, with the investigation completed, the volunteer coach has not responded to the enforcement staff's invitations to participate in the processing of this matter. As a result, the volunteer coach is considered a nonparticipating involved individual. The institution, the head coach and enforcement staff believe negotiated resolution is appropriate due to the parties' agreement on facts, violations, level classification and penalties.

## **II. PARTIES' AGREEMENTS**

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

1. [NCAA Division I Manual Bylaws 11.01.5 (2014-15); 11.3.1, 11.3.2.2 and 11.7.6 (2014-15 through 2017-18); and 11.01.6 (2015-16 through 2017-18)] (Level II)

The institution, the head coach and enforcement staff agree that from the 2014-15 through the 2017-18 academic years, the head coach and members of the women's gymnastics program arranged for the volunteer coach to receive impermissible compensation and benefits, resulting in the women's gymnastics program exceeding the permissible number of countable coaches. The total value of the impermissible compensation and benefits was approximately \$33,600. Specifically:

- a. From the 2014-15 through 2017-18 academic years, the head coach used his camp and/or personal bank accounts to pay the volunteer coach via a fraudulent third party for the women's gymnastics team's floor music. The head coach then sought reimbursement from the institution for the payments by providing invoices from the fraudulent third party to conceal the volunteer coach's involvement. The total value of the impermissible compensation was approximately \$12,600. [NCAA Bylaws 11.01.5 (2014-15); 11.3.1, 11.3.2.2 and 11.7.6 (2014-15 through 2017-18); and 11.01.6 (2015-16 through 2017-18)]
  - b. From the 2014-15 through 2017-18 academic years, several women's gymnastics student-athletes paid the volunteer coach for choreography instruction provided during counted practice time that they subsequently used in the floor exercise portion of intercollegiate competitions. The total value of the impermissible compensation was approximately \$12,600. [NCAA Bylaws 11.01.5 (2014-15); 11.3.1, 11.3.2.2 and 11.7.6 (2014-15 through 2017-18); and 11.01.6 (2015-16 through 2017-18)]
  - c. From the 2014-15 through 2017-18 academic years, the head coach arranged for the associate women's gymnastics coach to provide lodging to the volunteer coach when he was in the institution's locale for practices and competition at no cost for approximately three weeks per year for a total of 12 weeks. The total value of the impermissible lodging was approximately \$8,400. [NCAA Bylaws 11.01.5 (2014-15); 11.3.1 and 11.7.6 (2014-15 through 2017-18); and 11.01.6 (2015-16 through 2017-18)]
2. [NCAA Division I Manual Bylaws 11.1.1.1 (2014-15 through 2017-18)] (Level II)

The institution, the head coach and enforcement staff agree that from the 2014-15 through 2017-18 academic years, the head coach is presumed responsible for the violations detailed in Agreed-Upon Finding of Fact No. 1 and did not rebut the presumption of responsibility. Specifically, the head coach did not demonstrate that he promoted an atmosphere of compliance due to his personal involvement in the violations.

**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 – Standard for the institution and Level II – Aggravated for the head coach and the volunteer 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 [Bylaw 19.9.3-(g)].
  - c. Persons of authority (the head coach) 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. An established history of self-reporting Level III or secondary violations [Bylaw 19.9.4-(d)].

**Involved individual (Head Coach):**

1. Aggravating factors (Bylaw 19.9.3).
  - a. Violations were premeditated, deliberate or committed after substantial planning [Bylaw 19.9.3-(f)].
  - b. Multiple Level II violations [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)].
  - d. Conduct or circumstances demonstrating an abuse of a position of trust [Bylaw 19.9.3-(j)].

e. Intentional, willful or blatant disregard for the NCAA constitution and bylaws [Bylaw 19.9.3-(m)].

2. Mitigating factor (Bylaw 19.9.4).

The absence of prior conclusions of Level I, Level II or major violations committed by the involved individual [Bylaw 19.9.4-(h)].

**Involved individual (Volunteer Coach):**

1. Aggravating factors (Bylaw 19.9.3).

a. Violations were premeditated, deliberate or committed after substantial planning [Bylaw 19.9.3-(f)].

b. Conduct intended to generate pecuniary gain for the involved individual [Bylaw 19.9.3-(l)].

c. Intentional, willful or blatant disregard for the NCAA constitution and bylaws [Bylaw 19.9.3-(m)].

2. Mitigating factor (Bylaw 19.9.4).

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**

None.

## **V. PARTIES' AGREED-UPON PENALTIES**

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 institution, the head coach and enforcement staff have negotiated this agreement and agreed to the following penalties. The institution, the head coach and enforcement staff agree that this case should be properly resolved as Level II – Standard for the institution and Level II – Aggravated for the head coach. The agreed-upon penalties detailed below are consistent with the penalty matrix of NCAA Article 19, Figure 19-1 and available case precedent. Because the violations were not of a recruiting nature and did not involve the participation of ineligible student-athletes, the institution and enforcement staff agreed to impose no core penalties involving scholarship reduction or recruiting. This approach is within the bounds of the penalty matrix, which allows for zero reductions in both scholarships and recruiting for a Level II – Standard violation. However, the institution and enforcement staff have agreed to offset the no imposition of core penalties involving scholarships and recruiting with an agreed-upon reduction by one in the number of allowable countable coaches for one year. Additionally, the enforcement staff provides the hearing panel of the NCAA Division I Committee on Infractions for its consideration and inclusion in this infractions case the uncontested violations and proposed penalties for the nonparticipating volunteer coach pursuant to Bylaw 19.5.12.1.1.

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

1. Probation: Two years of probation from April 28, 2020, through April 27, 2022.
2. Financial penalty: Nebraska shall pay a fine of \$5,000 plus one percent of the budget for the women's gymnastics program.<sup>2</sup>

### **Core Penalties for Level II – Aggravated Violations (Bylaw 19.9.5)**

3. Show-cause order: the head coach was personally involved in arranging for impermissible compensation to a volunteer coach. Therefore, the head coach shall be subject to a three-year show-cause order from April 28, 2020, through April 27, 2023. Should the head coach become employed in an athletically related position at an NCAA member institution during the first year of the show-cause period, any employing institution shall be required to contact the office of the Committees on Infractions to make arrangements to show cause why restrictions on all athletically related activities should not apply. Any NCAA member institution employing the head coach during the pendency of the three-year show-cause term shall provide

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<sup>2</sup> This fine shall be paid consistent with COI IOPs 5-15-2 and 5-15-2-1.

the head coach enhanced monitoring and NCAA rules education, which shall include monthly meetings with the member institution's compliance officer to review the head coach's coaching activity and to provide NCAA rules education as appropriate. Also, during the three-year show-cause period, the head coach shall attend an NCAA Regional Rules Seminar one time at his own expense.

4. Head coach restriction: the head coach violated Bylaw 11 head coach responsibility legislation when he failed to promote an atmosphere of compliance in his program. Bylaw 19.9.5.5 and the Figure 19-1 penalty guidelines contemplate head coach suspensions to address head coach responsibility violations. Therefore, the head coach shall be suspended from 40 percent of contests during the first year of the show-cause period. This suspension shall run concurrently with the show-cause order.
5. Show-cause order: the volunteer coach violated volunteer coach legislation. Therefore, the volunteer coach shall be subject to a two-year show-cause order from April 28, 2020, through April 27, 2022. Should the volunteer coach become employed in an athletically related position at an NCAA member institution during the first year of the show-cause period, any employing institution shall be required to contact the office of the Committees on Infractions to make arrangements to show cause why restrictions on all athletically related activities should not apply. Any NCAA member institution employing the volunteer coach during the pendency of the two-year show-cause term shall provide the volunteer coach enhanced monitoring and NCAA rules education, which shall include monthly meetings with the member institution's compliance officer to review the volunteer coach's coaching activity and to provide NCAA rules education as appropriate. Also, during the two-year show-cause period, the volunteer coach shall attend an NCAA Regional Rules Seminar one time at his own expense.

**Additional Penalties for Level II – Standard Violations (Bylaw 19.9.7)**

6. Reduction by one in the number of countable coaches for one year, which has already been imposed by the institution during the 2018-19 academic year. (See the appendix for details and more on the institution's corrective actions.)
7. Public reprimand and censure through the release of the public infractions' decision.
8. 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 financial and countable coach legislation;

- b. Submit a preliminary report to the NCAA office of the Committees on Infractions by June 15, 2020, setting forth a schedule for establishing this compliance and educational program;
  - c. File with the office of the Committees on Infractions annual compliance reports indicating the progress made with this program by March 15 during each year of probation. Particular emphasis shall be placed on the institution's compliance measures taken to ensure adherence with NCAA financial and countable coach legislation and related rules education;
  - d. Inform prospects in the women's gymnastics program in writing that the institution is on probation for two years 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.
9. Following the receipt of the compliance report and prior to the conclusion of probation, the institution's president shall provide a letter to the NCAA Division I Committee on Infractions affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.



## **VI. PARTIES TO THE CASE**

### **A. In agreement with the negotiated resolution (the parties).**

The institution, the head coach and enforcement staff.

### **B. Not participating in the case.**

**Volunteer Coach.**

## **VII. 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 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 19.1.1, the violations identified in this agreement should be classified as Level II – Standard for the institution and Level II – Aggravated for the head coach.

If a hearing panel approves the negotiated resolution, the institution and the head coach agree that they will take every precaution to ensure that the terms of the penalties are observed. The institution and the head 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 head 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.

## **VIII. 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-Standard for Nebraska and Level II-Aggravated for the head coach's and the volunteer coach's violations. The agreed-upon penalties align with the ranges identified for core penalties for Level

II-Standard cases and Level II-Aggravated 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 Nebraska, the head coach and the volunteer 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, and/or the head coach and the volunteer coach contrary and 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  
Joseph Novak

**APPENDIX**

**UNIVERSITY OF NEBRASKA, LINCOLN'S, CORRECTIVE ACTIONS**

1. As a result of the institution's internal investigation, the head coach immediately resigned from his daily responsibilities October 15, 2018, and officially retired from the institution December 31, 2018.
2. As a result of the institution's internal investigation, the volunteer coach was permanently disassociated from the institution October 16, 2018.
3. The institution self-imposed a reduction by one in countable coaches for the 2018-2019 academic year after the head coach resigned from his daily responsibilities October 15, 2018. In addition, the coaching staff operated without a volunteer coach after the volunteer coach was disassociated, resulting in a coaching staff of two (rather than four) for the entire 2018-2019 competition season.
4. The institution provided additional education to the women's gymnastics staff and all coaches in all sports who are permitted to have a volunteer coach. The institution's executive associate athletic director for compliance provided the women's gymnastics staff one-on-one education immediately after the head coach resigned from his daily responsibilities. In addition, all other coaching staffs have received specific education during each staff's monthly education meetings with the compliance staff.