

NEGOTIATED RESOLUTION¹

Seton Hall University – Case No. 00860

November 15, 2019

I. CASE SYNOPSIS

A men's basketball prospective student-athlete (prospect) attended high school in New Jersey and later New Hampshire. He was recruited by many NCAA Division I institutions, including Seton Hall University. The prospect committed to another Division I institution (initial institution) and enrolled in the fall of 2016. Following the completion of his freshman year, and pursuant to NCAA Bylaw 13.1.1.3, the prospect requested that his initial institution grant Seton Hall, among other institutions, permission to contact him about transferring. On July 25, 2017, the initial institution granted multiple institutions, but not Seton Hall, permission to contact the prospect. The prospect appealed the decision to exclude Seton Hall. Because the initial institution erred by failing to provide the prospect with the requisite appeal hearing, Seton Hall received permission to contact the prospect by default.² The prospect enrolled at Seton Hall on August 28, 2017.

In August 2017, the prospect's initial institution notified Seton Hall of alleged impermissible contacts between the Seton Hall men's basketball staff and the prospect's mother, who resided in New York City. Seton Hall investigated the allegations with guidance from the Big East Conference. A Seton Hall compliance staff member interviewed the prospect's mother, the former associate head men's basketball coach (associate head coach), the senior associate director of athletics, and the head men's basketball coach (head coach). Each of them, including the associate head coach, reported that they did not have recruiting conversations/contacts with the prospect's mother. Following those interviews, Seton Hall concluded that no violations occurred and submitted its findings to the Big East. The Big East agreed with Seton Hall's conclusion.

In November 2017, the NCAA basketball development staff received an allegation that Seton Hall had "tampered" with the prospect while he attended the initial institution. Specifically, the person making the allegation reported that the associate head coach had impermissible telephone contact with the prospect and/or his mother. The NCAA enforcement staff began an investigation and requested phone records from Seton Hall for all men's basketball coaching staff members and the associate director of athletics. Upon review, the phone records revealed that the associate head coach and the prospect's mother exchanged 156 phone calls while the prospect was enrolled at his initial institution. Further, the phone records demonstrated that after the associate head coach learned that the initial institution denied Seton Hall permission to contact the prospect, the associate head coach exchanged an additional 87 phone calls with the prospect's mother.

¹ In reviewing this agreement, the hearing panel made editorial revisions pursuant to NCAA Division I Committee on Infractions (COI) Internal Operating Procedure (IOP) 4-9-1-2. These modifications did not affect the substance of the agreement.

² An August 20, 2010, Educational Column requires the student-athlete to participate in the hearing either in person or via telephone.

The associate head coach did not report his telephone contacts with the prospect's mother during Seton Hall's investigation because they involved a personal relationship outside of the associate head coach and basketball, and the associate head coach believed that such communications were permissible. During the investigation, the associate head coach and the prospect's mother explained that they had developed a strong personal relationship during the prospect's high school career. The regular communication between the associate head coach and the prospect's mother paused for a short time when the prospect first enrolled at his initial institution in August 2016. However, regular communication between the two picked up again later in the fall of 2016. The prospect's mother initiated contact with the associate head coach to reconcile their friendship. During his interview with the enforcement staff, the associate head coach confirmed he frequently spoke on the phone with the prospect's mother after and while the prospect was enrolled at his initial institution. The associate head coach said they discussed many topics, ranging from the prospect's mother's health issues, daily prayer, coaching strategies and the performance of the Seton Hall men's basketball team. The associate head coach believed that because their conversations did not include the active recruitment of the prospect, they were permissible.

During his interview with the enforcement staff, the head coach said he was aware of certain conversations between the associate head coach and the prospect's mother after the prospect enrolled at the initial institution. Specifically, the head coach recalled the prospect's mother calling the associate head coach after a Seton Hall basketball game and during their staff meeting where she provided her analysis of Seton Hall's performance. The head coach reported that he was not concerned about that phone call, or similar calls, because they were about Seton Hall's team, players and coaches and not the prospect. However, the head coach did not report the calls to compliance or confirm whether they were permissible. Further, the head coach did not ensure conversations between the associate head coach and the prospect's mother ceased. For those reasons, he is responsible for the violations and did not rebut the presumption of responsibility.

Seton Hall and the enforcement staff submitted a joint interpretation of the facts to the NCAA academic and membership affairs (AMA) staff in February 2019. AMA determined that the phone calls, regardless of the nature of the calls and regardless of the associate head coach's personal relationship with the prospect's mother, were a violation of Bylaw 13.1.1.3. The institution appealed the decision to the NCAA Division I Interpretations Committee where AMA's decision was upheld. Seton Hall then appealed that decision to the NCAA Division Legislative Committee, which affirmed the decision.

The parties believe negotiated resolution is appropriate due to the agreement on the facts, violations, level classification and penalties. Given the participating parties' agreement on all these elements, the participating parties believe the nature of the acknowledged behavior should not preclude a negotiated resolution.

II. PARTIES' AGREED-UPON FACTUAL BASIS, VIOLATIONS OF NCAA LEGISLATION AND VIOLATION LEVELS

A. AGREED-UPON FINDING OF FACT NO. 1, VIOLATION LEVEL AND NARRATIVE - [NCAA Division I Manual Bylaw 13.1.1.3 (2016-17 and 2017-18)] (Level II)

Seton Hall, the associate head coach and the enforcement staff agree that from November 16, 2016, through August 28, 2017, the associate head coach had approximately 243 impermissible contacts with the prospect's mother. Specifically, from November 16 through July, while the prospect was enrolled at his initial institution, the associate head coach exchanged 156 impermissible phone calls with the prospect's mother. After the prospect informed his initial institution of his intent to transfer and requested permission to contact Seton Hall, the initial institution denied the request on July 25, 2017. Even though the associate head coach learned that the request was denied, he exchanged an additional 87 impermissible phone calls with the prospect's mother until the prospect enrolled at Seton Hall on August 28, 2017.

B. AGREED-UPON FINDING OF FACT NO. 2, VIOLATION LEVEL AND NARRATIVE - [NCAA Division I Manual Bylaw 11.1.1.1 (2016-17 and 2017-18)] (Level II)

Seton Hall, the head coach and the enforcement staff agree that from November 16, 2016, through August 28, 2017, the head 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, the head coach did not demonstrate that he promoted an atmosphere of compliance within the men's basketball program because he did not establish a program that included immediate reporting of actual and potential issues to compliance in that he knew about some of the phone calls detailed in Agreed-Upon Finding of Fact No. 1 between the associate head coach and the prospect's mother while the prospect was enrolled his initial institution and failed to report to compliance. Additionally, the head coach did not demonstrate that he monitored his staff because he failed to take adequate steps to uncover potential or existing compliance problems and ensure the calls ceased.

III. OTHER NCAA VIOLATIONS SUBSTANTIATED, NOT ALLEGED

None.

IV. REVIEW OF OTHER ISSUES

None.

V. 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-Standard for the institution, associate head coach and head coach.

A. 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. Affirmative steps to expedite final resolution of the matter. [Bylaw 19.9.4-(c)]
 - b. An established history of self-reporting Level III or secondary violations. [Bylaw 19.9.4-(d)]

B. Associate head coach.

1. Aggravating factors [Bylaw 19.9.3].
 - a. Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct. [Bylaw 19.9.3-(h)]
 - b. Intentional, willful or blatant disregard for the NCAA constitution and bylaws. [Bylaw 19.9.3-(m)]
2. Mitigating factors. [Bylaw 19.9.4].
 - a. Affirmative steps to expedite final resolution of the matter. [Bylaw 19.9.4-(c)]
 - b. The absence of prior conclusions of Level I, Level II or major violations committed by the associate head coach. [Bylaw 19.9.4-(h)]

C. Head 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. Affirmative steps to expedite final resolution of the matter. [Bylaw 19.9.4-(c)]
- b. The absence of prior conclusions of Level I, Level II or major violations committed by the head coach. [Bylaw 19.9.4-(h)]

VI. AGREED-UPON PENALTIES

The institution, associate head coach, head coach and enforcement staff agree that this case should be properly resolved as Level II-Standard for all parties. In reaching a "standard" classification, the institution, associate head coach, head coach and enforcement staff assessed the aggravating and mitigating factors by weight and number. For Seton Hall, the parties believe that minimal weight should be given to the institution's history of violations because its last major violation occurred in 1975.³

For the associate head coach, the enforcement staff and associate head coach agreed to a Level II-Standard classification relative to Finding of Fact No. 1. The associate head coach accepted responsibility for the violation, cooperated in the investigation, and agreed to significant penalties—including a four-game suspension and restrictions on his recruiting communications at his current institution—which helped to expedite a final resolution of this matter.⁴

For the head coach, the institution, head coach and enforcement staff agreed that the head coach accepted responsibility, cooperated in the investigation and agreed to significant penalties relative to Finding of Fact No. 2. Based upon the circumstances of the underlying violations and his

³ In multiple previous cases, the COI rejected the application of aggravating factor 19.9.3-(b) when an institution's prior infractions cases were aged beyond far fewer than 45 years. See *University of Utah* (2018) (15 years); *University of the Pacific* (2017) (25 years); *Rutgers, The State University of New Jersey, New Brunswick* (2017) (14 years); *University of South Florida* (2017) (21 years); *University of Virginia* (2017) (24 years); and *University of Notre Dame* (2016) (17 years).

⁴ Although the associate head coach was not a head coach at the time of the impermissible contacts, he nevertheless accepted a four-game suspension. The associate head coach and the enforcement staff agreed that his suspension would apply to the first exhibition contest and the first three regular season contests of the 2019-20 season.

cooperation in the investigation, the parties believe that Level II-Standard is appropriate for the head coach.⁵

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.

The institution and enforcement staff reviewed similar case precedent to ensure a consistent assessment of the level, classification and penalties for this case. Specifically, the institution, associate head coach, head coach and enforcement staff noted *DePaul University* (2019). The hearing panel classified the DePaul case as Level II-Standard and prescribed three years of probation and a fine of \$5,000 plus one percent of the men's basketball program, recruiting restrictions, a three-contest suspension for the head coach and a three-year show cause order for the associate head coach.

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

A. Institution (Level II-Standard).

1. Core penalties. (Bylaw 19.9.5)

- a. Financial penalty: Seton Hall shall pay a fine of \$5,000 plus one percent of the men's basketball budget to the NCAA.⁶
- b. Scholarship reduction: During the 2020-21 academic year, the institution shall reduce the annual limit on the number of counters in men's basketball by one for a maximum of 12.
- c. Head coach restrictions (game suspensions via show cause for Bylaw 11.1.1.1):
 - The head coach shall be suspended from two contests of the 2019-20 season.⁷ The provisions of this suspension require that the head coach not be present in the facility where games are played and have no contact or communication with men's basketball coaching staff members or student-athletes during the two-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, the head coach may not participate

⁵ The enforcement staff, Seton Hall and the head coach agreed that the head coach's suspension would apply to the final exhibition contest and the first regular season contest of the 2019-20 season.

⁶ The fine from the budget for the program must be calculated in accordance with COI IOPs 5-15-4 and 5-15-4-1.

⁷ The head coach will be suspended from the final exhibition contest and the first regular season contest of the 2019-20 season.

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 the head coach is suspended shall not count toward the head coach's career coaching record.

- d. Recruiting restrictions:
- Four-week ban of recruiting communication for the men's basketball program. Specifically, the head coach, along with his staff, will serve a two-week ban in 2019-20 and a two-week ban in 2020-21.
- e. Probation: Three years of probation from November 15, 2019, through November 14, 2022.⁸
2. Additional penalties. (Bylaw 19.9.7)
- a. Public reprimand and censure through the release of the public infractions decision.
- b. During the time of probation, the institution shall:
- (1) Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct the coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for recruiting;
 - (2) Submit a preliminary report to the NCAA Office of the Committees on Infractions (OCOI) by **December 30, 2019**, setting forth a schedule for establishing this compliance and educational program;
 - (3) File with the OCOI annual compliance reports indicating the progress made with this program by **September 30** during each year of probation. Particular emphasis shall be placed on monitoring recruiting;
 - (4) Inform all prospects in writing that the institution is on probation for three years and detail the violations committed. If a prospective student-athlete 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

⁸ Periods of probation always commence with the release of the infractions decision.

- (5) 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 report located on the athletic department's main or "landing" webpage. The information shall also be included in media guides and in an alumni publication. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the infractions case; and (iii) provide a clear indication of what happened in the infractions case. A statement that refers only to the probationary period with nothing more is not sufficient.
- c. Prior to the conclusion of probation, the institution's president shall provide a letter to the hearing panel of the COI affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.
- d. The head coach shall attend one NCAA Regional Rules Seminar in 2020.

B. Associate Head Coach (Level II-Standard).

1. Core penalties. [Bylaw 19.9.5]⁹

Show-cause order: The associate head coach is subject to a 20-month show-cause order that includes a suspension from four contests of the 2019-20 season.¹⁰ The show-cause order shall run from November 7, 2019, to June 9, 2021.¹¹

The associate head coach is currently the head men's basketball coach at another Division I institution. The provisions of this suspension require that the associate head coach not be present in the facility where games are played and have no contact or communication with men's basketball coaching staff members or student-athletes during the four-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, the associate 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 those contests from which

⁹ Although the show-cause order for the associate head coach runs through the last day of the June 2021 NCAA Regional Rules Seminar, the negotiated resolution submitted by the parties did not include attendance at one NCAA Regional Rules Seminar in 2020 and one in 2021 as part of the show-cause order. Instead, the parties identified required Regional Rules attendance as an additional penalty under Bylaw 19.9.7. The parties acknowledged the clerical error and allowed the COI to correct the show-cause order to properly include Regional Rules attendance, along with the suspension and recruiting communication restriction.

¹⁰ The associate head coach will be suspended from the first exhibition contest and the first three regular season contests of the 2019-20 season.

¹¹ The duration begins on the first agreed-upon suspension date and the last day of the June 2021 NCAA Regional Rules Seminar.

the associate head coach is suspended shall not count toward his career coaching record.

In addition, as part of the show-cause order, the associate head coach shall attend one NCAA Regional Rules Seminar in 2020 and one in 2021.¹² Further, the associate head coach shall be prohibited from all recruiting communication for six weeks during the 2019-20 academic year.

VII. 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 COI 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-Standard for the associate head coach, head coach and institution.

If a hearing panel approves the negotiated resolution, the institution, associate head coach and head coach agree that they will take every precaution to ensure that the terms of the penalties are observed. The institution, associate head coach and 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 OCOI will monitor the penalties during their effective periods. Any action by the institution, associate head coach or 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 COI 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

¹² There are two NCAA Regional Rules Seminars per calendar year.

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-Standard for Seton Hall and Level II-Standard for the associate head coach's and head coach's violations. The agreed-upon penalties align with the ranges identified for core penalties for Level II-Standard 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 Seton Hall, the associate head coach and 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, associate head coach 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, Chief Hearing Officer
Joe Novak
Steve Madva