

## NEGOTIATED RESOLUTION

San Diego State University – Case No. 01009

January 17, 2020

### **I. CASE SYNOPSIS**

In November 2018, after the season concluded, three women's volleyball student-athletes reported possible NCAA violations to their academic counselor. The allegations involved mandatory summer workouts and excessive countable athletically related activities (CARA). The academic counselor notified the athletics compliance staff about the allegations. Shortly thereafter, the institution notified the NCAA enforcement staff of the allegations and advised the staff of its plan to conduct interviews with the student-athletes. The institution collaborated with the enforcement staff and kept them informed of the investigation's progress. After some initial investigation, the institution retained outside counsel and continued its independent investigation.

As part of its investigation, the institution gathered multiple documents including CARA logs, time management policy and plans, summer calendars, student-athletes' text messages, coaches' emails, unofficial and official visit documentation and summer camp documentation. The institution also interviewed seven women's volleyball student-athletes (which included a combination of former and current student-athletes), an assistant athletic trainer, the assistant director of strength and conditioning and the women's volleyball coaches and staff. Based on information developed during the interviews and review of documents, the institution determined that the following violations related to CARA occurred: (1) women's volleyball student-athletes' participation in summer open gyms and strength and conditioning activities were not always voluntary; (2) the coaching staff requested incoming freshman women's volleyball student-athletes to participate in summer camps; and (3) the coaching staff requested women's volleyball student-athletes to participate in an open gym during a prospective student-athlete's official paid visit, resulting in excessive CARA. The institution also determined that the women's volleyball coaching staff impermissibly organized prospects' participation in open gyms during on-campus visits and had one impermissible contact with a prospect during her first year at a two-year college when she was certified as an NCAA nonqualifier.

The violations pertaining to mandatory summer activities occurred because the activities were not always initiated and requested solely by the student-athletes. For example, the head coach prepared and distributed a calendar of summer activities to the women's volleyball student-athletes. The calendar identified scheduled weight training and on and off-campus open gyms. The head coach sent the following communications via text message and/or email to the student-athletes:

May 30, 2018

Also just a reminder the dates you will have off before the season are August 1-5. You can leave after workouts on July 31st. You must be back in San Diego on the 5th. Please remember to respond to all coaches texts and emails so we can be sure you have seen what we need. I hope you are enjoying your summer!

June 8, 2018

Workouts with [institutional staff member] begin June 20th. You will have the 4th and 5th of July off and boot camp will begin July 9th and will go until the 31st. Meetings are on the 7th with our first practice on the 8th before that date.

June 13, 2018

Reminder tone [sic] back for a workout on June 20th. You will have off again August 1st to 5th.

When she distributed the summer calendars to the student-athletes June 14, 2018, she said:

If you replied once you don't have to reply again. However freshman and transfer make sure I know you have seen the schedule.

Based on those communications from the head coach, the student-athletes believed they were required to report back to campus and participate in the summer activities. The head coach reported that she did not intend for the activities to be mandatory and instead only attempted to provide information to the team about available opportunities. Regardless, the activities were impermissible.

The violation related to the coaches' impermissible contact with the two-year college prospect was inadvertent. In fact, when the head coach realized the prospect was in her first year at the two-year college, she recognized the contact was impermissible, ended it and immediately reported it to the compliance staff. As a result, the head coach demonstrated a commitment to compliance and in that instance, rebutted the presumption of responsibility for this violation.

The remainder of the violations in this case appear to be a result of further misunderstanding or lack of knowledge of applicable NCAA legislation. However, the misunderstanding and/or lack of knowledge of rules was not due to a lack of education from the institution. The institution demonstrated that it implemented a comprehensive NCAA rules education program, including education about CARA and summer activities. In addition, the institution properly monitored its sport programs for violations of NCAA legislation.

The institution submitted a self-report of the violations in March 2019. The enforcement staff issued a notice of inquiry in May and conducted on-campus interviews. Those interviews further substantiated that the head coach did not rebut the presumption of responsibility for most of the violations. Also, through the interviews and a review of documents, the enforcement staff confirmed that the institution implemented adequate compliance monitoring systems and provided sufficient NCAA rules education. Therefore, this case does not include a failure to monitor by the institution.

The institution, head coach and enforcement staff considered the nature of the violations while discussing case processing options. The parties believe negotiated resolution is appropriate due to the agreement on facts, violations, level classification and penalties.

## **II. PARTIES' AGREEMENTS**

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

1. [NCAA Division I Manual Bylaws 17.02.18 (2014-15 through 2016-17); 17.1.7.2.1,<sup>1</sup> 17.25.11 and 17.25.12 (2014-15 through 2018-19); 17.02.19 (2017-18); and 17.1.7.1 (2018-19)] (Level II)

The institution; head women's volleyball coach (head coach), and enforcement staff agree that from at least June 2015 through December 2018, the head coach and the women's volleyball coaching staff violated the provisions of CARA legislation. Specifically:

- a. During at least the summers of 2015 through 2018, the head coach directed the volleyball student-athletes to report for participation in open gyms and strength and conditioning activities. As a result, the student-athletes' participation was not voluntary and constituted impermissible CARA. [NCAA Bylaws 17.02.18 (2014-15 through 2016-17); 17.1.7.2.1 and 17.25.11 (2014-15 through 2017-18); and 17.02.19 (2017-18)]
- b. During at least the summers of 2015 through 2018, the head coach directed enrolled freshman student-athletes to impermissibly participate as campers in the institution's camps. [NCAA Bylaws 17.1.7.2.1, 17.25.11 and 17.25.12 (2014-15 through 2017-18)]
- c. On December 4, 2018, during the playing season, the women's volleyball coaching staff directed student-athletes to participate in an open gym with a

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<sup>1</sup> The legislation was revised April 26, 2017, to eliminate the "department-wide basis" qualifier for strength and conditioning coaches but did not have a substantive effect.

prospective student-athlete who was on an official visit. The student-athletes' participation caused the program to exceed the maximum of 20 hours per week by one hour. [NCAA Bylaw 17.1.7.1 (2018-19)]

2. [NCAA Division I Manual Bylaws 13.11.1 and 13.11.2.3 (2015-16, 2017-18 and 2018-19)] (Level II)

The institution, head coach and enforcement staff agree that from March 7, 2016, through December 4, 2018, the women's volleyball coaching staff organized 11 prospective student-athletes' participation in open gym with women's volleyball student-athletes during their campus visits, which occurred over six sets of campus visits. Their participation in open gym was considered a physical workout or other recreational activity and constituted impermissible tryouts.

3. [NCAA Division I Manual Bylaw 13.1.1.2 (2018-19)] (Level III)

The institution, head coach and enforcement staff agree that December 4, 2018, the women's volleyball coaching staff had an impermissible recruiting contact with one prospective student-athlete and her mother during their campus visit. Specifically, the coaching staff had in-person contact with volleyball prospective student-athlete prospect, who was not a qualifier and in her first year of full-time enrollment at a two-year college, and prospect's mother at a local restaurant located off the institution's campus.

4. [NCAA Division I Manual Bylaw 11.1.1.1 (2014-15 through 2018-19)] (Level II)

The institution, head coach and enforcement staff agree that from June 2015 through December 2018, the head coach is presumed responsible for the violations detailed in Allegation Nos. 1 and 2 and did not rebut the presumption of responsibility. Specifically, the head coach did not demonstrate that she promoted an atmosphere of compliance within the women's volleyball program due to her personal knowledge of and involvement in the violations. Additionally, even though athletics administrators notified the head coach in October 2016 that student-athletes raised concerns about potential mandatory activities during the summer and advised her to clearly communicate the voluntary nature of such activities in the future, the head coach failed to ensure that subsequent summer activities complied with NCAA legislation.

#### **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 head coach.

**Institution:**

1. Aggravating factors. [NCAA Bylaw 19.9.3]
  - a. A history of Level I, II or major violations by the institution. [NCAA Bylaw 19.9.3-(b)]<sup>2</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 related wrongful conduct. [NCAA Bylaw 19.9.3-(h)]
2. Mitigating factors. [NCAA Bylaw 19.9.4]
  - a. Prompt acknowledgement of the violation, acceptance of responsibility and the imposition of meaningful corrective measures. [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 or secondary violations. [NCAA Bylaw 19.9.4-(d)]<sup>3</sup>
  - d. Implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional control standards (e.g. National Association of Athletics Compliance Reasonable Standards). [NCAA Bylaw 19.9.4-(e)]

**Involved Individual (Head coach):**

1. Aggravating factors. [NCAA Bylaw 19.9.3]
  - a. Multiple Level II violations by the involved individual. [NCAA Bylaw 19.9.3-(g)]
  - b. Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct. [NCAA Bylaw 19.9.3-(h)]

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<sup>2</sup> The institution and enforcement staff agree that pursuant to Bylaw 19.9.3-(b), no weight should be applied to this factor because the last major infractions case for the institution was more than 15 years ago and none of its cases involved the women's volleyball program.

<sup>3</sup> Since the 2015-16 academic year, SDSU has self-reported 55 Level III violations.

2. Mitigating factors. [NCAA Bylaw 19.9.4]
  - a. Affirmative steps to expedite final resolution of the matter. [NCAA Bylaw 19.9.4-(c)]
  - 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 PENALTIES**

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. Probation: One year of probation from January 17, 2020 through January 16, 2021.
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 women's volleyball during the 2019-20 academic year by 5% of the average number of official paid visits for women's volleyball during the previous four years.<sup>4</sup>

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<sup>4</sup> The institution has already started implementing this penalty.

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

4. **Show-Cause Order – Head Coach Restrictions:** The institution shall suspend the head coach from the first two regular season games of the 2020 women's volleyball season. The provisions of this suspension require that the head coach not be present in the arena where the contest is played and have no contact or communication with members of the women's volleyball program or student-athletes during the two-game suspension. The prohibition includes all coaching activities for the period of time which begins at 12:01 a.m. the day of the game 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 the contests from which the head coach is suspended shall not count in her career coaching record. The institution or any other employing member institution shall adhere to this penalty and the reporting requirements during the 2020-21 academic year.<sup>5</sup>

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

5. Public reprimand and censure.
6. Once a month during the 2019-20 academic year, the institution will require that one women's volleyball student-athlete meet individually with compliance to review countable athletically related activities (CARA) practice logs.<sup>6</sup>
7. **Recruiting Restrictions:** The institution reduced contacts with prospective student-athlete by two once such contacts were permissible.<sup>7</sup>
8. 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 and playing and practice season legislation;

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<sup>5</sup> Although each case is unique, the head coach's suspension is consistent with those prescribed in recent Level II head coach responsibility cases. See University of Oregon (2018).

<sup>6</sup> The institution has already started implementing this penalty.

<sup>7</sup> The parties originally identified this penalty as the last penalty in the draft agreement submitted to the COI. The COI reordered the penalties to align with its standard decision format.

- b. Submit a preliminary report to the office of the Committees on Infractions by **March 1, 2020**, setting forth a schedule for establishing this compliance and educational program;
  - c. File with the office of the Committees on Infractions annual compliance report indicating the progress made with this program by one month prior to last day of the probation period **December 1, 2020**. Particular emphasis shall be placed on the institution's compliance measures taken to ensure adherence with NCAA recruiting and playing and practice season legislation and related rules education and;
  - 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.
9. 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.

## 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 NCAA Division I 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 should be classified as Level II – Mitigated.

If a hearing panel approves the negotiated resolution, the institution and the head coach agree that they will take every precaution to ensure that the terms of the penalties are observed. The institution and the head 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 NCAA office of the Committee on Infractions will monitor the penalties during their effective periods. Any action by the institution or the head 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 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 to waive NCAA appellate opportunities.

### **VIII. DIVISION I COMMITTEE ON INFRACTIONS APPROVAL**

Pursuant to NCAA Bylaw 19.5.12, the panel approves the parties' negotiated resolution agreement. The panel's review of this agreement is limited. Panels may only reject a negotiated resolution agreement if the agreement is not in the best interests of the Association or if the agreed-upon penalties are manifestly unreasonable. *See* Bylaw 19.5.12.2. In this case, the panel determines the agreed-upon facts, violations, aggravating and mitigating factors, and classifications are appropriate for this process. Further, the parties classified this case as Level II-Mitigated for SDSU and Level II-Standard for the head coach's violations. The agreed-upon penalties align with the ranges identified for core penalties for Level II-Mitigated cases and Level

II-Standard violations 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 SDSU and the head 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, and/or head coach contrary to the terms of any of the penalties or any additional violations shall be considered grounds for prescribing more severe penalties and/or may result in additional allegations and violations.

NCAA COMMITTEE ON INFRACTIONS PANEL  
Greg Christopher, Chief Hearing Officer  
Bobby Cremins  
Kay Norton

## **APPENDIX**

### **SAN DIEGO STATE UNIVERSITY'S CORRECTIVE ACTIONS**

1. Once a month during the 2019-20 academic year, the institution will require that one women's volleyball student-athlete meet individually with compliance to review countable athletically related activities (CARA) practice logs.<sup>1</sup>
2. The institution has implemented a policy that requires mandatory disclosure of facility arrangement by athletics staff to compliance for student-athletes to engage in voluntary activities or if no institutional facility is being used, to require coaches to report to the compliance staff voluntary activity opportunities.
3. The institution's associate athletics director of compliance shall meet annually with the women's volleyball staff and the sport administrator for women's volleyball during the spring semester in the 2019-20 and 2020-21 academic years to review the voluntary summer activities for women's volleyball.
4. The institution shall require that all paid coaches on the women's volleyball staff attend an NCAA Regional Rules Seminar in 2020. Each coach shall provide written documentation to the compliance staff evidencing their attendance.
5. As part of the approval process for summer camps, the institution shall require all sport programs to submit detailed camp itineraries for review and approval by the compliance office.
6. For the 2019-20 academic year, the institution shall require that the women's volleyball program to obtain prior approval from the compliance office for all pre-arranged unofficial visits and to provide itineraries for such pre-arranged unofficial visits to the compliance staff for review and approval.
7. The institution shall increase rules education on recreational activities, camps and try-outs to all sport programs.
8. The institution shall implement controls to prevent coaches from accessing footage from any security cameras in athletic facilities during vacation periods.

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<sup>1</sup> The institution has already commenced implementing this corrective measure.