

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

Mississippi State University – Case No. 01001

August 23, 2019

### I. CASE SYNOPSIS

On January 19, 2019, an athletics academic advisor at Mississippi State University met with a fellow athletics academic advisor who reported a conversation he overheard between two student-athletes. One of the student-athletes complained to his teammate about the difficulty he had with his online general chemistry course. His teammate, in the middle of the conversation, pointed to a then student at the institution and part-time athletics department tutor specializing in chemistry (tutor), who was seated nearby, and suggested that the tutor could complete the course for him for a price. After learning about this conversation, the tutor immediately communicated this information to the associate director of athletics and executive director of academics so she could report it to the athletics compliance staff for investigation. The institution immediately suspended the tutor's employment as a part-time tutor pending investigation. The institution's dean of students' office was also advised and was actively involved in the investigation from that point forward.

The compliance staff reviewed the online general chemistry class roster to identify all student-athletes in the fall of 2018 course and saw that a men's basketball student-athlete, along with several football student-athletes, were enrolled in the course.<sup>2</sup> The institution also pulled internet protocol (IP) addresses and metadata for the enrolled student-athletes' coursework and exams. The IP data showed that certain student-athletes' coursework and exams for the online chemistry course was completed, primarily, from two IP addresses: one on campus and one off-campus. The IP and timestamp data suggested that one individual logged into the student-athletes' online chemistry course accounts and completed exams and/or assignments for the men's basketball student-athlete and 10 football student-athletes, often in discernable, successive patterns. Based upon the IP information, an analysis of relevant dates, times and data showing that the tutor was logged in to the institution's system when course assignments or exams were completed, the institution believed the IP addresses traced back to the tutor.

When the institution met with the tutor and asked her about the type of assistance she provided student-athletes enrolled in the online general chemistry course, the tutor replied that she might have helped with an answer on occasion but did not do anything more substantial. At that point, the institution asked the tutor to provide the IP address(es) she used at her off-campus residence, along with locations where she may have used either institutional Wi-Fi or other Wi-Fi systems. She refused to provide the information and told the institution she planned to seek legal counsel. From that point forward, the tutor declined to participate in the institution's investigation, sit for an NCAA interview or respond to any additional requests for information.

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<sup>1</sup> In reviewing this agreement, the hearing panel made editorial revisions pursuant to Committee on Infractions (COI) Internal Operating Procedure 4-9-1-2. These modifications did not affect the substance of the agreement.

<sup>2</sup> The spring semester had just begun, and the institution deduced that any alleged academic misconduct most likely occurred the previous semester. To complete its due diligence, the institution reviewed data for other semesters when the online general chemistry course was offered, but only found evidence of academic misconduct during the fall of 2018 semester.

On February 15, 2019, the institution interviewed the men's basketball student-athlete. In his initial interview with the institution, the men's basketball student-athlete denied engaging in academic misconduct with the tutor. Two days after his interview, his counsel notified the institution that he would like to sit for a second interview. On February 19, 2019, the men's basketball student-athlete was interviewed for a second time. He admitted that the tutor offered to complete coursework and exams for his online chemistry course in exchange for cash payments, and that she only did so after he paid her. The institution continued to withhold the student-athlete from competition and compiled additional information on the football student-athletes enrolled in the online chemistry course. The institution contacted the NCAA enforcement staff immediately after the men's basketball student-athlete's interview on February 19, 2019.

On February 25, 2019, the enforcement staff issued a verbal notice of inquiry and on February 26, 2019, the institution and enforcement staff conducted interviews of the 10 football student-athletes enrolled in the course. All 10 football student-athletes were represented by personal legal counsel and all of them acknowledged that the tutor completed academic work in the online chemistry course on their behalf in exchange for cash payments. Most of the student-athletes reported that the tutor would not assist them with assignments/examinations until she received payment. The amount charged by the tutor and the number of assignments/exams she completed varied for the involved student-athletes.<sup>3</sup>

The institution took the involved student-athletes through its academic honor system process and found that all 11 student-athletes violated the institution's honor code. All 11 student-athletes received an F in the course as a result of the misconduct and honor code violation, in addition to other disciplinary and rehabilitative actions taken by the institution's dean of students' office.

The institution declared all 11 student-athletes ineligible and sought NCAA reinstatement.

Both the institution and enforcement staff tried on multiple occasions to engage the tutor and secure her cooperation for an interview. When it became clear that the tutor had requested money in exchange for assisting student-athletes with coursework and that she would not participate in the process, she was dismissed. The enforcement staff considers the tutor to be a non-participating involved individual. As the tutor failed or refused to participate in an interview requested by the enforcement staff, and because she is an involved individual, the hearing panel of the COI may view this failure and refusal as an admission that the alleged violation involving her occurred, pursuant to NCAA Bylaws 19.2.3.2.2 and 19.7.8.3.3. Further, the enforcement staff provided the tutor a copy of the allegations involving her on May 23, 2019, to which she failed to respond.<sup>4</sup>

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<sup>3</sup> For a detailed description of the amount of work the tutor completed for each student-athlete, how much money they paid the tutored and the number of competitions each student-athlete participated in while ineligible, *see* Section II below.

<sup>4</sup> Also *see* Bylaw 19.5.12.1.1.

The institution and enforcement staff considered the serious nature of academic misconduct violations during discussions about case processing options. The parties believe negotiated resolution is appropriate due to the agreement on the facts, violations, level classification and penalties. Given the participating parties' agreement on all these elements, the participating parties believe the nature of the acknowledged behavior should not preclude a negotiated resolution.

The institution and enforcement staff agree that this case should be properly resolved as Level I-Mitigated for the institution. In reaching a "mitigated" classification, the institution and enforcement staff assessed the aggravating and mitigating factors by weight and number. The parties considered the institution's rules compliance efforts and remedial measures, and agreed that significant weight should be given to the institution's: (a) prompt self-detection and self-disclosure; (b) exemplary cooperation; (c) affirmative steps to expedite final resolution of the matter; and (d) prompt acknowledgement of the violations, acceptance of responsibility and imposition of meaningful corrective measures. The institution and enforcement staff also considered whether certain aggravating factors that applied to the tutor should also apply to the institution inasmuch as the tutor was, by definition, an institutional staff member. Both the facts of this case and prior case precedent suggest that it is not appropriate to apply all of the tutor's aggravating factors to the institution.

## **II. PARTIES' AGREED-UPON FACTUAL BASIS, VIOLATIONS OF NCAA LEGISLATION AND VIOLATION LEVELS**

### **AGREED-UPON FINDING OF FACT NO. 1, VIOLATION LEVEL AND NARRATIVE – [NCAA Division I Manual Bylaws 12.11.1, 14.9.2.1-(a), 14.9.2.2-(a) and 16.8.1 (2018-19)] (Level I)**

The institution and enforcement staff agree that in the fall semester of the 2018-19 academic year, the tutor committed academic misconduct in an online general chemistry course when she completed multiple assignments, exams and, in some instances nearly the entire course, for 10 football student-athletes and one men's basketball student-athlete in exchange for cash payments. The institution determined that this conduct violated its academic misconduct policy. As a result of the academic misconduct, eight football student-athletes and one men's basketball student-athlete competed and received competition-related expenses while ineligible. The following outlines the details of the work the tutor completed for each student-athlete in the chemistry course, the amount each student-athlete paid the tutor for the work and the number of contests each student-athlete competed in subsequent to the violations:<sup>5</sup>

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<sup>5</sup> The hearing panel redacted the chart to remove identification of the student-athletes.

Student-Athlete (Sport)	Completed by the Tutor					Payments to the Tutor	Total Paid (approximate)	Competitions Post-Violation
	Lessons	No. of Lessons	Exams	No. of Exams	Final Exam			
Football	Yes	Most	Yes	4	Yes	\$350 flat fee	\$350	13
Football	No	-	Yes	1	Yes	\$40 – exam \$60 – final	\$100	0
Football	Yes	Most	Yes	4	Yes	"about \$60"	\$60	13
Football	Yes	Half	Yes	4	Yes	\$250-350 flat fee	\$250-350	13
Football	Yes	"a few"	Yes	2 or 3	Yes	Various	\$140 +	1
Football	No	-	Yes	3	Yes	\$40 – exam \$60 – final	\$180	1
Football	Yes	Most	Yes	3	Yes	\$20 – lesson \$40 – exam \$60 – final	\$215	0
Football	No	-	Yes	2 or 3	Yes	\$40 – exam \$60 – final	\$145	2
Football	Yes	Most	Yes	4	Yes	\$25-30 – lessons Unknown – exams	\$200 +	12
Football	No	-	Yes	3	Yes	\$40 – exam \$60 – final	\$180	1
Men's Basketball	Yes	"more than half"	Yes	4	Yes	\$20 – lesson \$40 – exam \$60 – final	\$300 +	24

**III. POST-SEPARATION FACTUAL BASIS, VIOLATIONS OF NCAA LEGISLATION AND VIOLATION LEVELS**

**UNCONTESTED FINDING OF FACT NO. 1, VIOLATION LEVEL AND NARRATIVE** – [NCAA Division I Manual Bylaws 10.1, 10.1-(a), 19.2.3 and 19.2.3.2 (2018-19)] (Level I)

It is uncontested that in March 2019 and continuing to the present, the tutor failed to cooperate with the enforcement staff when she refused to participate in an interview with the institution and enforcement staff to discuss her involvement in alleged academic misconduct that occurred when she was employed at the institution.

**IV. OTHER NCAA VIOLATIONS SUBSTANTIATED, NOT ALLEGED**

None.

**V. REVIEW OF OTHER ISSUES**

None.

**VI. AGREED-UPON AGGRAVATING AND MITIGATING FACTORS**

Pursuant to 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 I-Mitigated for the institution and the tutor's overall processing level for her uncontested violations are classified Level I-Aggravated.

**A. Institution.**

1. Aggravating factors [Bylaw 19.9.3].
  - a. A history of Level I, Level II or major violations. [Bylaw 19.9.3-(b)]
  - b. One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospective student-athlete. [Bylaw 19.9.3-(i)]

2. Mitigating factors [Bylaw 19.9.4].

- a. Prompt self-detection and self-disclosure of the violation(s). [Bylaw 19.9.4-(a)]
- b. Prompt acknowledgement of the violation(s), acceptance of responsibility and imposition of meaningful corrective measures and/or penalties. [Bylaw 19.9.4-(b)]
- c. Affirmative steps to expedite final resolution of the matter. [Bylaw 19.9.4-(c)]
- d. An established history of self-reporting Level III or secondary violations. [Bylaw 19.9.4-(d)]
- e. Implementation of a system of compliance methods designed to ensure rules compliance. [Bylaw 19.9.4-(e)]
- f. Exemplary cooperation. [Bylaw 19.9.4-(f)]

**B. Involved individual [Tutor].**

1. Aggravating factors [Bylaw 19.9.3].

- a. Unethical conduct, failure to cooperate during an investigation. [Bylaw 19.9.3-(e)]
- b. Violations were premeditated, deliberate or committed after substantial planning. [Bylaw 19.9.3-(f)]
- c. One or more violations caused significant ineligibility or other substantial harm to a student-athlete or prospective student-athlete. [Bylaw 19.9.3-(i)]
- d. Conduct intended to generate pecuniary gain for the involved individual. [Bylaw 19.9.3-(l)]
- e. Intentional, willful or blatant disregard for the NCAA constitution and bylaws. [Bylaw 19.9.3-(m)]

2. Mitigating factor [Bylaw 19.9.4].

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

## **VII. 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 institution and enforcement staff agree to the following penalties. Additionally, the enforcement staff provides the hearing panel for its consideration and inclusion in this infractions case the uncontested violations and proposed penalties for the non-participating tutor pursuant to Bylaw 19.5.12.1.1.

### **A. Core Penalties for Level I-Mitigated Violations (Bylaw 19.9.5).**

1. Financial penalty: The institution shall pay a fine of \$5,000 plus one percent each of the football and men's basketball budgets to the NCAA. The fine related to the football program will be \$165,533 and the fine related to the men's basketball program will be \$54,014.
2. Scholarship reductions:<sup>7</sup> During the 2020-2021 and 2021-22 academic years, the institution shall reduce the annual limit on the number of counters in football by a reduction of two for a maximum of 83. During the 2020-2021 academic year, the institution shall reduce the annual limit on the number of counters in men's basketball by one for a maximum of 12.
3. Recruiting restrictions: During the 2019-2020, 2020-2021 and 2021-2022 academic years in the sports of football and men's basketball, the institution shall restrict recruiting activities as follows:
  - a. During the 2019-20 academic year, official visits in the sport of football will be limited to 36, a reduction by four from the four-year average of 40 visits. During the 2019-20 and 2020-21 rolling two-year period, official visits in the sport of men's basketball will be limited to 10, a reduction by two from the four-year average of six visits per year.

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<sup>6</sup> In addition to consulting Article 19, Figure 19-1 Penalty Guidelines, the parties also reviewed similar case precedent to ensure consistent assessment of level, classification and penalties for this case. In fashioning the penalties, the enforcement staff reviewed recent cases with similar sets of facts and ranges of penalties for Level I-Mitigated and Level I-Aggravated violations. See *University of Louisiana, Monroe* (2018) (concluding that a men's basketball coach completed four online French courses for two men's basketball student athletes) and *University of Missouri, Columbia* (2019) (concluding that a full-time athletics department tutor committed academic misconduct for multiple student-athletes over a period of several years).

<sup>7</sup> Because of scholarship commitments already made by the institution, both the institution and enforcement staff agree on the staggering of this penalty.

- b. In the sport of football, no unofficial visits will be permitted during one home contest for the 2019-2020, 2020-2021, and 2021-22 academic years. In the sport of men's basketball, no unofficial visits will be permitted during two home contests for the 2019-2020 and 2020-2021 academic years.
  - c. During the 2019-20 academic year, football evaluation days will be reduced by two in the fall 2019 and 10 in spring 2020 from the permissible number of evaluation days. In spring 2020, recruiting-person days for men's basketball will be reduced by six from the permissible number of recruiting-person days. Over the past four years, the institution has used the maximum number of permissible evaluation and recruiting-person days.
4. Probation: Three years of probation from August 23, 2019, through August 22, 2022.

**B. Additional Penalties for Level I-Mitigated Violations (Bylaw 19.9.7)**

1. Public reprimand and censure.
2. Vacation of records: The institution will vacate all regular season and conference tournament records and participation in which the ineligible student-athletes in this case competed from the time they became ineligible through the time they were reinstated as eligible for competition.

This vacation includes all regular season competition and conference tournaments. Further if the ineligible student-athletes participated in NCAA postseason competition at any time while they were ineligible, the institution's participation in the postseason shall be vacated. The individual finishes and any awards for all eligible student-athletes shall be retained. Further, the institution's records regarding its affected programs, as well as the records of the head coaches, shall reflect the vacated records and shall be recorded in all publications in which such records are reported, including, but not limited to, institutional media guides, recruiting material, electronic and digital media plus institutional, conference and NCAA media archives. Any institution that may subsequently hire the affected head coaches shall similarly reflect the vacated wins in their career records documented in media guides and other publications cited above. Head coaches with vacated wins on their records may not count the vacated wins towards specific honors or victory "milestones" such as 100<sup>th</sup>, 200<sup>th</sup> or 500<sup>th</sup> career victories.

Any public reference to the vacated contests shall be removed from the athletics department stationary, banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in the affected programs shall be returned to the Association. Finally, to ensure that all institutional and student-athlete vacations, statistics and records are accurately reflected in official NCAA publications and

archives, the sports and information director (or other designee as assigned by the director of athletics) must contact the NCAA Media Coordination and Statistics office and appropriate conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the NCAA Media Coordination and Statistics office with a written report detailing those discussions. This document will be maintained in the permanent files of the NCAA Media Coordination and Statistics office. This written report must be delivered to the office no later than 45 days following the release of this decision or, if the citation penalty is appealed, at the conclusion of the appeals process. The sports information director (or designee) must also inform the Office of the Committees on Infractions (OCOI) of this submission to the NCAA Media Coordination and Statistics office.

3. Disassociation: The institution shall disassociate the tutor. The disassociation shall include:
  - a. Refraining from accepting any assistance from the tutor that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes;
  - b. Refusing financial assistance or contributions to the institution's athletics program from the tutor or her business interests;
  - c. Ensuring that no athletics benefit or privilege is provided to the tutor, either directly or indirectly or her business interests; and
  - d. Implementing other actions that the institution determines to be within its authority to eliminate the involvement of the tutor in the institution's athletics program.
  
4. During the time of probation, the institution shall:
  - a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct the coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for recruiting;
  - b. Submit a preliminary report to the OCOI by October 15, 2019, 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 July 1 during each year of probation. Particular emphasis shall be placed on monitoring recruiting;

- d. Inform all prospects in the involved sports programs in writing that the institution is on probation for three years and detail the violations committed. If a prospective student-athlete 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 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 report located on the athletic department's main or "landing" webpage. The information shall also be included in media guides and in an alumni publication. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the infractions case; and (iii) provide a clear indication of what happened in the infractions case. A statement that refers only to the probationary period with nothing more is not sufficient.
  - f. Prior to the conclusion of probation, the institution's president shall provide a letter to the hearing panel of the COI affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.
5. Other penalties to include:
- a. Rules education: The institution will require all of the involved student-athletes to conduct one rules education session with their respective teammates on the consequences of academic misconduct.
  - b. Academic review: During the 2019-2020 academic year the institution will participate in the National Association of Academic and Student-Athlete Development Professionals (N4A) program review and Academic Integrity Assessment (AIA) process.

**C. Core Penalties for Level I-Aggravated Violations by the Tutor (Bylaw 19.9.5)**

Show-cause order: The tutor is subject to a 10-year show cause order restricting her from all athletically related duties. The show cause shall run from August 23, 2019, to August 22, 2029.

**D. Additional Penalties for Level I-Aggravated Violations by the Tutor (Bylaw 19.9.7)**

None.

## **VIII. PARTIES TO THE CASE**

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

The institution and enforcement staff.

### **B. Not in agreement with the negotiated resolution.**

Not applicable.

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

The tutor is a non-participating involved individual, and as a result her violations are uncontested.

## **IX. 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. The parties agree that, pursuant to Bylaw 19.1.1, the violations identified in this agreement should be classified as Level I-Aggravated for the tutor and Level I-Mitigated for the institution.

If a hearing panel approves the negotiated resolution, the institution agrees that they 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.

#### **X. 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 participating parties classified this case as Level I-Mitigated for the institution and Level I-Aggravated for the tutor's violations. The agreed-upon penalties align with the ranges identified for core penalties for Level I-Mitigated and Level I-Aggravated 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 the institution and tutor 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 tutor 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  
Norman Bay  
Joel Maturi, Chief Hearing Officer  
Larry Parkinson

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**APPENDIX**

**MISSISSIPPI STATE UNIVERSITY'S CORRECTIVE ACTIONS**

Employment separation: The institution immediately suspended the tutor after learning of the initial information and formally terminated the tutor's part-time employment on February 27, 2019.