

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

Charleston Southern University – Case No. 01078

October 7, 2020

### **I. CASE SYNOPSIS**

The institution; head women's volleyball coach (head coach); and the NCAA enforcement staff agree that from March 26 through November 29, 2019, the head coach had 79 impermissible contacts with at least eight women's volleyball student-athletes and two parents of student-athletes he coached or recruited at a previous NCAA membership institution without first obtaining authorization through the notification of transfer process.

In December 2017, the head coach resigned as the head women's volleyball coach from his previous institution and did not coach collegiate volleyball for about 15 months. Subsequently, on March 26, 2019, Charleston Southern University (Charleston Southern) hired him as its head women's volleyball coach.

In May 2019, the Big South Conference notified the Charleston Southern compliance staff that another institution had alleged that the head coach had impermissible contacts with his former student-athletes at his previous institution. When the compliance staff questioned the head coach about the allegations, he acknowledged texting his former student-athletes to extend a birthday or holiday wish or talk generally about life events. He denied tampering or attempting to influence the student-athletes to consider transferring. Because of the limited and civil nature of the communications, the compliance staff erroneously believed the contacts were permissible. The compliance staff based that incorrect understanding on conversations with compliance colleagues at a National Association of Athletics Compliance convention.

On June 4, 2019, the enforcement staff received an email from a women's volleyball coach at another institution that included allegations about the head coach having impermissible contact with three of his former student-athletes at his prior institution. One student-athlete had transferred to Charleston Southern. The email included text messages that demonstrated the alleged contacts.

Upon reviewing the email, the enforcement staff determined that more investigation was necessary. The enforcement staff began by interviewing the coach who sent the email and the identified student-athletes and their current coaches. One of the student-athletes confirmed that the head coach contacted her to inquire about a women's volleyball student-athlete (volleyball student-athlete) who later transferred to Charleston Southern, and her experience at his previous institution. The enforcement staff contacted the volleyball student-athlete and her family and requested their participation in an interview, but they did not respond.<sup>2</sup>

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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.

<sup>2</sup> The volleyball student-athlete was no longer enrolled at an NCAA institution.

Thereafter, the institution and enforcement staff conducted interviews with the head coach and others at Charleston Southern. The director of compliance erroneously believed that coaches' contact with former student-athletes involving normal civility was permissible. Therefore, he believed the alleged contacts were permissible. The assistant women's volleyball coach and the head coach had the same understanding based on the compliance director's advice they received in May 2019. The head coach acknowledged he had contact with the father of the volleyball student-athlete prior to her entering the transfer portal but believed that was permissible since he only provided general enrollment information and did not influence her transfer. He also acknowledged that he exchanged text messages with other former student-athletes at his previous institution and their parents.

Because of the head coach's acknowledgements, the enforcement staff imaged his cell phone to review the content of the text messages he exchanged with those individuals. The review revealed that most of the exchanges included cordial and civil conversations (i.e., congratulatory messages, birthday wishes). Others included limited examples of the head coach's desire that some of his former student-athletes be part of Charleston Southern's team. The text messages with the father of the volleyball student-athlete showed that he initiated contact with the head coach to explore the possibility of the volleyball student-athlete transferring to Charleston Southern. The head coach responded to those texts and had cell phone conversations with her father before she entered the NCAA transfer database. Subsequently, the volleyball student-athlete entered the NCAA transfer database, visited Charleston Southern and transferred to the institution.

The institution, head coach and enforcement staff considered the nature and scope of the violations while discussing case processing options. The parties also considered the fact that the institution was involved in a recent but unrelated Level I case. The parties believe negotiated resolution is appropriate due to the agreement on facts, violations, level classification and penalties.

## **II. PARTIES' AGREEMENTS**

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

#### **1. [NCAA Division I Manual Bylaw 13.1.1.3 (2018-19 and 2019-20)] (Level II)**

The institution, head coach and enforcement staff agree that from March 26 through November 29, 2019, the head coach made at least 79 impermissible contacts with at least eight women's volleyball student-athletes from another institution and two parents of Mississippi State student-athletes. Specifically:

- a. From March 26 through April 25, 2019, the head coach engaged in at least 21 impermissible contacts via five telephone calls and 16 text messages with one women's volleyball student-athlete (from the head coach prior institution) and

her father prior to her entering the NCAA transfer database. the head coach did not obtain authorization through the notification of transfer process before he made the contacts. [NCAA Bylaw 13.1.1.3 (2018-19)]

- b. From March 26 through November 29, 2019, the head coach engaged in at least 58 impermissible contacts via one telephone call and 57 text messages with seven women's volleyball student-athletes (from the head coach prior institution) and one of their parents. the head coach did not obtain authorization through the notification of transfer process before he made the contacts. [NCAA Bylaw 13.1.1.3 (2018-19 and 2019-20)]

2. [NCAA Division I Manual Bylaw 11.1.1. (2018-19 and 2019-20)] (Level II)

The institution, head coach and enforcement staff agree that from March 26 through May 22, 2019, 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 for compliance due to his personal involvement in the violations.

**B. 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 for the institution and the head coach.

In reaching a "mitigated" classification for the institution, the parties agreed that minimal weight should be assigned to its history of Level I, II or major violations and multiple Level II violations because the limited violations in this case resulted from the actions of one individual and were unrelated to its systemic violations in the 2018 infractions case. Finally, the institution agreed to negotiate a resolution and otherwise accepted responsibility for the violations, which helped expedite a final resolution of this matter. Given the totality of circumstances unique to this case, the parties agree that the weight of the mitigating factors is significantly greater than the weight of aggravating factors.

In reaching a "mitigated" classification for the head coach, the parties agreed that minimal weight should be assigned to multiple Level II violations because the limited violations in this case were isolated only to his actions and were not systemic. Additionally, the head coach cooperated throughout the investigation and agreed to negotiate a resolution, which helped expedite the final resolution of the 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. Person of authority condoned, participated in or negligently disregarded the violation. [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 expediate final resolution of the matter. [Bylaw 19.9.4-(c)].
  - c. An established history of self-reporting Level III or secondary violations. [Bylaw 19.9.4-(d)].<sup>3</sup>

**Involved Individual (Head Coach):**

1. Aggravating factors (Bylaw 19.9.3).
  - a. Multiple Level II violations by the involved individual. [Bylaw 19.9.3-(g)].
  - b. Person of authority condoned, participated in or negligently disregarded the violation. [Bylaw 19.9.3-(h)].
2. Mitigating factors (Bylaw 19.9.4).
  - a. Prompt acknowledgement of the violation(s) and acceptance of responsibility. [Bylaw 19.9.4-(b)].
  - b. Affirmative steps to expedite final resolution of the matter. [Bylaw 19.9.4-(c)].

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<sup>3</sup> The institution reported 25 Level III or secondary violations from April 30, 2015, to May 1, 2020, which is an average of five violations each year.

- c. The absence of prior conclusions of Level I, Level II or major violations committed by the involved individuals. [Bylaw 19.9.4-(h)].

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

None.

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

None.

### **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: One year of probation to run consecutive to the probation in Case No. 00537. This will extend the probation period to **October 15, 2021**.<sup>4</sup>
2. Financial penalty: The institution will pay a fine of \$5,000 to the NCAA.
3. Show-cause order: The head coach was personally involved in impermissible contacts with his former women's volleyball student-athletes at his former institution without first obtaining authorization through the notification of transfer process. Therefore, the head coach shall be subject to a one-year show-cause order from **October 7, 2020**, through **October 6, 2021**. During the one-year show-cause period, the head coach shall be prohibited from participating in all recruiting communication contacts and off-campus recruiting for two weeks during the next contact period. There shall also be a reduction of four evaluation days for the head

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<sup>4</sup> The running of probation penalty consecutive to current probation period is consistent with the Committee on Infractions' precedent. See *University of North Carolina at Greensboro* (2018). This shall include the continuation of annual reporting and notification requirements.

coach during the next recruiting cycle.<sup>5</sup> Additional, the head coach shall attend one NCAA Regional Rules seminar in 2021 at his own expense.<sup>6</sup>

4. **Head coach restriction:** The head coach violated Bylaw 11 head coach responsibility legislation when he failed to promote an atmosphere of compliance when he was personally involved in impermissible contacts with his former women's volleyball student-athletes. Bylaw 19.9.5.5 and the Figure 19-1 penalty guidelines contemplate head coach suspensions to address head coach responsibility violations. Therefore, the head coach shall be suspended from 10 percent of the next season. The suspension will be served during home games. 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 women's volleyball coaching staff members or student-athletes during the 10 percent 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 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.<sup>7</sup>

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

5. Public reprimand and censure through the release of the public infractions decision.
6. The institution shall include a letter of admonishment in the head coach's human resource record.

## **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

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<sup>5</sup> Due to the uncertainty in collegiate athletics caused by COVID-19, providing specific language detailing when the penalties will be enforced is currently infeasible. All penalties will be enforced during the next possible opportunity.

<sup>6</sup> Originally, the head coach's required NCAA Regional Rules seminar attendance was presented as a stand-alone penalty. However, consistent with COI practice, the required attendance is included in this show-cause order.

<sup>7</sup> The Big South Conference canceled sports for the fall of 2020. The head coach restriction will be enforced during the next women's volleyball playing season.

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 for the institution and head coach.

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

Should a hearing panel approve the negotiated resolution, the parties agree to waive NCAA appellate opportunities.

## **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 the institution and the coach violations. The agreed-upon penalties align with the ranges identified for core penalties for Level II-Standard and Level II-Mitigated violations 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 Charleston Southern and the 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, and/or the head 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

Bobby Cremins

Thomas Hill

Kay Norton, Chief Hearing Officer