

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

University of Texas, El Paso – Case No. 01197

April 20, 2021

### **I. CASE SYNOPSIS**

In November 2019, the then head softball coach (former head softball coach) at the University of Texas at El Paso (UTEP), left her position for reasons unrelated to this case. When the current head coach took over the head softball coaching duties, the softball student-athletes asked him when they could begin working on "extras." Because he was confused with this term, the student-athletes explained to the current head coach the custom involved sending a text message to either the former head softball coach or a member of her staff to request additional practice time or individual workouts. During the "extras" time period, the former head softball coach, an assistant coach or coaches and/or graduate assistants viewed and/or participated in the workouts. Concerned with this practice, the current head coach reported the existence of "extras" to athletics compliance. Although the practice violated NCAA countable athletically related activities (CARA) legislation, the student-athletes reported that they did not mind it and saw it as an opportunity to improve.

While investigating "extras," the institution learned of another NCAA violation. The former head softball coach employed several graduate assistant managers during her time at the institution. Although the graduate assistants received direction from the institution's compliance staff not to engage in coaching activities, several student-athletes reported receiving instruction from the graduate assistants. The instruction occurred during practice and "extras," and a few student-athletes reported receiving instruction during competition. Many of the graduate assistants hoped to pursue a career in coaching and saw it as an opportunity to gain experience in that area. The institution investigated the matters involving "extras" and the graduate assistant managers, found violations and submitted a self-report to the NCAA enforcement staff.

Additionally, the institution learned of potential violations involving the football team. The enforcement staff conducted several interviews surrounding a potential academic misconduct issue that was ultimately unsubstantiated. During those interviews, however, a former noncoaching staff member reported that during his two-year tenure at UTEP, he coached while in a noncoaching role. As a result, the enforcement staff asked the institution to review practice videos from a select time frame to determine if additional noncoaching staff members engaged in coaching activities. The film showed both the defensive and offensive quality control staff members impermissibly providing instruction during practice. The institution and enforcement staff interviewed all the former quality control staff members and all admitted to engaging in impermissible coaching activities. The quality control staff members acknowledged they received clear guidance from compliance concerning the coaching restrictions; however, these staff members also hoped to pursue a career in coaching and saw the opportunity to gain experience in this area. Further, the head football coach acknowledged that noncoaching staff members engaged in coaching activities.

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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.

When asked why this happened, the head football coach stated that he did not "watch them closely enough" to prevent them from impermissible coaching.

## **II. PARTIES' AGREEMENTS**

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

1. [NCAA Division I Manual Bylaws 17.1.7.1, 17.1.7.3.4 and 17.1.7.4 (2016-17 through 2019-20)] (Level II)

The institution, the former head softball coach and enforcement staff agree that from at least the 2016-17 academic year through November 2019, the former head softball coach required softball student-athletes' participation in CARA beyond NCAA legislated daily and weekly hour in-season limitations and did not provide the required day off during the season. Further, the former head softball coach failed to ensure the accurate recording of student-athletes' countable hours in weekly reports to the compliance staff. Specifically, the violations resulted from "extras" where student-athletes worked with the coaching staff outside of regularly scheduled in-season practice times. During the violation period, the former head softball coach exceeded the maximum allowable weekly CARA by approximately 40 hours and the daily/skill instruction limitations by approximately 47 hours.<sup>2</sup>

2. [NCAA Division I Manual Bylaws 11.01.7, 11.7.1, 11.7.1.1 and 11.7.6 (2016-17 through 2019-20)] (Level II)

The institution, the former head softball coach and enforcement staff agree that during the 2016-17 academic year through November 2019, the former head softball coach exceeded the maximum allowable countable coaches on her coaching staff when she allowed graduate assistant managers to provide skill instruction to the softball team. The graduate assistant managers provided technical and tactical assistance to student-athletes during voluntary activities and CARA at the institution's softball practice facility and occasionally during games with other coaching staff members present. The team exceeded the maximum allowable countable coaches by two during the 2016-17 academic year, by three during the 2017-18 academic year, by three during the 2018-19 academic year and by two from August through November 2019.

3. [NCAA Division I Manual Bylaw 11.1.1.1 (2016-17 through 2019-20)] (Level II)

The institution, the former head softball coach and enforcement staff agree that from at least the 2016-17 academic year through November 2019, the former head softball coach is presumed responsible for the violations detailed in Agreed-Upon Findings of Fact Nos. 1 and 2 and did not rebut the presumption of responsibility. Specifically, the former head softball coach did not demonstrate that she promoted an atmosphere for compliance because of her personal involvement

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<sup>2</sup> The scheduling of "extras" varied during the violation period. Because of this, the agreed-upon finding of fact notes total CARA overages rather than approximate daily or weekly overages.

in the violations. Additionally, the former head softball coach did not demonstrate that she monitored her staff's involvement in the violations.

4. [NCAA Division I Manual Bylaws 11.7.1, 11.7.1.1, 11.7.3 and 11.7.4 (2018-19 and 2019-20)] (Level II)

The institution, the head football coach and enforcement staff agree that during the 2018-19 and 2019-20 academic years, the head football coach exceeded the maximum allowable countable coaches on his coaching staff when he allowed noncoaching staff members to provide skill instruction to the football team. Members of the quality control staff with noncoaching duties provided technical and tactical assistance to student-athletes during CARA with other coaching staff members present. During both in-season and out-of-season CARA, quality control staff members with noncoaching duties engaged in drills and other skill instruction during each CARA session. The team exceeded the maximum allowable countable coaches by two during the 2018-19 academic year and 2019 fall semester, and by one during the 2020 spring semester.

5. [NCAA Division I Manual Bylaw 11.1.1.1 (2018-19 and 2019-20)] (Level II)

The institution, the head football coach and enforcement staff agree that during the 2018-19 and 2019-20 academic years, the head football coach is presumed responsible for the violations detailed in Agreed-Upon Finding of Fact No. 4 and did not rebut the presumption of responsibility. Specifically, the head football coach did not demonstrate that he monitored his staff because he did not detect noncoaching staff members engaging in impermissible skill instruction.

### **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 – Standard for the former head softball coach and the head football coach.<sup>3</sup>

#### **Institution:**

1. Aggravating factors (Bylaw 19.9.3).

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<sup>3</sup> In reviewing the agreed-upon aggravating and mitigating factors, the panel considered requesting clarification on the parties' agreed-upon Level II-Mitigated classification for UTEP. Although the presence and weight of the factors could have potentially supported a Level II-Standard classification, the panel noted the significant overlap in penalties and that the same penalties would be appropriate for a Level II-Standard case. Therefore, consistent with its scope of review under Bylaw 19.5.12.2, the panel did not determine the penalties to be manifestly unreasonable, nor did it determine the agreement was contrary to the best interests of the Association. The panel also noted that, pursuant to NCAA Bylaw 19.5.12.4, this agreement has no precedential value.

- a. A history of Level I, Level II or major violations by the institution [NCAA Bylaw 19.9.3-(b)].<sup>4</sup>
  - b. Multiple Level II violations by the institution [NCAA Bylaw 19.9.3-(g)].
  - c. Persons of authority condoned, participated in or negligently disregarded the violation or wrongful conduct [NCAA Bylaw 19.9.3-(h)].
2. Mitigating factors (Bylaw 19.9.4).
    - a. Prompt acknowledgment of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties [NCAA Bylaw 19.9.4-(b)].
    - b. Affirmative steps to expedite final resolution of the matter [NCAA Bylaw 19.9.4-(c)].
    - c. An established history of self-reporting Level III violations [NCAA Bylaw 19.9.4-(d)].<sup>5</sup>

**Involved Individual (former head softball coach):**

1. Aggravating factors (Bylaw 19.9.3).
  - a. Multiple Level II violations by the individual [NCAA Bylaw 19.9.3-(g)].
  - b. Persons of authority condoned, participated in or negligently disregarded the violation or wrongful conduct [NCAA Bylaw 19.9.3-(h)].
2. Mitigating factors (Bylaw 19.9.4).
  - a. Prompt acknowledgment of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties [NCAA Bylaw 19.9.4-(b)].
  - b. Absence of prior conclusions of Level I, Level II or major violations [NCAA Bylaw 19.9.4-(h)].

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<sup>4</sup> The institution's last major infraction occurred May 1, 1997, and the enforcement staff believes this aggravating factor should carry little weight.

<sup>5</sup> The institution reported 36 Level III or secondary violations from 2015 to 2020, approximately seven violations each year.

**Involved Individual (head football coach):**

1. Aggravating factors (Bylaw 19.9.3).
  - a. Multiple Level II violations by the individual [NCAA Bylaw 19.9.3-(g)].
  - b. Persons of authority condoned, participated in or negligently disregarded the violation or wrongful conduct [NCAA Bylaw 19.9.3-(h)].
2. Mitigating factors (Bylaw 19.9.4).
  - a. Prompt acknowledgment of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties [NCAA Bylaw 19.9.4-(b)].
  - b. Absence of prior conclusions of Level I, Level II or major violations [NCAA Bylaw 19.9.4-(h)].

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

None.

**IV. REVIEW OF OTHER ISSUES**

Although this case includes several Level II violations, the enforcement staff did not allege a failure to monitor or lack of institutional control violation for several reasons. First, concerning NCAA countable coaches legislation, all of the involved parties acknowledged that the institution educated them on what they could and could not do as either managers or quality control staff personnel. The violations stemmed from individuals eager to gain experience in coaching and having difficulty accepting the limitations of their respective positions. Second, these violations were difficult for the institution to detect. The compliance office conducted spot checks during CARA, but because of budgetary limitations, managers and quality control staff performed a large variety of permissible tasks that necessitated their attendance at practice. Also, the technical and tactical assistance provided by the managers and the quality control personnel varied from practice to practice. At times, these individuals provided assistance, but at other times they did not. Finally, the softball program conducted "extras" at random dates and times. This made discovery of these violations very difficult.

## V. PARTIES' AGREED-UPON PENALTIES<sup>6</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.

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. One year of probation from April 20, 2021, through April 19, 2022.<sup>7</sup>
2. The institution shall pay a fine of \$5,000 to the NCAA.

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

3. Show-cause order: The former head softball coach engaged in impermissible CARA and allowed noncoaching staff members to engage in skill instruction. Therefore, the former head softball coach shall be subject to a one-year show-cause order from April 20, 2021, through April 19, 2022. In accordance with Bylaw 19.9.5.4 and NCAA Division I Committee on Infractions Internal Operating Procedure (IOP) 5-15-3, any employing member institution shall restrict the former head softball coach from all coaching activities for a four-week period. Additionally, during the show-cause period, the former head softball coach shall attend the annual NCAA Regional Rules Conference at her own expense. Finally, during the show-cause period, any member institution that employs the former head softball coach shall require the coach to conduct an NCAA rules education session for coaches at that institution discussing lessons learned from the infractions process and the importance of following CARA legislation. Any member institution that employs the former head softball coach in an athletically related position during the one-year show-cause period, shall abide by the terms of the show-cause order unless it contacts the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why the terms of the order should not apply.

Head coach restriction: The former head softball coach violated head coach responsibility legislation when she engaged in the violations and failed to monitor

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<sup>6</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.

<sup>7</sup> Institutions must serve probation during the prescribed penalty period. The COVID-19 next available opportunity penalty methodology does not apply.

her staff's involvement. Bylaw 19.9.5.5 and the Figure 19-1 penalty guidelines contemplate head coach suspensions to address head coach responsibility violations. Therefore, any member institution that employs the former head softball coach in an athletically related position shall suspend the former head softball coach from 15% of softball regular season contests during the first season of the show-cause period. This percentage corresponds with six regular season contests. The suspension shall run concurrently with the show-cause order. The provisions of this suspension require that the former head softball coach not be present in the facility where the contests are played and have no contact or communication with softball coaching staff members or student-athletes during the six contest-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 contest and ends at 11:59 p.m. that day. During that period, the former head softball coach may not participate in any coaching activities including, but not limited to, team travel, practice, video study, recruiting and team meetings. The results of those contests from which the former head softball coach is suspended shall not count toward the former head softball coach's career coaching record.

4. Show-cause order: The head football coach allowed noncoaching staff members to engage in skill instruction. Therefore, the head football coach shall be subject to a one-year show-cause order from April 20, 2021, through April 19, 2022. In accordance with Bylaw 19.9.5.4 and COI IOP 5-15-3, any employing member institution shall restrict the head football coach from four days of team practices during the 2021-22 academic year. The provisions of this withholding require that he not be present in the football complex or facility where practice takes place and have no contact or communication with football staff or student-athletes during the withholding period. The prohibition includes all coaching activities for the period of time that begins at 12:01 a.m. on the days of the practices and ends at 11:59 p.m. on those days. During that period, the head football coach may not participate in any coaching activities including, but not limited to, team travel, video study, recruiting and team meetings. Additionally, the head football coach shall not participate in 10 days of off campus recruiting during the 2021-22 football contact period. During the 2020-21 or 2021-22 academic year, UTEP or any employing institution shall require the head football coach to conduct a rules education session for coaches at that institution discussing lessons learned from the infractions process and the importance of following countable coaches legislation. Finally, during the 2020-21 or 2021-22 academic year, any employing institution shall require the head football coach to attend the annual Regional Rules Conference at his own expense. UTEP or any member institution that employs the head football

coach in an athletically related position during the one-year show-cause period shall abide by the terms of the show-cause order unless it contacts the OCOI to make arrangements to show cause why the terms of the order should not apply.

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

5. Softball: During the 2021-22 academic year, a reduction in the number of permissible CARA hours from 20 to 18 (in-season) and from eight to seven (out of season).
6. Softball: During the 2021-22 academic year, a reduction in the number of countable coaches by one for six days of practice (24 hours total). The reduction will remove a countable coach who otherwise would have been present at practice.
7. Football: During the 2021-22 academic year, a reduction in the number of countable coaches by one for six days of practice (24 hours total). The reduction will remove a countable coach who otherwise would have been present at practice.
8. Public reprimand and censure through the release of the negotiated resolution agreement.
9. 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 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 noncoaching staff members and CARA.
  - d. Inform prospects in softball and football 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 softball and football programs. 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.
10. 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 COI affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

## **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 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 Bylaws 19.1.1 and 19.1.2, the violations identified in this agreement occurred and should be classified as Level II – Mitigated for the institution and Level II – Standard for the former head softball coach and the head football coach.

If a hearing panel approves the negotiated resolution, the institution, former head softball coach and head football coach agree that they will take every precaution to ensure that the terms of the penalties are observed. The institution, former head softball coach and the head 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 OCOI will monitor the penalties during their effective periods. Any action by the institution, the former head softball coach and/or the head 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.

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 that they waive NCAA hearing and appellate opportunities.

### **VIII. 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 UTEP. The panel classified the former head softball coach's and the head football coach's violations as Level II-Standard. The agreed-upon penalties align with the ranges identified for core penalties for Level II-Mitigated and Level II-Standard 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 UTEP, the former head softball coach and the head 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, former head softball coach or head 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  
Thomas Hill  
Joel Maturi, chief hearing officer  
Mary Schutten