

NEGOTIATED RESOLUTION¹

Texas A&M University, College Station – Case No. 01208

August 20, 2021

I. CASE SYNOPSIS

Texas A&M University, College Station (institution); head men's basketball coach (head coach); assistant men's basketball coach (assistant coach 1); and the NCAA enforcement staff agree that from April 2019 through June 2020, violations of NCAA legislation occurred in the institution's men's basketball program involving (a) noncoaching staff members' participation in impermissible coaching activities, (b) staff members' engagement in impermissible recruiting activities and (c) an assistant men's basketball coach's participation with men's basketball student-athletes in activities that were prohibited due to the COVID-19 pandemic. Further, the parties agree that the head coach was responsible for select violations because he did not rebut the presumption of responsibility. The parties agree that this case is Level II-Standard for the institution, head coach and assistant coach 1.

In early June 2020, after their internal investigation, the institution informed the NCAA enforcement staff that assistant coach 1 impermissibly conducted and supervised off-campus workouts with a then men's basketball prospective student-athlete and several men's basketball student-athletes even though the activities were prohibited due to the COVID-19 pandemic. Additionally, assistant coach 1 arranged for several noncoaching staff members with sport-specific responsibilities to supervise and/or participate in the activities. See Agreed-Upon Finding of Fact No. 3 for details.

In August 2020, the institution and enforcement staff commenced a collaborative investigation and substantiated the violations involving assistant coach 1. The investigation further revealed that additional noncoaching staff members had impermissibly provided technical and tactical instruction to student-athletes and participated in impermissible recruiting activities. See Agreed-Upon Findings of Fact Nos. 1 and 2 for details.

The head coach confirmed his knowledge of noncoaching staff members with men's basketball responsibilities engaging in coaching activities. Those violations resulted in the program exceeding the countable coach limitations. Further, the head coach confirmed that he had an impermissible recruiting contact with a men's basketball prospective student-athlete. Due to his knowledge of an involvement in violations, the head coach could not rebut the presumption of responsibility. See Agreed-Upon Finding of Fact No. 4 for details.

II. PARTIES' AGREEMENTS

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

1. [NCAA Division I Manual Bylaws 11.01.7, 11.01.7-(b), 11.7.1, 11.7.1.1, 11.7.1.1-(a), 11.7.3 and 11.7.6 (2018-19 and 2019-20)] (Level II)

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.

The institution, head coach and enforcement staff agree that from April 2019 through March 2020, the head coach permitted six noncoaching men's basketball staff to participate impermissibly in on-court activities and engage in technical or tactical instruction. The staff members' impermissible participation and instruction also resulted in the institution exceeding limits on countable coaches by three. Specifically:

- a. The head coach permitted the special assistant to the head men's basketball coach, who was considered a noncoaching staff member, to provide technical or tactical instruction to the men's basketball team during film sessions on numerous occasions. [NCAA Bylaws 11.7.1, 11.7.1.1, 11.7.1.1-(a), 11.7.3 and 11.7.6 (2018-19 and 2019-20)]
- b. The head coach permitted two graduate assistant managers, to provide instruction to the men's basketball team and participate in more than limited on-court activities during practice. [NCAA Bylaws 11.01.7, 11.01.7-(b), 11.7.1, 11.7.1.1-(a), 11.7.3 and 11.7.6 (2018-19 and 2019-20)]
- c. The head coach permitted three noncoaching staff members to participate in on-court activities by engaging in drills, providing instruction by demonstrating plays and/or scrimmaging with the student-athletes. [NCAA Bylaws 11.7.1, 11.7.1.1, 11.7.1.1-(a), 11.7.3 and 11.7.6 (2018-19 and 2019-20)]

This finding forms the basis for the head coach responsibility violation outlined in Agreed-Upon Finding of Fact No. 4.

2. [NCAA Division I Manual Bylaws, 11.7.2, 11.7.2-(a), 13.01.1, 13.01.2, 13.02.4, 13.02.5.2, 13.1, 13.1.1.1, 13.1.1.1.2, 13.11.1, 13.11.2.1, 13.11.2.1-(a) and 13.11.2.1-(f) (2019-20)]

The institution, head coach, assistant coach 1 and enforcement staff agree that between July 2019 and March 2020, the head coach and assistant coach 1 engaged in impermissible recruiting activities with a prospective student-athlete during his 2019-20 junior year of high school. Specifically:

- a. In July 2019, an evaluation period, the head coach engaged in an impermissible contact with a men's basketball prospective student-athlete (prospect 1) during the July evaluation period. Specifically, while checking into the hotel where prospect 1's AAU team stayed, prospect 1 approached the head coach in the lobby as the head coach was checking in and the two engaged in a conversation that included the head coach stating that he would be attending prospect 1's game the next day. [NCAA Bylaws 13.01.1, 13.01.2, 13.02.4, 13.02.5.2, 13.1, 13.1.1.1 and 13.1.1.1.2 (2019-20)]
- b. During an unofficial visit for top underclassmen in September 2019, assistant coach 1 impermissibly evaluated prospect 1 during an unofficial visit for top underclassmen. Specifically, assistant coach 1 observed prospect 1 and other prospective student-athletes participating in an open gym for approximately 20 minutes. [NCAA Bylaws 13.11.1, 13.11.2.1 and 13.11.2.1-(a) (2019-20)]

- c. During an unofficial visit from March 8 through 10, 2020, assistant coach 1 conducted two 45-minute impermissible tryouts with prospect 1 in which he used cones and provided tactical and technical instruction. Further, assistant coach 1 arranged for at least one noncoaching staff member with sport-specific responsibilities to participate in the tryouts. [NCAA Bylaws 11.7.2, 11.7.2-(a), 13.11.1, 13.11.2.1, 13.11.2.1-(a) and 13.11.2.1-(f) (2019-20)]

This finding forms the basis for the head coach responsibility violation outlined in Agreed-Upon Finding of Fact No. 4.

- 3. [NCAA Division I Manual Bylaws 11.7.1, 11.7.1.1, 11.7.3, 11.7.6, 13.11.1, 13.11.3.8, 17.1.7.2, 17.1.7.2.2, 17.4.6 and 17.4.6.1 (2019-20)]

The institution, assistant coach 1 and enforcement staff agree that in May and June 2020, assistant coach 1 impermissibly conducted and supervised a tryout and countable athletically related activities when they were prohibited due to the COVID-19 pandemic. Also, assistant coach 1 arranged for several noncoaching staff members with sport-specific responsibilities to supervise and/or participate in the activities exceeding limit on countable coaches. Specifically:

- a. In May and June 2020, assistant coach 1 conducted and supervised off-campus workouts with a then men's basketball prospective student-athlete (prospect 2) on approximately 24 occasions. The activities, which included shooting drills and scrimmages, constituted impermissible tryouts because prospect 2 had committed to the institution as a transfer but had not yet enrolled at the institution. Further, assistant coach 1 included several men's basketball student-athletes in many of the workouts even though the activities were prohibited due to the COVID-19 pandemic.² [NCAA Bylaws 13.11.1, 17.1.7.2.2, 17.4.6 and 17.4.6.1 (2019-20)]
- b. On multiple occasions, assistant coach 1 arranged for noncoaching staff members to participate in the May and June on-court activities when they supervised and conducted workouts with prospect 2 and the men's basketball student-athletes. As a result of their participation in the coaching activities, the institution exceeded the limits on countable coaches by four. [NCAA Bylaws 11.7.1, 11.7.1.1, 11.7.3 and 11.7.6 (2019-20)]

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

The institution, head coach and enforcement staff agree that from April 2019 through March 2020, the head 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 head coach did not demonstrate that he promoted an atmosphere for compliance based on his personal involvement in the violations detailed in Agreed-Upon Findings of Fact Nos. 1 and 2. In addition, the head coach did not demonstrate that he monitored his staff within the men's basketball program, which resulted in impermissible recruiting and athletically related activities and violations on coaching restrictions.

² See NCAA Division I Council Coordination Committee April 15, 2020, action related to countable athletically related activities. (Effective April 20, 2020)

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 each of the parties. In determining a Level II – Standard classification for the institution, the parties agreed that the aggravating factor in Bylaw 19.9.3-(b) warranted additional weight because the violations in the present case occurred at approximately the same time its most recent infractions case was decided.³

Institution:

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

³ The institution's last infractions case was decided in July 2020.

⁴ Because this case involved intentional violations that were expressly prohibited during the COVID-19 pandemic, the panel considered whether the agreed-upon level and aggravating factors were appropriate. Specifically, the panel considered whether the nature of the conduct and the potential disregard for health and safety measures supported a Level I violation or other aggravating factors. In light of the panel's scope of review, however, the panel deferred to the parties' agreement. The COI will continue to review these violations on a case-by-case basis and assess the level of those violations and the potential application of aggravating factors. To be clear, the COI's future analysis on level does not turn on whether or not a student-athlete contracted COVID-19 as a result of the violations. An institution's or involved individual's disregard of prohibitions may be sufficient to increase the level or warrant aggravating factors.

⁵ The institution reported 49 Level III or secondary violations from March 2017 through March 2021, approximately 12 violations each year.

Involved Individual (head coach):

1. Aggravating factors (Bylaw 19.9.3).
 - a. Multiple Level II violations by the involved individual [Bylaw 19.9.3-(g)].
 - b. Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct [Bylaw 19.9.3-(h)].
 - c. Intentional, willful or blatant disregard for the NCAA constitution and bylaws [NCAA Bylaw 19.9.3-(m)].
2. Mitigating factors (Bylaw 19.9.4).
 - a. Prompt acknowledgement of the violation and acceptance of responsibility [NCAA Bylaw 19.9.4-(b)].
 - b. Affirmative steps to expedite final resolution of the matter [Bylaw 19.9.4-(c)].
 - c. The absence of prior conclusions of Level I, Level II or major violations committed by the involved individual [Bylaw 19.9.4-(h)].

Involved Individual (assistant coach 1):

1. Aggravating factors (Bylaw 19.9.3).
 - a. Multiple Level II violations by the involved individual [Bylaw 19.9.3-(a)].
 - b. Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct [Bylaw 19.9.3-(h)].
 - c. Intentional, willful or blatant disregard for the NCAA constitution and bylaws [Bylaw 19.9.3-(m)].
2. Mitigating factors (Bylaw 19.9.4).
 - a. Prompt acknowledgement of the violation and acceptance of responsibility. [NCAA Bylaw 19.9.4-(b)]
 - b. Affirmative steps to expedite final resolution of the matter [Bylaw 19.9.4-(c)].
 - c. The absence of prior conclusions of Level I, Level II or major violations committed by the involved individual [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)

1. Probation: Two years of probation to run consecutive to the probation in Case No. 00928. This will extend the probation period through June 30, 2023.⁷
2. Financial Penalty: The institution shall pay a fine of \$5,000 to the NCAA.
3. Recruiting Restrictions: The institution shall reduce official paid visits for men's basketball by five during the 2021-22 academic year, plus no unofficial visits for the first three Southeastern Conference games during the 2021-22 academic year.
 - a. The institution shall have no recruiting communication for three weeks to begin at either the end of the upcoming dead period or the beginning of the fall of 2021 recruiting period.
 - b. The institution shall restrict the men's basketball recruiting period 5% during the 2021-22 academic year. This percentage corresponds with seven out of 130 recruiting days during the 2021-22 academic.
4. Head coach restriction: The head coach violated head coach responsibility legislation when he did not demonstrate that he promoted an atmosphere for compliance based on

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 The running of a probation penalty consecutive to a current probation period is consistent with the NCAA Division I Committee on Infractions' precedent. See *University of Utah* (2019).

his personal involvement in the violations detailed in Agreed-Upon Findings of Fact Nos. 1 and 2 and did not demonstrate that he monitored his staff, which resulted in impermissible recruiting and athletically related activities and violations on coaching restrictions. Bylaw 19.9.5.5 and the Figure 19-1 penalty guidelines contemplate head coach suspensions to address head coach responsibility violations. Therefore, any institution that employs the head coach in an athletically related position shall suspend the head coach from first two regular season contests. The provisions of this suspension require that the head coach not be present in the facility where the contests are played and have no contact or communication with men's basketball coaching staff members or student-athletes during the two 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 head 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 head coach is suspended shall not count toward the head coach's career coaching record.

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

5. Public reprimand and censure through the release of the negotiated resolution agreement.
 - a. The institution shall issue a letter of reprimand to the special assistant to head men's basketball coach.
 - b. The institution shall issue a letter of reprimand to assistant men's basketball coach 1, for his knowledge of violations.
6. During this period of probation, the institution shall:
 - a. Continue to develop and implement a comprehensive compliance and educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for NCAA recruiting legislation;
 - b. Submit a preliminary report to the office of the Committees on Infractions by October 15, 2021, setting forth a schedule for establishing this compliance and educational program;
 - c. File with the office of the Committees on Infractions annual compliance reports indicating the progress made with this program by June 15, during each year of probation. Particular emphasis shall be placed on the institution's compliance measures taken to ensure adherence with NCAA recruiting legislation and related rules education;

- d. Inform prospects in all affected sports programs in writing that the institution is on probation for one year and detail the violations committed. If a prospect takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospect signs a National Letter of Intent; and
 - e. Publicize specific and understandable information concerning the nature of the violations by providing, at a minimum, a statement to include the types of violations and the involved sports program(s) and a direct, conspicuous link to the public infractions decision located on the athletics department's main webpage "landing page" and in the media guides of the involved sports program(s) for the entire term of probation. The institution's statement must: (i) clearly describe the violations; (ii) include the length of the probationary period associated with the case; and (iii) give members of the general public a clear indication of what happened in the case to allow the public (particularly prospects and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.
- 7. Following the receipt of the compliance report and prior to the conclusion of probation, the institution's president shall provide a letter to the Committee on Infractions affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.
 - 8. The institution suspended assistant coach 1 from all program related activities/duties June 29, 2020. The period of assistant coach 1's suspension remained in effect thru the end of the 2020-21 basketball season (approximately nine months).
 - 9. Throughout the entire 2020-21 season, the men's basketball program operated with one fewer assistant coach than permitted. That is, assistant coach 1 was not replaced on a temporary basis for any countable activities nor for any recruiting.

VI. OTHER AGREEMENTS

The parties agree that this case will be processed through the NCAA negotiated resolution process as outlined in Bylaw 19.5, and a hearing panel comprised of members of the Committee on Infractions will review the negotiated resolution. The parties acknowledge that the negotiated resolution contains agreed-upon findings of fact of NCAA violations and agreed-upon aggravating and mitigating factors based on information available at this time. Nothing in this resolution precludes the enforcement staff from investigating additional information about potential rules violations. The parties agree that, pursuant to Bylaw 19.1.2, the violations identified in this agreement occurred and should be classified as Level II – Standard.

If a hearing panel approves the negotiated resolution, the institution, head coach and assistant coach 1 agree that they will take every precaution to ensure that the terms of the penalties are observed. The

institution, head coach and assistant coach 1 acknowledge that they have or will impose and follow the penalties contained within the negotiated resolution, and these penalties are in accordance with those prescribed in Bylaws 19.9.5, 19.9.6, 19.9.7 and 19.9.8. The office of the Committees on Infractions will monitor the penalties during their effective periods. Any action by the institution, head coach or assistant coach 1 contrary to the terms of any of the penalties or any additional violations may be considered grounds for prescribing more severe penalties or may result in additional allegations and violations.

The parties acknowledge that this negotiated resolution may be voidable by the Committee on Infractions if any of the parties were aware or become aware of information that materially alters the factual information on which this negotiated resolution is based. Additionally, the parties acknowledge that this negotiated resolution will not be binding if the case is referred to the independent accountability resolution process (Bylaw 19.11).

The parties further acknowledge that the hearing panel, subsequent to its review of the negotiated resolution, may reject the negotiated resolution. Should the hearing panel reject the negotiated resolution, the parties understand that the case may be submitted through a summary disposition report (Bylaw 19.6) or notice of allegations (Bylaw 19.7) and prior agreed-upon terms of the rejected negotiated resolution will not be binding.

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

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 Texas A&M, the head coach and assistant coach 1. The agreed-upon penalties align with the ranges identified for core penalties for 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 Texas A&M, the head coach and the assistant coach 1 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 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

Carol Cartwright, chief hearing officer

Thomas Hill

Mary Schutten