

NEGOTIATED RESOLUTION¹

Kentucky State University

May 9, 2023

I. CASE SYNOPSIS

Kentucky State University (Kentucky State); then president of the institution (then president); and the NCAA enforcement staff agree that during the fall of 2019, the institution violated NCAA eligibility legislation. Specifically, then president instructed the then director of athletics to permit then football student-athlete (then student-athlete) to participate in a season of competition even though it was known that then student-athlete had completed more than 10 semesters of full-time enrollment and exhausted his eligibility. Additionally, then student-athlete competed in eight contests and received actual and necessary expenses while ineligible. Further, the institution and enforcement staff agree that the institution failed to adhere to adequate institutional control standards in its eligibility certification process as it pertained to then student-athlete because it deviated from its normal eligibility certification procedures by having the then president and then director of athletics directly manage then student-athlete's eligibility certification.

This case originated in August 2021, when a former institutional staff member reported multiple potential violations to the institution and enforcement staff. One of the allegations was that the institution allowed a student-athlete to compete during the 2019 season, despite the then student-athlete having exhausted his eligibility. On August 24, 2021, the enforcement staff issued a notice of inquiry to the institution and commenced a collaborative investigation.

The investigation substantiated that during August and September 2019, the then president instructed then director of athletics to permit then student-athlete to compete and certify his eligibility even though it was known that he had completed more than 10 semesters of full-time enrollment.

Specifically, in late April/early May 2019, while completing preliminary eligibility checks, the then compliance officer informed the then director of athletics that she believed then student-athlete had completed his 10 semesters of full-time enrollment. Subsequently in May, the then director of athletics and then compliance officer inquired with the then student-athlete's previous institutions to understand his enrollment history. Their inquiry indicated that in addition to his eight semesters of full-time enrollment at Kentucky State, he previously was enrolled in two full-time semesters each at two other institutions.

In mid-June 2019, the then director of athletics contacted the then student-athlete to discuss the eligibility concerns, and on July 2, 2019, the then student-athlete met with the then director of athletics, then compliance officer and two other athletics staff members where they informed him that he had exhausted his 10 full-time semesters of eligibility. During the meeting, the then student-athlete became agitated to the point where he punched the wall and the staff called campus police because they did not feel safe.

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

On July 3, 2019, the then president emailed the athletics department staff regarding the July 2 meeting with the then student-athlete. The then president indicated displeasure with how academic advising and eligibility compliance were operating in communicating directly with the then student-athlete, and that if his eligibility issues were not corrected by July 15, the then president would manage the eligibility directly. During this time period, the then president, then director of athletics and others met to discuss the then student-athlete's eligibility issues and decided that the institution would submit an extension waiver request (waiver) with the NCAA academic and membership affairs staff.

During late July and early August 2019, the then director of athletics compiled appropriate documentation for the waiver and submitted it August 6. The next day, the then president requested from the then director of athletics all information related to the then student-athlete and his eligibility. On August 26, the then president conducted a meeting with the then director of athletics, then compliance officer, then executive vice president/CFO and the president's chief of staff related to the then student-athlete's eligibility. Three of the meeting participants reported that the then president pressured the athletics staff members in the meeting to certify the then student-athlete's eligibility and stated that they did not want to ruin their careers over the then student-athlete. Additionally, the then president indicated that ultimate authority for eligibility rested with himself. After the meeting, the then director of athletics withdrew the waiver request, as she believed that the then president assumed responsibility for the then student-athlete's eligibility certification.

On September 4, 2019, the then head football coach inquired whether the then student-athlete was eligible to participate in the team's first contest. Based on the direction received from the then president during the August 26 meeting, the then director of athletics informed the then head football coach that the then student-athlete was included on the certified roster for the team. The certified roster indicated that the then student-athlete was eligible to compete. Additionally, the then compliance officer submitted a copy of the certified roster to the conference office. The then student-athlete continued to compete throughout the remaining contests during the 2019 season.

II. PARTIES' AGREEMENTS

Agreed-upon findings of fact and violations of NCAA legislation.

1. [NCAA Division II Manual Bylaws 14.01.1, 14.2, 14.2.2, 14.12.1 and 16.8.1 (2019-20)]

The institution, then president and enforcement staff agree that during the fall of 2019, the institution violated NCAA eligibility legislation when the then president instructed the then director of athletics to improperly certify and knowingly permit the then student-athlete to participate in a season of competition after the then student-athlete's first 10 semesters of full-time enrollment. Additionally, the then student-athlete competed in eight contests and received actual and necessary expenses while ineligible.

2. [NCAA Division II Manual Constitution 2.1.1, 2.8.1 and 6.01.1 (2019-20)]

The institution and enforcement staff agree that the scope and nature of the violations detailed in Agreed-Upon Finding of Fact No. 1 demonstrate that the institution failed to exercise institutional control and monitor the conduct and administration of its athletics programs when the then president instructed the then director of athletics to deviate from its regular eligibility certification processes regarding the then student-athlete and subsequently failed to adequately monitor the then student-athlete's eligibility. Specifically, no regular certifying officer (e.g., compliance director) was involved in the then student-athlete's eligibility certification, contrary to established procedures. Instead, the then president instructed the then director of athletics to directly manage the then student-athlete's eligibility certification by filing an eligibility extension waiver with the academic and membership affairs staff on his behalf, and the then president never verified the waiver was approved prior to permitting the then student-athlete to compete.

III. OTHER VIOLATIONS OF NCAA LEGISLATION SUBSTANTIATED; NOT ALLEGED

None.

IV. REVIEW OF OTHER ISSUES

The enforcement staff considered naming the then director of athletics for her involvement in Agreed-Upon Finding of Fact No. 1. However, the enforcement staff decided not to include the then director of athletics in the violation based on the totality of the circumstances surrounding the then student-athlete's eligibility certification, including the direction from the then president, her direct supervisor, to certify the eligibility of the then student-athlete and the concern for the then director of athletics' and the then compliance officer's general safety related to the July 2, 2019, encounter with the then student-athlete.

V. PARTIES' AGREED-UPON PENALTIES²

Pursuant to NCAA Bylaw 32.6.2.3-(e), the parties agree to the following penalties:

Penalties for Major Violations (Bylaw 19.5.2)

1. Public reprimand and censure through the public release of the negotiated resolution agreement.

² 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 NCAA Division II Committee on Infractions aware of the impossibility and must complete the penalty at the next available opportunity.

2. Two years of probation from May 9, 2023, through May 8, 2025.³
3. 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 Office of the Committees on Infractions (OCOI) by June 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 March 31, during each year of probation. Particular emphasis shall be placed on rules education and monitoring related to eligibility certification.
 - d. Inform prospects in the football 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 football 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.
4. Financial penalty: The institution shall pay a fine of \$2,000.
5. Vacation of team and individual records: Ineligible participation in the football program occurred over the fall of 2019 playing season as a result of violations in this case. Therefore, pursuant to Bylaw 19.5.2-(g) and Executive Regulations 31.2.2.4 and 31.2.2.5, Kentucky State 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. Further, if the ineligible student-athletes participated in NCAA postseason competition at any time they were ineligible, Kentucky State's participation in the postseason contests in which the ineligible competition

³ Institutions must serve probation during the prescribed penalty period.

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, Kentucky State's records regarding its football program, as well as the records of the head 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 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 football program 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 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. The written report must be delivered to the office no later than 14 days following the release of this decision or, if the institution appeals the vacation penalty, at the conclusion of the appeals process. A copy of the written report shall also be delivered to the OCOI at the same time.

6. Outside audit or review: Kentucky State shall undergo a systems review of its athletics compliance program and its certification and eligibility processes by an outside reviewer during the term of probation. Kentucky State shall implement all recommendations made by the reviewers and shall provide a copy of the reviewer's report in its annual report.
7. During the term of probation, the director of athletics, compliance staff and all individuals with eligibility certification-related responsibilities for the institution's football program must also attend NCAA Regional Rules Seminars. The institution shall provide in its annual compliance reports a list of the sessions the individuals attend at these seminars.
8. Show-cause: The then president knowingly pressured the then director of athletics to improperly certify the eligibility of a student-athlete. Therefore, the then president shall be subject to a two-year show-cause order from May 9, 2023, through May 8, 2025. In accordance with Bylaw 19.5.2.2.1 and Committee on Infractions Internal Operating Procedure 5-17-1-2, any employing member institution shall restrict the athletically related duties of the former president as follows:

- a. The then president is prohibited from any involvement in the certification of student-athlete eligibility.
- b. Within one year of being hired, the then president shall attend an NCAA Regional Rules Seminar. He shall also receive ethics training as arranged by the institution.

If the then president becomes employed by a member institution in an athletically related position during the two-year show-cause period, the employing institution shall abide by the terms of the show-cause order unless it contacts the OCOI to make arrangements to show cause why the terms of the order should not apply.

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.

VI. OTHER AGREEMENTS

The parties agree that this case will be processed through the NCAA negotiated resolution process as outlined in Bylaw 32.6, and 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 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 the violations identified in this agreement occurred and should be classified as major.

If the Committee on Infractions 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 Bylaw 19.5.

The OCOI will monitor the penalties during their effective periods. Any action by the institution or then president 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. Additionally, as required by NCAA legislation for any institution involved in a major infractions case, Kentucky State shall be subject to the provisions of Bylaw 19.5.2.3 concerning repeat violators for a five-year period beginning on the effective date of the penalties in this case, May 9, 2023.

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 Committee on Infractions, subsequent to its review of the negotiated resolution, may reject the negotiated resolution. Should the Committee on Infractions reject

the negotiated resolution, the parties understand that the case may be submitted through a summary disposition report (Bylaw 32.8) or notice of allegations (Bylaw 32.7) and prior agreed-upon terms of the rejected negotiated resolution will not be binding.

Should the Committee on Infractions approve the negotiated resolution, the parties agree that they waive NCAA hearing and appellate opportunities.

VII. DIVISION II COMMITTEE ON INFRACTIONS APPROVAL

Pursuant to Bylaw 32.6.5, the COI approves the parties' negotiated resolution agreement. The COI's review of this agreement is limited. The COI 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 32.6.3. In this case, the COI determines that the agreed-upon facts, violations, and type of violations are appropriate for this process. The agreed-upon penalties align with the penalties available under Bylaw 19.5 and with past case guidance. Pursuant to Bylaw 32.6.5, this negotiated resolution has no precedential value.

The COI advises Kentucky State and the then president 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 then president 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 DIVISION II COMMITTEE ON INFRACTIONS

Jessica Chapin
David Hansburg
John David Lackey, Chair
Richard Loosbrock
Melissa Reilly
Leslie Schuemann
Jason Sobolik

APPENDIX

KENTUCKY STATE UNIVERSITY'S CORRECTIVE ACTIONS

1. Conducting initial, transfer and continuing eligibility review in the office of compliance.
2. Processing eligibility reviews through review and signatures from the registrar's office, head coach, director of athletics and compliance administrator prior to complete certification.
3. Implemented one-on-one compliance meetings with athletics coaching staff to review compliance tasks, including eligibility checklists.
4. Provided increased NCAA rules education to each sport team's student-athletes in 2021 fall and 2022 fall term.
5. Added educational documents on athletics website to include NCAA rules and student-athlete eligibility requirements.
6. Providing NCAA compliance education to athletics coaches and staff regularly.
7. Provide access to coaches to review NCAA portal including access to the NCAA Eligibility Center data and monitor their team's IRL and transfer portal.
8. Involving coaches in the initial eligibility process and taking a more active role in communicating required tasks with student-athletes during recruitment process regarding initial eligibility and transfer eligibility documentation.
9. Provide student-athlete transfer documentation (including official transcripts) regularly and directly to acting compliance administrator from the admissions office upon request.
10. Collaborating with the office of Institutional Research to review data for admissions, registration and reporting mechanisms on campus.
11. Providing athletics compliance with access to review and extrapolate student-athlete data from the institution's Banner system to assist in the process of eligibility certification.