

NEGOTIATED RESOLUTION¹

Morgan State University – Case No. 020110

June 30, 2023

I. CASE SYNOPSIS

Morgan State University (institution); head softball coach (head softball coach); and NCAA enforcement staff agree with the violations and penalties detailed below. The parties agree that this case should be resolved as Level II – Standard for the institution and head softball coach.

Commencement of the investigation.

On October 21, 2021, a former assistant softball coach reported potential violations in the institution's softball program to the NCAA Eligibility Center call center. During a November 24, 2021, interview with the enforcement staff, the former assistant softball coach reported potential recruiting violations involving head softball coach conducting tryouts of softball prospective student-athletes during their unofficial visits at the institution. The enforcement staff tested the credibility of the information by conducting or attempting to conduct interviews with three then softball prospective student-athletes.

On May 11, 2022, the enforcement staff notified the institution about the information it received, worked collaboratively with the institution and substantiated the tryout violations reported.

Tryouts during unofficial visits.

In early 2018, head softball coach arranged on at least two occasions to meet with a then softball prospective student-athlete (PSA 1) at an off-campus facility in Baltimore, Maryland. During a January 2018 meeting, PSA 1 pitched to a then softball student-athlete (SA 1), while head softball coach provided instruction to PSA 1. In February 2018, PSA 1 pitched to her father while head softball coach watched and provided instruction to PSA 1.

In the summer of 2018, a then softball prospective student-athlete (PSA 2) took an unofficial visit to the institution with her family. A then softball student-athlete (SA 2) provided PSA 2 a tour of the campus and head softball coach directed SA 2 to bring PSA 2 to an institutional athletics facility. While in the institutional athletics facility, head softball coach hit ground balls to PSA 2 which she fielded and threw to SA 2.

On January 25, 2019, a softball prospective student-athlete (PSA 3) took an unofficial visit to the institution with her father. That day, PSA 3 and her father attended the softball team's practice.

¹ In reviewing this agreement, the hearing panel made editorial revisions pursuant to NCAA Division I Committee on Infractions (COI) Internal Operating Procedure (IOP) 4-7-1-2. These modifications did not affect the substance of the agreement.

During practice, a member of the softball coaching staff invited PSA 3 to join the team's infield/outfield session and PSA 3 fielded fly balls for approximately 15 minutes with other softball student-athletes. Additionally, after practice concluded, a member of the softball coaching staff invited PSA 3 to an institutional facility where the softball staff watched her swing at approximately 10 soft toss throws so they could witness her wrist speed.

On March 1, 2019, a softball prospective student-athlete (PSA 4) took an unofficial visit to the institution with her father. Head softball coach and other members of the softball staff observed PSA 4 pitch to a then student-athlete (SA 3) in an institutional facility.

Head softball coach knew, for the violations he was personally involved in, that the conduct was impermissible. Further, head softball coach recognized that he failed to act appropriately when he did not report the violations to compliance and continued to engage in the same behaviors.

II. PARTIES' AGREEMENTS

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

1. [NCAA Division I Manual Bylaws 13.1.2.7-(a) (2017-18) and 13.11.1 (2017-18 and 2018-19)] (Level II)

The institution, head softball coach and enforcement staff agree that between January 2018 and March 2019, head softball coach and the softball coaching staff conducted impermissible tryouts with four then softball prospective student-athletes. Specifically:

- a. In January and February 2018, head softball coach conducted two impermissible tryouts with PSA 1.
 - 1) In January 2018, head softball coach arranged for SA 1 and PSA 1 to meet at an off-campus facility in Baltimore, Maryland, where head softball coach provided tactical and technical instruction to PSA 1 while PSA 1 pitched to SA 1. [NCAA Bylaws 13.1.2.7-(a) and 13.11.1 (2017-18)]
 - 2) In February 2018, head softball coach arranged to meet with and provided tactical and technical instruction to PSA 1 while PSA 1 pitched to PSA 1's father at an off-campus facility in Baltimore, Maryland. [NCAA Bylaw 13.11.1 (2017-18)]
- b. In August of 2018, head softball coach conducted an impermissible tryout with PSA 2 during an unofficial visit. Head softball coach directed and observed PSA 2 field ground balls and throw to SA 2 at an institutional facility. [NCAA Bylaw 13.11.1 (2018-19)]

- c. On January 25, 2019, the softball staff conducted an impermissible tryout with PSA 3 during an unofficial visit. A member of the softball staff directed and observed PSA 3 participate in portions of the softball team's practice at an institutional facility. [NCAA Bylaw 13.11.1 (2018-19)]
 - d. On March 1, 2019, head softball coach and the softball staff conducted an impermissible tryout with PSA 4 during an unofficial visit. Head softball coach and members of the softball staff observed PSA 4 pitch to SA 3 at an institutional facility. [NCAA Bylaw 13.11.1 (2018-19)]
2. [NCAA Division I Manual Bylaw 11.1.1.1 (2017-18 and 2018-19)] (Level II)

The institution, head softball coach and enforcement staff agree that from January 2018 through March 2019, head softball coach is presumed responsible for the violations detailed in Agreed-Upon Finding of Fact No. 1 and did not rebut the presumption of responsibility. Specifically, head softball coach did not demonstrate that he promoted an atmosphere for compliance based on his personal involvement in the violations detailed in Agreed-Upon Finding of Fact No. 1.

C. Agreed-upon aggravating and mitigating factors.

Pursuant to NCAA Bylaw 19.10.3-(e), the parties agree that the aggravating and mitigating factors identified below are applicable. The parties assessed the factors by weight and number and agree that this case should be properly resolved as Level II – Standard for the institution and head softball coach.

Institution:

1. Aggravating factors (Bylaw 19.12.3.1).²
 - a. Multiple Level I and/or multiple Level II violations for which the institution is responsible [NCAA Bylaw 19.12.3.1-(a)].
 - b. Persons of authority condoned, participated in and negligently disregarded the violations or wrongful conduct [NCAA Bylaw 19.12.3.1-(e)].

² On January 1, 2023, the NCAA membership adopted new legislation for aggravating and mitigating factors. Relevantly, the membership removed former Bylaw 19.9.3-(b), A history of Level I, Level II or major violations, and replaced it with Bylaw 19.12.5. Repeat Violators. Pursuant to Bylaw 19.12.5, Morgan State is a repeat violator. *See Morgan State University* (2017). The institution's repeat violator status can serve as appropriate rationale for deviating upwards in the Figure 19-1 penalty guidelines. However, given the timing of this case and the different substantive issues involved in both cases, the panel discussed the potential applicability and impact of Bylaw 19.12.5. Notably, the application of Bylaw 19.9.3-(b) under the former structure would not likely have had a material effect on the case's classification. Moreover, based on the facts at issue and the discretionary nature of Bylaw 19.12.5, the panel would not have deviated upwards in this case. As a reminder, NRs have no precedential value. *See* Bylaw 19.10.6. This case has no bearing on future panels' consideration on penalties when a party triggers repeat violator status.

- c. Intentional, willful, or blatant disregard for NCAA bylaws by a person with institutionally derived authority [NCAA Bylaw 19.12.3.1-(i)].
2. Mitigating factors (Bylaw 19.12.4.1).
 - a. Prompt acknowledgement and acceptance of responsibility for the violations [NCAA Bylaw 19.12.4.1-(b)].
 - b. Affirmative steps to expedite final resolution of the matter, including a good faith request for a timely submission of a negotiated resolution pursuant to Bylaw 19.10 [NCAA Bylaw 19.12.4.1-(d)].
 - c. An established history of self-reporting Level III or secondary violations [NCAA Bylaw 19.12.4.1-(e)].³

Involved Individual (head softball coach):

1. Aggravating factors (Bylaw 19.12.3.2).
 - a. Multiple Level I and/or multiple Level II violations [NCAA Bylaw 19.12.3.2-(a)].
 - b. Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct [NCAA Bylaw 19.12.3.2-(d)].
 - c. Intentional, willful, or blatant disregard for the NCAA bylaws [NCAA Bylaw 19.12.3.2-(i)].
2. Mitigating factors (Bylaw 19.12.4.2).
 - a. Prompt acknowledgement and acceptance of responsibility for the violations [NCAA Bylaw 19.12.4.2-(b)].
 - b. Affirmative steps to expedite final resolution of the matter, including a timely submission of a negotiated resolution pursuant to Bylaw 19.10 [NCAA Bylaw 19.12.4.2-(c)].
 - c. The absence of prior conclusions of Level I, Level II or major violations committed by the involved individual [NCAA Bylaw 19.12.4.2-(e)].

³ The institution reported 27 Level III or secondary violations from March 2018 to March 2023, approximately five violations each year.

III. OTHER VIOLATIONS OF NCAA LEGISLATION SUBSTANTIATED; NOT ALLEGED

None.

IV. REVIEW OF OTHER ISSUES

None.

V. PARTIES' AGREED-UPON PENALTIES⁴

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 19.10.3-(e), the parties agree to the following penalties:

Core Penalties for Level II – Standard Violations (Bylaw 19.12.6)

1. Two years of probation from June 30, 2023, through June 29, 2025.
2. Financial penalty: The institution shall pay a fine of \$5,000 to the NCAA.
3. Show-cause order: Head softball coach violated NCAA tryout legislation. Therefore, head softball coach shall be subject to a one-year show-cause order from June 30, 2023, through June 29, 2024. In accordance with Bylaw 19.12.6.4 and NCAA Division I Committee on Infractions Internal Operating Procedure 5-15-5, any employing member institution shall prohibit head softball coach from all recruiting communication, off-campus recruiting and evaluations for four weeks in July 2023⁵ and require NCAA regional rules seminar attendance for head softball coach at his own expense. The institution or any member institution that employs head softball coach in an athletically related position during the one-year show-cause period, shall abide by the terms of the show-cause order unless it contacts the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why the terms of the order should not apply.

⁴ All penalties must be completed during the time periods identified in this decision. If completion of a penalty is impossible during the prescribed period, the institution shall make the Committee on Infractions aware of the impossibility and must complete the penalty at the next available opportunity.

⁵ Head softball coach is currently employed at Morgan State and is the only softball coaching staff member who recruits off campus. If head softball coach is still employed at Morgan State in July 2023, the prohibitions on his recruiting communication and off-campus recruiting and evaluations would run concurrently with institutional penalties 5-(b) and (c).

4. Head coach restriction: Head softball coach violated head coach responsibility legislation due to his personal involvement in tryout violations. Bylaw 19.12.6.5 and the Figure 19-1 penalty guidelines contemplate head coach suspensions to address head coach responsibility violations. Therefore, the institution or any member institution that employs head softball coach in an athletically related position shall suspend head softball coach from the first 10% of softball regular season contests during the first season of the show-cause period. This percentage corresponds with five regular season contests. The suspension shall run concurrently with the show-cause order. The provisions of this suspension require that head softball coach not be present in the facility where the contests are played and have no contact or communication with softball coaching staff members or student-athletes during the five 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, head softball 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 head softball coach is suspended shall not count toward the head coach's career coaching record.
5. Recruiting restrictions:
 - a. The institution shall have a maximum of 10 combined official and unofficial visits in the softball program during the 2023-24 academic year.⁶
 - b. The institution shall prohibit recruiting communication in softball for four weeks in July 2023.
 - c. The institution shall prohibit off-campus recruiting and evaluations in softball by four weeks in July 2023.

Additional Penalties for Level II – Standard Violations (Bylaw 19.12.8)

6. Disassociation: A former softball student-athlete, refused to cooperate with the institution's and enforcement staff's investigation. Therefore, the institution shall disassociate from the former softball student-athlete, for a period of ten years beginning on June 30, 2023, and ending June 29, 2033 (self-imposed). Pursuant to Bylaw 19.12.8-(i), the disassociation shall include:
 - a. Refraining from accepting any assistance from the former softball student-athlete that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes;

⁶ The institution's softball program averaged 1.5 official visits each year over the last three years.

- b. Refusing financial assistance or contributions to the institution's athletics program from the former softball student-athlete;
 - c. Ensuring that no athletics benefit or privilege is provided to the former softball student-athlete, either directly or indirectly, that is not available to the general public; and
 - d. Taking such other actions that the institution determines to be within its authority to eliminate the involvement of the former softball student-athlete in the institution's athletics program.
7. Public reprimand and censure through the release of the negotiated resolution agreement.
8. During this period of probation, the institution shall:
 - a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel, and all institutional staff members with responsibility for recruiting and certification legislation.
 - b. Submit a preliminary report to the OCOI by August 15, 2023, 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 May 1st during each year of probation. Particular emphasis shall be placed on rules education and monitoring related to recruiting.
 - d. Inform prospects in the softball program in writing that the institution is on probation for two years and detail the violations committed. If a prospect takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospect signs a National Letter of Intent.
 - e. Publicize specific and understandable information concerning the nature of the infractions by providing, at a minimum, a statement to include the types of violations and the affected sport programs and a direct, conspicuous link to the public infractions decision located on the athletics department's main webpage "landing page" and in the media guides for the softball program. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the case; and (iii) give members of the general public a clear indication of what happened in the case

to allow the public (particularly prospects and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.

9. Following the receipt of the final compliance report and prior to the conclusion of probation, the institution's president shall provide a letter to the Committee on Infractions affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

VII. OTHER AGREEMENTS

The parties agree that this case will be processed through the NCAA negotiated resolution process as outlined in Bylaw 19.10, 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 19.1.3, 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 and head softball coach agree that they will take every precaution to ensure that the terms of the penalties are observed. The institution and head softball 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 19.12.6, 19.12.7, 19.12.8 and 19.12.9. The OCOI will monitor the penalties during their effective periods. Any action by the institution or head softball 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.

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 panel will issue instructions for processing of the case pursuant to hearing resolution (Bylaw 19.8) or limited resolution (Bylaw 19.9) and prior agreed-upon terms of the rejected negotiated resolution will not be binding.

VIII. DIVISION I COMMITTEE ON INFRACTIONS APPROVAL

Pursuant to NCAA Bylaw 19.10.1, 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 19.10.4. 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 – Standard for both Morgan State and the head softball coach. The agreed-upon penalties align with the ranges identified for core penalties for Level II – Standard cases in Figure 19-1 and Bylaw 19.12.6 and the additional penalties available under Bylaw 19.12.8. Pursuant to Bylaw 19.10.6, this negotiated resolution has no precedential value.

The COI advises Morgan State and the head softball 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 the head softball 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
Gary L. Miller
Joe Novak
Dave Roberts, Chief Hearing Officer

APPENDIX

MORGAN STATE UNIVERSITY'S CORRECTIVE ACTIONS

- The institution is requiring the softball coaching staff attend the next available NCAA Regional Rules Seminar.