

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

University of Nebraska, Lincoln – Case No. 01264

May 2, 2022

### **I. CASE SYNOPSIS**

The University of Nebraska, Lincoln; its head football coach; and NCAA enforcement staff agree with the violations and penalties detailed below. The parties also agree this case should be resolved as Level II – Mitigated for the institution and head football coach.

In late January 2021, the enforcement staff contacted the institution's executive associate director of athletics for compliance (compliance officer) to discuss a media article concerning the departure of a former senior special teams analyst (former special teams analyst) from the football program. Based upon the article and other reports, the enforcement staff requested the institution to review whether the former special teams analyst had engaged in activity that was impermissible for a noncoaching staff member.

The compliance officer notified the faculty athletics representative of the enforcement staff's request and initiated an internal review to determine the circumstances and scope of any potential NCAA rules compliance issues. From February through April 2021, the compliance officer and faculty athletics representative reviewed relevant documentation and special teams practice footage and conducted an initial interview of the head football coach and an assistant coach.

In mid-April 2021, the institution engaged outside counsel and notified the enforcement staff of the potential NCAA violations it identified. Thereafter, at the direction of the enforcement staff, the institution interviewed several student-athletes, assistant coaches and noncoaching staff members, and shared the information reported by those individuals with the enforcement staff. The institution and enforcement staff then reviewed supplemental practice footage and documentation, and conducted interviews of additional individuals, including the head football coach and the former special teams analyst.

As a result of the collaborative investigation, the institution and enforcement staff determined that the then special teams analyst provided technical or tactical instruction to football student-athletes during special teams film sessions and on-the-field practices in the spring and fall of 2020. He also made or assisted in making tactical decisions in competition during the fall of 2020.

Upon the head football coach's decision to look for candidates for a special teams analyst position, the football staff and compliance staff collaborated to create a job description for the position, which included only permissible job duties. Candidates were provided this job

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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.

description during the selection process. Upon hiring the then special teams analyst<sup>2</sup> in January 2020, the institution set clear expectations for his duties and compliance with noncoaching staff legislation. Despite these clear expectations for the then special teams analyst, the head coach failed to rebut the presumption of responsibility for the underlying violations as he did not demonstrate that he monitored the activities of the then special teams analyst. Specifically, after observing the then special teams analyst communicating with student-athletes, adjusting a student-athlete's alignment, and demonstrating techniques during practice, the head coach addressed it directly with the then special teams analyst, but he mistakenly concluded that the conduct did not amount to a violation and failed to notify or consult with compliance.

## **II. PARTIES' AGREEMENTS**

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

1. [NCAA Division I Manual Bylaws 11.7.1, 11.7.1.1, 11.7.1.1-(a), 11.7.1.1-(b), 11.7.3 and 11.7.6 (2019-20 and 2020-21)] (Level II)

The institution and enforcement staff agree that during two practices in March 2020 and from October through December 2020, then special teams analyst, a noncoaching staff member, impermissibly participated in on and off-field activities and provided technical and tactical instruction to football student-athletes consistent with the actions of a countable coach. As a result, the football program exceeded the permissible number of countable coaches by one. Specifically:

- a. During two practices in March 2020 and from October through December 2020, the special teams analyst regularly provided technical or tactical instruction to football student-athletes during team film sessions and occasionally during individual film review. [NCAA Bylaws 11.7.1, 11.7.1.1, 11.7.1.1-(a), 11.7.3 and 11.7.6 (2019-20 and 2020-21)]
- b. During two practices in March 2020 and from October through December 2020, the special teams analyst regularly provided technical or tactical instruction to football student-athletes, participated in on-field activities (e.g., assisted with drills, signaled plays) and made or assisted in making tactical decisions during on-field practice. [NCAA Bylaws 11.7.1, 11.7.1.1, 11.7.1.1-(a), 11.7.1.1-(b), 11.7.3 and 11.7.6 (2019-20 and 2020-21)]
- c. From October through December 2020, the special teams analyst participated in on-field activities (e.g., called or signaled plays) and made or assisted in making tactical decisions during competition. [NCAA Bylaws 11.7.1, 11.7.1.1, 11.7.1.1-(a), 11.7.1.1-(b), 11.7.3 and 11.7.6 (2020-21)]

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<sup>2</sup> The then special teams analyst had been an analyst at two prior institutions in the Southeastern Conference before coming to the institution.

2. [NCAA Division I Manual Bylaw 11.1.1.1 (2019-20 and 2020-21)] (Level II)

The institution, head football coach and enforcement staff agree that the head football coach is presumed responsible for the violations detailed in Agreed-Upon Finding of Fact No. 1 and that he did not rebut the presumption of responsibility. Specifically, the head coach failed to monitor the special teams analyst. He was present when some of the violations occurred and identified red flags; yet he did not consult with compliance when he noticed these red flags to ensure the special teams analyst 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 the head football coach.

In reaching a mitigated classification for the institution, the parties agreed that significant weight should be given to "other factors," including the institution's thorough investigation and its dedication of significant time and resources to conduct interviews and review voluminous practice video footage. These steps helped to quickly identify violations and, along with the institution's agreement to a negotiated resolution, helped expedite the resolution of this matter. And while there are two Level II violations in this case, one is a derivative of the underlying violation and, therefore, the parties did not give this aggravating factor as much weight.

In reaching a mitigated classification for the head coach, the parties agreed that more weight should be given to "affirmative steps to expedite final resolution of the matter". The head coach's prompt acknowledgement of his negligent supervision of then special teams analyst and his agreement to a negotiated resolution helped expedite the resolution of this matter.

**Institution:**

1. Aggravating factors (Bylaw 19.9.3).
  - a. A history of Level I, Level II or major violations by the institution [Bylaw 19.9.3-(b)].
  - b. Multiple Level II violations by the institution [Bylaw 19.9.3-(g)].
  - c. Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct [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 reporting Level III or secondary violations [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/coaches' control standards [Bylaw 19.9.4-(e)].
  - e. Other factors warranting a lower penalty range [Bylaw 19.9.4-(i)].

**Involved Individual (head football coach):**

1. Aggravating factor (Bylaw 19.9.3).

Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct [Bylaw 19.9.3-(h)].
2. Mitigating factors (Bylaw 19.9.4).
  - a. Prompt acknowledgment of the violation, acceptable of responsibility and (for any institution) 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. 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.

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<sup>3</sup> The institution reported 46 Level III or secondary violations from November 30, 2016, through December 1, 2021, approximately nine violations each year.

#### **IV. REVIEW OF OTHER ISSUES**

In consultation with the enforcement staff, the institution also reviewed information relating to football student-athletes' participation in strength training activities at a local off-campus sports performance facility during April and May 2020. The institution and enforcement staff ultimately determined that the workouts were permissible and did not violate NCAA rules.

#### **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: A one-year extension of the existing probationary period to conclude April 27, 2023.
2. Financial Penalty: The institution shall pay a fine of \$10,000 to the NCAA.
3. Show-cause order: The head football coach violated head coach responsibility when he failed to demonstrate that he monitored the special teams analyst. Therefore, the head football coach shall be subject to a one-year show-cause order from May 2, 2022, through May 1, 2023. In accordance with Bylaw 19.9.5.4 and Committee on Infractions IOP 5-15-3, any employing member institution shall withhold the head coach from five consecutive days of coaching activity during the championship segment of the 2022 season.<sup>4</sup> The institution, or any member institution that employs the head 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 to make arrangements to show cause why the terms of the order should not apply. The provisions of this withholding require that he not be present in the football complex or facility where practice takes place and have no contact or communication with football staff or student-athletes during the withholding period. The prohibition includes all

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<sup>4</sup> The parties did not include a game suspension for the head coach, which is within the penalty guidelines for a Level II-Mitigated case (0-10 percent of the season). Through negotiations, the parties agreed that significant restrictions on the head coach's coaching activity during the playing season represents a meaningful and equitable penalty for the agreed-upon findings. In drawing that conclusion, the parties considered that the violations were limited to one noncoaching staff member, did not occur over multiple years, and the head football coach's failure to monitor was not intentional.

coaching activities for the period of time that begins at 12:01 a.m. on the first day of the withholding and ends on the fifth day at 11:59 p.m. During that period, the head football coach may not participate in any coaching activities, including, but not limited to team travel, video study (with football staff or student-athletes), recruiting and team meetings. Additionally, during either the 2021-22 or 2022-23 academic year, the institution or any other employing member institution shall require the head football coach to attend the annual Regional Rules Seminar at his own expense. The institution or any other employing member institution shall adhere to this penalty and the reporting requirements during the 2022-23 academic year.

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

4. Public reprimand and censure.
5. The institution will issue a letter of admonishment to the head football coach.
6. Other penalties, as appropriate, in football:
  - a. A reduction in the number of countable coaches by one for two days of practice (eight hours total) during the spring of 2022. The reduction will remove a countable coach who otherwise would have been permitted to be present at practice.
  - b. All noncoaching staff members shall be removed from practice and competition for five consecutive days during the championship segment of the 2022 season. The prohibition begins at 12:01 a.m. on the first day of the withholding and ends on the fifth day at 11:59 p.m. During that period, noncoaching staff members may not participate in any practice- or competition-related activities where student-athletes are present (i.e., on-field practices, walk-throughs, film review sessions).
7. 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 countable coach legislation.
  - b. Submit a preliminary report to the NCAA office of the Committees on Infractions by June 15, 2022, 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 March 15, 2023 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.
  - 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 sport 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 sport 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.
8. Following the receipt of the compliance report and prior to the conclusion of probation, the institution's Chancellor 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 occurred and should be classified as Level II – Mitigated for the institution.

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.

### **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 Nebraska and the head football coach's violations. 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 Nebraska, and the head football 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 football coach contrary and 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

Kenda Greene

Joel Maturi, Chief Hearing Officer