

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

University of Dayton – Case No. 01046

April 22, 2021

### **I. CASE SYNOPSIS**

The University of Dayton (Dayton) and NCAA enforcement staff agree that, during the 2018-19 academic year, the women's volleyball coaching staff sent impermissible recruiting correspondence and conducted tryouts in violation of NCAA legislation.

In March 2019, a confidential source notified the enforcement staff that the Dayton women's volleyball coaching staff invited select prospective student-athletes, who were otherwise prohibited from taking unofficial visits, to its camps by emailing the link to a registration button located at the bottom of the women's volleyball coaching staff biographies page on the women's volleyball camp website. The enforcement staff conducted interviews with a 10th grade prospect and her club coach who confirmed the women's volleyball coaching staff sent emails with the camp link to the club coach, who then shared the information with the prospect.

Later in the spring of 2019, the institution learned of potential recruiting correspondence violations involving a compliance office approved questionnaire sent to prospective student-athletes in April 2019. The institution submitted a self-report to the Level III/secondary staff in June 2019. These violations were ultimately incorporated in Agreed-Upon Finding of Fact No. 1-a-(2).

In August 2019, the institution and enforcement staff began a collaborative investigation regarding the camp issue, which included reviewing the women's volleyball coaching staff's January 1 through June 30, 2019, email records. In addition to confirming tryout violations as outlined in Agreed-Upon Finding of Fact No. 1-b, the emails also revealed impermissible recruiting correspondence as outlined in Agreed-Upon Finding of Fact No. 1-a-(1).

#### Agreed-Upon Finding of Fact No. 1-a-(1).

The women's volleyball coaching staff violated recruiting correspondence legislation when it sent approximately 1,118 emails to the club coaches of at least 279 women's volleyball prospects prior to September 1 of those prospects' junior year. Specifically, the coaching staff developed 13 email templates that included specific information about the women's volleyball program that went beyond general camp or clinic information. The coaching staff then personalized these templates by identifying specific prospects in whom the program had interest and requested (either explicitly or implicitly) that the club coach forward or share the information with the prospect. The emails also contained electronic links to information such as screen shots and/or videos as well as statistical information about the women's volleyball program not generally available to the public.

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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.

As outlined in a July 13, 2017, educational column, if an institution's coach cannot contact a prospective student-athlete directly, then it is also impermissible to send recruiting messages indirectly through a club coach. Therefore, these emails to the club coaches violated NCAA recruiting correspondence legislation.

Agreed-Upon Finding of Fact No. 1-a-(2).

In the spring of 2019, the women's volleyball coaching staff drafted a questionnaire to send to prospective student-athletes via text message and provided it to the compliance staff for review. The compliance staff approved the questionnaire, and in April 2019, the coaching staff sent it to 49 prospective student-athletes prior to September 1 of their junior year. Subsequently, the compliance staff at another Division I institution contacted Dayton's compliance staff about the permissibility of the questionnaire because it included statistics about the women's volleyball program. As outlined in a January 27, 2016, official interpretation, correspondence with a questionnaire cannot include information related to the institution's athletics program. Therefore, the institution's compliance staff ultimately determined the previously approved questionnaire was impermissible and submitted a Level III self-report to the enforcement staff in June 2019.

Agreed-Upon Finding of Fact No. 1-b.

In January 2019, the women's volleyball camp coordinator (coordinator) worked with a new outside vendor to have the women's volleyball camp information posted on the women's volleyball camp website.<sup>2</sup> When creating the website, the outside vendor sent a January 23, 2019, email to the coordinator that offered to locate the camp registration button in a less conspicuous location (i.e., on the staff biographical page). Specifically, the outside vendor stated, "You didn't hear this from me. But we have also had coaches not have us add that camp on their home page list of camps, and even posted the camp link for registration like at the bottom of their staff page, and that's where they send the kids to register. Little sneaky but way of having it 'on your website' but not noticeable to the public as easy." The coordinator agreed to this suggestion, and the outside vendor placed the camp registration button at the bottom of the women's volleyball staff biographies section instead of under the camp information section. While the women's volleyball coaching staff submitted the women's volleyball camp website to the compliance staff for review and approval, there was no specific discussion about the outside vendor's suggestion or the placement of the registration button.

Between January and March 2019, the women's volleyball coaching staff scheduled five separate one-day camps to be held on the institution's campus. The coordinator instructed the outside vendor to post information about and registration for each camp approximately three to five days before the camp was scheduled to occur. The camp registration information posted at the bottom of the coaching staff biographies section on the women's volleyball camp website and the women's volleyball coaching staff's emails to the club coaches of specific prospective student-

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<sup>2</sup> The coordinator is not a coaching staff member but an employee of the head women's volleyball coach's camps which are operated outside of the institution.

athletes with a direct link to the camp registration button constituted the advertising for the 2019 spring camps.

A total of 19 ninth and 10th grade prospects attended the five camps held in the spring of 2019 and the women's volleyball coaching staff sent emails with a link to register for the camp to the club coaches of all 19 prospects. No prospective student-athletes registered for the camps solely by finding the camp information through the camp website.

The parties sought a joint interpretation regarding Agreed-Upon Finding of Fact No. 1-b. Both the NCAA Division I Legislative Review and Interpretations Committees concluded that the camps were not open to any and all entrants because the registration link was placed in a location where interested individuals would not reasonably think to look for information about camps. Because the institution did not satisfy the legislative requirements to properly advertise the five camps and the involved prospects were not otherwise able to participate in unofficial visits, the institution permitted 19 prospective student-athletes to engage in impermissible tryouts for 19 prospective student-athletes. All other aspects of the camp were conducted in accordance with NCAA legislation.

## **II. PARTIES' AGREEMENTS**

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

1. [NCAA Division I Manual Bylaws 13.4.1,<sup>3</sup> 13.4.1.5-(b), 13.4.1.5-(c), 13.4.1.6, 13.7.1, 13.11.1, 13.11.1.14 and 13.12.1.3 (2018-19)] (Level II)

It is agreed that during the 2018-19 academic year, the women's volleyball staff engaged in multiple impermissible recruiting activities with at least 279 prospective student-athletes. Specifically:

- a. During the 2018-19 academic year, the women's volleyball staff sent impermissible electronic recruiting correspondence prior to September 1 at the beginning of the junior year of 279 prospective student-athletes and/or club coaches of the prospective student-athletes. Specifically:
  - i. During the 2018-19 academic year, the women's volleyball staff sent emails on 1,118 occasions to the club coaches of at least 279 prospective student-athletes prior to September 1 at the beginning of their junior year in high school. The emails included requests that the club coaches forward information to specific prospective student-athletes about the women's

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<sup>3</sup> The membership adopted Proposal 2018-93 effective May 1, 2019, which in part amended NCAA Bylaw 13.4.1 to permit institutions to send recruiting materials to prospective student-athletes beginning June 15 at the conclusion of his or her sophomore year. The violations detailed in Agreed-Upon Finding of Fact No. 1 occurred prior to May 1, 2019.

volleyball program, and/or the program's interest in communicating with and/or hosting the prospective student-athletes on the institution's campus. [Bylaws 13.4.1, 13.4.1.5-(b) and 13.4.1.6 (2018-19)]

- ii. In April 2019, the women's volleyball staff sent compliance approved questionnaires with impermissible recruiting language via text message to 49 prospective student-athletes prior to September 1 at the beginning of their junior year in high school.<sup>4</sup> [Bylaws 13.4.1, 13.4.1.5-(c) and 13.4.1.6 (2018-19)]
- b. From February 2 through March 30, 2019, the women's volleyball program conducted five camps that were not open to any and all entrants. As a result, 19 prospective student-athletes participated in impermissible tryouts before September 1 at the beginning of their junior year in high school.<sup>5</sup> [Bylaws 13.7.1, 13.11.1, 13.11.1.4 and 13.12.1.3 (2018-19)]

#### **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.

##### **Institution:**

1. Aggravating factor (Bylaw 19.9.3).

A history of Level I, Level II or major violations by the institution [Bylaw 19.9.3-(b)].<sup>6</sup>

2. Mitigating factors (Bylaw 19.9.4).

- a. Affirmative steps to expedite final resolution of the matter [Bylaw 19.9.4-(c)].<sup>7</sup>

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<sup>4</sup> Forty-two of the 49 prospective student-athletes who received the questionnaires also received the impermissible electronic correspondence detailed in Agreed-Upon Finding of Fact No. 1-a-(1).

<sup>5</sup> All 19 prospective student-athletes involved in Agreed-Upon Finding of Fact No. 1-b also received the impermissible electronic correspondence detailed in Agreed-Upon Finding of Fact No. 1-a.

<sup>6</sup> The institution has a total of three major cases (all involved men's basketball): April 18, 2000; October 31, 1962; and January 10, 1956.

<sup>7</sup> The enforcement staff reserves the right to withdraw this mitigating factor depending on whether the parties can process the case through negotiated resolution or summary disposition.

- b. An established history of self-reporting Level III violations [Bylaw 19.9.4-(d)].<sup>8</sup>

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

None.

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

The enforcement staff considered alleging head coach responsibility and failure to monitor violations. However, the institution and enforcement staff agree the head women's volleyball coach rebutted the presumption of responsibility outlined in Bylaw 11.1.1.1 in that the head coach established clear expectations that his staff complied with NCAA rules. The head coach also established a program of prompt and consistent review of documentation related to monitoring camp and clinic information, such as forms and questionnaires within the sport program. While the decision made by the camp coordinator to place the registration link in an obscure location was concerning, the overall tone and tenor set by the head women's volleyball coach rebutted the presumption of responsibility.

Additionally, the institution and enforcement staff agree the institution sufficiently monitored its women's volleyball program during the period of the violations. Specifically, the institution demonstrated it provided adequate and continuing education to the women's volleyball coaches and noncoaching staff. The compliance staff and coaching staff also proactively reviewed the questionnaires and camps and clinics information in order to comply with NCAA legislation. While there was a misunderstanding regarding the permissibility of certain correspondence, these violations did not rise to the level of a failure to monitor.

### **V. PARTIES' AGREED-UPON PENALTIES<sup>9</sup>**

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.

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<sup>8</sup> Prior to the COVID-related recruiting restrictions, the institution reported 25 Level III or secondary violations from 2014-15 through 2018-19, approximately five violations each year.

<sup>9</sup> 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.

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 22, 2021, through April 21, 2022.<sup>10</sup>
2. Financial Penalty: The institution shall pay a fine of \$5,000 to the NCAA.
3. Recruiting Restrictions:
  - a. The institution shall reduce official paid visits in women's volleyball during the 2021-22 academic years to no more than five official paid visits in the women's volleyball program.
  - b. The institution shall prohibit unofficial visits in women's volleyball for two weeks during the 2021-22 academic year.
  - c. The institution shall prohibit recruiting communications in women's volleyball for a total of three weeks with two of the weeks occurring during the 2020-21 academic year and one week occurring during the 2021-22 academic year.
  - d. The institution shall reduce the number of evaluation days in women's volleyball during the 2021-22 academic year by 24 from the number of evaluation days permissible.
  - e. The institution shall reduce the number of contacts and evaluations for all prospective student-athletes during the 2021-22 academic year by one.

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

4. Public reprimand and censure through the release of the negotiated resolution agreement.
5. The institution prohibited all volleyball camps from August 2019 until March 11, 2020 (and remains in effect during the COVID-19 dead period).
6. The institution prohibited the women's volleyball program from sending electronic correspondence to the 49 prospective student-athletes detailed in Agreed-Upon Finding of Fact No. 2-a-(2) as follows:

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<sup>10</sup> Institutions must serve probation during the prescribed penalty period. The COVID-19 next available opportunity penalty methodology does not apply.

- a. For prospects in the class of 2021, the women's volleyball program was prohibited from sending otherwise permissible electronic correspondence (e.g. questionnaires, camp and clinic information) from May 22 to June 5, 2019 (16 days) and all electronic correspondence (first date of permissible general correspondence) from June 15 to June 29, 2019 (14 days);
  - b. For prospects in the class of 2022, the women's volleyball program was prohibited from sending otherwise permissible electronic correspondence from May 22 to June 5, 2019 (16 days) and all electronic correspondence from February 12 to March 12, 2021 (28 days); and
  - c. For prospects in the class of 2023 the women's volleyball program was prohibited from sending otherwise permissible electronic correspondence from May 22 to June 5, 2019 (16 days); and all electronic correspondence from June 15 to June 29, 2021 (14 days).
7. During this period of probation, the institution shall:
- a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for recruiting and certification legislation.
  - b. Submit a preliminary report to the Office of the Committees on Infractions (OCOI) by June 15, 2021, 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 March 1 during each year of probation. Particular emphasis shall be placed on rules education and monitoring related to recruiting correspondence, camps and tryouts.
  - d. Inform prospects in the women's volleyball program 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.
  - e. Publicize specific and understandable information concerning the nature of the infractions by providing, at a minimum, a statement to include the types of violations and the affected sport programs 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 for the women's volleyball program. The institution's statement must: (i) clearly describe the infractions; (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 final compliance report and prior to the conclusion of probation, the institution's president shall provide a letter to the NCAA Division I COI 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 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–Mitigated.

If a hearing panel approves the negotiated resolution, the institution agrees that it will take every precaution to ensure that the terms of the penalties are observed. The institution acknowledges 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 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 (Bylaw 19.6) or notice of allegations (Bylaw 19.7) and prior agreed-upon terms of the rejected negotiated resolution will not be binding.

Should a hearing panel approve the negotiated resolution, the parties agree to waive NCAA appellate opportunities.

## **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 Dayton. The agreed-upon penalties align with the ranges identified for core penalties for Level II-Mitigated cases 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 Dayton that they should take every precaution to ensure that it observes 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  
Thomas Hill  
Joel Maturi, chief hearing officer  
Mary Schutten

University of Dayton – Public Decision  
NEGOTIATED RESOLUTION  
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APPENDIX

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**APPENDIX**

**UNIVERSITY OF DAYTON'S CORRECTIVE ACTION**

The institution will require all volleyball staff to attend three institutional, mandatory compliance training session related to Bylaw 13 no later than July 31, 2021.