



News Release

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NCAA Division I
Committee on Infractions
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UNIVERSITY OF ALBANY **PUBLIC INFRACTIONS REPORT**

A. INTRODUCTION.

The case was resolved through the summary disposition process, a cooperative endeavor in which the Committee on Infractions reviews infractions cases submitted in written form. This process is used in lieu of a formal hearing when the NCAA enforcement staff, the member institution and involved individuals agree to the facts of an infractions case and that those facts constitute major violations. The involved institution also proposes penalties. The violations in this case were narrow in scope and involved the transmission of text messages, an impermissible form of electronic correspondence, to prospective student-athletes and a failure by the institution to adequately monitor these transmissions. The initial information the committee reviewed centered on text messages transmitted by assistant football coaches during a limited period of time immediately after the use of text messaging for recruitment purposes was prohibited.

The summary disposition report was reviewed by the committee during its October 2008 meeting. On October 28 the committee informed the institution that it had accepted the findings in the report, but sought clarification on one of the proposed penalties. Shortly after sending that letter, the committee received information through the enforcement staff documenting that there had been additional impermissible text messaging, in this instance, by the head baseball coach. The violations involving the baseball program had been detected following the completion of the original summary disposition report in the late summer of 2008. On November 6, in response to the new information about impermissible text messaging by the head baseball coach, the committee sent additional correspondence to the institution expressing concern regarding the monitoring effort by the institution as it related to text messaging by the institution's coaches. In that context, the committee requested further information pertaining to the monitoring of text messages and asked the institution to provide assurances, if appropriate, to the committee that all text messaging violations had been detected and reported to the NCAA. On November 20 the institution provided a letter addressing these concerns, which the committee found to be satisfactory.

The University at Albany is a Division I institution, and in the sport of football, competes in the Football Championship Subdivision (FCS). The institution is a member of the America East Conference for all sports, except football, for which it is an affiliate member of the Northeast Conference. The University at Albany has a total enrollment of approximately 18,000 students and sponsors eight men's and 11 women's intercollegiate sports. This was the institution's first major infractions case.

B. FINDINGS OF VIOLATIONS OF NCAA LEGISLATION.

1. IMPERMISSIBLE ELECTRONIC TRANSMISSIONS. [NCAA Bylaw 13.4.1.2]

On 36 occasions during the 2007 fall semester, several assistant football coaches sent impermissible text messages to prospective student-athletes. The majority of the text messages were sent using a recruiting software program that enabled a coach to type a single message and send it to several prospects at once. As a result, the 36 occasions when football coaches sent text messages resulted in 331 messages sent and 220 prospects contacted. Further, during the summer of 2008, the head baseball coach sent 56 impermissible text messages. Specifically:

- a. An assistant football coach ("assistant coach A") sent impermissible text messages on 26 occasions resulting in a total of 158 text messages to 53 prospects.
- b. A former assistant football coach ("assistant coach B") sent impermissible text messages on seven occasions resulting in a total of 90 text messages to 84 prospects.
- c. Two other assistant football coaches ("assistant coaches C and D") jointly sent an impermissible text message on one occasion resulting in a total of 71 text messages to 71 prospects.
- d. Another assistant football coach ("assistant coach E") sent impermissible text messages on two occasions resulting in a total of 12 text messages to 12 prospects.
- e. Between June 13 and August 12, 2008 the head baseball coach ("head baseball coach") sent a total of 56 impermissible text messages to five prospects using his institution-issued cellular telephone.

Explanation of Violation

In or around the beginning of the 2006 fall semester, the football coaching staff began using a recruiting software program to collect and organize information on prospective student-athletes, organize recruiting efforts, log recruiting contacts and communicate with enrolled student-athletes and prospects. As it relates to communication with prospects, the software program enabled coaches to store contact information for prospects, send electronic mail to stored e-mail addresses and send text messages to stored cell phone numbers. The program offered several advantages over cell phones when sending text messages. Specifically, (1) it was easier to type a message on a computer keyboard instead of entering a message on the keypad of a cell phone, (2) cell phone numbers of all prospects were stored in the software program for easy access and (3) the program made it possible to send a single text message to a large number of recipients. Several football coaches found the program's text messaging feature to be a convenient and effective method for communicating not only with prospects but also with current student-athletes about scheduling and other issues.

During the 2007 fall semester, following the effective date of NCAA legislation eliminating text-message communication with prospects, the football coaches identified earlier in this report continued to send text messages to prospects. The violations occurred because the coaches misunderstood the text-messaging ban and essentially believed a text message would be treated like a phone call under the legislation. The coaches interpreted the ban to mean that the sending of an unlimited amount of text messages was banned, but they thought that one text message per week could be sent to a high school senior prospect in lieu of the usual weekly phone call. In these circumstances, NCAA legislation permits one weekly telephone call during the fall semester of a prospect's senior year between September 1 and the beginning of the contact period in late November. Further, as noted in this finding and detailed in Finding B-2, the institution failed to adequately monitor text messaging during the 2007 fall semester, which allowed the coaches to begin sending text messages in September and continue until December.

The violations were discovered in December 2007 when a representative from the company which developed the software program provided to the assistant director of athletics for compliance ("compliance director") instruction on monitoring transmissions made through the software program. Following this instruction, the compliance director noticed that football coaches had been sending text messages to prospects for approximately three months after the text messaging ban was in effect.

During March 2008 interviews with the enforcement staff and institution, the coaches acknowledged that they should have understood that sending even one text message to a prospect was impermissible. All of the coaches named in the finding, with the exception

of assistant coach E, received an e-mail from the compliance director on July 31, 2007, reminding them that new NCAA legislation banning text messaging to prospects would go into effect at midnight. Other coaches on the football staff who were not named in this finding understood and followed the text-messaging ban. Although the coaches named in this finding were unable to identify the source of their confusion regarding the new legislation, the committee found the coaches' adherence to their flawed interpretations of the legislation as the most compelling evidence that they did, in fact, misunderstand the text-messaging ban. With limited exceptions, the coaches sent no more than one text message per week after September 1 and only sent a text message to a prospect if they did not otherwise communicate with the prospect during the same week, which was consistent with their misunderstanding that a text message was treated like a phone call under the new NCAA legislation. There were a limited number of instances when assistant coaches A and E failed to adhere to that misinterpretation, but those occasions did not outweigh the evidence supporting the conclusion that the coaches misunderstood the text-messaging ban.

With regard to the impermissible text messages sent by the head baseball coach, during a routine review of the coach's cellular telephone records for the period mid-June to mid-July, the compliance office discovered 47 impermissible text messages. When informed of these impermissible text messages, the head baseball coach revealed that there were additional text messages he had sent to prospective student-athletes during the period mid-July to mid-August. A review of these records uncovered nine additional impermissible text messages. When asked why he had sent these text messages, the coach explained that he had misread Bylaw 13.4.1.2.1 which provides an exception to the text messaging ban. This exception allows text messages to be sent by coaches to a prospective student-athlete after he/she signs a National Letters of Intent (NLI) to attend the respective institution. All five of the prospects to whom the coach sent impermissible text messages had previously committed to attend the institution and had accepted financial aid packages, but had not signed NLIs. Although Bylaw 13.4.1.2 allows text messages to be sent to prospects after they had signed financial aid agreements, that exception applies to institutions which do not subscribe to the NLI program. The University at Albany is a NLI subscriber, thus that exception was not available to the institution.

The institution's failure to detect and prevent the text messages sent by the football staff demonstrated a failure to monitor, as discussed in Finding B-2.

2. FAILURE TO MONITOR. [NCAA Constitution 2.8.1]

During the 2007 fall semester, the institution failed to monitor the football coaching staff's transmission of electronic correspondence to prospective student-athletes.

Explanation of Violation

In April 2006 the NCAA Division I Board of Directors approved a ban on the text messaging of prospective student-athletes effective August 1, 2007. Beginning on September 5, 2007, and despite this ban, five assistant football coaches sent text messages on 36 occasions resulting in a total of 331 impermissible text messages being sent to 220 prospects. The coaches sent the vast majority of these messages (324) using the previously described recruiting software program. The compliance staff knew the software was being used but did not fully understand its capabilities and, as result, failed to monitor the use of this program and detect the impermissible text messaging activity until December 12, 2007. Although the institution recognized that its coaches continued using institutional cell phones to send text messages after August 1, the compliance staff did not take sufficient steps to determine whether any of those text messages were sent to prospects or to reiterate to coaches after August 1 that text messaging to prospects was banned.

The compliance director recalled that in August 2007, he received an e-mail from a representative of the company that developed the software which caused concern because the message claimed that the software offered a possible replacement to text messaging. [Note: The subject line of the August 20, 2007, e-mail stated: "Need to replace Texting, (the name of the software) is the answer."] The compliance director stated that, at around the time he received the e-mail or soon thereafter in September or October, he had conversations with a representative from the software company. The compliance director stated he was "trying to get a handle on what (the software) was and get somebody to come in and do a presentation about what it is and, from a compliance viewpoint, how you monitor and all these things." The compliance director reported that a representative from the software company was unavailable to provide education until December 12, 2007. During that December education session, the compliance director learned that coaches could send text messages using the software program, and due to the software's storage of information, the compliance officer was immediately able to recognize that the football coaches named in Finding B-1 had been sending text messages to prospects throughout the 2007 fall semester. At that time, the institution took action to prevent further violations and implement penalties and corrective actions.

The committee did not find that the institution failed to monitor with regard to the text messages sent by the head baseball coach. The violations were promptly discovered by

the compliance office shortly after they were committed and during a review of the head baseball coach's cellular telephone records.

C. PENALTIES.

For the reasons set forth in Parts A and B of this report, the Committee on Infractions finds that this case involved major violations of NCAA legislation. In determining the appropriate penalties to impose, the committee considered the institution's self-imposed penalties and corrective actions. [Note: The institution's corrective actions are contained in Appendix Two.] Further, the committee considered the institution's cooperation in this case. It determined that the cooperation exhibited by the institution was consistent with Bylaw 32.1.4, Cooperative Principle, which requires member institutions to cooperate in investigations, and did not warrant a reduction in penalties. The committee imposes the following penalties (the institution's self-imposed penalties are so noted):

1. Public reprimand and censure.
2. Two years of probation beginning January 27, 2009, and concluding January 26 2011. (Institution imposed)
3. The number of grants-in-aid in baseball shall be limited to no more than 10.7 for the 2008-09 academic year. [Note: this represents a reduction of 1 equivalency from the maximum of 11.7 equivalencies allowed in the sport of baseball.] (Institution imposed)
4. The number of official paid visits in the sport of football shall be limited to 28 for the 2008-09 academic year. This represents a reduction of 12 from the average number of official visits (40) during the previous four years. The reduction of 12 visits was imposed because it reflects the number of weeks during the period in which the text messages were sent. [Note: 56 visits is the maximum allowed in Division I football programs.] (Institution imposed)
5. The head baseball coach shall be restricted from all off-campus recruiting activities, including telephone calls and off-campus contacts, for a one-year period commencing on August 21, 2008, the date of the institution's letter to the America East Conference self-reporting the text messaging violations committed by the head baseball coach. (Institution imposed)
6. The institution suspended assistant coach A from recruiting activities for 48 weeks, assistant coach B from recruiting activities for 12 weeks, assistant coaches

C and D from recruiting activities for four weeks, and assistant coach E from recruiting activities for four weeks with each suspension beginning December 23, 2007. The length of each suspension was determined by multiplying the number of weeks over which that coach's violations took place by a factor of four. (Institution imposed)

7. Recruiting activities in the sport of football were suspended for a period of four weeks during otherwise permissible contact periods per NCAA Bylaw 30.10.3-(b)] from December 2007 to February 2008. (Institution imposed)
8. The institution reduced by one the number of football coaches permitted to be engaged in off-campus recruiting at any one time (per Bylaw 11.7.4) for a one year period from February 2008 to February 2009. (Institution imposed)
9. The institution suspended the recruitment of each prospect to whom a message was sent for two weeks for each week during which an impermissible message was sent. (Institution imposed)
10. The above-listed penalties are independent of and supplemental to any action that has been or may be taken by the Committee on Academic Performance through its assessment of contemporaneous, historical, or other penalties.
11. During this period of probation, the institution shall:
 - a. Continue to develop and implement a comprehensive educational program on NCAA legislation, including seminars and testing, to instruct the coaches, the faculty athletics representative, all athletics department personnel and all institution staff members with responsibility for the certification of student-athletes for admission, retention, financial aid or competition;
 - b. Submit a preliminary report to the office of the Committees on Infractions by March 31, 2009 setting forth a schedule for establishing this compliance and educational program; and
 - c. File with the office of the Committees on Infractions annual compliance reports indicating the progress made with this program by December 15 of each year during the probationary period. Particular emphasis should be placed on the monitoring of recruiting activities, particularly in the area of electronic and telephonic communication. The reports must also include documentation of the institution's compliance with the penalties adopted and imposed by the committee.

12. At the conclusion of the probationary period, 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.

As required by NCAA legislation for any institution involved in a major infractions case, the University at Albany shall be subject to the provisions of NCAA Bylaw 19.5.2.3, concerning repeat violators, for a five-year period beginning on the effective date of the penalties in this case, January 27, 2009.

The Committee on Infractions 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, and any action contrary to the terms of any of the penalties or any additional violations shall be considered grounds for extending the institution's probationary period, as well as imposing more severe sanctions in this case.

NCAA COMMITTEE ON INFRACTIONS

Paul T. Dee, chair
Eileen K. Jennings
Alfred J. Lechner, Jr.
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James Park Jr.
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Dennis E. Thomas

APPENDIX ONE

CASE CHRONOLOGY.

2007

September 5 to December 12 – Assistant football coaches send impermissible text messages to prospective student-athletes using a recruiting software program.

December 12 - The assistant director of athletics for compliance discovers that some assistant football coaches sent text messages to prospective student-athletes via the previously described software program following the August 1, 2007, effective date of NCAA legislation banning such electronic communications. The institution subsequently performed a review of all text messages sent using the program.

2008

January 30 - The institution submitted a self-report of NCAA secondary infractions and self-imposed penalties and corrective actions to the NCAA enforcement staff.

February 28 - Notice of inquiry sent.

June 27 - The staff requested that the member of the NCAA Committee on Infractions designated to review secondary infractions perform a preliminary review of the violations reported by the institution.

June 29 - Following that review, the committee member advised the staff that the case could not be resolved through the secondary infractions process.

July 24 – The enforcement staff and the institution agreed to process the case through summary disposition.

August 21 – The institution submitted a letter to the America East Conference self-reporting text message violations committed by the head baseball coach.

August 29 – The summary disposition report concerning the text message violations in the football program was sent to the committee.

October 19 – The committee reviewed the summary disposition report.

October 28 – The committee notified the institution that it had agreed to accept the findings, but sought clarification on one of the institution's proposed penalties.

October 29 – The committee received a copy of a self-report from the institution documenting additional text messaging violations; in this instance by the head baseball coach during the summer of 2008.

November 6 - The committee requested that the institution provide further information pertaining to the monitoring of text messaging and, if appropriate, assurances that all text messaging violations had been detected and reported to the NCAA.

November 20 - The institution provided a letter responding to the committee's concerns set forth in its November 6 letter.

2009

January 27 – Infractions Report No. 295 is released.

APPENDIX TWO

CORRECTIVE ACTIONS AS LISTED IN THE INSTITUTION'S SUMMARY DISPOSITION REPORT DATED AUGUST 29, 2008 AND ITS OCTOBER 28, 2008, SELF-REPORT.

1. The institution disabled the text-messaging function of the recruiting software program.
2. The text messaging function on the head baseball coach's cellular telephone was disabled by the service provider.
3. The compliance office provided a rules education session on the topic of text messaging to the head baseball coach.
4. The institution provided the compliance office with access to the software program in all sports to allow more thorough monitoring of the recruiting databases and activities.
5. The institution issued a "counseling memorandum," which is a "term of art" under the collective bargaining agreement applicable to the coaches' employment, to each of the involved assistant football coaches notifying him that the conduct was not appropriate and is to be avoided in the future.
6. The institution issued a "counseling memorandum" to the head football coach because, although he understood the rule correctly, the violations were committed by members of the staff he supervised.
7. The institution issued a "counseling memorandum" to the head baseball coach.
8. The institution required the head football coach to designate a different assistant as recruiting coordinator because the previous coordinator was involved in the text messaging.
9. The institution required the involved assistant football coaches and the head football coach to attend NCAA Regional Rules Seminars during the spring of 2008.