

[November 15, 2023 - This decision reflects changes resulting from the decision of the NCAA Division I Infractions Appeals Committee (IAC). In its September 28, 2023, decision, the IAC determined that the COI abused its discretion in applying Bylaw 19.9.3-(m), Intentional, willful or blatant disregard for the NCAA constitution and bylaws, and not applying Bylaw 19.9.4-(e) Implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches' control standards. As a result, the IAC also vacated penalties V.1 (probation) and V.2 (fine). The IAC remanded the decision to the panel with the instruction to reclassify the case and reassess the probation and financial penalties under the requirements that Bylaw 19.9.3-(m) not be applied as an aggravating factor and Bylaw 19.9.4-(e) be applied as a mitigating factor. On remand, the panel classifies the case as Level II-Standard for CSUN and prescribes a three-year probationary period and a fine of \$5,000 plus 0.5% of the men's basketball budget. The panel also acknowledges that CSUN has begun serving its probationary period and paid a portion of its financial penalty. The panel's analysis can be found in Appendix Three.]

NCAA DIVISION I COMMITTEE ON INFRACTIONS

Infractions Decision No. 569

California State University, Northridge

Case No. 01279

Confidential

December 16, 2022

This decision is issued in accordance with NCAA Bylaw 19 (2022-23 Division I Manual) and is organized as follows:

- I. Introduction
- II. Case History
- III. Parties' Agreements
- IV. Review of Case
- V. Penalties

INFRACTIONS DECISION NO. 569
California State University, Northridge
Case No. 01279

I. INTRODUCTION

The NCAA Division I Committee on Infractions (COI) is an independent administrative body of the NCAA comprised of individuals from the Division I membership and the public. The COI decides infractions cases involving member institutions and their staffs.¹ This case involved impermissible recruiting activity in the men's basketball program at California State University, Northridge (CSUN).² The activity occurred during the COVID-19 recruiting dead period and centered on impermissible on- and off-campus contacts by the former head men's basketball coach and two former assistant men's basketball coaches. These contacts resulted from two prospects' impermissibly arranged visits to CSUN's campus, during which they also received impermissible recruiting inducements. Around the same time, one of the assistant coaches engaged in impermissible text communication with a different prospect prior to obtaining authorization through the notification of transfer process. As a result of the head coach's personal involvement in the impermissible visits and his failure to monitor his staff, the head coach violated the principles of head coach responsibility.

A panel of the COI considered this case through the cooperative summary disposition process in which all parties agreed to the primary facts and violations, as fully set forth in the Summary Disposition Report (SDR). Through that process, the panel accepted CSUN's self-imposed recruiting restrictions but proposed additional penalties for the institution, as well as all three coaches. Following notification of the panel's proposed penalties, CSUN contested the proposed probationary period and financial penalty. Additionally, the head coach contested his show-cause order and suspension. One of the assistant coaches also contested his proposed show-cause order.

The panel held an expedited penalty hearing to review the contested penalties. This hearing also gave the parties an opportunity to provide their positions on the case's classification and the panel's application of aggravating and mitigating factors. In light of the issues discussed at the hearing and upon further review of case guidance, the panel reduces the length of CSUN's probationary period and the head coach's show-cause order but maintains all other penalties. CSUN, the head coach and the assistant coach have the opportunity to appeal these penalties.

The recruiting violations at the center of this case occurred when the three involved coaches impermissibly arranged visits for two men's basketball prospects in late April 2021. Specifically, the head coach and one of the assistant coaches arranged the first prospect's impermissible visit, which lasted several days. While on campus, the prospect received tours of facilities and met with all three of the involved coaches at least once. Additionally, the head coach observed the prospect

¹ Infractions cases are decided by hearing panels comprised of COI members. Decisions issued by hearing panels are made on behalf of the COI.

² A member of the Big West Conference, CSUN has an enrollment of approximately 30,000 students. It sponsors seven men's and 10 women's sports. This is the institution's fifth Level I, Level II or major infractions case. CSUN's prior cases occurred in 2016 (men's basketball), 2004 (men's basketball), 2000 (football) and 1985 (football).

engage in an impermissible tryout. A graduate manager provided the prospect with cost-free workout apparel prior to the tryout. Moreover, on three occasions, the prospect met with the head coach at off-campus restaurants where the head coach paid for his meals.

While the first prospect was still in the locale, the other assistant coach arranged for a second prospect and his mother to visit CSUN's campus. After they arrived on campus, the prospect met with all three involved coaches and received a campus tour. The three coaches subsequently met the prospect and his mother at an off-campus restaurant, where the head coach paid for their meals.

The coaches' arrangement of impermissible visits and impermissible contacts with the prospects demonstrated intentional disregard for the COVID-19 recruiting dead period, which prohibited any in-person recruiting contacts and evaluations as well as official and unofficial visits. The recruiting dead period was enacted to protect the health and safety of prospects, student-athletes and institutional staff. It also leveled the playing field for recruiting at a time when government-imposed COVID-19 restrictions varied across the country. The coaches' conduct undermined these critical objectives. Notably, each involved coach had decades of experience that exposed them to NCAA legislation, and they received dead period-related reminders from CSUN's compliance staff shortly before the violations occurred. However, the panel also notes that the coaches' misconduct was exacerbated by their passive relationship with the institution's compliance staff in which clear communication and understanding were lacking between both groups. This relationship was particularly problematic at a time when heightened communication and support were necessary to navigate the challenges of the COVID-19 pandemic. The impermissible recruiting activity of the men's basketball coaching staff constitutes a Level II violation.

While investigating the impermissible visits, the NCAA enforcement staff uncovered additional recruiting violations that occurred when one of the assistant coaches engaged in impermissible text communication with a prospect enrolled at another NCAA Division I institution prior to obtaining authorization through the notification of transfer process. This violation is also Level II.

Lastly, due to his personal involvement in arranging a prospects' impermissible visit and providing impermissible recruiting inducements, as well as his failure to monitor his staff, the head coach agreed that he violated the principles of head coach responsibility. This violation is Level II.

After considering applicable aggravating and mitigating factors, the panel classifies this case as Level II-Standard for CSUN and Level II-Aggravated for the head coach and both assistant coaches. Utilizing the applicable penalty guidelines and bylaws authorizing additional penalties, the panel adopts and prescribes the following principal penalties: three years of probation, a fine of \$5,000 plus one percent of the men's basketball budget, recruiting restrictions, a three-year show-cause order for the head coach plus a 40 percent suspension from the following men's basketball season, and two-year show-cause orders for both assistant coaches.

II. CASE HISTORY

In late April 2021, an equipment manager informed CSUN's director of compliance about potential recruiting violations stemming from the presence of two four-year college men's basketball prospective student-athletes (prospects 1 and 2) on campus during the COVID-19 recruiting dead period. The compliance staff began a preliminary investigation into the report before notifying the NCAA enforcement staff of the potential violations on April 28, 2021. CSUN then placed the former head men's basketball coach [Mark Gottfried] (head coach) and two former assistant coaches [Jeff Dunlap and Jim Harrick] (assistant coach 1 and 2) on paid administrative leave starting the following day. On May 5, 2021, the enforcement staff issued a verbal notice of inquiry and began a collaborative investigation with the institution.

In December 2021, the enforcement staff issued a notice of allegations (NOA) to CSUN and the three involved coaches. After attempts to negotiate a resolution, the parties agreed to resolve the case via the SDR process. As a result, the enforcement staff withdrew the NOA in February 2022.

On July 12, 2022, the parties submitted the SDR to the COI. The panel reviewed the SDR on August 16, 2022. The panel accepted the parties' agreed-upon facts, violations and violation levels, as well as CSUN's self-imposed recruiting restrictions. The panel proposed additional penalties to all parties on August 22, 2022. In early September, CSUN, the head coach and assistant coach 1 requested an expedited penalty hearing to contest their proposed penalties. Assistant coach 2 did not respond to his proposed two-year show-cause order. The panel views his non-response as an acceptance of the penalty, meaning he has no opportunity to appeal.

Both CSUN and assistant coach 1 submitted their pre-hearing written submissions on September 20, 2022. The head coach did not provide a written submission. Shortly thereafter on September 29, 2022, CSUN requested to provide a supplemental written submission to address the potential impact of a recently released infractions decision on its positions. The chief hearing officer approved the institution's request and moved the supplemental submission into the record. The panel held an expedited hearing via videoconference on November 1, 2022.

III. PARTIES' AGREEMENTS

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

The parties jointly submitted an SDR that identified the agreed-upon factual basis, violations of NCAA legislation and types of violations.³ The SDR identified:

³ This decision provides the agreed-upon factual basis, violations and type of violations exactly as stated in the SDR, except for shortening and clarifying references to the parties and adding a footnote relating to the panel's perspective on applicable bylaws.

1. [NCAA Division I Manual Bylaws 13.02.5.5,⁴ 13.1.2.1, 13.2.1, 13.2.1.1-(b), 13.5.1, 13.5.3, 13.7.3.1, 13.7.5 and 13.11.1 (2020-21)] (Level II)

The institution, the head coach, assistant coach 1, assistant coach 2 and enforcement staff agree that on or about April 19 through April 25, 2021, during the COVID-19 recruiting dead period, the men's basketball coaching staff, including assistant coach 1, the head coach and assistant coach 2, arranged impermissible (in-person, on- and off-campus) unofficial visits, had impermissible recruiting contacts with and provided impermissible recruiting inducements to prospects 1 and 2. Specifically:

a. From on or about April 19 through April 25, 2021, the head coach and assistant coach 1 arranged for prospect 1 to impermissibly visit the institution's campus during the COVID-19 dead period. Specifically:

(1) After prospect 1 arrived at the institution's locale on or about April 22, assistant coach 1 and the head coach arranged for a graduate manager to provide prospect 1 local transportation from prospect 1's hotel to campus. There, prospect 1 toured campus facilities with the graduate manager and met with the head coach, assistant coach 1 and assistant coach 2. Then, the head coach provided prospect 1 local transportation to an off-campus restaurant where the head coach purchased his meal. Finally, the head coach provided prospect 1 local transportation to his hotel after the meal. [NCAA Bylaws 13.02.5.5, 13.2.1, 13.5.1, 13.5.3, 13.7.3.1 and 13.7.5 (2020-21)]

(2) On or about April 23, assistant coach 1 and the head coach arranged for the graduate manager to provide prospect 1 breakfast and local transportation from prospect 1's hotel to campus. There, prospect 1 toured campus facilities with the graduate manager and a men's basketball student-athlete and met with assistant coach 1 and the head coach. Then, the head coach met prospect 1 at an off-campus basketball court where he observed prospect 1 engage in an impermissible tryout. Prospect 1 received a pair of shorts and a shirt to use during the tryout that he was not required to return. After the tryout, the head coach met prospect 1 at an off-campus restaurant and purchased his meal. The head coach provided prospect 1 local transportation to his hotel after the meal. [NCAA Bylaws 13.02.5.5, 13.2.1, 13.2.1.1-(b), 13.5.1, 13.5.3, 13.7.3.1, 13.7.5 and 13.11.1 (2020-21)]

(3) On or about April 24, the head coach met prospect 1 at an off-campus restaurant and purchased his meal. Further, the head coach provided prospect 1 local transportation to the residence of a representative of the institution's athletics

⁴ As a result of the COVID-19 pandemic, the NCAA Council adopted R-2020-1, which established a temporary recruiting dead period (as defined in NCAA Bylaw 13.02.5.5) effective March 13, 2020, and subsequently extended the COVID-19 recruiting dead period through May 31, 2021. The COVID-19 recruiting dead period was implemented to protect the health and safety of coaches, student-athletes and prospective student-athletes.

interests (booster) so the booster could drive prospect 1 to a religious service. [NCAA Bylaws 13.02.5.5, 13.1.2.1, 13.2.1, 13.5.1, 13.5.3,13.7.3.1 and 13.7.5 (2020-21)]

- b. On or about April 23 through April 25, 2021, assistant coach 2 arranged for prospect 2 and his mother to impermissibly visit the institution's campus and receive a tour of the institution's campus during the COVID-19 dead period. Specifically, after their arrival to campus on April 25, prospect 2 and his mother met with the head coach, assistant coach 1 and assistant coach 2, and toured campus facilities with assistant coach 1 and a graduate manager. Then, the head coach, assistant coach 1 and assistant coach 2 met prospect 2 and his mother at an off-campus restaurant where the head coach purchased a meal for prospect 2 and his mother. [NCAA Bylaws 13.02.5.5, 13.2.1, 13.7.3.1 and 13.7.5 (2020-21)]

2. [NCAA Division I Manual Bylaw 13.1.1.3 (2020-21)] (Level II)

The institution, assistant coach 1 and enforcement staff agree that in April 2021, assistant coach 1 had at least seven impermissible text contacts with a four-year college prospective men's basketball student-athlete (prospect 3) at another NCAA Division I member institution. Assistant coach 1 did not obtain authorization through the notification of transfer process before he made the contacts. In addition, assistant coach 1 continued to have contact with prospect 3 despite being told by his athletics compliance director that prospect 3 was not in the NCAA transfer portal and the contact was impermissible.

3. [NCAA Division I Manual Bylaw 11.1.1.1 (2020-21)] (Level II)

The institution, the head coach and enforcement staff agree that from on or about April 19 through 25, 2021, the head coach is presumed responsible for the violations detailed in Violation No. 1 and did not rebut the presumption of responsibility. Specifically, the head coach did not demonstrate that he promoted an atmosphere of compliance due to his personal involvement in the violations as detailed in Violation No. 1. Further, the head coach did not demonstrate that he monitored because he involved his staff, including a graduate manager, in the violations and disregarded fundamental recruiting legislation.

B. PARTIES' AGREED-UPON AGGRAVATING AND MITIGATING FACTORS

Pursuant to Bylaw 19.6.2-(g), the participating parties agreed to the following aggravating and mitigating factors:⁵

⁵ Key aspects of the expedited hearing involved the application and weight of aggravating and mitigating factors. The panel provides in-depth analysis of those issues in Section V of this decision.

CSUN:

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. [Bylaw 19.9.3-(h)]

2. Mitigating factors [Bylaw 19.9.4]⁶
 - a. Prompt self-detection and self-disclosure of the violations. [Bylaw 19.9.4-(a)]
 - b. Prompt acknowledgment of the violation, acceptance of responsibility and imposition of meaningful corrective measures and penalties. [Bylaw 19.9.4-(b)]
 - c. Affirmative steps to expedite final resolution of the matter. [Bylaw 19.9.4-(c)]
 - d. An established history of self-reporting Level III/secondary violations.⁷ [Bylaw 19.9.4-(d)]
 - e. Exemplary cooperation. [Bylaw 19.9.4-(f)]

Head Coach:

1. Aggravating factors [Bylaw 19.9.3]
 - a. A history of Level I, Level II or major violations by the individual. [Bylaw 19.9.3-(b)]
 - b. Multiple Level II violations by the individual. [Bylaw 19.9.3-(g)]
 - c. Persons of authority condoned, participated in or negligently disregarded the violation. [Bylaw 19.9.3-(h)]

2. Mitigating factors [Bylaw 19.9.4]
 - a. Prompt acknowledgment of the violation, acceptance of responsibility and imposition of meaningful corrective measures and penalties. [Bylaw 19.9.4-(b)].
 - b. Affirmative steps to expedite final resolution of the matter. [Bylaw 19.9.4-(c)]

⁶ The parties agreed to include NCAA Bylaw 19.9.4-(e), *Implementation of a system of methods designed to ensure rules compliance and satisfaction of institutional/ coaches' control standards*, as a mitigator in this case. However, as explained in Section V of this decision, the hearing panel did not accept the proposed mitigator.

⁷ CSUN self-reported 25 Level III violations over the previous five years, an average of five violations per year.

Assistant Coach 1:

1. Aggravating factors [Bylaw 19.9.3]
 - a. Persons of authority condoned, participated in or negligently disregarded the violation. [Bylaw 19.9.3-(h)]
 - b. Intentional, willful or blatant disregard for NCAA constitution/bylaws. [Bylaw 19.9.3-(m)]

2. Mitigating factors [Bylaw 19.9.4]
 - a. Prompt acknowledgment of the violation, acceptance of responsibility and imposition of meaningful corrective measures and penalties. [Bylaw 19.9.4-(b)]
 - b. Affirmative steps to expedite final resolution of the matter. [Bylaw 19.9.4-(c)]
 - c. Absence of prior conclusions of Level I, Level II or major violations committed by the involved individual. [Bylaw 19.9.4-(h)]

Assistant Coach 2:

1. Aggravating factors [Bylaw 19.9.3]
 - a. Persons of authority condoned, participated in or negligently disregarded the violation. [Bylaw 19.9.3-(h)]

2. Mitigating factors [Bylaw 19.9.4]
 - a. Prompt acknowledgment of the violation, acceptance of responsibility and imposition of meaningful corrective measures and penalties. [Bylaw 19.9.4-(b)]
 - b. Affirmative steps to expedite final resolution of the matter. [Bylaw 19.9.4-(c)]

IV. REVIEW OF CASE

Agreed-Upon Violations

The submitted SDR fully details the parties' positions and includes the agreed-upon primary facts, violations, violation levels and aggravating and mitigating factors. After reviewing the parties' principal factual agreements and the respective explanations surrounding those agreements, the panel accepts the parties' SDR and concludes that the facts constitute violations of NCAA legislation. Specifically, the COI concludes that several violations occurred as a result of prospect 1 and 2's impermissible visits. Additional recruiting violations occurred when assistant coach 1 engaged in impermissible text communication with prospect 3. As a result of his involvement in Violation No. 1 and his failure to monitor his staff, the head coach violated head coach responsibility legislation. All violations are Level II.

After arranging for prospects 1 and 2 to visit campus during the COVID-19 recruiting dead period, the head coach, assistant coach 1 and assistant coach 2 each engaged in impermissible on- and off-campus recruiting contacts with the prospects. In addition to the impermissible contacts, prospect 1 received free meals and workout apparel, engaged in an impermissible tryout and interacted with a booster. Prospect 2 and his mother also received a free meal. This conduct violated Bylaw 13.⁸

Bylaw 13 governs recruiting. With regard to permissible recruiting periods, Bylaw 13.02.5.5 defines a “recruiting dead period” as a period of time when it is not permissible to make in-person recruiting contacts or evaluations or to permit official or unofficial visits by prospects. As a result of the COVID-19 pandemic, the NCAA established a temporary recruiting dead period that was effective from March 13, 2020, through May 31, 2021. In addition, Bylaw 13 also outlines permissible recruiters (*i.e.*, authorized institutional staff members) who may have recruiting contacts with a prospect. *See* Bylaw 13.1.2.1. Bylaw 13.2.1 also generally prohibits institutional staff members from any involvement in providing, arranging or offering benefits to a prospect that are not expressly permitted by NCAA legislation. Specific prohibitions are set forth in Bylaw 13.2.1.1. Notably, subsection (b) prohibits gifts of clothing or equipment. Finally, Bylaw 13.11.1 prohibits a member institution from conducting any physical activity (*e.g.*, a practice session or tryout) at which a prospect reveals, demonstrates or displays their athletic ability.⁹

The conduct leading up to these Bylaw 13 violations began in mid-April 2021, when prospect 1 started texting the head coach to coordinate dates to visit CSUN’s campus and meet with the coaching staff. The head coach responded and helped prospect 1 identify dates that he and both assistant coaches would be available. Shortly before prospect 1’s arrival, the head coach texted him saying he was “excited [he was] coming” and was “looking forward to meeting [him] in person.”

Upon arriving in Los Angeles on April 22, 2021, prospect 1 reached out to assistant coach 1 for assistance with finding a hotel, and the assistant coach provided him with a hotel recommendation. The head coach instructed assistant coach 1 to coordinate the prospect’s transportation from his hotel to the institution—a task assistant coach 1 delegated to a graduate manager. That afternoon, the graduate manager picked up prospect 1 from his hotel and proceeded to give him a tour of CSUN’s campus. Prospect 1 then met with the three involved coaches in the men’s basketball offices. After spending a few hours on campus, the head coach and prospect 1 departed the institution. The head coach then drove prospect 1 around his neighborhood and purchased a meal for the prospect at an off-campus restaurant before returning him to his hotel.

⁸ The full text of all bylaws violated in this case is located at Appendix Two.

⁹ Bylaws 13.5.1, 13.5.3 and 13.7.5 address permissible activities with a prospect while on an unofficial visit. In this case, because the dead period prohibited unofficial visits altogether, the panel does not believe these bylaws and the specific unofficial visit restrictions are applicable. Rather, violations appear to have occurred regardless of whether the coaching staff complied with the traditional parameters of an unofficial visit. The COI recently made a similar observation in *Louisiana State University (LSU)* (2022). Along these same lines, the parties also cite to Bylaw 13.7.3.1, which places restrictions on entertainment (*i.e.*, admission to home athletics events) during an unofficial visit. Given the facts of this case, it appears that the parties intended to cite to Bylaw 13.7.3.1.2, which addresses the provision of meals on an unofficial visit. For the same reasons outlined above, the panel does not believe this bylaw applies to this case. However, the panel defers to the parties’ agreements.

The following day, the graduate manager picked up prospect 1 from his hotel and took him to get breakfast. While there, they met with a then-current CSUN men's basketball student-athlete who assistant coach 1 had reached out to about showing prospect 1 around campus. After breakfast, the three of them then headed to campus, where the graduate manager and student-athlete provided prospect 1 with a second, more thorough tour of the men's basketball facilities. Once again, prospect 1 met with the head coach and assistant coach 1 in the men's basketball offices. After receiving workout apparel from the graduate manager, a booster drove prospect 1 to a local park to work out.¹⁰ Following the workout, the head coach met prospect 1 at an off-campus restaurant where he paid for his meal before driving the prospect back to his hotel. Lastly, on April 24, 2021, the head coach met prospect 1 at another restaurant where he purchased the prospect's breakfast and, subsequently, drove him to the booster's home.

Regarding prospect 2, assistant coach 2 began corresponding with the prospect's mother in late April 2021. Shortly thereafter, prospect 2's mother asked if they could drive to campus for a visit, to which assistant coach 2 responded in the affirmative. He also sent prospect 2's mother the address of a restaurant and a time to meet. Assistant coach 2 sent this same information to the head coach and assistant coach 1 as well, along with the phrase "Get [prospect 2] to commit..." Upon arriving on campus on April 25, 2021, the graduate manager met prospect 2 and his mother and took them to meet the three involved coaches before he and assistant coach 1 gave them a tour of campus. After the tour, the coaches met prospect 2 and his mother at the aforementioned restaurant where the head coach paid for their meals.

The coaches agreed that their conduct violated fundamental recruiting legislation under Bylaw 13. Their arrangement of prospect 1 and 2's visits to campus, coupled with their on- and off-campus contacts with the prospects violated the dead period restrictions defined in Bylaw 13.02.5.5. Similarly, the recruiting contacts made by the booster with prospect 1 violated Bylaw 13.1.2.1. Additionally, the cost-free meals provided by the head coach and prospect 1's receipt of workout apparel violated Bylaw 13.2.1.1 and constituted impermissible inducements. Finally, the head coach's observation of prospect 1's workout constituted an impermissible tryout under Bylaw 13.11.1.

The COI has recently concluded that Level II violations occurred when coaching staff members violated the COVID-19 recruiting dead period and engaged in additional recruiting violations. *See LSU* (concluding that an assistant coach and an assistant recruiting director who had off-campus recruiting contacts with a prospect during the dead period and provided the prospect with inducements in the form of athletic gear committed Level II violations).¹¹ Further, albeit not during the COVID-19 recruiting dead period, the panel has previously accepted parties' agreements that Level II violations occurred when coaches engaged in recruiting activity outside of permissible time periods. *See University of Utah* (2019) (concluding via summary disposition report (SDR) that Level II violations occurred when the head men's basketball coach and three

¹⁰ The booster was an alumnus of prospect 1's then Division I institution who the prospect knew through his uncle and sister.

¹¹ At the time of this decision, an involved individual in *LSU* is appealing portions of his case including the panel's designation of his violation as Level II.

coaching staff members made an impermissible recruiting contact with a prospect at his high school during a designated quiet period) and *Southern Illinois University at Carbondale (SIU)* (2018) (concluding via SDR that a Level II violation occurred when a diving coach conducted numerous impermissible diving lessons with two prospects, including one during a dead period).¹²

The actions of the coaches in this case are similar to the involved individuals' violations in *LSU* in that they engaged in impermissible recruiting activity during the COVID-19 recruiting dead period. Additional violations also occurred as a result of the head coach's observation of prospect 1's workout and the booster's recruiting contacts with prospect 1. Consistent with case guidance and Bylaw 19.1.2, these recruiting violations are Level II for CSUN and all three coaches.

In addition to the violations stemming from prospect 1's and 2's impermissible visits, further recruiting violations occurred due to assistant coach 1's impermissible text communication with prospect 3 prior to obtaining authorization through the notification of transfer process. In short, assistant coach 1 engaged in tampering. His conduct also violated Bylaw 13.

Bylaw 13.1.1.3 provides that an athletics staff member shall not communicate with the student-athlete of another NCAA Division I institution, directly or indirectly, without first obtaining authorization through the notification of transfer process. In other words, the prospect must be in the transfer portal.

Assistant coach 1's conduct failed to comply with this bylaw. Prospect 3 reached out to assistant coach 1 via text on April 1, 2021. At the time, prospect 3 was enrolled at another Division I institution.¹³ Prior to verifying whether prospect 3 was in the transfer portal, assistant coach 1 sent him four text messages. Minutes later, the graduate manager confirmed that prospect 3 was not in the portal and informed the head coach. On April 8, 2021, CSUN's director of compliance emailed assistant coach 1 to tell him that prospect 3 was still not in the transfer portal and that he could not have conversations with the prospect. That same day, CSUN's associate athletics director for administration and operations (associate AD) contacted the head coach to emphasize that prospect 3 needed to be in the transfer portal before the coaching staff could recruit him.¹⁴ Despite these efforts, assistant coach 1 proceeded to send three more text messages to prospect 3. His conduct violated Bylaw 13.1.1.3.

¹² Although *Utah* and *SIU* were decided through the summary disposition process and may be viewed as less instructive under COI Internal Operating Procedure (IOP) 4-10-2-2, the panel cites to these, and other cases resolved via summary disposition because they involve similar conduct and violations.

¹³ The coaching staff had briefly recruited prospect 3 the previous year before opting not to sign him to CSUN. Assistant coach 1 stated that, at the time of the violations, the coaching staff was not intending to recruit prospect 3. At the expedited hearing, assistant coach 1 explained that prospect 3 was a former teammate of prospect 1, and their relationship led to prospect 3's renewed interest in CSUN. Assistant coach 1 also explained that, in his communications with prospect 3, he was trying to "stall" so as not to adversely affect prospect 1's commitment decision.

¹⁴ At the time of the violations, the associate AD had compliance oversight and responsibilities related to the men's basketball program.

The COI has previously concluded that contacting a prospect prior to obtaining authorization through the notification of transfer process resulted in Level II violations. *See Georgia Institute of Technology (Georgia Tech) (2019)* (concluding that a Level II violation occurred when a booster introduced the idea of transferring to the institution prior to the institution requesting permission to contact) and *Sam Houston State University (2017)* (concluding via SDR that a Level II violation occurred when a former head coach sent at least 31 Facebook messages to a prospect prior to obtaining written permission from the prospect's NCAA institution). In this case, assistant coach 1 sent at least seven text messages to prospect 3 prior to him entering the transfer portal. Despite learning that prospect 3 was not in the transfer portal shortly after sending his first series of texts, assistant coach 1 continued to contact him. Consistent with the COI's past cases and Bylaw 19.1.2-(f), this conduct constitutes a Level II violation.

Lastly, the head coach was involved in arranging prospect 1's impermissible visit, engaged in on- and off-campus recruiting contacts, provided inducements and observed an impermissible tryout. He also failed to monitor his staff and their involvement with impermissible recruiting activities. Thus, the head coach did not meet his legislated obligations under Bylaw 11.

Bylaw 11.1.1.1 establishes two affirmative duties for head coaches: (1) to promote an atmosphere of rules compliance and (2) to monitor individuals in their program who report to them. The bylaw presumes that head coaches are responsible for violations in their programs. Head coaches may rebut this presumption by demonstrating that they promoted an atmosphere of compliance and monitored their staff.

The head coach was personally involved in arranging prospect 1's visit to campus. Specifically, he engaged in text communication with the prospect to identify dates for the prospect to visit campus. He also had impermissible on- and off-campus recruiting contacts with prospects 1 and 2, provided both prospects with at least one inducement and observed prospect 1's impermissible tryout. Moreover, he failed to monitor his staff, including a graduate manager, which resulted in their involvement in the recruiting violations. In the case of assistant coach 1, the head coach directly involved him in a violation by instructing him to arrange transportation for prospect 1. His actions were contrary to the membership's expectations of a head coach under Bylaw 11.

In applying Bylaw 11.1.1.1 in recruiting cases, the COI has concluded that Level II head coach responsibility violations occur when a head coach is directly involved in and/or involves their staff in Level II violations. *See Utah* (concluding via SDR that a Level II head coach responsibility violation occurred when a head coach was personally involved in Level II violations and failed to confirm that the off-campus recruiting activities and the prospect's campus visit were permissible); *California State University, Sacramento (2018)* (concluding via SDR that a head men's tennis coach engaged in a Level II head coach responsibility violation when he could not demonstrate that he promoted an atmosphere of compliance and monitored his staff due to his personal involvement in Level II violations, his failure to consult with compliance and his failure to monitor the recruiting activities of his assistant coach); and *Sam Houston* (concluding via SDR that a Level II head coach responsibility violation occurred as a result of a head coach's personal involvement

in Level II inducement, benefit and recruiting contact violations that demonstrated that he did not promote an atmosphere of compliance).

In the SDR, the head coach admitted that he knew the timing of the prospects' visits did not comply with NCAA rules. However, he had previously offered scholarships to prospects 1 and 2 and knew they were eager to make their commitment decisions. The head coach's desire to sign the prospects outweighed his desire to comply with the recruiting dead period and to ensure his staff complied with NCAA legislation. Consistent with case guidance and Bylaw 19.1.2-(e), the head coach's involvement in underlying Level II recruiting violations and his failure to monitor his staff constituted a Level II head coach responsibility violation.

Contested Penalties

CSUN contested the panel's proposed four-year probationary period and financial penalty of \$5,000 plus one percent of the men's basketball budget. The head coach contested his four-year show-cause order plus a 40 percent suspension from the men's basketball season immediately following the conclusion of his show-cause order. Assistant coach 1 contested his two-year show-cause order. In contesting the panel's proposed penalties, the parties emphasized their disagreement with the panel's application of aggravating and mitigating factors and its classification of the case for each party. The panel provides a thorough analysis of those arguments in Section V of this decision. This section focuses solely on the contested penalties.

Probation

The panel initially proposed a four-year probationary period for CSUN. CSUN contested this penalty at the expedited hearing, arguing that a probationary period at the high end of the range for its Level II-Standard classification contradicted case precedent and that their compliance program did not have deficiencies that warranted a lengthy probation. Upon further review of the penalty following the hearing, the panel reduces the probationary period by one year. Although the four-year period falls within the penalty guidelines, the three-year probationary period more closely aligns with recent COI decisions. While the panel found that additional enhancements to CSUN's compliance program are necessary, CSUN's president and athletics leadership highlighted the efforts that the institution has taken to improve its compliance program since its earlier 2016 infractions case. Thus, a shorter probationary period than originally proposed is appropriate.

A three-year probationary period is appropriate for the following three reasons: (1) the penalty addresses the significant violations in this case; (2) it provides the appropriate oversight of CSUN's efforts to enhance its compliance program—particularly its strengthening of the relationship between compliance and men's basketball; and (3) the penalty falls within the range for the case's Level II-Standard classification and is supported by past cases.

As a starting point, this case involved significant intentional violations committed by experienced men's basketball coaches. More significantly, the violations occurred during the COVID-19 recruiting dead period, which was enacted to promote the health and safety of coaches, staff, student-athletes and prospects, and to promote competitive equity across programs dealing with a

variety of local and state guidelines. The men's basketball coaching staff's blatant disregard for the dead period requires a significant probationary period—particularly in light of the similar disregard for NCAA bylaws that occurred in the same program only a few years earlier.

This is CSUN's second infractions case involving its men's basketball program in the last six years. Although each case involved different coaching staffs and different violations, the panel was, and remains, concerned about the culture of compliance in the CSUN men's basketball program. Violations in both cases involved fundamental bylaws—academic misconduct and dead periods—that are well known by coaches of all experience levels. This case involved intentional violations by coaches with decades of experience. The violations also occurred during the COVID-19 recruiting dead period, meaning that the coaches' actions endangered the health and safety of numerous individuals while, simultaneously, gaining a recruiting advantage over compliant institutions. Irrespective of the compliance staff's efforts, individuals within CSUN's men's basketball program have felt comfortable engaging in violations. As such, continued monitoring by the COI will help ensure that the culture of compliance within the men's basketball program is improved and maintained. Thus, the COI prescribes a three-year probationary period.

In contesting the panel's initially proposed four-year probationary period, CSUN alleged that its compliance program had no relevant deficiencies that would support the need for a lengthy probation. Throughout its submissions and at the expedited hearing, CSUN pointed to its dead period-related education and “see something say something” culture of compliance that it promoted throughout its athletics department. CSUN noted that this approach was particularly important because state and local guidelines placed restrictions on which institutional employees were permitted to work on campus. These restrictions meant that, while the men's basketball coaching staff was on campus, CSUN's compliance staff was working (*i.e.*, attempting to educate and monitor its coaches) remotely. On top of the challenges posed by the pandemic, CSUN contrasted its efforts to promote compliance with the receptiveness of the men's basketball coaching staff, who it claimed often missed monthly virtual compliance education sessions, were difficult to schedule meetings with and gave the compliance staff concerns about the potential for violations within their program. These concerns specifically stemmed from the head coach, who was involved in an ongoing infractions case at another institution throughout his time at CSUN.

When asked at the expedited hearing how CSUN addressed its concerns with the coaching staff's compliance, CSUN's associate AD noted that he engaged in regular, informal conversations with the coaching staff. He did not indicate that CSUN took any other steps to reduce the risk of violations in the men's basketball program during the recruiting dead period. Additionally, contrary to CSUN's statements, the head coach and assistant coach 1 claimed that they tried to schedule monthly education sessions for the men's basketball staff, but those meetings rarely occurred. Due to the COVID-19 restrictions, members of the coaching staff also said that they were mostly alone on campus and would have benefitted from additional support, communication and education from compliance. Although the coaches' actions demonstrated disregard for well-known recruiting legislation, CSUN's compliance efforts could have been better. More specifically, CSUN lacked clear communication and understanding between the compliance office and the men's basketball staff. Stated simply, both sides appear to have been complacent with

their passive relationship. Exacerbated by the COVID-19 pandemic, this complacency created an environment where the coaching staff felt comfortable engaging in violations while the compliance staff were required to work remotely. The three-year probationary period provides the COI with the opportunity to monitor the growth of the compliance department's relationship with all of CSUN's sport programs.

Further, the three-year probationary period falls within the membership-approved ranges for Level II-Standard cases and aligns with past COI decisions. When the NCAA membership adopted the penalty guidelines, it approved ranges for required core penalties to be prescribed after the COI classifies a case based on fact-specific aggravating and mitigating factors. The COI is not required to prescribe the minimum penalty available every time an institution has an infractions case. Rather, the COI has the flexibility to prescribe any penalty within the membership's approved penalty ranges. For Level II-Standard cases, the membership identified probationary ranges of two to four years as appropriate lengths of probation. In that way, a four-year probationary period would have been appropriate under the penalty guidelines. However, based on the compliance improvements already implemented by the institution, the COI believes CSUN has a promising foundation in place. Thus, a three-year probationary period is appropriate to ensure that the foundation remains and is strengthened with COI oversight.

Finally, the COI has previously prescribed similar probationary periods in Level II-Standard cases involving recruiting violations. *See DePaul University* (2019) (prescribing three years of probation when an associate head coach arranged for the provision of impermissible recruiting inducements, which resulted in an impermissible contact); *Utah* (prescribing via an SDR two years of probation when impermissible recruiting activity, including contacts, inducements and tryouts, occurred in the men's basketball program); and *SIU* (prescribing via an SDR three years of probation when a diving coach provided inducements in the form of lessons and engaged in impermissible tryouts, and the institution failed to monitor its swimming and diving program). Like these cases, Level II recruiting violations occurred in the CSUN men's basketball program.

Notably, none of those cases involved violations during the COVID 19-recruiting dead period. The COI recently prescribed a probationary period of one year to *LSU* after recruiting violations occurred during the COVID-19 recruiting dead period. However, that case was classified as Level II-Mitigated for the institution. In *LSU*, the prospect and his family were in the locale of the institution over the course of two weekends for otherwise permissible reasons, which resulted in intentional, but brief, off-campus recruiting contacts with the involved individuals. In this case, the coaches arranged the prospects' visits. Moreover, the violations in this case consisted of multiple interactions with members of the coaching staff including campus tours and off-campus meals. Stated simply, the two cases are different. Upon review of the case guidance and consideration of the unique facts of this case, the panel determines that a three-year probationary period is appropriate for CSUN.

Financial Penalty

The panel proposed a financial penalty of \$5,000 plus one percent of the men's basketball budget. CSUN did not directly address the percentage component of the fine outside of representing that

it continued to believe its case should have been classified as Level II-Mitigated—a classification that requires only a \$5,000 fine with no additional sport budget percentage. The panel is not persuaded. The financial penalty is appropriate for the following reasons: (1) this case resulted from several significant recruiting violations by three members of the men’s basketball coaching staff; (2) the penalty falls within the membership approved ranges for Level II-Standard violations; and (3) past cases support the penalty. The panel maintains the proposed financial penalty.

As outlined above, three experienced men’s basketball coaches disregarded fundamental recruiting legislation. In addition to the prospects, their actions also involved a graduate manager and a student-athlete in violations. The recruiting violations alone are significant, but they are made even worse by the risks posed and advantages gained by engaging in such violations during the COVID-19 pandemic. Again, this is the second infractions case in the men’s basketball program in the past six years. Given these facts, the proposed financial penalty directed at the men’s basketball program appropriately addresses the violations.

This penalty also falls within the membership-approved ranges for Level II-Standard cases, which permits fines of \$5,000 plus zero to one percent of a sport program’s budget. As previously mentioned, the membership’s penalty guidelines do not distinguish penalties within a particular range. Thus, the membership has entrusted the COI to determine what penalty is appropriate within that range based on the facts and circumstances of an individual case. Here, because of the significant nature of the violations and the fact that this is the institution’s second case involving the men’s basketball program in a relatively short period of time, the additional one percent of the men’s basketball budget is appropriate.

Further, a financial penalty of \$5,000 plus one percent of a sport program’s budget has previously been prescribed by the COI in similar Level II-Standard cases. *See University of California, Santa Barbara (UCSB)* (2019) (prescribing a fine of \$5,000 plus one percent of the budget for the involved sport programs when inducement and benefit violations occurred in the men’s water polo program) and *DePaul* (prescribing a fine of \$5,000 plus one percent of the men’s basketball budget when recruiting, benefit and competition violations occurred within the men’s basketball program). Additionally, the COI recently prescribed a financial penalty of \$5,000 in *LSU* where similar violations of a more limited scope occurred, and the case was classified as Level II-Mitigated. Based on the facts and circumstances of this case, a fine of \$5,000 plus one percent of the men’s basketball budget is appropriate.

Head Coach’s Show-Cause Order and Suspension

After reviewing the SDR, the panel proposed a four-year show-cause order for the head coach. The panel also proposed a 40 percent suspension from the men’s basketball season immediately following the conclusion of his show-cause order. The head coach contested the penalties. The head coach did not file a written submission as requested by the panel but argued at the expedited hearing that leniency was warranted due to his COVID-19-related hardships. At the expedited hearing, the head coach provided context surrounding the challenges he faced, as well as the lack of support and communication he received from CSUN during the pandemic. The panel found the

head coach's latter argument more persuasive and reduces the length of the show-cause order to more closely align with recent cases.

A three-year show cause order and 40 percent suspension are appropriate for three reasons: (1) they address the head coach's knowing violation of fundamental recruiting legislation and failure to monitor his staff's involvement in the violations; (2) the penalty falls within the permissible range for Level II-Aggravated cases; and (3) the penalty aligns with recent cases where head coaches engaged in similar conduct and violated the principles of head coach responsibility.

The head coach admitted he knowingly committed violations. He knew the timing of the prospects' visits violated NCAA legislation yet arranged and participated in them anyway. In addition to arranging prospect 1's visit and engaging in on- and off-campus contacts with prospects 1 and 2, he also violated well-known rules related to inducements and tryouts. Beyond his direct involvement in the violations, the head coach stood by as his two assistant coaches and graduate manager actively engaged in the same violations. On at least one occasion, the head coach even instructed assistant coach 1 to commit a violation and coordinate prospect 1's transportation from his hotel to campus. His actions are contrary to the basic responsibilities of a head coach and warrant significant penalties.

In disputing his penalties, the head coach pointed to the negative effects that the COVID-19 pandemic had on his decision-making abilities. Additionally, during the expedited hearing, the head coach clarified that, despite requests, he rarely received education sessions from CSUN's compliance staff. While the panel is sympathetic to the hardships faced by head coaches during the pandemic, the panel is more persuaded that the lack of support the head coach received from the institution contributed to his violations. The challenges of the COVID-19 pandemic called for an increase in support and communication between coaches and athletic administrators. Based on the parties' comments at the expedited hearing, neither of those things occurred. To be sure, the compliance department's shortcomings do not excuse a head coach's behavior, nor do they absolve a head coach from his specific and independent responsibilities as a head coach. Even more is expected from a head coach with decades of experience. In this case, it was incumbent upon both parties to go above and beyond to prevent violations on campus. In other words, compliance is a two-way street. While his violations were significant, the responsibility does not fall solely on the shoulders of the head coach. Therefore, the panel reduces the head coaches show-cause order to three years but maintains the 40 percent suspension.

A three-year show-cause order is also contemplated by the ranges for Level II-Aggravated penalties. For a coach involved in a Level II-Aggravated case, the membership approved ranges for a show-cause order span from two to four years. When prescribing penalties for a head coach who violated their head coach responsibility under Bylaw 11.1.1.1, the COI may also prescribe a head coach restriction suspending them from 30 to 50 percent of a season. Thus, the panel's prescribed three-year show-cause order followed by a 40 percent suspension fit within the approved ranges.

Finally, a three-year show-cause order aligns with case guidance for head coaches with Level II-Aggravated cases. *See Siena College (2020)* (prescribing a three-year show-cause order and 30 percent suspension from the following season to a head coach who provided impermissible benefits, involved his staff in violations and violated the principles of head coach responsibility) and *Sam Houston* (prescribing a three-year show-cause order with a suspension of 30 percent of his first season of employment to a head women's tennis coach who violated recruiting, head coach responsibility and unethical conduct legislation). Like the coaches in these cases, the head coach violated recruiting legislation and the principles of head coach responsibility. As such, the proposed penalties are appropriate for the head coach.

Assistant Coach 1's Show-Cause Order

Lastly, the panel prescribed a two-year show-cause order for assistant coach 1. Assistant coach 1 contested the penalty, arguing that it is unduly harsh given his conduct. The panel disagrees and maintains the proposed show-cause order because it addresses the significant conduct and aligns with the range identified for Level II-Aggravated violations and past cases.

Assistant coach 1 agreed that he was involved in arranging prospect 1's visit, engaged in on- and off-campus contacts with prospects 1 and 2 and exchanged impermissible texts with prospect 3. Despite his claims that he was the least culpable coach, assistant coach 1 was the only coach involved in violations with all three of the prospects. Additionally, assistant coach 1 had roughly 30 years of coaching experience. He knew that his conduct violated NCAA rules but continued to engage in violations and did not report them to compliance. Although assistant coach 1 argued that he should not receive any show-cause order, a two-year show-cause order appropriately addresses his conduct.

As stated above, the approved show-cause range for Level II-Aggravated conduct is two to four years. Assistant coach 1's penalty falls at the low end of that range. Therefore, the proposed show-cause order complies with the penalty guidelines.

The COI has prescribed a two-year show-cause order for coaches involved in Level II-Aggravated cases. *See University of Houston (2019)* (concluding that a head coach's Level II-Aggravated case resulting from CARA and head coach responsibility violations supported a two-year show-cause order); *UCSB* (prescribing a two-year show-cause order to a head coach where their provision of inducements and benefits resulted in a Level II-Aggravated case); and *Prairie View A&M University (2017)* (concluding that a Level II-Aggravated unethical conduct violation occurred and prescribing a two-year show-cause order for an assistant men's basketball coach who knowingly arranged payment for an online course a student-athlete needed to regain eligibility). In accordance with case precedent, a two-year show-cause order is appropriate for assistant coach 1.

V. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the panel concludes that this case involves Level II violations of NCAA legislation. Level II violations are significant breaches of

conduct that provide or are intended to provide more than a minimal but less than a substantial or extensive advantage or benefit.

In considering penalties, the panel first reviewed aggravating and mitigating factors pursuant to Bylaws 19.9.2, 19.9.3 and 19.9.4 to determine the appropriate classifications for the parties. The panel then used the current penalty guidelines (Figure 19-1) and Bylaws 19.9.5 and 19.9.7 to prescribe penalties. As previously mentioned, a key issue in this case and the central focus at the expedited hearing for all parties was the application and weight of aggravating and mitigating factors and the respective classifications for the parties. Based on its assessment, and after considering the parties' written and oral arguments at the expedited hearing, the panel classifies this case as Level II-Standard for CSUN and Level II-Aggravated for all three of the coaches.

CSUN's Factors

CSUN and the enforcement staff agreed on the application of three aggravating factors and six mitigating factors. The enforcement staff proposed one additional aggravating factor. After reviewing the SDR and pursuant to Bylaw 19.9.2, the panel's analysis differed slightly from the parties' proposed factors. Specifically, the panel: (1) afforded one of the agreed-upon aggravating factors significant weight; (2) added an additional aggravating factor; (3) declined to apply the enforcement staff's proposed aggravating factor; and (4) removed an agreed-upon mitigating factor. CSUN contested several of these changes at the expedited hearing and argued that another mitigator, Bylaw 19.9.4-(f), should receive significant weight. Despite CSUN's arguments, the panel maintains its decisions with regard to the applicable factors. Thus, this case involves four aggravating factors and five mitigating factors and results in a Level II-Standard classification for CSUN. The panel's detailed analysis follows below.

With respect to aggravating factors, the panel accepts the parties' agreement that Bylaw 19.9.3-(b), *A history of Level I, Level II or major violations*, Bylaw 19.9.3-(g), *Multiple Level II violations*, and Bylaw 19.9.3-(h), *Persons of authority condoned, participated in or negligently disregarded the violation or wrongful conduct*, apply to CSUN. The panel also applies Bylaw 19.9.3-(m), *Intentional, willful or blatant disregard for the NCAA constitution and bylaws*.

In applying Bylaw 19.9.3-(b), the panel afforded significant weight to the factor because this case comes on the heels of CSUN's 2016 infractions case which involved academic misconduct in the men's basketball program and the institution's failure to monitor a men's basketball staff member. Although violations occurred within the same program, CSUN argued that the type of violations (*i.e.*, academic misconduct as opposed to impermissible recruiting) were different and occurred under a different coaching staff. CSUN also claimed that this factor has been afforded normal weight in some cases where less time had passed between an institution's infractions cases.¹⁵

¹⁵ CSUN also claimed that the panel's decision to assign significant weight to Bylaw 19.9.3-(b) is inconsistent with the COI's decision to give the factor minimal weight in *LSU*. In addition to an LSU case 11 years prior involving the same program, CSUN noted that LSU has a pending case that was referred to the Independent Accountability Resolution Process (IARP). The COI has traditionally afforded less weight to this factor when cases occurred more than 10 years prior. Additionally, the IARP case has not yet been decided, meaning that it is not yet part of LSU's infractions history and is not relevant to the analysis of Bylaw 19.9.3-(b).

The COI has afforded this factor significant weight when institutions have recently had prior infractions cases. *See Georgia Institute of Technology (Georgia Tech) (2021)* (giving Bylaw 19.9.3-(b) significant weight when presented with the institution’s fourth case in the past decade, with the most recent case occurring two years prior); *Florida A&M University (FAMU) (2019)* (giving Bylaw 19.9.3-(b) significant weight where the institution had a similar case four years prior and had systemic eligibility and certification infractions dating back 20 years); and *San Jose State University (2018)* (giving Bylaw 19.9.3-(b) significant weight where the institution had a case three years prior involving similar CARA violations). To be clear, there is no set time frame for affording this factor significant weight, although the COI has generally afforded cases that occurred more than 10 years prior with less or no weight. That is different from CSUN’s infractions history. CSUN’s most recent infractions case occurred six years ago. Although the cases involved different violations, having two infractions cases involving the same sport program less than 10 years apart is not a common occurrence. Further, the present case involved violations in the men’s basketball program *after the 2016 case involved CSUN’s failure to monitor its men’s basketball program*. Stated directly, although this case does not involve a failure to monitor, CSUN’s attention to and focus on compliance in the men’s basketball program should have been paramount. Due to the proximity of a prior case within the same sport program, the panel affords this factor significant weight.

In addition to the agreed-upon factors, the panel determines that Bylaw 19.9.3-(m) applies to CSUN. The COI traditionally applies Bylaw 19.9.3-(m) to institutions when an individual’s conduct is directly tied to performing institutional responsibilities. A recent Infractions Appeals Committee (IAC) decision emphasized that there “must be a nexus or connection of action or inaction by the institution relevant to the violation,” which, among other examples, may be demonstrated by the presence of a head coach responsibility violation. *See Georgia Institute of Technology, IAC Decision No. 524 (2021)*. Here, the parties agreed that the head coach violated head coach responsibility legislation. Moreover, the violations occurred as a result of coaches carrying out institutionally derived responsibilities—*i.e.*, recruiting—in an inappropriate manner. However, CSUN argued that there must be more than a mere Bylaw 11 violation and that “specific factual findings of action or inaction” are required to demonstrate the appropriate nexus. Although CSUN applies its own interpretation of the IAC’s decision, the facts of the case support the application of Bylaw 19.9.3-(m) under both the IAC’s standard as well as CSUN’s narrower version.

Bylaw 19.9.3-(m) has been applied on a case-by-case basis. In multiple recent cases, the COI has applied the factor to an institution when the case also involved a head coach responsibility violation. *See The Ohio State University (2022)* (applying the factor to the institution when two head coaches violated Bylaw 11 when they were personally involved in violations within their respective programs) and *Missouri State University (2021)* (applying the factor where a head coach’s Bylaw 11 violation and the institution’s failure to monitor its women’s volleyball program demonstrated a sufficient nexus between the institution and the violations). By their nature, head coach responsibility violations involve action or inaction by leaders of sport programs and demonstrate a culture of active or permissive noncompliance in the program—thus, establishing an institutional nexus. Although CSUN asserts that a head coach responsibility violation alone is

insufficient to support the application of this factor, the COI has viewed head coach responsibility violations, in and of themselves, as being demonstrative of institutional inaction in accordance with the IAC's standard.

Further, even under CSUN's preferred standard, the factor applies. Specifically, at the expedited hearing CSUN's associate AD noted that he had concerns about the men's basketball coaching staff. However, he appears to have only addressed those concerns through informal conversations. In that way, the associate AD's actions, or lack thereof, were inadequate. These compliance-related shortcomings contributed to the culture in which the violations occurred. The panel takes the same approach here. Thus, this factor applies.

Regarding the last aggravating factor, the enforcement staff identified Bylaw 19.9.3-(o), *Other facts warranting a higher penalty range*, because the violations occurred during the COVID-19 recruiting dead period. The panel declines to apply this factor because the institution took reasonable steps to comply with the dead period and promote health and safety on its campus. *See LSU* (declining to apply Bylaw 19.9.3-(o) where the institution took appropriate measures to attempt to prevent violations of the COVID-19 recruiting dead period). Therefore, this factor does not apply.

Turning to CSUN's mitigating factors, the panel accepts five of the agreed-upon mitigators including Bylaw 19.9.4-(a), *Prompt self-detection and self-disclosure of the violations*, Bylaw 19.9.4-(b), *Prompt acknowledgment of the violation, acceptance of responsibility and imposition of meaningful corrective measures and penalties*, Bylaw 19.9.4-(c), *Affirmative steps to expedite final resolution of the matter*, Bylaw 19.9.4-(d), *An established history of self-reporting Level III/secondary violations*, and Bylaw 19.9.4-(f), *Exemplary cooperation*. However, the panel declines to apply Bylaw 19.9.4-(e), *Implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/ coaches' control standards*.

In declining to apply agreed-upon factor Bylaw 19.9.4-(e), the panel noted that CSUN's compliance efforts were already accounted for by Bylaw 19.9.4-(a). Further, the panel determined that the conduct of the three involved coaches demonstrated that CSUN's compliance systems were not adequately adopted and implemented by the men's basketball coaching staff and did not ensure satisfaction of head coach control standards, a violation to which CSUN agreed. CSUN disagreed with the panel's analysis and claimed that it met the established standard for applying this factor, particularly because the COI applied the factor in *LSU* on the basis of the institution's rules education. The panel is not persuaded, and the factor does not apply.

The COI has traditionally stated that Bylaw 19.9.4-(e) only applies when an institution has compliance systems in place at the time of a violation and those systems detect the violations in a timely manner. *See Ohio State* (declining to apply the factor where the violations went undetected for several years). Notably, this factor was applied to the institution in *LSU* because LSU took comprehensive measures to educate the football staff and deter violations during prospects' visits to campus. More specifically, LSU held a special rules education session for all football staff the day before a group of 14 prospects was due to arrive in the vicinity of campus. The COI

determined that these efforts demonstrated a proactive compliance system designed to ensure rules compliance and prevent the exact type of violation that ultimately occurred. While the panel does not disagree that CSUN provided timely rules education, the education provided in *LSU* occurred in preparation of the prospects' visits and focused on the exact types of violations that ended up occurring. *LSU*'s efforts were more comprehensive and targeted than reminder emails pertaining to the dead period.

Additionally, the latter half of Bylaw 19.9.4-(e) specifically requires that institutions implement systems that ensure satisfaction of coach control standards. The coaches' involvement in intentional violations weighs against applying this factor. Beyond the fact that CSUN agreed that a head coach responsibility violation occurred, both the head coach and assistant coach 1 made concerning claims at the expedited hearing regarding the lack of communication and education they received. More troubling to the panel, CSUN's associate AD acknowledged that he had concerns with the head coach's commitment to head coach responsibility and that he was concerned about the potential for "hidden" violations within the program. These comments indicate that, despite CSUN's efforts, their compliance systems did not promote head coach control standards within the men's basketball program.

Furthermore, the COI has often declined to apply mitigating factors where their application would be based on conduct already accounted for by another factor. *See Ohio State* (declining to apply Bylaw 19.9.4-(i) where the institution's investigative efforts had already been credited by affording it exemplary cooperation). In this case, the effective components of CSUN's compliance program involved the equipment manager's identification and reporting of a potential violation. The COI recognizes those facts through Bylaw 19.9.4-(a). More is required for Bylaw 19.9.4-(e) to apply. Accordingly, the panel declines to apply this factor.

Regarding the final mitigating factor, CSUN argues that Bylaw 19.9.4-(f) should have received significant weight. Specifically, CSUN feels that the panel overlooked its exemplary cooperative efforts, which included conducting numerous interviews, identifying relevant documents, expending significant resources during the investigation and reporting the violations to the enforcement staff within 72 hours of their occurrence. The COI has consistently emphasized that exemplary cooperation is a high bar. Despite CSUN's claims that the panel ignored the importance of its exemplary cooperation, the application of this factor has generally served as a significant acknowledgment of an institution's efforts. Therefore, the panel assigns normal weight to this factor.

CSUN disagreed with the panel's classification of this case as Level II-Standard. Beyond disagreeing with several factors, CSUN claimed that, even accepting the four aggravating and five mitigating factors proposed by the panel, the case should be classified as Level II-Mitigated. Bylaw 19.9.2 vests the COI with the authority to apply and weigh factors to classify a case. Bylaw 19.9.2.2 defines a standard case as one in which aggravating and mitigating factors for a party are generally equal weight. Although this case involves four aggravating factors and five mitigating factors for CSUN, the panel's classification of a case is more than a numerical analysis. *See* Bylaw 19.9.2.3 (stating that a case should not be classified as mitigated solely because the number of

mitigating factors is larger than the number of aggravating factors). Notably, one aggravator—Bylaw 19.9.3-(b)—received significant weight. Because the factors are of generally equal weight, CSUN’s case is appropriately classified as Level II-Standard.

Head Coach’s Factors

Regarding the head coach, he and the enforcement staff agreed on the application of three aggravating factors and two mitigating factors. The panel applies each of those factors. The enforcement staff also proposed three additional aggravating factors, which the panel applies. Further, the head coach proposed one additional mitigating factor that the panel declines to apply. Thus, the head coach received six aggravating factors and two mitigating factors. The panel classifies his violations as Level II-Aggravated.

With respect to aggravating factors, the panel accepts the parties’ agreement that Bylaw 19.9.3-(b), *A history of Level I, Level II or major violations*, Bylaw 19.9.3-(g), *Multiple Level II violations*, and Bylaw 19.9.3-(h), *Persons of authority condoned, participated in or negligently disregarded the violation or wrongful conduct*, apply to the head coach’s conduct. In reviewing the aggravating factors proposed by the enforcement staff, the panel determines that Bylaw 19.9.3-(j), *Conduct or circumstances demonstrating an abuse of a position of trust*, Bylaw 19.9.3-(m), *Intentional, willful or blatant disregard for the NCAA constitution and bylaws*, and Bylaw 19.9.3-(o), *Other facts warranting a higher penalty range*, also apply.

The COI typically applies Bylaw 19.9.3-(j) when an individual in a position of trust—often a coach—involves other individuals in violations, particularly if those individuals are student-athletes and prospects. *See Oklahoma State University (2020)* (applying the factor to the associate head men’s basketball coach, who introduced a student-athlete to a financial advisor in exchange for cash bribes from the advisor). The head coach agreed that he engaged in violations of recruiting legislation and that those violations involved his assistant coaches, a graduate manager, a student-athlete, two prospects and one prospect’s mother. Although the head coach claimed that this factor requires misleading or expressly encouraging individuals to violate NCAA legislation, such a standard has not been expressed by the COI. Thus, the panel applies this factor.

Moreover, regarding Bylaw 19.9.3-(m), the head coach asserted that this factor should be given little weight due to his mental state at the time of the violations. The COI traditionally applies this factor when individuals knowingly violate NCAA legislation. *See DePaul* (applying the factor to the associate head coach who knowingly violated recruiting legislation) and *University of Missouri, Columbia (2019)* (applying the factor to a tutor who knowingly engaged in academic misconduct on behalf of student-athletes). At the expedited hearing, the head coach acknowledged that he knowingly engaged in violations of NCAA legislation. Although the panel is sympathetic to the negative impact that the COVID-19 pandemic had on many individuals—including coaches—those circumstances do not absolve individuals who intentionally commit NCAA violations. The panel applies this factor and gives it normal weight.

Lastly, the panel applies Bylaw 19.9.3-(o). As previously stated, the COVID-19 recruiting dead period was implemented to protect health, safety and fairness within collegiate athletics.

Arranging for prospects to visit campus, meet with coaches and staff members, take tours and go out to eat at restaurants put the health and safety of the prospects, staff, and others at risk. Moreover, it provided the men's basketball program with recruiting opportunities not available to other institutions, programs and coaches who complied with the mandated dead period. The application of this factor to the head coach is consistent with recent guidance involving impermissible recruiting contacts during the recruiting dead period. *See LSU* (applying the factor to an associate head coach and an assistant recruiting director whose recruiting contacts occurred during the COVID-19 recruiting dead period). Due to the health and safety risks posed by the head coach's conduct and the recruiting advantage realized in this case, this factor applies.

Regarding mitigating factors, the panel accepts that Bylaw 19.9.4-(b), *Prompt acknowledgement of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties*, and Bylaw 19.9.4-(c), *Affirmative steps to expedite final resolution of the matter*, apply. However, the COI declines to apply Bylaw 19.9.4-(i), *Other facts warranting a lower penalty range*.

At the expedited hearing, the head coach spent a significant portion of time outlining his rationale for why Bylaw 19.9.4-(i) should apply. His arguments revolved around the negative impact of the COVID-19 pandemic on the head coach's mental state and, ultimately, his decision making. To be clear, the panel is sympathetic to the challenges coaches faced during the pandemic. The head coach was responsible for leading a program during a time of constant uncertainty. Additionally, the requirements of CSUN's state and local COVID-19 guidelines required the men's basketball coaching staff to be almost, if not entirely, alone on campus. This caused the head coach to feel isolated and unsupported.

Although the panel does not wish to diminish the head coach's experience, it notes that these challenging circumstances were experienced by countless coaches around the country. In other words, the universal hardships of the COVID-19 pandemic do not excuse the head coach's decision to violate fundamental recruiting legislation. Moreover, at the expedited hearing, the head coach acknowledged that he did not reach out to the athletics department staff to inform them of his situation or request support. He also declined to take a recommended leave of absence from his position. Had the head coach felt that his decision making was compromised, taking these steps could have prevented the violations.

The COI rarely applies this factor absent unique facts and circumstances—even in situations where significant personal hardship is involved. *See Houston* (declining to apply Bylaw 19.9.4-(i) where the head coach identified tragic personal circumstances after separating from the institution, but those circumstances were not present at the time she engaged in NCAA violations) and *Brigham Young University* (2018) (declining to apply Bylaw 19.9.4-(i) in an SDR to the institution when it claimed the violations occurred, in part, due to significant personal circumstances of a student-athlete). Although these cases have facts that distinguish them from the present case, *e.g.*, the timing of the hardships compared to when the violations occurred, they reinforce the COI's position that personal hardship and difficulty have not established unique facts warranting mitigation. As in these cases, the panel declines to apply Bylaw 19.9.4-(i).

Assistant Coach 1's Factors

In terms of assistant coach 1, he and the enforcement staff agreed on the application of two aggravating factors and three mitigating factors. The panel applies each of those factors. The enforcement staff also proposed three additional aggravating factors, while assistant coach 1 proposed two additional mitigating factors. The panel applies each of the aggravating factors but declines to apply assistant coach 1's proposed mitigating factors. Thus, assistant coach 1 has five aggravating factors and three mitigating factors. The panel classifies his violations as Level II-Aggravated.

With respect to aggravating factors, the panel accepts the parties' agreement that Bylaw 19.9.3-(h), *Persons of authority condoned, participated in or negligently disregarded the violation or wrongful conduct*, and Bylaw 19.9.3-(m), *Intentional, willful or blatant disregard for the NCAA constitution and bylaws*, apply to assistant coach 1's conduct. In reviewing the aggravating factors proposed by the enforcement staff, the panel also determines that Bylaw 19.9.3-(g), *Multiple Level II violations*, Bylaw 19.9.3-(j), *Conduct or circumstances demonstrating an abuse of a position of trust*, and Bylaw 19.9.3-(o), *Other facts warranting a higher penalty range*, also apply.

The COI consistently applies Bylaw 19.9.3-(g) whenever multiple Level II violations occur. Assistant coach 1 agreed that he was involved in arranging prospect 1's visit to campus during the COVID-19 recruiting dead period which resulted in a Level II violation. Although he asserted that his impermissible text communication with prospect 3, who was not yet in the transfer portal, amounted to a less significant violation, he still agreed that the violation could be classified as Level II. Therefore, in accordance with the plain text of the factor, Bylaw 19.9.3-(g) applies.

As mentioned above, the COI typically applies Bylaw 19.9.3-(j) when an individual in a position of trust—often a coach—involves other individuals in violations, particularly if those individuals are student-athletes and prospects. *See Oklahoma State*. In disputing this factor, assistant coach 1 claimed that he was acting at the head coach's instruction with regard to the impermissible visits and recruiting contacts. Although the head coach initially instructed assistant coach 1 to arrange transportation for prospect 1, assistant coach 1 did so by delegating the task to a graduate manager. He also reached out to a student-athlete for assistance with showing prospect 1 around campus. As a result of these actions, assistant coach 1 involved individuals who trusted him in the violations. Additionally, assistant coach 1 continued to engage in several subsequent recruiting contacts with prospects 1 and 2 throughout their visits. At no point did he question the head coach or attempt to report the violations to compliance. Moreover, assistant coach 1 neglected to address the impact of his impermissible text messages with prospect 3—a violation in which only he was involved—on the applicability of this factor. This factor applies.

Lastly, the panel applies Bylaw 19.9.3-(o) to assistant coach 1 for the same reasons it applied to the head coach—his actions endangered the health and safety of the numerous individuals he came into contact with and otherwise involved in the violations. His actions also provided the CSUN men's basketball program with a recruiting advantage over compliant institutions. *See LSU*.

Regarding mitigating factors, the panel accepts that Bylaw 19.9.4-(b), *Prompt acknowledgement of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties*, Bylaw 19.9.4-(c), *Affirmative steps to expedite final resolution of the matter*, and Bylaw 19.9.4-(h), *The absence of prior conclusions of Level I, Level II or major violations*, apply. However, the COI declines to apply Bylaw 19.9.4-(f), *Exemplary cooperation*, and Bylaw 19.9.4-(i), *Other facts warranting a lower penalty range*.

When addressing Bylaw 19.9.4-(f), the COI has consistently stated that exemplary cooperation is a high bar and simply meeting the legislated obligation to cooperate does not warrant application of the factor. It is uncontested that assistant coach 1 met his obligation to cooperate. Assistant coach 1 outlined his cooperative efforts—including, sitting for interviews and working to expedite the resolution of this matter—that he believed support the application of this bylaw. Although appreciated by the panel, these actions are basic requirements of all current and former staff members in the infractions process. Moreover, the COI has rarely applied this factor to an involved individual, only doing so when individuals far exceed their legislated obligations. *See University of Northern Colorado (2017)* (determining the factor applied to two assistant coaches and a graduate assistant who promptly admitted to the violations, sat for multiple interviews, went to great lengths to participate in the infractions hearing and provided candid information that assisted the panel in its consideration of the case). The panel declines to apply this factor.

Finally, for Bylaw 19.9.4-(i) to apply, an individual must demonstrate unique circumstances warranting additional mitigation. In support of his argument, assistant coach 1 relied on the panel's application of the factor in *University of Southern California (USC) (2021)*. In that case, the COI applied the factor to an assistant coach who was characterized as the least culpable defendant in the SDNY cases and participated in the infractions process, which distinguished him from other involved coaches. Similarly, assistant coach 1 characterized himself as the least culpable coach in this case and emphasized his cooperative efforts. As a starting point, there is a significant difference between a federal judge's characterization of criminal defendants and assistant coach 1's individual analysis of his own culpability in relation to his colleagues. Moreover, assistant coach 1 was involved in both Violation Nos. 1 and 2. Beyond the unique circumstances in *USC*, being the least culpable actor in a case has not warranted the COI's application of this factor in other past cases. Therefore, the panel declines to apply this factor.

Assistant Coach 2's Factors

Lastly, assistant coach 2 and the enforcement staff agreed on the application of one aggravating factor and two mitigating factors. The panel applies each of these factors. The enforcement staff also proposed four additional aggravating factors, while assistant coach 2 proposed two additional mitigating factors. The panel applies each of the aggravating factors but declines to apply assistant coach 2's proposed mitigating factors. Thus, assistant coach 2 has five aggravating factors and two mitigating factors.

With respect to aggravating factors, the panel accepts the parties' agreement that Bylaw 19.9.3-(h), *Persons of authority condoned, participated in or negligently disregarded the violation or wrongful conduct*, applies to assistant coach 2's conduct. In reviewing the aggravating factors

proposed by the enforcement staff, the panel also determines that Bylaw 19.9.3-(b), *A history of Level I, Level II or major violations*, Bylaw 19.9.3-(j), *Conduct or circumstances demonstrating an abuse of a position of trust*, Bylaw 19.9.3-(m), *Intentional, willful or blatant disregard for the NCAA constitution and bylaws*, and Bylaw 19.9.3-(o), *Other facts warranting a higher penalty range*, also apply.

As the language of the bylaw suggests, the COI has traditionally applied Bylaw 19.9.3-(b) to involved individuals with a prior infractions history. It is uncontested that assistant coach 2 was involved in prior violations of NCAA legislation in 1998. The COI has previously applied Bylaw 19.9.3-(b) to involved individuals when they have been involved in prior infractions cases. *See Auburn University (2021)* (concluding that the factor applied to a head coach, but affording it minimal weight, in part, because 10 years had passed since his prior violations). Although the panel applies this factor, it affords it minimal weight due to the significant amount of time that has passed since assistant coach 2's previous violations.

As previously stated, the COI typically applies Bylaw 19.9.3-(j) when an individual in a position of trust involves other individuals in violations. In the SDR, assistant coach 2 agreed that he arranged for prospect 2 and his mother to visit campus. He also met with that prospect at a restaurant and briefly met with prospect 1 during his visit to campus. In accordance with case guidance, the panel applies this factor.

Moreover, regarding Bylaw 19.9.3-(m), assistant coach 2 asserted that this factor should not apply because he mistakenly believed his actions were permissible. The COI typically applies this factor in cases where an individual knew *or should have known* that their conduct violated NCAA legislation. *See Ohio State and DePaul*. Assistant coach 2 had decades of coaching experience. Although the COVID-19 recruiting dead period was unprecedented, it required coaches to abide by traditional dead period legislation. It is unfathomable that a veteran coach would not understand the limitations of a recruiting dead period. Thus, taking into account assistant coach 2's significant coaching experience, the panel determines that this factor applies.

Consistent with both other coaches, the panel applies Bylaw 19.9.3-(o) for the same reasons that it applied to the head coach and assistant coach 1—assistant coach 2 endangered individuals' health and safety by engaging in recruiting activity during the COVID-19 recruiting dead period and provided the CSUN men's basketball program with a recruiting advantage not realized by those institutions who complied with the dead period. *See LSU*.

Regarding mitigating factors, the panel accepts that Bylaw 19.9.4-(b), *Prompt acknowledgement of the violation, acceptance of responsibility and imposition of meaningful corrective measures and/or penalties*, and Bylaw 19.9.4-(c), *Affirmative steps to expedite final resolution of the matter*, apply. However, the COI declines to apply Bylaw 19.9.4-(g), *Violations were unintentional, limited in scope and represent a deviation from otherwise compliant practices*, and Bylaw 19.9.4-(i), *Other facts warranting a lower penalty range*.

In terms of Bylaw 19.9.4-(g), the COI has previously stated that application of this factor requires a party to show all three prongs of the bylaw— unintentional violations, limited violations and a deviation from compliant practices—for the factor to apply. Although distant, assistant coach 2’s prior infractions history impacts the panel’s ability to conclude that these violations were a deviation from otherwise compliant practices. Moreover, and as previously explained, the panel determines that assistant coach 2 knew or should have known that his conduct did not comply with the COVID-19 recruiting dead period. Thus, the factor cannot apply to the facts of this case.

With respect to Bylaw 19.9.4-(i), an individual must demonstrate unique facts and circumstances. Although the panel considered assistant coach 2’s level of involvement in the violations compared to other members of the coaching staff, the panel does not believe the facts support application of this factor.

All penalties prescribed 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. In prescribing penalties, the panel considered CSUN’s cooperation in all parts of this case and determines it was consistent with CSUN’s obligation under Bylaw 19.2.3. The panel also considered CSUN’s corrective actions, which are contained in Appendix One. The panel prescribes the following penalties:

Core Penalties for Level II-Standard Violations (Bylaw 19.9.5)¹⁶

1. Probation: Three years of probation from December 16, 2022, through December 15, 2025.
2. Financial Penalty: CSUN shall pay a fine of \$5,000 plus one percent of the men’s basketball budget.¹⁷
3. Recruiting Restrictions:
 - a. CSUN shall prohibit unofficial visits in men’s basketball for one week during the 2022-23 academic year. (self-imposed)
 - b. CSUN shall prohibit recruiting communication in men’s basketball for one week during the 2022-23 academic year. (self-imposed)

Core Penalties for Level II-Aggravated Violations (Bylaw 19.9.5)

4. Show Cause Order: The head coach violated NCAA recruiting legislation when he arranged a prospect’s impermissible visit to campus during the COVID-19 recruiting dead period,

¹⁶ All penalties must be completed during the time periods identified in this decision. If completion of a penalty is impossible during the prescribed period, the institution shall notify the COI of the impossibility and must complete the penalty at the next available opportunity.

¹⁷ The fine shall be paid consistent with COI Internal Operating Procedures 5-15-4 and 5-15-4-1.

engaged in impermissible recruiting contacts with two prospects, provided inducements and facilitated an impermissible tryout. These violations demonstrate that the head coach failed in his responsibility to promote an atmosphere of compliance and monitor his staff within the men's basketball program. Therefore, the head coach shall be subject to a three-year show-cause order from December 16, 2022, through December 15, 2025.¹⁸ Pursuant to COI IOP 5-15-3-1, if the head coach seeks employment or affiliation with any athletically related position at an NCAA member institution during the three-year show-cause period, any employing institution shall be required to contact the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why restrictions on all athletically related activity should not apply.

Head coach restriction: As part of this show-cause order, and pursuant to Bylaw 19.9.5.5, the head coach shall be suspended from 40 percent of the first season following the conclusion of his show-cause order should he become employed at an NCAA member institution. During the period of suspension, the head coach is prohibited from performing all coaching and recruiting activities and may not have any contact with members of his men's basketball staff, student-athletes and prospective student-athletes. The provisions of this suspension require that the head coach not be present in the facility where the contests are played and have no contact or communication with men's basketball coaching staff members or student-athletes during the 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.

Although each case is unique, the show-cause order and head coach restrictions are consistent with those prescribed in previous cases involving Level II-Aggravated violations. *See Siena* (prescribing a three-year show-cause order and a 30 percent suspension of his first season of employment to a head men's basketball coach who provided impermissible benefits to student-athletes) and *Sam Houston* (prescribing a three-year show-cause order with a suspension of 30 percent of his first season of employment to a head women's tennis coach who violated recruiting, head coach responsibility and unethical conduct legislation). As in these cases, the show-cause order and suspension fall within the membership approved penalty guidelines.

5. Show-cause order: Assistant coach 1 violated NCAA recruiting legislation when he arranged a prospect's impermissible visit to campus during the COVID-19 recruiting dead period and had impermissible recruiting contacts with two prospects. The assistant coach also impermissibly texted a prospect prior to receiving authorization through the notification of transfer process. Therefore, assistant coach 1 shall be subject to a two-year show-cause order from December 16, 2022, through December 15, 2024. Pursuant to COI IOP 5-15-3-1, if

¹⁸ The head coach is currently serving a one-year show-cause order due to his involvement in another infractions case, *North Carolina State University* (2021), that was resolved through the Independent Accountability Resolution Process. This show-cause order will run consecutively to his current show-cause order, which is set to end on December 19, 2022.

assistant coach 1 seeks employment or affiliation with any athletically related position at an NCAA member institution during the two-year show-cause period, any employing institution shall be required to contact the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why restrictions on all athletically related activity should not apply.

Although each case is unique, the show-cause order is consistent with those prescribed in prior Level II-Aggravated cases. *See Houston* (concluding that a head coach's Level II-Aggravated case resulting from CARA and head coach responsibility violations supported a two-year show-cause order); *UCSB* (prescribing a two-year show-cause order to a head coach where their provision of inducements and benefits resulted in a Level II-Aggravated case); and *Prairie View A&M* (concluding that a Level II-Aggravated unethical conduct violation occurred and prescribing a two-year show order for an assistant men's basketball coach who knowingly arranged payment for an online course a student-athlete needed to regain eligibility). As with these cases, the show-cause order falls within the membership-approved penalty guidelines.

6. Show-cause order: Assistant coach 2 violated NCAA recruiting legislation when he arranged for a prospect and his mother to impermissibly visit campus during the COVID-19 recruiting dead period and had impermissible recruiting contacts with two prospects. Therefore, the assistant coach shall be subject to a two-year show-cause order from December 16, 2022 through December 15, 2024. Pursuant to COI IOP 5-15-3-1, if assistant coach 2 seeks employment or affiliation with any athletically related position at an NCAA member institution during the two-year show-cause period, any employing institution shall be required to contact the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why restrictions on all athletically related activity should not apply.

Although each case is unique, the two-year show-cause order is consistent with those prescribed in prior Level II-Aggravated cases. *See Houston; UCSB; and Prairie View A&M.* Again, as with these cases, the show-cause order falls within the membership-approved penalty guidelines.

Additional Penalties for Level II-Standard Violations (Bylaw 19.9.7)

7. Public reprimand and censure through the release of the public infractions decision.
8. During the period of probation, CSUN shall:
 - a. Continue to develop and implement a comprehensive educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for recruiting and certification legislation.

- b. Submit a preliminary report to the OCOI by January 31, 2023, setting forth a schedule for establishing this compliance and educational program.
 - c. File with the OCOI a final compliance report indicating the progress made with this program by November 1st during each year of probation. Particular emphasis shall be placed on education and monitoring related to recruiting contacts—particularly during dead and quiet periods—and recruiting inducements.
 - d. Inform prospects in the men’s basketball program that CSUN is on probation for three years and detail the violations committed. If a prospect takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospect signs a National Letter of Intent.
 - e. Publicize specific and understandable information concerning the nature of the infractions by providing, at a minimum, a statement to include the types of violations and the affected sport program and a direct, conspicuous link to the public infractions decision located on the athletic department's main webpage "landing page" and in the media guides for the football program. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the case; and (iii) give members of the general public a clear indication of what happened in the case to allow the public (particularly prospects and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.
9. Following the receipt of the final compliance report and prior to the conclusion of probation, CSUN’s president shall provide a letter to the COI affirming that CSUN’s current athletics policies and practices conform to all requirements of NCAA regulations.
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The COI advises CSUN, the head coach, assistant coach 1 and assistant coach 2 that they should take every precaution to ensure that they observe the terms of the penalties. The COI will monitor CSUN 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 CSUN does not comply or commits additional violations. Likewise, any action by CSUN, the head coach, assistant coach 1 or assistant coach 2 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

Rich Ensor
Jason Leonard
Kay Norton, Chief Hearing Officer
Joseph Novak
Joel Maturi
Dave Roberts
Tricia Turley Brandenburg

APPENDIX ONE

**CSUN'S CORRECTIVE ACTIONS AS IDENTIFIED IN THE JULY 12, 2022,
SUMMARY DISPOSITION REPORT**

1. The institution ceased recruitment of the two involved prospects immediately upon learning of the violations.
2. The institution will enhance rules education for athletics administration and sport-specific positions, such as managers for sports and equipment managers. The institution identified this as a key focus area as this case revealed the importance of tailoring education to specific positions and individuals who may be asked to carry out tasks by coaches. The institution determined additional efforts to enhance this education would only help to strengthen its robust compliance system.
3. When the interim staff was appointed in July 2021, the institution's compliance office met with the interim head coach and each new staff member immediately after their official hiring date. Since that time, the institution has provided regular and timely education and communication with the new staff. Since the institution has returned to having all personnel on campus, compliance has had daily face-to-face interaction with the staff. All of the men's basketball staff operated out of a conference room adjacent to compliance in the same building during the first men's basketball season. The compliance staff provided formal rules education monthly. Given the institution was under investigation, CSUN wanted to ensure that the interim staff was provided all the compliance resources and access it needed and that any potential issues were quickly identified and addressed appropriately. Further, the interim head coach hired had been a Division I head basketball coach before but had not been in a coaching position since 2018. Making certain he was educated on current NCAA rules and supported by the compliance staff was a priority for the institution.
4. The institution reallocated \$20,000 from the men's basketball budget to another sport for 2021-22 in part as a punitive measure given the violations that had been substantiated and in part as an effort to reallocate resources to a sport program where they could be better utilized.
5. The institution placed the three involved coaches on paid administrative leave starting April 29, 2021. As of January 1, 2022, CSUN no longer employed the head coach. As of April 30, 2022, CSUN no longer employed assistant coaches 1 or 2.

APPENDIX TWO
Bylaw Citations

2020-21 Division I Manual

11.1.1.1 Responsibility of Head Coach. An institution's head coach is presumed to be responsible for the actions of all institutional staff members who report, directly or indirectly, to the head coach. An institution's head coach shall promote an atmosphere of compliance within his or her program and shall monitor the activities of all institutional staff members involved with the program who report, directly or indirectly, to the coach.

13.02.5.5 Dead Period. A dead period is a period of time when it is not permissible to make in-person recruiting contacts or evaluations on or off the institution's campus or to permit official or unofficial visits by prospective student-athletes to the institution's campus. It remains permissible, however, for an institutional staff member to write or telephone a prospective student-athlete during a dead period.

13.1.1.3 Four-Year College Prospective Student-Athletes. An athletics staff member or other representative of the institution's athletics interests shall not make contact with the student-athlete of another NCAA Division I institution, directly or indirectly, without first obtaining authorization through the notification of transfer process. Before making contact, directly or indirectly, with a student-athlete of an NCAA Division II or Division III institution, or an NAIA four-year collegiate institution, an athletics staff member or other representative of the institution's athletics interests shall comply with the rule of the applicable division or the NAIA rule for making contact with a student-athlete.

13.1.2.1 General Rule. All in-person, on- and off-campus recruiting contacts with a prospective student-athlete or the prospective student-athlete's family members shall be made only by authorized institutional staff members. Such contact, as well as correspondence and telephone calls, by representatives of an institution's athletics interests is prohibited except as otherwise permitted in this section.

13.2.1 General Regulation. An institution's staff member or any representative of its athletics interests shall not be involved, directly or indirectly, in making arrangements for or giving or offering to give any financial aid or other benefits to a prospective student-athlete or his or her family members or friends, other than expressly permitted by NCAA regulations. Receipt of a benefit by a prospective student-athlete or his or her family members or friends is not a violation of NCAA legislation if it is determined that the same benefit is generally available to the institution's prospective students or their family members or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability.

13.2.1.1 Specific Prohibitions. Specifically prohibited financial aid, benefits and arrangements include, but are not limited to, the following:

(b) Gift of clothing or equipment.

13.5.1 General Restrictions. An institution may not provide transportation to a prospective student-athlete other than on an official paid visit or, on an unofficial visit, to view a practice or competition site in the prospective student-athlete's sport and other institutional facilities and to attend a home athletics contest at any local facility when accompanied by an institutional staff member. During the official paid visit, transportation may be provided to view a practice or competition site and other institutional facilities located outside a 30-mile radius of the institution's campus.

13.5.3 Transportation on Unofficial Visit. During any unofficial recruiting visit, the institution may provide the prospective student-athlete with transportation to view practice and competition sites in the prospective student-athlete's sport and other institutional facilities and to attend a home athletics contest at any local facility. The institution may use an institutional vehicle normally used to transport prospective students visiting campus, an institutional vehicle normally used to transport the institution's athletics team or the personal vehicle of an institutional staff member. An institutional staff member must accompany the prospective student-athlete during such transportation. Payment of any other transportation expenses, shall be considered a violation.

13.7.3.1. General Restrictions. During an unofficial visit, the institution may not pay any expenses or provide any entertainment except a maximum of three complimentary admissions (issued only through a pass list) to a home athletics event at any facility within a 30-mile radius of a member institution's main campus in which the institution's intercollegiate team practices or competes. Such complimentary admissions are for the exclusive use of the prospective student-athlete and those persons accompanying the prospective student-athlete on the visit and must be issued on an individual-game basis. Such admissions may provide seating only in the general seating area of the facility used for conducting the event. Providing seating during the conduct of the event (including intermission) for the prospective student-athlete or those accompanying the prospective student-athlete in the facility's press box, special seating box(es) or bench area is specifically prohibited. Complimentary admissions may not be provided during a dead period, except as provided in Bylaw 13.7.3.5.

13.7.5 Off-Campus Contact Within One-Mile of Campus Boundaries. Off-campus contact between an institutional staff member and a prospective student-athlete (and those accompanying the prospective student-athlete) and off-campus contact between an enrolled student-athlete and a prospective student-athlete (and those accompanying the prospective student-athlete) may occur during an unofficial visit within one mile of campus boundaries.

13.11.1 Prohibited Activities. A member institution, on its campus or elsewhere, shall not conduct (or have conducted on its behalf) any physical activity (*e.g.*, practice session or test/tryout) at which one or more prospective student-athletes (as defined in Bylaws 13.11.1.1 and 13.11.1.2) reveal, demonstrate or display their athletics abilities in any sport except as provided in Bylaws 13.11.2 and 13.11.3.

APPENDIX THREE
Amended Determination on Remand

Classification and Penalty Determination

Recently, the panel reconvened to consider the remand in this case from the Division I Infractions Appeals Committee (IAC). The remand stemmed from CSUN's appeal of several aggravating and mitigating factors that resulted in its Level II-Standard classification, as well as the corresponding probationary and financial penalties. On appeal, the IAC reversed the panel's decisions with regard to two factors—removing one aggravating factor originally applied by the panel and applying one mitigating factor originally rejected by the panel.¹ The IAC then remanded the case to the panel to classify and assess the probationary and financial penalties in light of the new composition of aggravating and mitigating factors.

Following the processes outlined in NCAA Bylaw 19, the IAC's directive, and pursuant to Bylaws 19.9.2 and 19.9.2.2, the panel continues to classify CSUN's case as Level II-Standard.² Consistent with the ranges identified for Level II-Standard probationary and financial penalties in Figure 19-1, the panel maintains CSUN's important and warranted three-year probationary period but reduces the financial penalty to \$5,000 plus 0.5% of the men's basketball budget.³

In making these changes, the panel acknowledges the IAC's legislated authority to vacate and remand COI decisions. The panel takes seriously its obligation to abide by the membership-approved legislative parameters that govern the infractions process. Adherence to the legislated process promotes trust and confidence within the membership in its infractions program. Conversely, failure to do so erodes trust in the infractions program. The panel is extremely troubled by what appears to be the IAC's *de novo* review of the panel's decision. Both the substantive changes and the panel's broader policy observations are addressed in turn.

With respect to this case's classification, the IAC changed the applicable factors by requiring the panel to remove Bylaw 19.9.3-(m), *Intentional, willful or blatant disregard for the NCAA constitution and bylaws*, and add Bylaw 19.9.4-(e), *Implementation of a system of compliance methods designed to ensure rules compliance and satisfaction of institutional/coaches' control*

¹ CSUN also appealed the panel's decision to afford significant weight to Bylaw 19.9.3-(b), *A history of Level I, Level II or major violations by the institution*, and its decision to afford normal weight to Bylaw 19.9.4-(f), *Exemplary cooperation*. The IAC determined that the panel did not abuse its discretion when assigning weight to those factors.

² On January 1, 2023, a series of legislative changes related to the infractions process went into effect. Although not substantively impacted by these changes, the bylaws associated with case classification (Factors Affecting Penalties) were renumbered from Bylaw 19.9.2 to Bylaw 19.12.2. Because CSUN filed its appeal prior to January 1, 2023, this remand decision cites to the bylaws that were in place at the time of the appeal.

³ On January 11, 2023, the institution requested that the traditional stay of appealed penalties be lifted, and that the institution begin serving one year of probation and pay a \$5,000 fine. The IAC approved CSUN's request. CSUN's progress towards complying with its probationary and financial penalties shall be accounted for when determining its fulfillment of the penalties prescribed on remand.

standards. As a result, this case now involves three aggravating and six mitigating factors. Although the mitigating factors outnumber the aggravating factors, the panel emphasizes that classification is not solely a numerical analysis. Bylaw 19.9.2.3 plainly states that "[a] case should not be classified as mitigated solely because the number of mitigating factors is larger than the number of aggravating factors." Rather, it is a combination of the number and weight attributed to the factors based on the unique facts of each case. Therefore, the panel determines that the three aggravating and six mitigating factors in this case are still of generally equal weight, thus warranting "standard" classification pursuant to Bylaw 19.9.2.2.

In its decision, the IAC instructed the panel not to reassess or alter the weight of factors that were not appealed or vacated. As explained in the COI's original decision, all but one of the factors that the panel initially applied to CSUN received normal weight. The panel afforded one aggravating factor—Bylaw 19.9.3-(b), *A history of Level I, Level II or major violations*—significant weight due to CSUN's recent Level I violations *in the same sport program*. Thus, on remand, the panel needed to assess the weight of Bylaw 19.9.4-(e). For the reasons outlined below, the panel assigns the newly applied mitigating factor minimal weight.

When addressing the panel's original decision to not apply Bylaw 19.9.4-(e), the IAC lauded CSUN's provision of compliance education and its creation of a culture that led to the detection of the violations. The IAC also placed full responsibility for the violations on the involved coaches and stated that the panel failed to provide sufficient practical examples of what "more" CSUN could have done to monitor them. The panel is troubled by the IAC's assertion that the COI needs to identify express examples of what more CSUN could have done to improve its compliance systems. Creating such a list places new burdens on the COI outside of what the membership requires in Bylaw 19. Moreover, it requires the COI to speculate and establish requirements outside of the bylaws that will inevitably be questioned as insufficient, wrongly emphasized or incomplete on appeal.

Practically, this new standard is also confusing because, albeit in a different context (rebutting head coach responsibility), the IAC has previously stated that it is not the COI's responsibility to identify what more could have been done. *See Syracuse University, Head Men's Basketball Coach, Infractions Appeals Report No. 414 (2015)*. This new standard is a slippery slope and could very well lead to unintended outcomes that negatively affect the timeliness of the infractions process—now requiring even lengthier infractions decisions that include exhaustive lists of institutional failings that will inevitably take more time to draft and release, as well as an increase in appeals that claim the COI's analysis is insufficient or incomplete.

Notably, the IAC left the weight of Bylaw 19.9.4-(e) to the panel's discretion. The panel previously articulated its rationale for declining to apply Bylaw 19.9.4-(e) on pages 20 and 21 of its original decision and it expounded upon its rationale throughout the appellate process. The IAC disagreed. However, the panel's rationale remains relevant in determining the factor's weight. Simply put, the facts do not support anything more than minimal weight for this factor. Although CSUN may

have had a system it deemed appropriate on paper, it was not effective in practice. This is best demonstrated by the fact that *the entire coaching staff actively engaged in violations*.

At a minimum, CSUN's systems cannot be said to have been designed to ensure compliance with coaches' control standards, a literal requirement in the factor itself. In addition to the admitted head coach responsibility violation, CSUN's senior athletics leadership failed to take appropriate compliance-related actions. Specifically, the associate AD failed to adequately elevate—or make any changes to address—concerns with the head coach's commitment to head coach responsibility or the associate AD's concern for what he described as the potential for "hidden" violations within the men's basketball program. Further, regardless of who is to blame for the dysfunctional relationship between compliance and the men's basketball staff, the bottom line is that those communication and monitoring efforts were not adequate.

As the COI has repeatedly emphasized, compliance is a shared responsibility, and it takes more than a compliance program on paper to meet the membership's expectations for an adequate compliance system. *See University of Tennessee, Knoxville (2023)* (concluding that Tennessee failed to monitor and did not earn this factor despite having one of the most robust compliance programs the COI has encountered, but where the compliance program was not embraced and embodied by the football program).

To CSUN's credit, a staff member identified the potential violations and reported them shortly after the conduct occurred. In its original decision, the COI rewarded CSUN for these actions by applying Bylaw 19.9.4-(a), *Prompt self-detection and self-disclosure of the violations*, and providing it normal weight. The COI accepts the IAC's determination that the speed at which CSUN detected and reported the violations is relevant to whether Bylaw 19.9.4-(e) applies as an additional mitigator. However, those facts have already been accounted for and weighed through the application of Bylaw 19.9.4-(a), as explained in the original decision. The COI is not required to "double count" those facts in weighing Bylaw 19.9.4-(e). But the weight associated with Bylaw 19.9.4-(e) goes beyond simply having compliance systems in place. Weight hinges on the system's effectiveness. Here, while systems may have been in place to avoid a failure to monitor violation, they simply were not effective as evidenced by the agreed-upon facts and violations that occurred. As such, the panel applies minimal weight to the factor.

Additionally, the IAC noted that Bylaw 19.9.4-(e) was applied in a recent case involving, what the IAC considered to be, similar facts and underlying violations, and claimed its nonapplication in CSUN was arbitrary. *See Louisiana State University (LSU) (2022)*. However, the panel did distinguish CSUN from LSU in its decision and on appeal. The IAC's determination ignores that

the COI, as the trier of fact, is uniquely positioned to assess case-specific facts on a case-by-case basis and compare those facts with its own case precedent.⁴

The IAC's review—particularly under the legislated standards—does not contemplate the same depth of analysis. There were, and continue to be, substantive differences between the two cases that support differences in the application of Bylaw 19.9.4-(e). Those differences are clearly explained on pages 20-21 of the panel's decision and remain relevant on remand.

Despite the two committees' differing factual analyses, the panel complies with the IAC's directive and applies Bylaw 19.9.4-(e) to CSUN. However, for the same reasons that initially led the panel to decline to apply the factor, the panel affords Bylaw 19.9.4-(e) minimal weight. Recognizing the removal of an aggravating factor, the panel continues to believe this case is appropriately classified as Level II-Standard. Much of that analysis derives from the fact that Bylaw 19.9.3-(b), *A history of Level I, Level II or major violations*, received significant weight in the original decision. Again, this is CSUN's second case involving significant violations in its men's basketball program in a short period of time. That factor continues to weigh heavily in favor of a standard classification.

CSUN's case now involves three aggravating factors—one involving significant weight—and six mitigating factors—one involving minimal weight. Accordingly, after assessing the factors by weight and number, the panel determines that the Level II-Standard classification remains appropriate.

Because the classification of CSUN's case remains the same, the panel considered the appropriateness of the original penalties within the ranges for Level II-Standard cases in Figure 19-1. To be clear, under this classification, adjusting the probationary and financial penalties *is not necessary*, as both fall squarely within the legislated ranges. As a result, the panel maintains the three-year probationary period for the same reasons articulated in its original decision. The panel is not indifferent to the subtraction of an aggravating factor and the addition of a mitigating factor. Thus, in light of the IAC's findings and directives, the panel lowers CSUN's financial penalty to \$5,000 plus 0.5% of the men's basketball budget.⁵ This change accounts for the new composition of aggravating and mitigating factors.

Although the panel has followed the IAC's directives on remand, the panel notes observations and concerns to be considered by the NCAA membership and Division I Board of Directors Infractions

⁴ When comparing LSU and CSUN, Bylaws 19.9.4-(a) and (e) represent two sides of the same coin. LSU implemented specific, proactive, targeted education and reminders related to, albeit known, upcoming prospective student-athletes' visits. Therefore, it received credit for Bylaw 19.9.4-(e). CSUN's compliance systems relating to on-campus visits during the COVID-19 recruiting dead period came in the form of general reminder emails and informal touchpoints with coaching staff. On the other hand, and unlike CSUN, LSU did not detect and report the violation in a timely manner. Therefore, the COI did not apply Bylaw 19.9.4-(a) to LSU but did apply the factor to CSUN. These key distinctions remain relevant to the weight of Bylaw 19.9.4-(e) for CSUN.

⁵ This is the second time the panel has reduced the penalties in this case. The panel originally prescribed penalties at the high end of the available ranges for Level II-Standard cases. The panel *first* reduced the length of the probationary period from four years to three years following the conclusion of the expedited hearing. The panel *now* reduces the financial penalty by nearly half.

Process Committee (IPC) related to the appellate process. Simply stated, the practical ramifications and unintended consequences of the IAC's decision are far reaching. The panel's adherence to its legislated responsibility on remand should not be viewed as support of the IAC's decision; rather, it indicates the COI's understanding of its role within the membership's infractions process. The health and credibility of the infractions process depends on the adjudicative bodies adhering to their legislative authority and responsibility.

To begin, the IAC appears to have conducted a *de novo* review of the facts of this case in direct contravention of its legislated standard of review. Throughout its decision, the IAC relied upon its preferred factual narrative rather than giving deference to the COI's interpretation of the record and, particularly, the information developed during the expedited penalty hearing. The IAC went as far as to footnote extensive factual information in the record that it believed could refute the panel's sound, supported and reasonable determinations. In doing so, the IAC substituted its judgment for that of the panel while simultaneously discounting the credibility determinations made at the expedited hearing. Although the legislated abuse of discretion standard has been self-defined and, until recently, unchallenged by the membership, a *de novo* review of the facts is still prohibited under any reasonable interpretation of an abuse of discretion standard. Stated directly, the IAC's review appears to exceed the membership's legislated standard of review.

In addition to being incongruent with the IAC's standard of review, the IAC's analysis appears to contradict the IAC's statements in a prior case and materially alter an aggravating factor outside of the legislative process. *See University of Missouri, Columbia*, Infractions Appeals Report No. 513 (2019) at 6 (stating that "[i]n reviewing the panel's analysis and rationale, this committee may not substitute its judgment for that of the panel. Disagreement with the panel's outcome is not enough."). The panel recognizes that the IAC disagreed with the panel's interpretation of the facts. However, it appears that its disagreement was the driving force behind a finding that the panel abused its discretion. The panel notes that this is the last appeal under the abuse of discretion standard before shifting to the new standard that went into effect on January 1, 2023. The new standard is intended to provide the COI with appropriate deference and limit the number of issues and scope of review on appeal.

Further, the IAC's analysis, in part, appears to contradict its own case precedent to further exacerbate the already confusing standard for applying Bylaw 19.9.3-(m). *See Georgia Institute of Technology*, IAC Decision No. 524 (2021) (modifying the express language of the bylaw to include additional requirements for the aggravating factor to apply to an institution). The panel previously addressed its rationale for applying the factor to CSUN on pages 19 and 20 of its original decision. The COI specifically addressed the standard that the panel deduced from the IAC's prior decision in *Georgia Tech*, as well as the standard advanced by CSUN at the expedited hearing.

In reversing the COI in this decision, the IAC once again modified Bylaw 19.9.3-(m) by adding more layers to the elements it previously established in *Georgia Tech*. The IAC opined that "additional specific actions or inactions by individuals outside the sport athletics staff involved in

the violations...must be identified." The IAC then went on to add further considerations, including that Bylaw 19.9.3-(m) is not intended to apply to institutions whose athletics department staff members take reasonable steps to educate, monitor, and promote an atmosphere of compliance. Such factors have never been adopted by the membership and are not contemplated in the plain language of the aggravating factor.

The IAC's continual modification of what is required for the aggravating factor to apply is akin to legislating through an infractions decision and adds complexity and confusion throughout the membership and infractions process. The appropriate way to modify factors and when/to whom they apply is through the legislative process, not through infractions and appeals decisions. The panel is troubled by the IAC's unilateral decision to modify a factor beyond the clear bylaw language. Moreover, the panel is alarmed by IAC's inconsistency with its own case guidance. The panel attempted to strictly apply Bylaw 19.9.3-(m) consistent with the guidance it received in *Georgia Tech*, only to have it again modified through the appellate process.

More broadly, this decision (and others like it) have the potential to have lasting negative ramifications on the infractions process as a whole. Notably, the panel recognizes the membership's interest in an appellate opportunity. In fact, the COI has previously made recommendations to the IPC and during earlier infractions-related reviews aimed at enhancing the appeals process. However, if the appellate process permits a *de novo* review of the facts, it will encourage frivolous appeals only further delaying final resolution of infractions cases, undermine the role and purpose of the COI process, and have a chilling effect on COI membership.

If *de novo* reviews occur, parties to infractions cases will actively pursue an appeal in the hopes of getting a "second chance" to assert arguments previously rejected by the COI in hopes of a better outcome. As that approach invites more and more parties to pursue appeals, it inevitably drags out the timeline of cases—a primary focus of recent membership reforms aimed at accelerating the infractions process—thereby, hindering the infractions process's efficiency.

Moreover, by second guessing the COI's interpretation of the record and information ascertained at the hearing, the IAC effectively calls into question the subject matter expertise of COI members and, more bluntly, the need for a COI hearing. The panel recognizes that the IAC has legislated authority to reverse the COI. However, those reversals should not come simply because the IAC believed a fact or a set of facts to be more persuasive than those found by the panel—particularly when the IAC does not have the same engagement with the facts through the traditional hearing process. When it appears that the IAC merely disagrees with the COI's reasonable interpretation of the same facts, it undercuts the credibility of the COI and, therefore, the infractions process as a whole. Likewise, it questions the need for two adjudicative bodies engaging in duplicative work.

Lastly, the reputation of the COI is not only important in effectively maintaining the credibility of the infractions process—it also has an impact on the COI's ability to recruit new committee members. When the IAC conducts what appears to be a *de novo* review that leads to reversal, it has a chilling effect on encouraging credible, qualified members to volunteer for committee

service. As such, the IAC's decisions have the potential for a series of unintended consequences that may negatively impact the infractions process. At the conclusion of this case, the COI intends to raise these issues with the IPC as it continues to evaluate the NCAA's infractions process.