



**WEST VIRGINIA UNIVERSITY**  
**PUBLIC INFRACTIONS DECISION**  
**FEBRUARY 18, 2015**

**I. INTRODUCTION**

The NCAA Division I Committee on Infractions is an independent administrative body of the NCAA comprised of individuals from the Division I membership and the public charged with deciding infractions cases involving member institutions and their staffs. This case involved West Virginia University.<sup>1</sup> It also involved an assistant women's gymnastics coach. The institution, the assistant women's gymnastics coach and the enforcement staff were all parties to the case. The committee considered this case through the cooperative summary disposition process in which all parties agreed to the primary facts, violations and violation levels, as fully set forth in the Summary Disposition Report (SDR).<sup>2</sup> Further, the institution and the assistant women's gymnastics coach agreed to the penalties; therefore, there is no opportunity to appeal.

This case involved impermissible telephone and text communications that occurred in a number of the institution's athletics programs. Cumulatively, between June 2010 and February 2013, coaches in 14 sports sent 294 impermissible texts and placed 66 impermissible telephone calls to prospective student-athletes and, in some instances, parents. Most of the impermissible recruiting communications occurred in the following sports programs: women's gymnastics, football, women's basketball and women's soccer. The women's gymnastics staff sent 153 impermissible texts and placed one impermissible telephone call. The assistant women's gymnastics coach committed almost all (151 out of 154) of the text and telephone call violations in that program. Because of his responsibility for a large number of these impermissible communications, the assistant women's gymnastics coach was the only institutional staff member whose violations were individually addressed in this case. Further, members of the football staff sent 46 impermissible text messages and placed 22 impermissible telephone calls, members of the women's basketball staff sent 17 impermissible texts and placed 26 impermissible telephone calls, and members of the women's soccer staff sent 43 impermissible texts and placed three impermissible telephone calls.

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<sup>1</sup> A member of the Big XII Conference, the institution's main campus enrollment is approximately 29,100. The institution sponsors seven men's sports and 10 women's sports. This is the institution's seventh infractions case. The institution also had previous infractions cases in 1957 (men's basketball), 1982 (men's basketball), 1983 (men's basketball), 1995 (men's tennis), 2007 (men's soccer) and 2011 (football).

<sup>2</sup> Infractions cases are decided by hearing panels comprised of NCAA Division I Committee on Infractions members. Decisions issued by hearing panels are made on behalf of the Committee on Infractions.

On a smaller scale, 10 other sport programs also engaged in impermissible text and telephone-related activity. Cumulatively, staff members in these 10 sports programs sent 35 impermissible text messages and placed 14 impermissible telephone calls from 2010 to 2013. Those violations occurred in the men's basketball, baseball, men's soccer, men's wrestling, women's tennis, women's volleyball, men's swimming, women's diving, women's rowing and women's track and field programs.

The institution and the assistant women's gymnastics coach did not dispute the facts and violations. The panel accepted the parties' SDR and concluded that the parties' agreed-upon facts and violations constitute violations of NCAA bylaws. The violations in this case are Level II, "significant breaches of conduct." The committee determined that the institution gained more than a minimal, but less than a substantial or extensive recruiting advantage through the impermissible texting and telephone calls. After weighing the aggravating and mitigating factors and applying the new Figure 19-1 Penalty Guidelines for a Level II case, the panel prescribed the following principal core and administrative penalties: two years of probation; mandatory attendance at NCAA Regional Rules Seminars; recruiting restrictions, notification and publication requirements pertaining to the case, and a one-year show-cause order for the assistant women's gymnastics coach's conduct.

## **II. CASE HISTORY**

The violations exclusively related to impermissible text and telephone calls. The institution self-discovered the violations in January 2013 while it was on probation from a previous case involving the football program. The committee released its decision in that case on July 8, 2011, placing the institution on probation for two years.<sup>3</sup>

The current case originated in 2010 when the institution purchased a compliance software program that monitored recruiting telephone and text messages and identified those that potentially violated NCAA legislation. From the spring of 2010 through January 2013, the institution reviewed potential "flagged" telephone call and text message violations under one section of the program, believing this was in fact capturing all potential telephone call and text message violations. However, the section the institution was reviewing only flagged some of the potential telephone call and text message violations. As a result, there were impermissible telephone and text message violations that went undiscovered. The institution discovered the additional violations after the software

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<sup>3</sup> The violations in the 2011 case involved football noncoaching staff members performing activities reserved for members of the coaching staff. The noncoaching staff members monitored and/or conducted athletically related activities such as skill development and seven-on-seven drills during the summer and winter, resulting in the noncoaching staff members becoming countable coaches. Consequently, the institution exceeded the limit on the allowable number of countable coaches. That case was also processed through summary disposition.

company upgraded the program to make this information part of the screen the institution compliance personnel reviewed each day.

Upon discovering the violations, the institution conducted an internal investigation and, on June 24, 2013, submitted a self-report to the enforcement staff documenting 180 text message violations involving 12 sports, and 26 telephone call violations involving seven sports, all occurring between June 2010 and February 2013. The institution submitted the self-report two weeks prior to the conclusion of the probationary period resulting from the 2011 case. Following the enforcement staff's review of the self-report and associated documents, the enforcement staff determined that an additional 114 text messages and 40 telephone call violations occurred. These additional violations were added to the case.

On October 23, 2014, the parties jointly submitted the SDR to the committee. A panel reviewed the SDR on November 14, 2014. In a November 17, 2014, letter, the panel requested additional information regarding a self-imposed football penalty. Two days after the request, the institution provided the requested information. In determining penalties, the panel reviewed the institution's self-imposed penalties and corrective actions. The panel also considered the restrictions and corrective measures placed on the assistant women's gymnastics coach by the institution. The panel determined that the case warranted additional penalties. In a November 21, 2014, letter, the panel proposed additional and standard administrative penalties to the institution and the assistant women's gymnastics coach. The panel and the institution engaged in further discussion. On December 9, 2014, both the institution and the assistant women's gymnastics coach accepted the proposed additional and standard administrative penalties.

### **III. PARTIES' AGREEMENTS**

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

The parties jointly submitted a SDR that identified an agreed-upon factual basis and violations of NCAA legislation. The SDR identified:

##### **1. IMPERMISSIBLE RECRUITING COMMUNICATIONS [NCAA Division I Manual Bylaws 13.1.3.1 (2011-12) and 13.4.1.2 (2010-11 and 2012-13) (Level II)]**

The NCAA enforcement staff, the institution and the assistant women's gymnastics coach, agreed that between November 2010 and October 2012, three members of the women's gymnastics coaching staff, including the assistant coach, violated NCAA recruiting communication legislation by

sending 153 impermissible text messages and placing one impermissible telephone call to five women's gymnastics prospective student-athletes and a parent of a prospective student-athlete who was also the club coach of the prospective student-athlete. Specifically:

- a. Between July 15, 2011, and October 2, 2012, the assistant women's gymnastics coach sent 100 impermissible text messages to the parent of a prospective student-athlete who was also the club coach of the prospective student-athlete. [NCAA Bylaw 13.4.1.2 (2010-11 through 2012-13)]
- b. Between November 25, 2010, and October 30, 2012, three women's gymnastics coaching staff members, including an assistant women's gymnastics coach, sent a total of 53 impermissible text messages to five prospective student-athletes. The assistant women's gymnastics coach sent 50 of the 53 impermissible text messages to four of the prospective student-athletes. [NCAA Bylaw 13.4.1.2 (2010-11 and 2011-12)]
- c. On March 18, 2012, the assistant women's gymnastics coach placed one impermissible telephone call to the parent of a prospective student-athlete who was also the club coach of the prospective student-athlete. The call was placed prior to the permissible time to contact the prospective student-athlete or the parent of the prospective student-athlete. [NCAA Bylaw 13.1.3.1 (2011-12)]

**2. IMPERMISSIBLE RECRUITING COMMUNICATIONS [NCAA Division I Manual Bylaws 13.1.3.1, 13.1.3.1.2 and 13.4.1.2 (2010-11 through 2012-13) (Level II)]**

The enforcement staff and the institution agreed that between August 2010 and February 2013, 10 members of the football coaching staff and the football recruiting coordinator violated NCAA recruiting communication legislation by sending 46 impermissible text messages and placing 22 impermissible telephone calls to 45 football prospective student-athletes and one parent of a prospective student-athlete. Specifically:

- a. Between August 6, 2010, and February 6, 2013, five members of the football coaching staff and the football recruiting coordinator sent a total of 46 impermissible text messages to 28 prospective

student-athletes and one parent of a prospective student-athlete. [NCAA Bylaw 13.4.1.2 (2010-11 through 2012-13)]

- b. Between February 18, 2011, and December 3, 2012, eight members of the football coaching staff placed a total of 22 impermissible telephone calls that were prior to the permissible time to contact the prospective student-athlete, after a member of the coaching staff made one permissible call to the prospective student-athlete during the legislated time period or during a subsequent impermissible period to 18 prospective student-athletes. Specifically, of the 22 impermissible telephone calls, nine occurred prior to the permissible time to contact the prospect student-athlete, and 13 occurred after a member of the coaching staff made one permissible call to a prospective student-athlete during the legislated time period or during a subsequent impermissible period. [NCAA Bylaws 13.1.3.1 and 13.1.3.1.2 (2010-11 through 2012-13)]

**3. IMPERMISSIBLE RECRUITING COMMUNICATIONS [NCAA Division I Manual Bylaws 13.1.3.1 (2010-11 through 2012-13); 13.1.3.1.4 13.1.3.1.4.1 and 13.1.3.1.4.2 (2010-11 and 2011-12); and 13.4.1.2 (2009-10 through 2012-13)] (Level II)]**

The NCAA enforcement staff and institution agree that between June 2010 and January 2013, five members of the women's basketball coaching staff and the director of basketball operations violated NCAA recruiting communication legislation by sending 17 impermissible text messages and placing 26 impermissible telephone calls to eight women's basketball prospective student-athletes and eight parents of prospective student-athletes, in which four of the eight parents were also the nonscholastic coach but not the head scholastic coach of the prospective student-athletes. Specifically:

- a. Between June 22, 2010, and January 8, 2013, four members of the women's basketball coaching staff and the director of basketball operations sent 17 impermissible text messages to three prospective student-athletes and three parents of prospective student-athletes in which one parent was also the nonscholastic coach of the prospective student-athlete but not the head scholastic coach of the prospective student-athlete. Of the 17 impermissible text messages, nine were sent to the parent of a prospective student-athlete who was also the nonscholastic coach of the

prospective student-athlete but not the head scholastic coach of the prospective student-athlete. [NCAA Bylaws 13.1.3.1.4.1 (2012-13); and 13.4.1.2 (2009-10 through 2012-13)]

b. Between April 18, 2011, and November 26, 2012, four members of the women's basketball coaching staff placed a total of 26 impermissible telephone calls to five prospective student-athletes and five parents of prospective student-athletes in which three of the five were also the nonscholastic coach of the prospective student-athlete but not the head scholastic coach of the prospective student-athlete. Specifically:

(1) Twenty-five calls occurred prior to the permissible time to contact the prospective student-athlete or the parent of the prospective student-athlete. Of those calls, 19 were made to three parents of prospective student-athletes who were also the nonscholastic coach but not the head scholastic coach of the prospective student-athlete. [NCAA Bylaws 13.1.3.1 (2010-11 through 2012-13); 13.1.3.1.4 and 13.1.3.1.4.1 (2010-11 and 2011-12)]

(2) One call was placed to a prospective student-athlete during an impermissible July evaluation period and prior to the permissible time to contact the prospective student-athlete. [NCAA Bylaws 13.1.3.1, 13.1.3.1.4, 13.1.3.1.4.2 (2010-11)]

(3) One call was placed after a member of the coaching staff made one permissible call to the prospective student-athlete or the prospective student-athlete's parent during the legislated time period. [NCAA Bylaws 13.1.3.1 and 13.1.3.1.4 (2010-11)]

**4. IMPERMISSIBLE RECRUITING COMMUNICATIONS [NCAA Division I Manual Bylaws 13.1.3.1 (2010-11) and 13.4.1.2 (2009-10 through 2012-13)] (Level II)**

The enforcement staff and the institution agreed that between July 2010 and January 2013, the head women's soccer coach and an assistant women's soccer coach violated NCAA recruiting communication legislation by sending 43 impermissible text messages and placing three impermissible telephone calls to seven women's soccer prospective

student-athletes and four parents of prospective student-athletes. Specifically:

- a. Between July 13, 2010, and January 12, 2013, the head women's soccer coach and one assistant women's soccer coach sent a total of 43 impermissible text messages to seven prospective student-athletes and two parents of prospective student-athletes. [NCAA Bylaw 13.4.1.2 (2009-10 through 2012-13)]
- b. Between December 16, 2010, and February 19, 2011, the head women's soccer coach placed a total of three impermissible telephone calls to one prospective student-athlete and two parents of prospective student-athletes. All three impermissible calls were placed prior to the permissible time to contact the prospective student-athlete or the parent of a prospective student-athlete. [NCAA Bylaw 13.1.3.1 (2010-11)]

**5. IMPERMISSIBLE RECRUITING COMMUNICATIONS [NCAA Division I Manual Bylaws 13.1.3.1 and 13.1.3.1.3 and 13.4.1.2 (2010-11 and 2011-12)] (Level III)**

The NCAA enforcement staff and institution agreed that between August 2010 and March 2012, four members of the men's basketball coaching staff violated NCAA recruiting communication legislation by sending 15 impermissible text messages and placing four impermissible telephone calls to 10 men's basketball prospective student-athletes and two parents of prospective student-athletes. Specifically:

- a. Between August 4, 2010, and March 17, 2012, four members of the men's basketball coaching staff sent a total of 15 impermissible text messages to eight prospective student-athletes and two parents of prospective student-athletes. [NCAA Bylaw 13.4.1.2 (2010-11 and 2011-12)]
- b. Between April 25 and October 19, 2011, two members of the basketball coaching staff placed four impermissible telephone calls to two prospective student-athletes and one parent of a prospective student-athlete. Specifically, two occurred due to calls placed prior to the permissible time to contact the prospective student-athlete or the parent of the prospective student-athlete, while the other two occurred due to the calls being placed after a member of the coaching staff already made one permissible call to the prospective student-athlete during the legislated time period and

during a subsequent impermissible period. [NCAA Bylaws 13.1.3.1 and 13.1.3.1.3 (2010-11 and 2011-12)]

**6. IMPERMISSIBLE RECRUITING COMMUNICATIONS [NCAA Division I Manual Bylaws 13.1.3.1 (2010-11 through 2012-13) and 13.1.3.1.1 and 13.4.1.2 (2010-11 and 2011-12)] (Level III)**

The NCAA enforcement staff and institution agreed that from 2010 to 2013, coaching staff members from nine sport programs (sport programs not identified in Proposed Findings of Fact Nos. 1 through 5) violated NCAA recruiting communication legislation by sending 20 impermissible text messages and placing 10 impermissible telephone calls to 17 prospective student-athletes. Specifically:

- a. On July 6, 2011, an assistant baseball coach placed one impermissible telephone call to a baseball prospective student-athlete. The call was placed prior to the permissible time to contact the prospective student-athlete. In addition, between August 1, 2010, and June 21, 2012, three baseball coaching staff members sent a total of three impermissible text messages to three prospective student-athletes. [NCAA Bylaws 13.1.3.1 and 13.1.3.1.1 (2010-11) and 13.4.1.2 (2010-11 and 2011-12)].:
- b. Between January 23 and May 27, 2012, two men's soccer coaching staff members placed four impermissible telephone calls to two men's soccer prospective student-athletes. All four calls were placed prior to the permissible time to contact the prospective student-athletes. In addition, on May 25, 2012, an assistant men's soccer coach sent a total of three impermissible text messages to a prospective student-athlete. [NCAA Bylaws 13.1.3.1 and 13.4.1.2 (2011-12)]
- c. On January 29 and February 2, 2013, an assistant men's wrestling coach placed two impermissible telephone calls to two men's wrestling prospective student-athletes. Both calls were placed after a member of the coaching staff already made one permissible call to the prospective student-athlete during the legislated time period. In addition, on July 23, 2011, the head wrestling coach sent one impermissible text message to a prospective student-athlete. [NCAA Bylaws 13.1.3.1 (2012-13) and 13.4.1.2 (2010-11)]



- d. On June 24, 2012, the head women's tennis coach placed one impermissible telephone call to a women's tennis prospective student-athlete. The call was placed prior to the permissible time to contact the prospective student-athlete. In addition, on January 31, 2012, the head women's tennis coach sent eight impermissible text messages to a prospective student-athlete. [NCAA Bylaws 13.1.3.1 and 13.4.1.2 (2011-12)]
- e. On May 1, 2012, the head women's volleyball coach placed one impermissible telephone call to a women's volleyball prospective student-athlete. The call was placed after she already made one permissible call to the prospective student-athlete during the legislated time period. In addition, on July 6, 2012, the head women's volleyball coach sent two impermissible text messages to a prospective student-athlete. [NCAA Bylaws 13.1.3.1, 13.1.3.1.1 and 13.4.1.2 (2011-12)]
- f. On May 3, 2011, the head men's swimming coach sent one impermissible text message to a men's swimming prospective student-athlete. [NCAA Bylaw 13.4.1.2 (2010-11)]
- g. On July 27, 2011, the assistant women's diving coach sent one impermissible text message to a women's diving prospective student-athlete. [NCAA Bylaw 13.4.1.2 (2010-11)]
- h. On August 1, 2012, the assistant women's rowing coach placed one impermissible telephone call to a women's rowing prospective student-athlete. The call was placed after she had already made one permissible call to the prospective student-athlete during the legislated time period. [NCAA Bylaw 13.1.3.1 (2012-13)]
- i. On March 24, 2012, the head women's track and field coach sent one impermissible text message to a women's track and field prospective student-athlete. [NCAA Bylaw 13.4.1.2 (2011-12)]

**B. PARTIES AGREED-UPON AGGRAVATING AND MITIGATING FACTORS**

Pursuant to NCAA Bylaw 19.6.2-(g), the parties agreed to the following aggravating and mitigating factors:

1. **Aggravating and mitigating factors. [NCAA Bylaws 19.9.3 and 19.9.4 (2013-14)]**

a. Aggravating factors.

(1) Institution.

(a) NCAA Bylaw 19.9.3-(b). A history of Level I, II or major violations by the institution. Specifically, the institution had a major infractions case involving football in 2011, men's soccer in 2007, men's tennis in 1995, men's basketball in 1983, 1982 and 1957.

(b) NCAA Bylaw 19.9.3-(g). Multiple Level II violations by the institution or involved individual. Specifically, as outlined in Allegation Nos. 1, 2, 3 and 4, this case involves a significant number of text message and telephone call violations in three sport programs. The violations within each sport program would constitute a Level II violation in and of themselves, therefore resulting in multiple Level II violations in the overall case.

(2) Involved Individual – the assistant women's gymnastics coach.

None

b. Mitigating factors.

(1) Institution.

(a) NCAA Bylaw 19.9.4-(b). Prompt acknowledgement of the violations, acceptance of responsibility and (for an institution) imposition of meaningful corrective measures and/or penalties. Specifically,

the institution detected the potential violations, investigated to determine the nature and extent of the violations, promptly reported its findings to the enforcement staff and imposed meaningful corrective measures and penalties upon the completing of its investigation. Furthermore, the institution agreed to the additional violations identified by the enforcement staff after review of the institution's self-report.

- (b) NCAA Bylaw 19.9.4-(c). Affirmative steps to expedite final resolution of the matter. The institution promptly reported their findings to the enforcement staff after completing an internal investigation into the matter. The institution discovered the potential violations in January 2013, conducted interviews of involved individuals in February and March 2013, and self-reported the violations to the enforcement staff during the summer of 2013.
- (c) NCAA Bylaw 19.9.4-(d). An established history of self-reporting Level III or secondary violations. Specifically, the institution has reported 93 secondary or Level III violations from 2009 through April 2014.

- (2) Involved Individual – the assistant women's gymnastics coach.

None.

#### **IV. REVIEW OF CASE**

During the period from June 2010 to January 2013, the institution violated NCAA recruiting communication legislation involving 14 sports. Specifically, Level II violations occurred in four sports, while Level III violations occurred in 10 other sports. While a compliance software program contributed to the violations in this case, it also led the institution to discover the violations. The underlying causes of the violations were misunderstandings of NCAA recruiting communication legislation and inadvertent user errors. Coaches made 294 impermissible texts and placed 66 impermissible telephone

calls. The panel determined that the institution gained more than a minimal, but less than a substantial or extensive recruiting advantage. However, the panel noted that the violations occurred while the institution was on probation from a previous infractions case involving the football program.

The institution's women's gymnastics, football, women's basketball and women's soccer programs engaged in 154, 68, 43 and 46 impermissible communications respectively. The panel concluded that the recruiting violations in these programs were Level II "significant breach of conduct" violations because the impermissible texts and telephone calls provided more than a minimal, but less than a substantial or extensive recruiting advantage.

The institution's men's basketball, baseball, men's soccer, wrestling, women's tennis, women's volleyball, men's swimming, women's diving, women's rowing, and women's track and field programs collectively placed 35 impermissible text messages and made 14 impermissible telephone calls. The panel concluded that the recruiting violations in these programs were Level III "breach of conduct" violations because the impermissible communications were limited in nature and provide no more than a minimal recruiting advantage.

The institution's sports programs violated NCAA legislation by placing impermissible telephone calls and/or sending impermissible text messages. Generally, NCAA Bylaw 13.1.3.1 prohibits telephone calls to prospective student-athletes or their relatives prior to July 1 following the prospective student-athletes' junior year of high school. Thereafter, calls are limited to one call per week. As they existed at the time of the violations, NCAA Bylaws 13.1.3.1.2, 13.1.3.1.3<sup>4</sup>, 13.1.3.1.4 and 13.1.3.1.4.1 identified exceptions for football, men's basketball and women's basketball (13.1.3.1.4<sup>5</sup> and 13.1.3.1.4.1<sup>6</sup>), respectively. At the time of the violations, these exceptions identified the first permissible opportunity for coaches to place a telephone call to prospective student-athletes or their relatives and the limits on telephone calls thereafter. Specifically, the

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<sup>4</sup> Per NCAA Bylaw 13.1.3.1.3 of the 2011-12 manual, the telephone calls placed in 2011 were considered to be impermissible at that time. The recruiting communication legislation was amended in March 2012 to state that calls may be made to men's basketball prospective student-athletes at the institution's discretion subsequent to June 15, after the prospective student-athletes' sophomore year in high school.

<sup>5</sup> The telephone calls placed in 2011 and 2012 were impermissible at that time in accordance to NCAA Bylaw 13.1.3.1.4 of the 2010-11, 2011-12 and 2012-13 manuals. An amendment to the recruiting legislation occurred in August 2013, allowing calls to be made to women's basketball prospective student-athletes at the institution's discretion after September 1 of the prospective student-athlete's junior year in high school.

<sup>6</sup> NCAA Bylaw 13.1.3.1.4.1 of the 2010-11 through 2012-13 Division I manuals prohibited additional communication with the parent of a prospective student-athlete who was also the nonscholastic coach unless the parent was also the head scholastic coach and the communication was unrelated to the recruitment of his or her daughter. Therefore, at the time the bylaw was in effect, a violation occurred. The bylaw was amended in March 2013 to permit such communication except during July evaluation periods.

institution violated the following telephone contact legislation: 13.1.3.1, (women's gymnastics, football, women's basketball, women's soccer), 13.1.3.1.2 (football), 13.1.3.1.4, 13.1.3.1.4.1 and 13.1.3.1.4.2 (women's basketball). In addition, NCAA Bylaw 13.4.1.2 generally prohibited text messaging.<sup>7</sup> The institution eventually discovered the violations through an upgrade in its compliance software package.

The institution did not fully understand how to use an electronic software package it purchased to monitor telephone and text message activity. The institution stated that it devoted compliance personnel to check the software program on a daily basis and that it addressed any questions arising from these daily reviews with its staff members. However, the software program identified and stored potential texting and telephone violations in a location that the institution did not check during its daily use of the program. The institution uncovered the violations in January 2013 after the software company implemented an internal change merging all potential violations into a single section on the home screen. At that time, the institution became aware of over 500-flagged potential violations that had not been previously identified by the compliance office because it had not been reviewing all of the pertinent program fields. Upon discovering the violations, the institution launched an internal investigation and self-reported to the NCAA enforcement staff. As the result of its review of the institution's self-report and the information subsequently provided by the institution, the enforcement staff informed the institution that it had identified an additional 114 text messages and 40 telephone calls that appeared to violate NCAA legislation.

The investigation revealed several reasons why the impermissible electronic communications occurred. While some impermissible texts occurred because of confusion between the text messaging and email functions on coaches' phones, others occurred due to coaches' misunderstanding of NCAA recruiting legislation. Some of the most common areas of misunderstanding included: (a) the permissibility of communicating with parents of prospective student-athletes who were also club or non-scholastic team coaches; (b) confusion regarding the permissibility of texting prospective student-athletes who had either verbally committed to attend the institution, or had signed NLI's or financial papers; and (c) the permissibility of communicating with prospective student-athletes regarding institutional camps.

With regard to impermissible telephone calls, many of the coaches who placed the calls stated that they did not remember placing the calls or may have returned a call made by an individual whom the coach did not recognize as a prospective student-athlete. In some

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<sup>7</sup> NCAA Bylaw 13.4.1.2.2 provided no limit on the forms of electronically transmitted correspondence sent to a prospective student-athlete (or the prospective student-athlete's relatives or legal guardians) beginning the calendar day after: (a) The prospective student-athlete signs a National Letter of Intent (NLI) or the institution's written offer of admission and/or financial aid; or (b) The institution receives a financial deposit in response to the institution's offer of admission. NCAA Bylaw 13.4.1.2.2 was effective August 1, 2011, during the time some of the violations occurred.

cases, coaches placed calls to parents of prospective student-athletes who were also nonscholastic team coaches, believing such calls to be permissible under certain circumstances. Coaches attributed some of the impermissible calls to inadvertent "pocket dials."

While the panel determined that the violations did not provide a significant or extensive recruiting advantage, it was troubled by the number of coaches who claimed ignorance of recruiting communication legislation. It is incumbent upon member institutions to ensure that coaches are fully aware of all aspects of applicable NCAA legislation so that violations do not occur. Moreover, the panel was concerned by the significant length of time, two-and-a-half years, over which these violations occurred. This delay in discovering and reporting the violations was due, in large part, to the institution's failure to properly utilize a compliance software program it purchased.

The panel noted that text and telephone violations occurred in multiple sports programs both before and after the institution's 2011 infractions hearing and that these violations continued during the probationary period prescribed by the committee in that case. Therefore, numerous significant breaches of conduct occurred when the institution should have been in a heightened state of vigilance with regard to compliance with NCAA legislation. The panel emphasized the importance of probation as a time for the institution to make enhancements in its compliance culture and operations.

Because of these concerns, the panel proposed further penalties, including an additional year of probation beyond what the institution proposed. The institution agreed to the additional penalties. After considering the totality of the penalties and the institution's corrective actions and measures, the panel accepted the SDR.

## **V. PENALTIES**

For the reasons set forth in Sections III and IV of this decision, the panel concluded that this case involved Level II and Level III violations of NCAA legislation. Because the violations occurred both before and after the effective date of October 30, 2012, the panel conducted an analysis to determine whether to prescribe penalties under the former or current NCAA Bylaw 19 penalty guidelines. When reviewing a case under the new penalty guidelines, the panel weighs aggravating and mitigating factors as well as the number of each. In this case, the panel also considered the institution's contention that the enforcement staff's citing of Bylaw 19.9.3-(g) – Multiple Level II Violations as an aggravating factor should not trigger greater penalties. The panel also considered the institution's position that an additional mitigating factor should be considered; Implementation of a System of Compliance Methods (Bylaw 19.9.4-(e)). In both instances, the institution's position was unpersuasive. However, this did not affect the

penalties in this case, as the panel otherwise accepted the agreed-upon aggravating and mitigating factors. After considering these factors, the panel classified this case for penalty purposes as Level II-Standard.

The panel assessed whether the new penalty guidelines were more lenient. Under former NCAA Bylaw 19, the institution would have been considered a "repeat violator" and thus subject to enhanced penalties. Consequently, the panel determined that the current NCAA Bylaw 19 provided the institution with more lenient penalties.

Both the institution and the assistant women's gymnastics coach agreed to the facts, violations and the panel's proposed penalties and corrective measures; therefore, there is no opportunity to appeal. *See also* Appendix for the institution's self-imposed penalties and corrective actions.

All of the penalties prescribed in this case are independent and supplemental to any action that has been or may be taken by the Committee on Academics through its assessment of postseason ineligibility, historical penalties or other penalties. After considering all information relevant to the case, the panel prescribed the following:

**Level II – Standard Core Penalties (NCAA Bylaw 19.9.5)**

1. Probation: Two years, beginning February 18, 2015, through February 17, 2017<sup>8</sup>
2. Competition limitations: 0
3. Financial penalty: 0
4. Scholarship reductions: The institution reduced total grants-in-aid in football from 85 to 84 for the 2013-14 academic year. The panel acknowledges and adopts this reduction as set forth in the Appendix.
5. Show-cause order:

The assistant women's gymnastics coach sent 150 impermissible text messages and placed one impermissible telephone call over a 14-month period. He committed approximately 42 percent of the total violations in this case. The panel was troubled by the coach's claim that he was ignorant of how NCAA legislation applied to certain aspects of text messaging and does not believe that his claimed

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<sup>8</sup> The institution proposed a one-year probationary period. Institutions may propose probationary periods but the authority to prescribe NCAA probation rests solely with the committee. Periods of probation always commence with the release of the infractions decision.

ignorance of NCAA bylaws constitutes a defense to his violations. Therefore, in this case, the panel prescribed a one-year show-cause order for the assistant women's gymnastics coach beginning February 18, 2015, through February 17, 2016. The panel prohibits the assistant women's gymnastics coach from conducting all recruiting activities as defined by NCAA Bylaw 13.02.13 (2013-14 Division I Manual) during the 30 days preceding the 2015 spring NLI signing date (April 15, 2015). This restriction includes all means of recruiting communication, e.g. in-person, telephone, text messaging, social media, etc. Further, the assistant women's gymnastics coach shall attend a NCAA Regional Rules Seminar in 2015 at his own expense. Finally, the panel acknowledges and adopts the institution one-competition suspension of the assistant women's gymnastics coach during the 2013-14 academic year.

6. Recruiting communication restrictions: During portions of the 2013-14 and 2014-15 academic years, the institution self-imposed reductions in telephone communication in all 14 of the involved sports. The panel acknowledges and adopts these restrictions as set forth in the Appendix.
7. Off-campus recruiting restrictions: During the 2013-14 academic year, the institution self-imposed reductions in off-campus recruiting in the sports of football, women's soccer, women's basketball and men's basketball. The institution also self-imposed official visit restrictions for the women's soccer program. The panel acknowledges and adopts these restrictions as set forth in the Appendix.

**Level II – Standard Additional Penalties and Corrective Measures (NCAA Bylaw 19.9.7)**

8. Public reprimand and censure.

**Level II – Standard Additional Administrative Penalties (NCAA Bylaw 19.9.7)**

9. The head coaches in the sports of women's gymnastics, football, women's basketball and women's soccer shall each attend a NCAA Regional Rules Seminar in 2015, which may be at the institution's expense.
10. During this period of probation, the institution shall:
  - a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct the coaches, the faculty athletics representative, all athletics department personnel, all development or fundraising staff assigned to athletics and all institutional staff members



with responsibility for the certification of student-athletes' eligibility for admission, financial aid, practice or competition;

- b. Submit a preliminary report to the Office of the Committees on Infractions by April 15, 2015, 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 November 15 of each year during the probationary period. Particular emphasis should be placed on adherence to NCAA recruiting contact legislation. The reports must also include documentation of the institution's compliance with the penalties adopted and prescribed by the hearing panel, including compliance with the provisions of the show-cause order prescribed for the assistant women's gymnastics coach, should he remain employed at the institution;
- d. Inform all prospective student-athletes in the sports of women's gymnastics, football, women's soccer and women's basketball that the institution is on probation for two years and of the violations committed. If a prospective student-athlete in the aforementioned sport 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 prospective student-athlete in those sports 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 that includes the types of violations and the affected sport programs and a direct, conspicuous link to the public infractions decision located on the athletic department's main webpage. This information shall also be included in institutional 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 major infractions cases; and (iii) give members of the general public a clear indication of what happened in the major infractions cases to allow the public (particularly prospective student-athletes and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient. The institution may meet its responsibility in a variety of ways. Should the institution have any questions regarding fulfillment of this penalty, please contact the Office of the Committees on Infractions.

11. 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 affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.
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The committee advises the institution that it should take every precaution to ensure that the terms of the penalties are observed. The committee 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 shall be considered grounds for extending the institution's probationary period, prescribing more severe penalties, or may result in additional allegations and findings of violations.

NCAA COMMITTEE ON INFRACTIONS PANEL

John Black  
Carol Cartwright  
Melissa Conboy (Chief Hearing Officer)  
Joel Maturi  
James O'Fallon  
Gregory Sankey  
Rodney Uphoff

## **APPENDIX**

West Virginia University has put in place corrective and punitive actions and self-imposed penalties in response to this matter. The following details these actions:

### Women's Gymnastics

1. Coaching staff will be precluded from initiating any telephone communication with prospective student-athletes (PSAs) for four weeks. Three weeks will be during the 2013-14 academic year.
2. The remaining one week will be during the 2014-15 academic year. Coaching staff will initiate no phone calls until July 8, 2014, following the junior year or one week after the start of the senior year (whichever is earlier). This is one week later than the period that will be permissible to call.
3. Assistant coach – one game suspension from all coaching activities during a competition during the 2013-14 academic year.

### Football

4. Coaching staff members will be precluded from initiating any telephone communication with PSAs outside of recruiting contact periods during the 2013-14 academic year beginning September 1, 2013. No calls will be initiated from September 1, 2013 – November 30, 2014, and beginning February 2, 2014, through July 31, 2014. Calls will be permissible beginning December 1, 2013 – February 1, 2014, during the recruiting contact period.
5. The number of off-campus recruiters will be limited to eight (a reduction of two) at any one time during the spring 2014 academic year term.
6. Recruiting coordinator – the prohibition of any involvement during a weekend in December 2013 when prospective student-athletes are making an official visit. This included any presence on campus during that weekend, including contact with any prospective student-athletes.
7. Total athletics grants will be reduced by one for the 2013-14 academic year.

### Women's Soccer

8. Coaching staff members were precluded from initiating any telephone communication with PSAs for four weeks. Three of these weeks were during the 2013-14 academic year.

9. The remaining one week was during the 2014-15 academic year. Coaching staff members initiated no phone calls until July 8, 2014, following the junior year or one week after the start of the senior year (whichever is earlier). This is one week later than the period that will be permissible to call.
10. Official visits were precluded beginning August 1, 2013, until October 15, 2013.
11. Head coach - Suspended from all off campus recruiting beginning August 1, 2013 – October 15, 2013.

#### Women's Basketball

12. Coaching staff was precluded from initiating any telephone communication with PSAs.
13. The remaining one week will occur during the 2014-15 academic year, and coaching staff will initiate no phone calls until September 8 at the beginning of the junior year in high school. This is one week later than the period that will be permissible to call.
14. The number of recruiters off campus during the evaluation period that began September 30, 2013, until November 30, 2013, was reduced by one to no more than three off campus at any time.

#### Men's Basketball

15. Coaching staff was precluded from initiating any telephone communication with PSAs for three weeks. Two weeks will occur during the 2013-14 academic year.
16. The remaining week occurred during the 2014-15 academic year, and coaching staff initiated no phone calls until June 22 at conclusion of the sophomore year in high school. This was one week later than the period that will be permissible to call.
17. The number of recruiters off campus during the recruiting period beginning September 9, 2013, and ending November 10, 2013, was reduced by one to no more than three off campus at any time.

#### Women's Tennis

18. Coaching staff was precluded from initiating any telephone calls with PSAs for two weeks during the 2013-14 academic year.

Baseball

19. Coaching staff was precluded from initiating any telephone calls with PSAs for three weeks during the 2013-14 academic year.

Wrestling

20. Coaching staff was precluded from initiating any telephone calls with PSAs for three weeks during the 2013-14 academic year.

Women's Volleyball

21. Coaching staff was precluded from initiating any telephone calls with PSAs for two weeks during the 2013-14 academic year.

Men's Swimming

22. Coaching staff was precluded from initiating any telephone calls with PSAs for two weeks during the 2013-14 academic year.

Women's Diving

23. Coaching staff was precluded from initiating any telephone calls with PSAs for two weeks during the 2013-14 academic year.

Women's Track and Field

24. Coaching staff was precluded from initiating any telephone calls with PSAs for two weeks during the 2013-14 academic year.

Women's Rowing

25. Coaching staff was precluded from initiating any telephone calls with PSAs for two weeks during the 2013-14 academic year.

Men's Soccer

26. Coaching staff was precluded from initiating any telephone calls with PSAs for three weeks during the 2014-15 academic year.