

NEGOTIATED RESOLUTION¹

Arkansas State University – Case No. 020251

April 19, 2024

I. CASE SYNOPSIS

Arkansas State University (Arkansas State); Brian Dooley (Dooley), head women's soccer coach; Butch Jones (Jones), head football coach; Nick Montgomery (Montgomery), former football staff member; Jon Shalala (Shalala), former assistant football coach; and NCAA enforcement staff agree with the violations and penalties detailed below.

On March 22, 2023, Arkansas State self-reported violations regarding the institution paying for parents' airfare for official visits of women's soccer prospective student-athletes during the prior four years. The institution discovered the violations during a January 2023 athletics department rules education session explaining legislative changes that allowed for payment of families' transportation costs for official and unofficial visits. Dooley reported he believed these payments were already permissible and therefore had been paying for family members' airfare for several years.

The enforcement staff began its preliminary investigation and provided the institution with a notice of inquiry April 18, 2023. During May and June 2023, the institution and enforcement staff conducted interviews of select athletics administrators, Dooley and women's soccer student-athletes whose parents received the impermissible transportation expenses and who had enrolled at the institution.

The women's soccer violations involve the institution impermissibly arranging and providing airfare for the parents of 10 prospective student-athletes to accompany those prospects on their official paid visits to the institution. The impermissible payments occurred from 2019 to 2023. Athletics administrators acknowledged that, despite generally addressing permissible expenses during official visits, they did not specifically address travel costs when providing rules education on permissible payments for official visits. Athletics administrators also acknowledged that they failed to identify or prevent these violations after reviewing official visit expense reports submitted by the women's soccer program that included receipts for payment of airfare for the parents of visiting prospects.

On May 9, 2023, enforcement football development staff received correspondence from an NCAA Division II head football coach regarding impermissible contact of one of their football student-athletes by Arkansas State football staff. Specifically, the Division II head football coach reported that Montgomery and Shalala had impermissible contact with the Division II institution's football student-athlete (football student-athlete). On June 21, the enforcement staff informed the

¹ In reviewing this agreement, the hearing panel made editorial revisions pursuant to NCAA Division I Committee on Infractions (COI) Internal Operating Procedure (IOP) 4-7-1-2. These modifications did not affect the substance of the agreement.

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institution about the potential impermissible contact. Arkansas State was aware of the impermissible contact, had compiled initial information from its coaching staff and had reached out to the Division II institution for more information. However, during the pendency of this request for more information, the institution's former assistant director of compliance left the institution, and the request for more information from the Division II institution went unanswered. Thereafter, the enforcement staff and the institution began a collaborative investigation into the impermissible contact by the football staff.

The investigation revealed that the football student-athlete and Montgomery had a relationship from Montgomery's prior employment at the Division II institution. After the football student-athlete messaged Montgomery to request that Montgomery repost a highlight video of his on social media, Montgomery called the football student-athlete to arrange a meeting between him and Shalala, who was in the area of the Division II institution. Montgomery then shared the football student-athlete's contact information with Shalala, who initially contacted the football student-athlete via phone and text message and then met him in person on the Division II campus.

II. PARTIES' AGREEMENTS

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

1. [NCAA Division I Manual Bylaw 13.1.1.3 (2022-23)] (Level II)

The institution, Jones, Montgomery, Shalala and enforcement staff agree that on April 22, 2023, Montgomery impermissibly contacted the Division II football student-athlete, who was not in the transfer portal and arranged for Shalala to have impermissible contact with the football student-athlete. Specifically, Shalala contacted the football student-athlete via telephone and subsequently had in-person contact with him on the Division II institution's campus.

2. [NCAA Division I Manual Bylaw 11.1.1.1 (2022-23)] (Level II)

The institution, Jones and enforcement staff agree head football coach is responsible for the April 2023 violations detailed in Finding of Fact No. 1.

3. [NCAA Division I Manual Bylaws 13.2.1 and 13.5.2.6 (2018-19 through 2022-23)² and 12.11.1, 12.11.2 and 16.8.1 (2019-20 through 2021-22)] (Level II)

The institution, Dooley and enforcement staff agree that between May 2019 and January 2023, the women's soccer staff and institution arranged for and provided approximately \$4,144 in impermissible recruiting benefits in the form of airfare for the parents of 10 prospective student-athletes. Specifically, Dooley misapplied official visit legislation, and the institution's compliance

² Division I Proposal 2022-23, adopted effective July 1, 2023, amended NCAA Bylaw 13.5.2.6 to permit an institution to provide the actual round-trip cost for up to two family members to accompany a prospective student-athlete on an official visit.

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methods and procedures did not identify or prevent the impermissible benefits. As a result of the impermissible benefits, four student-athletes competed in 82 contests and received actual and necessary expenses while ineligible.

4. [NCAA Division I Manual Bylaw 11.1.1.1 (2018-19 through 2022-23)] (Level II)³

The institution, Dooley and enforcement staff agree that from May 2019 through December 2022, Dooley is presumed responsible for the violations detailed in Finding of Fact No. 3 and did not rebut the presumption of responsibility. Specifically, Dooley did not demonstrate that he promoted an atmosphere for compliance due to his personal involvement in the violations. Additionally, Dooley is responsible for the violation detailed in Finding of Fact No. 3 that occurred on or after January 1, 2023.

5. [NCAA Division I Manual Constitution 2.8.1 (2018-19 through 2021-22) and Bylaw 8.01.3 (2022-23)] (Level II)

The institution and enforcement staff agree that between May 2019 and January 2023, the scope and nature of the violations detailed in Finding of Fact No. 3 demonstrate that the institution failed to adequately monitor the women's soccer program's official visits when it did not provide sufficient NCAA rules education and training to institutional staff members or adequately oversee its compliance methods and procedures in connection with NCAA official visit transportation legislation.

C. Agreed-upon aggravating and mitigating factors.

Pursuant to NCAA Bylaw 19.10.3-(e), the parties agree that the aggravating and mitigating factors identified below are applicable. The parties assessed the factors by weight and number and agree that this case should be properly resolved as Level II – Mitigated for the institution, Dooley and Jones and Level II – Standard for Montgomery and Shalala.

When analyzing the aggravating and mitigating factors applicable to the institution, the institution and enforcement staff gave significant weight to Bylaw 19.12.4.1-(b), because the institution promptly self-reported the women's soccer violations and took steps to promptly investigate the football impermissible contact by reaching out to the Division II institution.

³ Head coach responsibility legislation outlined in Bylaw 11.1.1.1 changed January 1, 2023. Because the violations described in Finding of Fact No. 3 straddle this date, both head coach responsibility standards are included.

Institution:

1. Aggravating factors (Bylaw 19.12.3.1).
 - a. Multiple Level I and/or multiple Level II violations for which the institution is responsible [Bylaw 19.12.3.1-(a)].
 - b. Persons of authority condoned, participated in or negligently disregarded the violation or wrongful conduct [Bylaw 19.12.3.1-(e)].
 - c. One or more violations caused ineligible competition [Bylaw 19.12.3.1-(f)].
 - d. Intentional, willful, or blatant disregard for NCAA bylaws by a person with institutionally derived authority [Bylaw 19.12.3.1-(i)].
2. Mitigating factors (Bylaw 19.12.4.1).
 - a. Prompt acknowledgement and acceptance of responsibility for the violations [Bylaw 19.12.4.1-(b)].
 - b. Institution self-imposed meaningful corrective measures and/or penalties [Bylaw 19.12.4.1-(c)].
 - c. Affirmative steps to expedite final resolution of the matter [Bylaw 19.12.4.1-(d)].
 - d. An established history of self-reporting Level III or secondary violations (i.e., at minimum five violations per year for the previous five years [Bylaw 19.12.4.1-(e)].⁴

Involved Individual (Montgomery):

1. Aggravating factors (Bylaw 19.12.3.2).
 - a. Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct [Bylaw 19.12.3.2-(d)].
 - b. Intentional, willful or blatant disregard for NCAA bylaws [Bylaw 19.12.3.2-(i)].
2. Mitigating factors (Bylaw 19.12.4.2).

⁴ The institution reported 27 violations over the past five years, an average of approximately five each year.

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- a. Prompt acknowledgement and acceptance of responsibility for the violations [Bylaw 19.12.4.2-(b)].
- b. Affirmative steps to expedite final resolution of the matter [Bylaw 19.12.4.2-(c)].
- c. The absence of prior conclusions of Level I, Level II or major violations committed by an involved individual [Bylaw 19.12.4.2-(e)].

Involved Individual (Shalala):

1. Aggravating factors (Bylaw 19.12.3.2).
 - a. Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct [Bylaw 19.12.3.2-(d)].
 - b. Intentional, willful or blatant disregard for NCAA bylaws [Bylaw 19.12.3.2-(i)].
2. Mitigating factors (Bylaw 19.12.4.2).
 - a. Prompt acknowledgement and acceptance of responsibility for the violations [Bylaw 19.12.4.2-(b)].
 - b. Affirmative steps to expedite final resolution of the matter [Bylaw 19.12.4.2-(c)].
 - c. The absence of prior conclusions of Level I, Level II or major violations committed by an involved individual [Bylaw 19.12.4.2-(e)].

Involved Individual (Jones):

1. Aggravating factor(s) (Bylaw 19.12.3.2).

The enforcement staff did not identify any aggravating factors.
2. Mitigating factors (Bylaw 19.12.4.2).
 - a. Affirmative steps to expedite final resolution of the matter [Bylaw 19.12.4.2-(c)].
 - b. The absence of prior conclusions of Level I, Level II or major violations committed by an involved individual [Bylaw 19.12.4.2-(e)].

Involved Individual (Dooley):

1. Aggravating factor(s) (Bylaw 19.12.3.2).

The enforcement staff did not identify any aggravating factors.

2. Mitigating factors (Bylaw 19.12.4.2).

a. Prompt self-disclosure of the violations [Bylaw 19.12.4.2-(a)].

b. Prompt acknowledgement and acceptance of responsibility for the violations [Bylaw 19.12.4.2-(b)].

c. Affirmative steps to expedite final resolution of the matter [Bylaw 19.12.4.2-(c)].

d. The absence of prior conclusions of Level I, Level II or major violations committed by an involved individual [Bylaw 19.12.4.2-(e)].

III. OTHER VIOLATIONS OF NCAA LEGISLATION SUBSTANTIATED; NOT ALLEGED

None.

IV. REVIEW OF OTHER ISSUES

Head coach responsibility for Jones.

The parties considered the appropriate penalties for Jones, who did not commit or know of the underlying violations involving impermissible contact with the football student-athlete. Because Jones demonstrated that he promoted an atmosphere of compliance and monitored his staff, the parties agreed that a suspension penalty was not appropriate; however, Jones, who is currently employed at the institution, will be subject to the institutional recruiting restrictions outlined below.

V. PARTIES' AGREED-UPON PENALTIES⁵

All penalties agreed upon in this case are independent and supplemental to any action that has been or may be taken by the NCAA Division I Committee on Academics through its assessment of postseason ineligibility, historical penalties or other penalties.

Pursuant to Bylaw 19.10.3-(e), the parties agree to the following penalties:

Core Penalties for Level II – Mitigated Violations (Bylaw 19.12.6)

1. Probation: One year of probation to run from April 19, 2024, through April 18, 2025.
2. Financial penalty: The institution shall pay a fine of \$15,000 to the NCAA.
3. Recruiting restrictions in the women's soccer program:
 - a. The institution shall reduce official paid visits in the women's soccer program for the 2024-25 academic year by 10% of the average number of official paid visits during the previous four years.
 - b. A four-week reduction in off-campus recruiting contacts and evaluations.
4. Recruiting restrictions in the football program.
 - a. The institution shall reduce official paid visits in the football program by three for the 2023-24 academic year.
 - b. A two-week reduction in off-campus recruiting contacts and evaluations for the entire football coaching staff for the spring of 2024 off-campus recruiting period. The institution may select the two weeks, but they must be consecutive.
 - c. Two weeks during the 2024-25 academic year with no unofficial visits.

Core Penalties for Level II – Mitigated Violations (Bylaw 19.12.6)

5. Suspension: Dooley violated head coach responsibility legislation when he did not demonstrate he promoted an atmosphere of compliance due to his personal involvement in arranging for payment of airfare for parents of prospective student-

⁵ 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 make the NCAA Division I Committee on Infractions aware of the impossibility and must complete the penalty at the next available opportunity.

athletes. Bylaw 19.12.6.5 and the Figure 19-1 penalty guidelines contemplate head coach suspensions to address head coach responsibility legislation. Therefore, any member institution that employs the head coach in an athletically related position shall suspend the head coach for one women's soccer regular season contest during the 2024-25 women's soccer regular season. The provisions of the suspension require the head coach not be present in the facility where the contests are played and have no contact or communication with the women's soccer coaching staff members or student-athletes during the contest suspension period. The prohibition includes all coaching activities for the period of time that begins at 12:01 a.m. on the day of the contest and ends at 11:59 p.m. that day. During that period, the head coach may not participate 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.

Core Penalties for Level II – Standard Violations (Bylaw 19.12.6)

6. Show-cause order: Shalala violated recruiting legislation. Therefore, Shalala shall be subject to a one-year show-cause order from April 19, 2024, through April 18, 2025. In accordance with Bylaw 19.12.6.4 and NCAA Division I Committee on Infractions' Internal Operating Procedure 5-15-5, any employing member institution shall ensure Shalala is suspended from two football contests and has a two-week off-campus recruiting ban during the spring of 2024 contact period. Any member institution that employs Shalala in an athletically related position during the one-year show-cause period shall abide by the terms of the show-cause order unless it contacts the office of the Committees on Infractions to make arrangements to show cause why the terms of the order should not apply. The provisions of the suspension require Shalala not be present in the facility where the contests are played and have no contact or communication with the football coaching staff members or student-athletes during the contest suspension period. The prohibition includes all coaching activities for the period of time that begins at 12:01 a.m. on the day of the contest and ends at 11:59 p.m. that day. During that period, Shalala 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 Shalala is suspended shall not count toward the assistant coach's career coaching record.

Core Penalties for Level II – Standard Violations (Bylaw 19.12.6)

7. Show-cause order and suspension: Montgomery recruiting legislation. Therefore, Montgomery shall be subject to a one-year show-cause order from April 19, 2024, through April 18, 2025. In accordance with Bylaw 19.12.6.4 and Committee on Infractions' Internal Operating Procedure 5-15-5, any employing member

institution shall ensure Montgomery is suspended for one week from all athletically related duties. Because Montgomery is an analyst and not a coaching staff member, his suspension relates directly to his athletically-related duties rather than a percentage of regular season contests. Any member institution that employs Montgomery in an athletically related position during the one-year show-cause period shall abide by the terms of the show-cause order unless it contacts the office of the Committees on Infractions to make arrangements to show cause why the terms of the order should not apply. The provisions of the suspension require Montgomery not be present in the facility where the practices and contests are played and have no contact or communication with the football 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 Sunday and ends at 11:59 p.m. the following Saturday. During that period, Montgomery may not participate in any athletically related duties, including but not limited to team travel, practice, video study, recruiting, staff meetings and team meetings.

Additional Penalties for Level II – Mitigated Violations (Bylaw 19.12.8)

8. Public reprimand and censure through the release of the negotiated resolution agreement.
9. During this period of probation, the institution 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 office of the Committees on Infractions by June 15, 2024, setting forth a schedule for establishing this compliance and educational program.
 - c. File with the office of the Committees on Infractions annual compliance reports indicating the progress made with this program by March 1st during each year of probation. Particular emphasis shall be placed on rules education and monitoring related to recruiting contacts.
 - d. Inform prospects in the football and women's soccer programs in writing that the institution is on probation for one year 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.

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- 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 programs and a direct, conspicuous link to the public infractions decision located on the athletics department's main website "landing page" and in the media guides for the football and women's soccer programs. Permissible website posting locations include the main navigation menu or a sidebar menu. The link may not be housed under a drop-down menu. Further, the link to the posting (i.e., the icon or the text) must be titled "NCAA Infractions Case." With regard to the content of the posting, 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.
10. Following the receipt of the final compliance report and prior to the conclusion of probation, the institution's superintendent provide a letter to the Committee on Infractions affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.
11. Vacation of team and individual records: Ineligible participation in the women's soccer program occurred over three years as a result of violations in this case. Therefore, pursuant to Bylaws 19.12.8-(g) and 31.2.2.3 and Committee on Infractions Internal Operating Procedure 5-15-7, the institution shall vacate all regular season and conference tournament wins, records and participation in which the ineligible student-athletes competed from the time they became ineligible through the time they were reinstated as eligible for competition. Further, if the ineligible student-athletes participated in NCAA postseason competition at any time they were ineligible, the institution's participation in the postseason contests in which the ineligible competition occurred shall be vacated. The individual records of the ineligible student-athletes shall also be vacated. However, the individual finishes and any awards for all eligible student-athletes shall be retained. Further, the institution's records regarding the affected sport program, as well as the records of the head coach, shall reflect the vacated records and be recorded in all publications in which such records are reported, including, but not limited to, institutional media guides, recruiting material, electronic and digital media plus institutional, conference and NCAA archives. Any institution that may subsequently hire the affected head coach shall similarly reflect the vacated wins in his career records documented in media guides and other publications cited above. Head coaches with vacated wins on their records may not count the vacated wins toward specific honors or victory "milestones" such as 100th, 200th or 500th career victories. Any public reference to the vacated records shall be removed from

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the athletics department stationery, banners displayed in public areas and any other forum in which they may appear. Any trophies awarded by the NCAA in the affected sport program shall be returned to the Association.

Finally, to aid in accurately reflecting all institutional and student-athlete vacations, statistics and records in official NCAA publications and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA media coordination and statistics office and appropriate conference officials to identify the specific student-athletes and contests impacted by the penalties. In addition, the institution must provide the media coordination and statistics office with a written report detailing those discussions. This written report will be maintained in the permanent files of the media coordination and statistics office. The written report must be delivered to the office no later than 14 days following the release of this decision or, if the institution appeals the vacation penalty, at the conclusion of the appeals process. A copy of the written report shall also be delivered to the office of the Committees on Infractions at the same time.

VI. OTHER AGREEMENTS

The parties agree that this case will be processed through the NCAA negotiated resolution process as outlined in Bylaw 19.10, and a hearing panel comprised of members of the Committee on Infractions will review the negotiated resolution. The parties acknowledge that the negotiated resolution contains agreed-upon findings of fact of NCAA violations and agreed-upon aggravating and mitigating factors based on information available at this time. Nothing in this resolution precludes the enforcement staff from investigating additional information about potential rules violations. The parties agree that pursuant to Bylaw 19.1.3, the violations identified in this agreement occurred and should be classified as Level II – Mitigated for the institution, Dooley and Jones and Level II – Standard for Montgomery and Shalala.

If a hearing panel approves the negotiated resolution, the institution and agree that they will take every precaution to ensure that the terms of the penalties are observed. The institution, Dooley, Jones, Montgomery and Shalala acknowledge that they have or will impose and follow the penalties contained within the negotiated resolution, and these penalties are in accordance with those prescribed in Bylaws 19.12.6, 19.12.7, 19.12.8 and 19.12.9. The office of the Committees on Infractions will monitor the penalties during their effective periods. Any action by the institution, Dooley, Jones, Montgomery and Shalala contrary to the terms of any of the penalties or any additional violations may be considered grounds for prescribing more severe penalties or may result in additional allegations and violations.

The parties acknowledge that this negotiated resolution may be voidable by the Committee on Infractions if any of the parties were aware or become aware of information that materially alters the factual information on which this negotiated resolution is based.

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The parties further acknowledge that the hearing panel, subsequent to its review of the negotiated resolution, may reject the negotiated resolution. Should the hearing panel reject the negotiated resolution, the parties understand that the hearing panel will issue instructions for processing of the case pursuant to hearing resolution (Bylaw 19.8) or limited resolution (Bylaw 19.9) and prior agreed-upon terms of the rejected negotiated resolution will not be binding.

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

VII. DIVISION I COMMITTEE ON INFRACTIONS APPROVAL

Pursuant to NCAA Bylaw 19.10.1, the panel approves the parties' negotiated resolution agreement. The panel's review of this agreement is limited. Panels may only reject a negotiated resolution agreement if the agreement is not in the best interests of the Association or if the agreed-upon penalties are manifestly unreasonable. *See* Bylaw 19.10.4. In this case, the panel determines the agreed-upon facts, violations, aggravating and mitigating factors, and classifications are appropriate for this process. Further, the parties classified this case as Level II – Mitigated for Arkansas State, Dooley and Jones and Level II-Standard for Montgomery and Shalala. The agreed-upon penalties align with the ranges identified for core penalties for Level II – Mitigated and Level II – Standard cases in Figure 19-1 and Bylaw 19.12.6 and the additional penalties available under Bylaw 19.12.8. Pursuant to Bylaw 19.10.6, this negotiated resolution has no precedential value.

The COI advises Arkansas State, Dooley, Montgomery and Shalala that they should take every precaution to ensure that they observe the terms of the penalties. The COI will monitor the institution while it is on probation to ensure compliance with the penalties and terms of probation and may extend the probationary period, among other action, if the institution does not comply or commits additional violations. Likewise, any action by the institution, Dooley, Montgomery and/or Shalala 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

Cassandra Kirk

Jason Leonard, chief hearing officer

Stephen Madva

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APPENDIX

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APPENDIX

ARKANSAS STATE UNIVERSITY CORRECTIVE ACTIONS

1. The institution sought and obtained reinstatement for the women's soccer student-athletes whose eligibility was impacted by the violations detailed in Finding of Fact No. 3.
2. Upon learning of the impermissible contact detailed in Finding of Fact No. 1, the institution suspended Montgomery and Shalala for one football competition during the 2023-24 football season.
3. The institution issued letters of admonishment to Montgomery and Shalala for failure to follow institutional guidance and procedure pertaining to contact with transfer or potential transfer student-athletes in connection with the violations detailed in Finding of Fact No. 1.
4. The institution is committed to increased resources for its compliance personnel, including but not limited to the hiring of a new senior associate athletics director of compliance and student services and support staff.