

NEGOTIATED RESOLUTION¹

Youngstown State University – Case No. 01239

April 20, 2021

I. CASE SYNOPSIS

Youngstown State University (Youngstown State); the assistant football coach; (assistant coach) and the NCAA enforcement staff agree that in November and December 2019, the assistant coach had numerous impermissible contacts with a then football student-athlete who was enrolled at a four-year NCAA Division II institution via telephone calls; text messages; an off-campus, in-person contact; and an unofficial visit before obtaining written permission to contact from the Division II institution. Additionally, the institution, the assistant coach and the enforcement staff agree that the institution provided the football student-athlete with an official visit in December 2019 without proper written permission, which resulted in additional impermissible contacts by the assistant coach and other football coaching staff members.

Youngstown State and the enforcement staff also agree that the institution permitted three football coaching staff members to recruit off-campus from September 2019 to January 2020 before they passed the NCAA Coaches Certification (Recruiting) Test. This failure resulted in the football coaches' engagement in several impermissible contacts and evaluations.

Finally, Youngstown State and the enforcement staff agree that the institution failed to monitor and ensure compliance with NCAA recruiting legislation when it did not have an adequate system in place to monitor its football program's recruitment of a football student-athlete enrolled at another four-year institution or ensure its football coaches had passed the Coaches Certification (Recruiting) Test prior to recruiting off-campus.

Impermissible contact with a football student-athlete at an NCAA Division II institution (Division II Institution).

Youngstown State football student-athlete (student-athlete) was a true freshman during the 2019-20 academic year. His older brother (student-athlete's brother) was a football student-athlete at an NCAA Division II member institution. Near the end of the 2019 football season, the student-athlete's brother told him that the brother's roommate, who was a Division II football student-athlete (Division II student-athlete), wanted to transfer. The student-athlete informed the Youngstown State football coaching staff that the Division II student-athlete was considering transferring schools. Because the Division II student-athlete was an offensive lineman, his information was provided to the assistant coach, who was responsible for recruiting prospective student-athletes to play on the offensive line.

The assistant coach first contacted the Division II student-athlete by text on November 25, 2019, without the Division II institution's permission to contact. During a telephone conversation that same day, the Division II student-athlete mistakenly informed the assistant coach that he was in the NCAA transfer portal. The Division II student-athlete believed he was in the transfer portal because he had requested that his Division II institution's athletics compliance office add him to it; however, the

¹ 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.

Division II student-athlete did not understand that the Division II institution was not required to enter him into the transfer portal because Division II had not adopted such legislation at that time.

Youngstown State did not provide the assistant coach with rules education, training on the use of, or a username or password to access the NCAA transfer portal. Due to the Division II student-athlete's assertion, the assistant coach believed it was permissible to contact the Division II student-athlete. The assistant coach never checked to confirm that the Division II student-athlete was in the transfer portal. Had the assistant coach done so, he would have discovered that the Division II student-athlete was not in the portal and would have avoided the 41 impermissible contacts by him that followed.

On December 6, 2019, the Division II student-athlete made an unofficial visit to the institution. During the visit, the assistant coach and the head football coach engaged in impermissible recruiting contact when they met with the Division II student-athlete. The compliance staff required all football coaches to document unofficial visits through a shared document. The assistant coach did not document the unofficial visit on the unofficial visit shared document form, so compliance was not aware of this contact.

Youngstown State administrators were not aware that the football program was recruiting the Division II student-athlete until the staff submitted compliance documentation for his official visit. The documentation was part of the institution's monitoring system to ensure compliance with NCAA official visit legislation. However, the documentation did not request the user to clarify whether transfer student-athletes were two-year or four-year college transfers.² Mistakenly, the compliance staff believed that the Division II student-athlete was a two-year college transfer and did not check the NCAA transfer portal for his name. As a result, the institution erroneously approved an official visit for the Division II student-athlete, which he took December 13-15.

On December 17, 2019, when meeting with the football coaching staff to prepare written offers to prospective student-athletes, the compliance staff discovered its error identifying the Division II student-athlete as a two-year college transfer. Over the course of that day, the compliance staff determined that all the institution's contacts with the Division II student-athlete were impermissible because he was not in the NCAA transfer portal and the institution did not have permission to contact from the Division II institution. The compliance staff immediately informed the football coaching staff to cease all communication with the Division II student-athlete until further notice. The compliance staff also contacted the Division II institution athletics department to inform them of the matter. On January 3, 2020, the Division II institution provided verbal permission to contact the Division II student-athlete to Youngstown State with written permission following January 10, 2020. At that time, Youngstown State renewed its recruitment of the Division II student-athlete, but he eventually transferred to another Division I NCAA institution.

The factual scenario demonstrates that the institution failed to monitor the football program's recruitment of the Division II student-athlete because it did not have an adequate system to ensure the

² In May 2020, athletics compliance created a new form that clearly identifies if prospective transfer student-athletes are two-year or four-year transfers.

contacts with the Division II student-athlete were permissible. As a result, Level II recruiting violations occurred.

Failure to pass the annual NCAA coaches certification (recruiting) test.

In late January 2020, another Division I NCAA institution (Division I institution) hired the then head football coach (former head coach), for Youngstown State, as its defensive coordinator. On January 28, 2020, the Division I institution contacted Youngstown State and requested the former coach's 2019-20 Coaches Certification (Recruiting) Test score. When the compliance staff looked for the former head coach's score, they discovered that he and two assistant football coaches, had not taken the 2019-20 Coaches Certification (Recruiting) Test. The compliance staff immediately recognized this was problematic because the coaches had engaged in off-campus recruiting activities prior to passing the required annual test. Youngstown State subsequently determined that the three football coaches had impermissible contacts with 16 prospective student-athletes and conducted impermissible evaluations of two prospective student-athletes as a result.

An email dated July 5, 2019, demonstrates that the compliance staff notified coaches who had not taken and/or passed the Coaches Certification (Recruiting) Test and told them they would not be able to recruit off-campus as of July 31 if they did not pass the test. The email also provided additional testing dates. Another email dated August 5, 2019, shows that the compliance staff again notified coaches who still had not taken and/or passed the Coaches Certification (Recruiting) Test and told them they could not recruit off-campus until they passed the test. The former head coach and two other assistant football coaches received both emails.³ However, beyond those email reminders, the institution did not have procedures or protocols in place to ensure coaches were properly certified to engage in off-campus recruiting activities.

The factual scenario demonstrates that the institution failed to monitor the football program's recruiting activities because it did not have an adequate system to ensure they were certified to engage in off-campus recruiting activities. As a result, Level II violations occurred.

II. PARTIES' AGREEMENTS

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

1. [NCAA Division I Manual Bylaw 13.1.1.3 (2019-20)] (Level II)

The institution, the assistant coach and the enforcement staff agree that from November 26 through December 17, 2019, the assistant coach had at least 41 impermissible contacts with the Division II student-athlete without first obtaining written permission to contact from the Division II institution. Further, additional impermissible contacts occurred when the institution permitted the Division II student-athlete to complete an official paid visit. Specifically:

³ Each coach believed they successfully completed the coaches certification (recruiting) test, as they did in prior years, and were certified to recruit off-campus.

- a. From November 26 through December 17, 2019, the assistant coach engaged in at least 38 impermissible contacts via 13 telephone calls and 25 text messages with the Division II student-athlete. The assistant coach did not obtain permission from the Division II institution before he made the contacts. [NCAA Bylaw 13.1.1.3 (2019-20)]
- b. On December 6, 2019, the Division II student-athlete made an unofficial visit to the institution. During the visit, the assistant coach and the head football coach engaged in impermissible contact when they met with the Division II student-athlete. The assistant coach still had not obtained permission to contact from the Division II institution. [NCAA Bylaw 13.1.1.3 (2019-20)]
- c. On December 11, 2019, the assistant coach engaged in an off-campus, in-person contact with the Division II student-athlete at a local coffee and fast food restaurant near the Division II institution. The assistant coach still had not obtained permission to contact from the Division II institution. [NCAA Bylaw 13.1.1.3 (2019-20)]
- d. On December 13-15, 2019, the institution provided the Division II student-athlete an official paid visit. During the visit, the assistant coach and other football coaches engaged in impermissible contact when they met with the Division II student-athlete over an extended time period. The institution and assistant coach still had not obtained permission to contact from the Division II institution prior to the official paid visit. [NCAA Bylaw 13.1.1.3 (2019-20)]

2. [NCAA Division I Manual Bylaws 11.5.1 and 13.1.2.1.1 (2019-20)] (Level II)

The institution and enforcement staff agree that from September 20, 2019, to January 29, 2020, the institution permitted three football coaches to recruit off-campus before they were certified on knowledge of applicable recruiting rules. Specifically, the coaches had impermissible contacts with 16 football prospective student-athletes and conducted impermissible evaluations of two prospective student-athletes before they passed the Coaches Certification (Recruiting) Test.

3. [NCAA Division I Manual Constitution 2.8.1 (2019-20)] (Level II)

The institution and enforcement staff agree that from at least September 20, 2019, to January 29, 2020, the scope and nature of the violations detailed in Agreed Upon Findings of Fact Nos. 1 and 2 demonstrate that the institution violated the NCAA principle of rules compliance when it failed to adequately monitor its football program by ensuring compliance with applicable NCAA recruiting legislation. Specifically:

- a. From November through December 2019, the institution failed to monitor the football program's recruitment of the Division II student-athlete identified in Agreed Upon Finding of Fact No. 1. Additionally, the institution failed to recognize that the prospective student-athlete was then enrolled at another four-year college and determine whether it had permission to contact him and authorize an official visit. The institution also failed to provide rules education,

training on the use of, or a username or password to access the NCAA transfer portal to an assistant football coach. [NCAA Constitution 2.8.1 (2019-20)]

- b. From September 2019 through January 2020, the institution failed to establish reasonable policies and procedures to ensure all coaching staff members passed the annual Coaches Certification (Recruiting) Test prior to engaging in off-campus recruiting activities. [NCAA Constitution 2.8.1 (2019-20)]

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-Mitigated for the assistant coach.

Institution:

1. Aggravating factors (Bylaw 19.9.3).
 - a. A history of Level I, Level II or major violations by the institution [NCAA Bylaw 19.9.3-(b)].⁴
 - 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 related wrongful conduct [NCAA Bylaw 19.9.3-(h)].
2. Mitigating factors (Bylaw 19.9.4).
 - a. An established history of self-reporting Level III or secondary violations [NCAA Bylaw 19.9.4-(d)].⁵
 - b. Prompt self-detection and self-disclosure of the violations [NCAA Bylaw 19.9.4-(a)].
 - c. Prompt acknowledgment of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties [NCAA Bylaw 19.9.4-(b)].

⁴ As a procedural matter, the parties bifurcated this case from a broader investigation and agreed that it supported Bylaw 19.9.3-(b). Typically, the COI would not identify a potential future case as supporting Bylaw 19.9.3-(b); however, the panel accepts the parties' agreement.

⁵ The institution reported 26 Level III or secondary violations from November 2015 through October 2020, approximately five violations each year.

Involved Individual (Assistant Coach):

1. Aggravating factor (Bylaw 19.9.3).

Persons of authority condoned, participated in or negligently disregarded the violation or related 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. The absence of prior conclusions of Level I, Level II or major violations committed by the involved individual [NCAA 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 PENALTIES⁶

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 – Standard Violations (Bylaw 19.9.5) (Institution)

1. Probation: Two years of probation from April 20, 2021 to April 19, 2023.⁷

2. Financial Penalty: The institution will pay a fine of \$5,000 to the NCAA.

⁶ 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.

⁷ Periods of probation always commence with the release of the infractions decision. Institutions must serve probation during the prescribed penalty period. The COVID-19 next available opportunity penalty methodology does not apply.

3. Recruiting Restrictions:

- a. The institution shall reduce official paid visits in its football program during the 2021-22 academic year by three from the number of visits permissible.
- b. The institution shall prohibit unofficial visits in its football program for two weeks during the 2020-21 academic year.
- c. The institution shall prohibit all recruiting communications in its football program for two weeks during the 2020-21 academic year.
- d. The institution shall reduce the number of evaluations days in its football program during the 2021-22 academic year by three from the number of evaluation days permissible.

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

4. Public reprimand and censure through the release of the negotiated resolution agreement.
5. 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 communications with and unofficial and official paid visits taken by four-year college transfers and annual NCAA recruiting rules certification testing.
 - d. Inform prospects in the football 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.
 - 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 football 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.

6. 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.

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

7. The institution suspended the assistant coach from all coaching duties during three preseason football dates: January 30 and February 7 and 14, 2021.
8. The institution prohibited the assistant coach from all recruiting activities from February 13 through 26, 2021.

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 occurred and should be classified as Level II – Standard for the institution and Level II – Mitigated 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 OCOI 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 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.

VII. DIVISION I COMMITTEE ON INFRACTIONS APPROVAL

Pursuant to Bylaw 19.5.12, the hearing panel approves the parties' negotiated resolution agreement. The hearing panel's review of this agreement is limited. Hearing panels may only reject a negotiated resolution agreement if the agreement is not in the best interests of the Association or if the agreed-upon penalties are manifestly unreasonable. *See* Bylaw 19.5.12.2. In this case, the hearing panel determines that the agreed-upon facts, violations, aggravating and mitigating factors, and classifications are appropriate for this process. Further, the parties classified this case as Level II-Standard for Youngstown State and Level II-Mitigated for the assistant coach's violations. The agreed-upon penalties align with the ranges identified for core penalties for Level II-Standard and Level II-Mitigated violations in Figure 19-1 and Bylaw 19.9.5 and with the additional penalties available under Bylaw 19.9.7. Pursuant to Bylaw 19.5.12.4, this negotiated resolution has no precedential value.

The COI advises Youngstown State and the assistant coach that they should take every precaution to ensure that they observe the terms of the penalties. The COI will monitor the institution while it is on probation to ensure compliance with the penalties and terms of probation and may extend the probationary period, among other action, if the institution does not comply or commits additional violations. Likewise, any action by the institution or the assistant 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, chief hearing officer
Joel Maturi
Mary Schutten