

**[April 21, 2020, Erratum – Penalty No. 7-(b) and (c) of this decision contained a date error in the probationary reporting requirements. There was a failure to note the correct due dates for the preliminary and annual compliance reports. Pursuant to Division I Committee on Infractions Internal Operation Procedure (COI IOP) 5-16-2, the agreement has been amended to include due dates for the respective compliance reports. Penalty No. 7-(b) requires the preliminary report to be submitted no later than June 1, 2020 and Penalty NO. 7-(c) requires that the annual compliance report be submitted no later than March 15, 2021.]**

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

University at Buffalo, the State University of New York – Case No. 01111

April 21, 2020

### **I. CASE SYNOPSIS**

The parties and NCAA enforcement staff agree that during June and July 2019, a then assistant men's basketball coach, violated NCAA ethical conduct legislation when he knowingly forged a written statement in support of men's basketball student-athlete's transfer residence waiver request, created a fabricated email account to conceal his identity and submitted the written statement to the institution's compliance office.

The case originated October 2, 2019, the associate athletics director for compliance, self-reported a potential violation regarding the assistant coach forging a written statement in support of the student-athlete's transfer residence waiver request. The assistant coach wrote the statement in consultation with one of the student-athlete's former teammates at the institution from which he transferred, and later forged the former teammate's signature to the document. Buffalo became aware of the potential violation September 25, 2019, when the head men's basketball coach, was informed of the forged statement by the head men's basketball coach at the institution from which the student-athlete transferred, who had received a copy of the letter through the NCAA academic and membership affairs' (AMA) 10-day review process. The head coach reported that information to the director of athletics. Buffalo and enforcement staff then began a collaborative investigation that substantiated the violation.

In early May 2019, the head coach hired the assistant coach as an assistant men's basketball coach. The assistant coach had no prior experience in recruiting at the Division I level. Shortly after the assistant coach was hired, the head coach assigned the assistant coach to be the point person for recruiting the student-athlete. At the time, Buffalo had five roster spots that it needed to fill, and the student-athlete was a potential transfer prospect [from his previous institution]. In addition to the student-athlete, the men's basketball program recruited the former teammate and another transfer prospect from the student-athlete's previous institution. The assistant coach previously worked at the student-athlete's former institution as a graduate assistant and had good working relationships with the men's basketball staff. Additionally, the assistant coach knew the former teammate because he was an incoming freshman during the assistant coach's last summer at the student-athlete's former institution.

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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.

During the recruitment of the student-athlete and his former teammate, the men's basketball staff discussed submitting a transfer residence waiver for each of the prospects to gain immediate eligibility. The assistant coach communicated with the men's basketball staff at the student-athlete's former institution, who assured him that the student-athlete's former institution would support any transfer residence waiver submitted. The former teammate ultimately decided to enroll at another institution; however, on June 7, 2019, the student-athlete signed a financial aid agreement to attend the University at Buffalo, the State University of New York.

After the student-athlete committed to the Buffalo, the head coach tasked the assistant coach with compiling the appropriate transfer residence waiver documentation for the student-athlete. The men's basketball staff regularly discussed the possibility of a waiver with the associate athletics director for compliance. The assistant coach worked with the associate athletics director for compliance, the student-athlete and the head coach, coaches at the student-athlete's former institution and other individuals familiar with the student-athlete's status to assemble the waiver request materials.

The assistant coach also called and texted the former teammate to write a letter in support of the student-athlete's waiver request. On June 28, 2019, the assistant coach and the former teammate discussed the content of the statement, which the assistant coach typed and provided to the head coach. During the following days, the assistant coach attempted to contact the former teammate to request that he submit the statement or provide the assistant coach access to his email to submit the statement; however, the former teammate did not answer the assistant coach's phone calls. The assistant coach then created a Yahoo! email account [email address removed] posing as the former teammate, which he used to submit the statement to the associate athletics director for compliance July 2. The associate athletics director for compliance responded shortly thereafter requesting a signed copy of the statement. The assistant coach forged the former teammate's signature on the statement and resent it via the Yahoo! email account, again posing as the former teammate. The associate director of athletics for compliance then submitted the legislative relief waiver, including the forged statement, to the NCAA.

The assistant coach did not tell the head coach or the associate director of athletics for compliance about the difficulties he experienced in obtaining the former teammate's statement and signature. Additionally, the assistant coach did not tell the head coach or the associate director of athletics for compliance that he created a fictitious email account using the former teammate's name to send the statement and did not have the former teammate send any communication expressly authorizing the assistant coach's actions. The assistant coach's forging the former teammate's signature and fabricating an email account to submit the statement, are contrary to the membership's well-established honesty and sportsmanship and ethical conduct legislation.

## **II. PARTIES' AGREEMENTS**

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

#### **1. [NCAA Division I Manual Bylaws 10.01.1 and 10.1 (2018-19)] (Level II)**

The institution, the assistant coach and enforcement staff agree that during June and July 2019, the assistant coach violated the NCAA principles of ethical conduct when he failed to deport himself in accordance with the generally recognized high standards of honesty and sportsmanship normally associated with the conduct and administration of intercollegiate athletics when he knowingly forged a written statement in support of the student-athlete's transfer residence waiver request. Specifically, the assistant coach wrote the statement in consultation with one of the student-athlete's former teammates at the institution from which he transferred and later forged the former teammate's signature on the statement, to help the student-athlete gain immediate eligibility. Additionally, the assistant coach fabricated an email account to conceal his identity and submitted the written statement to the institution's compliance office.

### **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 because the violation provided or was intended to provide more than a minimal competitive advantage. The assistant coach's overall processing level for his unethical conduct violation is classified as Level II – Aggravated because the violation includes unethical conduct inconsistent with the affirmative responsibility and behavioral expectations of college coaches, which seriously undermines or threatens the integrity of the NCAA Collegiate Model.

#### **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. Conduct or circumstances demonstrating an abuse of a position of trust. [Bylaw 19.9.3-(j)].

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)].

**Involved Individual (assistant coach):**

1. Aggravating factors (Bylaw 19.9.3).

- a. Obstructing an investigation or attempting to conceal the violation. [Bylaw 19.9.3-(d)].
- b. Unethical conduct. [Bylaw 19.9.3-(e)].
- c. Violations were premeditated, deliberate or committed after substantial planning. [Bylaw 19.9.3-(f)].
- d. Conduct or circumstances demonstrating an abuse of a position of trust. [Bylaw 19.9.3-(j)].

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. [Bylaw 19.9.4-(h)].

**III. OTHER VIOLATIONS OF NCAA LEGISLATION SUBSTANTIATED; NOT ALLEGED**

None.

#### **IV. REVIEW OF OTHER ISSUES**

The parties agree that a proposed finding of fact regarding institutional control and failure to monitor should not be included in this report. Interviews conducted by the institution and enforcement staff illustrated that the compliance office was heavily involved in compiling information for the transfer residence waiver process and communicated regularly with the men's basketball staff on that process' requirements. Immediately after receiving information of the potential violations, the institution investigated and reported the information to its conference office and the enforcement staff.

Additionally, the parties agree that a proposed finding of fact regarding head coach responsibility should not be included in this report. Throughout the transfer residence waiver process, the head coach communicated regularly with compliance, and instructed the assistant coach to communicate with compliance. Additionally, the head coach reviewed the information that the assistant coach submitted to compliance for the student-athlete's waiver request. Lastly, the head coach immediately reported the potential violation to his athletics director and compliance officer once he was alerted to the behavior.

#### **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 parties agree to the following penalties:

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

1. Probation: One year of probation from April 21, 2020 through April 20, 2021.
2. Financial penalty: The institution shall pay a fine of \$5,000 to the NCAA.
3. Recruiting communication: The institution shall impose a two-week ban on all recruiting communications for men's basketball during the 2020-21 academic year.
4. Recruiting restrictions: The institution shall reduce its men's basketball program's recruiting person days for the 2020-21 academic year by five.

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

5. Show-cause order: The former assistant coach violated the principles of ethical conduct when he knowingly violated honesty and sportsmanship legislation. Therefore, pursuant to Bylaw 19.9.5.4, the former assistant coach shall be subject to a three-year show-cause order from April 21, 2020, through April 20, 2023, as follows:
  - a. During the first year that the show cause is in effect, from April 21, 2020, through April 20, 2021, the former assistant coach shall be: (1) restricted from all off-campus recruiting activities as defined in Bylaw 13.02.14 (2019-20 Manual) and all recruiting communications (e.g., phone calls, written or electronic correspondence, in-person contacts, evaluations) and (2) suspended from all coaching duties for the first 20 percent of the season (six contests), not counting exhibition games. The provisions of this suspension require that the former assistant coach not be present in the facility where games are played and have no contact or communication with men's basketball coaching staff members or student-athletes during the suspension period. The prohibition includes all coaching activities for the period of time that begins at 12:01 a.m. on the day of the first contest of the season and ends at 11:59 p.m. on the day of the final contest of the suspension period. During that period, the former assistant coach may not participate in any coaching activities, including, but not limited to, team travel, practice, video study, recruiting and team meetings.
  - b. During the second year that the show cause is in effect, from April 21, 2021, through August 31, 2021, the former assistant coach shall be restricted from all off-campus recruiting activities as defined in Bylaw 13.02.14 (2019-20 Manual) and all recruiting communications (e.g., phone calls, written or electronic correspondence, in-person contacts, evaluations).
  - c. In each year during the period of the show cause in which the former assistant coach is employed by a member institution for any portion of that year, he shall attend an NCAA Regional Rules Seminar at his own expense.

Pursuant to NCAA Division I Committee on Infractions Internal Operating Procedure 5-15-3, if the former assistant coach obtains employment or affiliation with any athletically related position at an NCAA member institution during the three-year show-cause period, any employing institution shall, within 30 days of hiring him, be required to contact the NCAA office of the Committees on Infractions to make arrangements to show cause why restrictions should not apply or notify the office of the Committees on Infractions that it will abide by the show cause order and fulfill reporting requirements. Further, every six months thereafter

through the end of the show-cause order, any employing institution shall file reports detailing its adherence to these restrictions.

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

6. Public reprimand and censure.
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 and ethical conduct legislation;
  - b. Submit a preliminary report to the Office of the Committees on Infractions by June 1, 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, 2021. Particular emphasis shall be placed on the institution's compliance measures taken to ensure adherence with NCAA recruiting and ethical conduct 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.

## **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 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 Level II – Aggravated for the assistant coach.

If a hearing panel approves the negotiated resolution, the institution and the assistant coach agree that they will take every precaution to ensure that the terms of the penalties are observed. The institution and the 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 office of the Committees on Infractions will monitor the penalties during their effective periods. Any action by the institution or the 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 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 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 Buffalo, SUNY and Level II-Standard for the head coach's violations. The agreed-upon penalties align with the ranges identified for core penalties for Level II-Mitigated cases and Level II-Standard 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 Buffalo, SUNY and the assistant head 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 head 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  
Joel Maturi  
Kay Norton, Chief Hearing Officer  
Larry Parkinson

## **APPENDIX**

### **UNIVERSITY AT BUFFALO, THE STATE UNIVERSITY OF NEW YORK'S CORRECTIVE ACTIONS**

Given the nature of this case and the lack of involvement with any other institution staff members or student-athletes, the institution has implemented the following corrective actions:

1. For NCAA or Mid-American Conference waivers, the compliance office will take additional verification steps to validate any documentation coming from a source outside of the university. Steps may include, but are not limited to, requiring a notary signature on documents, requiring in-person delivery of documents or requiring video phone calls.
2. All university coaches will receive additional rules education on ethical conduct bylaws.