

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

Ohio University – Case No. 01170

June 16, 2020

### **I. CASE SYNOPSIS**

Ohio University (Ohio) and the NCAA enforcement staff agree that from October 2015 through September 2018 the women's volleyball coaching staff violated NCAA recruiting legislation by arranging and providing impermissible recruiting inducements in the form of airfare for one or both of the parents of eight prospective student-athletes to accompany the prospective student-athletes on their official paid visits. Ohio and the enforcement staff further agree that the institution failed to monitor and ensure compliance with NCAA legislation regarding official paid visits when it did not provide adequate NCAA rules education and training and failed to have an adequate system in place to monitor the provision of airline transportation during such visits in the women's volleyball program.

This case originated in February 2019 during a conversation between the women's volleyball coaches and a compliance staff member regarding compliance issues. During the conversation, the coaches noted that the women's volleyball program paid for the airfare of a parent to accompany a women's volleyball prospective student-athlete on an official paid visit. The compliance staff member knew such an arrangement was impermissible and ascertained from the head women's volleyball coach that he misunderstood the applicable legislation. The coaching staff then informed the compliance staff that the provision of airfare to parents on official visits had occurred on several occasions over the past few years and voluntarily provided their recollection of those occasions. The institution immediately began an internal investigation into the issue.

The institution self-reported the violations April 18, 2019, and later requested reinstatement of four prospects' eligibility who were then student-athletes. On November 18, 2019, the enforcement staff assigned an investigative team to review the case. The institution and enforcement staff subsequently began a collaborative investigation.

The collaborative investigation confirmed the findings of the institution's internal investigation that one or two of the parents of eight women's volleyball prospective student-athletes received the cost of impermissible airline transportation. Only four of the eight women's volleyball prospective student-athletes enrolled at the institution. The institution and enforcement staff agree that: (i) the violations were inadvertent and resulted from the head women's volleyball coach's misunderstanding of applicable legislation; (ii) the institution did not provide sufficient NCAA rules education regarding official paid visits to staff members responsible for the expense approval process; and (iii) prior to the discovery of the violations, compliance staff members did not review

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<sup>1</sup>In reviewing this agreement, the hearing panel made editorial revisions pursuant to NCAA Division I Committee on Infractions (COI) Internal Operating Procedure (IOP) 4-9-1-2. These modifications did not affect the substance of the agreement. In addition, pursuant to NCAA Bylaw 19.5.12.4, this agreement has no precedential value.

expense reports requesting recruiting expenses reimbursement for NCAA compliance purposes.<sup>2</sup> Furthermore, the compliance form used to track and monitor official paid visits did not identify or provide enough information regarding travel expenses for the institution to determine if official paid visits were compliant with NCAA legislation.<sup>3</sup>

## **II. PARTIES' AGREEMENTS**

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

1. [NCAA Division I Manual Bylaws 13.2.1 and 13.5.2.6 (2015-16 through 2018-19) and 12.11.1 and 16.8.1 (2016-17 through 2018-19)] (Level II)

The institution and enforcement staff agree that between October 2015 and September 2018 the women's volleyball coaching staff arranged and provided approximately \$4,408 in impermissible recruiting inducements in the form of airfare for one or both of the parents of eight prospective student-athletes to accompany the prospective student-athletes on their official paid visits to the institution. As a result of the impermissible inducements, four student-athletes competed in 83 contests over three academic years and received actual and necessary expenses while ineligible. Specifically, the chart in Appendix A identifies the impermissible recruiting inducements received.

2. [NCAA Division I Manual Bylaw 2.8.1 (2015-16 through 2018-19)] (Level II)

The institution and the enforcement staff agree that between October 2015 and September 2018, the scope and nature of the violations detailed in Agreed-Upon Finding of Fact No. 1 demonstrate that the institution violated the NCAA principle of rules compliance when it failed to (a) provide adequate NCAA rules education and training to institutional staff members who had the responsibility to ensure compliance with NCAA official paid visits transportation legislation and (b) establish an adequate system for monitoring compliance with NCAA official paid visits transportation legislation in the women's volleyball program.

### **C. 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 II – Mitigated.

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<sup>2</sup> In April 2019, compliance staff members started reviewing expense reports that requested reimbursement for recruiting expenses.

<sup>3</sup> In April 2019, the compliance staff revised the existing form to include the necessary information to ensure compliance with NCAA legislation.

**Institution:**

1. Aggravating factor (Bylaw 19.9.3).<sup>4</sup>

Multiple Level II violations by the institution [NCAA Bylaw 19.9.3-(g)].

2. Mitigating factors (Bylaw 19.9.4).

- a. Prompt acknowledgement of the violation, acceptance of responsibility and 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)].
- d. The violations were unintentional, limited in scope and represent a deviation from otherwise compliant practices by the institution [NCAA Bylaw 19.9.4-(g)].
- e. The absence of prior conclusions of Level I, Level II or major violations committed by the institution [NCAA Bylaw 19.9.4-(h)].

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

None.

**IV. REVIEW OF OTHER ISSUES**

The institution and enforcement staff agree that the head women's volleyball coach rebutted the presumption of responsibility outlined in Bylaw 11.1.1.1 in that he promoted an atmosphere of compliance and monitored the activities of all institutional staff members involved with his program who reported directly or indirectly to him.

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<sup>4</sup> Due to the student-athletes competing in 83 contests over three academic years while ineligible, the panel considered the potential application of Bylaw 19.9.3-(i), *One or more violations caused significant ineligibility*, as an aggravating factor. However, the addition of this factor would not have changed the level or classification of the case or rendered the penalties manifestly unreasonable or contrary to the best interests of the Association.

Unfortunately, the head coach mistakenly believed that the women's volleyball program could arrange and purchase airfares for parents of prospective student-athletes completing official paid visits. He provided this misinformation to his assistant women's volleyball coach who was responsible for making travel arrangements for official paid visits. However, when the compliance staff informed him that his understanding was wrong, the head coach immediately expressed remorse and acknowledged that the program previously had paid such airfare and that possible violations may have occurred over the past several years. He also took responsibility for the violations and his assistant coach's actions since he told the assistant coach that purchasing the airfares was permissible. The head coach and his staff cooperated fully during both the institution's internal investigation and the collaborative enforcement investigation. While the head coach's misunderstanding of the legislation led to the violations, there was no intent to circumvent NCAA rules or conceal violations. He otherwise promoted an atmosphere of compliance and monitored his staff resulting in rebutting his presumption of responsibility.

## **V. PARTIES' AGREED-UPON PENALTIES<sup>5</sup>**

All penalties agreed upon in this case are independent and supplemental to any action that has been or may be taken by the NCAA Division I Committee on Academics through its assessment of postseason ineligibility, historical penalties or other penalties.

Pursuant to Bylaw 19.5.12.1.3-(e), the parties agree to the following penalties:

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

1. Probation: One year of probation from June 16, 2020, through June 15, 2021.
2. Financial Penalty: The institution will pay a fine of \$5,000 to the NCAA.
3. Recruiting Restrictions:
  - a. A 37.5% reduction of official paid visits from the institution's average of eight official paid visits per academic year over the previous four years to a maximum of five official paid visits from August 1, 2019, through July 31, 2020.
  - b. A four-week ban from May 1-28, 2019, on all official paid and unofficial visits by women's volleyball prospective student-athletes.

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<sup>5</sup> The panel recognizes that circumstances surrounding the COVID-19 pandemic could impact how the institution is able to implement some of the agreed-upon penalties. If Ohio finds that a penalty cannot be served due to the ongoing pandemic, it should report any such challenges through the probation compliance process.

- c. A reduction of 25 off-campus recruiting days from the available number of off-campus recruiting days in women's volleyball during the 2019-20 academic year.

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

- 4. Public reprimand and censure through the release of the public infractions decision.
- 5. Vacation of team and individual records: Ineligible participation in the women's volleyball program occurred as a result of violations in this case during the 2016-17, 2017-18 and 2018-19 academic years.<sup>6</sup> Therefore, pursuant to Bylaws 19.9.7-(g) and 31.2.2.3 and COI IOP 5-15-7, the institution shall vacate all regular season and conference tournament wins, records and participation in which the ineligible student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition.<sup>7</sup> This order of vacation includes all regular season competition and conference tournaments. Further, if the ineligible student-athletes participated in NCAA postseason competition at any time they were ineligible, the institution's participation in the postseason contests in which the ineligible competition occurred shall be vacated. The individual records of the ineligible student-athletes shall also be vacated. However, the individual finishes and any awards for all eligible student-athletes shall be retained. Further, the institution's records regarding its women's volleyball program, as well as the records of the head women's volleyball coach, shall reflect the vacated records and 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 archives. Any institution that may subsequently hire the affected head women's volleyball coach shall similarly reflect the vacated wins in his 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 toward specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to the vacated records shall be removed from the athletics department stationery, banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in women's volleyball shall be returned to the Association.

Finally, to aid in accurately reflecting all institutional and student-athlete vacations, statistics and records in official NCAA publications and archives, the sports

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<sup>6</sup> Four student-athletes competed in 83 contests over the three academic years with the institution winning 46 of those 83 contests. Those 46 wins will be vacated.

<sup>7</sup> The panel corrected two minor typographical errors in this sentence, making the word "win" plural and adding a comma. The corrections did not alter the penalty.

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 media coordination and statistics office with a written report detailing those discussions. This written report will be maintained in the permanent files of the media coordination and statistics office. This written report must be delivered to the office no later than 14 days following the release of this decision. A copy of the written report shall also be delivered to the NCAA office of the Committees on Infractions (OCOI) at the same time.

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 official paid visits legislation;
  - b. Submit a preliminary report to the OCOI by August 1, 2020, 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 April 15, 2021. Particular emphasis shall be placed on the institution's compliance measures taken to ensure adherence with NCAA official paid visits legislation and related rules education;
  - d. Inform prospects in the women's volleyball program 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.

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 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 agrees that it will take every precaution to ensure that the terms of the penalties are observed. The institution acknowledges that it has 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 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.

## **VII. 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 Ohio University. The agreed-upon penalties align with the ranges identified for core penalties for Level II-Mitigated 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 Ohio University that it 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  
Thomas Hill  
Larry Parkinson  
E. Thomas Sullivan, Chief Hearing Officer



**APPENDIX ONE**

**IMPERMISSIBLE RECRUITING INDUCEMENTS RECEIVED**

<b>Date of Violation</b>	<b>Official Visit Start Date</b>	<b>Women's Volleyball Prospective Student-Athlete</b>	<b>Parent Recipient(s) of Impermissible Airfare</b>	<b>Approximate Value of Impermissible Airfare</b>
October 7, 2015	November 6, 2015	Prospect No. 1	Mother	\$408
November 4, 2015	November 6, 2015	Prospect No. 2	Father and Mother	\$659
March 18, 2016	March 31, 2016	Prospect No. 3	Father and Mother	\$686
September 15, 2016	October 21, 2016	Prospect No. 4	Father and Mother	\$476
May 1, 2017	May 9, 2017	Prospect No. 5r	Mother	\$346
January 4, 2018	January 18, 2018	Prospect No. 6	Father and Mother	\$593
January 2018	January 19, 2018	Prospect No. 7	Mother	\$319
August 4, 2018	September 6, 2018	Prospect No. 8	Father and Mother	\$921

**APPENDIX TWO**

**OHIO UNIVERSITY'S CORRECTIVE ACTIONS**

1. Suspended the head women's volleyball coach and one assistant women's volleyball coach without pay for one week (May 3-9, 2019).
2. Issued Letters of Admonishment to the head women's volleyball coach and one assistant women's volleyball coach.
3. Increased the level of rules education provided to athletics business office staff regarding NCAA recruiting legislation.
4. Revised athletics business office procedures for the review of various recruiting processes, including official visits.