

NEGOTIATED RESOLUTION¹

Southern Utah University – Case No. 020291

May 29, 2024

I. CASE SYNOPSIS

Southern Utah University (Southern Utah); DeLane Fitzgerald (Fitzgerald), head football coach; and NCAA enforcement staff agree with the violations and penalties described below.

Commencement of the investigation.

In May 2023, the enforcement staff received a copy of an impermissible text message exchange between Fitzgerald and a football student-athlete (student-athlete 1) enrolled at another NCAA institution. After authenticating the text message and verifying that student-athlete 1 was never in the NCAA transfer portal, the enforcement staff began its investigation.

Tampering violations.

On May 12, 2023, Fitzgerald sent two text messages to student-athlete 1 and requested game film from student-athlete 1. At this time, student-athlete 1 was enrolled at another NCAA institution and was not in the transfer portal. Student-athlete 1 replied to the text messages and indicated that, if the request was regarding transferring, he was not interested. In his July 26, 2023, interview with the enforcement staff, student-athlete 1 stated that he had never considered transferring, nor had he ever entered his name in the transfer portal. Additionally, student-athlete 1 reported that he was surprised by Fitzgerald's unsolicited text messages and was unsure how Fitzgerald obtained his cell phone number.

After issuing the notice of inquiry August 9, 2023, the enforcement staff reviewed Fitzgerald's phone and text message records to determine if he had impermissible contact with any of Southern Utah's seven incoming transfer football student-athletes. During that review, the enforcement staff identified an April 11, 2023, phone call from Fitzgerald to a football student-athlete (student-athlete 2) who was enrolled at another institution and not in the transfer portal at the time of the call. Student-athlete 2 subsequently entered the transfer portal April 15, 2023, and committed to Southern Utah on May 3, 2023. In their late-August 2022 interviews, student-athlete 2 and Fitzgerald confirmed this call occurred. Fitzgerald reported that he spoke to student-athlete 2 regarding the football program and the institution's academic reputation.

Failure to monitor.

The enforcement staff conducted interviews with both the institution's current and past compliance officers. Both individuals described the institution's lack of resources devoted to

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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NCAA compliance. They also reported receiving minimal guidance and assistance from the athletics administration, which hindered the successful performance of their job responsibilities. The lack of compliance-related resources and guidance led to deficiencies in both education and monitoring. One such educational deficiency was that the institution did not provide specific education to coaches regarding NCAA Bylaw 13.1.1.3 and the transfer portal.

Additionally, regarding monitoring, the institution did not have processes in place to certify components of the one-time transfer exception. Specifically, the institution did not require head coaches and incoming transfer student-athletes intending to utilize the one-time transfer exception to certify that no impermissible contact occurred prior to the student-athletes entering the transfer portal. Further, the institution did not verify if student-athletes intending to utilize the one-time transfer exception had entered the transfer portal during the appropriate specified period for the sport.

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, Fitzgerald and enforcement staff agree that from April 11 through May 12, 2023, Fitzgerald initiated impermissible communications with two football prospective student-athletes without first obtaining authorization through the notification of transfer process. Specifically:

- a. On April 11, 2023, Fitzgerald called student-athlete 2 and engaged in a 17-minute telephone conversation. Student-athlete 2 entered the transfer portal April 15, 2023, and subsequently enrolled at Southern Utah.
- b. On May 12, 2023, Fitzgerald sent two text messages to student-athlete 1 and requested his game film. Student-athlete 1 indicated in a reply text that he was not interested in transferring and has never entered the transfer portal.

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

The institution, Fitzgerald and enforcement staff agree that between April and May 2023, Fitzgerald is responsible for the violations detailed in Agreed-Upon Finding of Fact No. 1.

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3. [NCAA Division I Manual Bylaw 8.01.3 (2022-23)] (Level II)

The institution and enforcement staff agree that in April and May 2023, the scope and nature of the violations detailed in Agreed-Upon Finding of Fact No. 1 demonstrates the institution failed to adequately monitor its football program. Specifically:

- a. The institution failed to have a process in place to accurately certify the eligibility of transfer student-athletes utilizing the one-time transfer exception. The institution did not require the head football coach to certify that athletics staff members did not communicate or make contact with each transferring football student-athlete without obtaining authorization through the notification of transfer process. Further, the institution did not verify that each transferring football student-athlete entered the transfer portal during the specified period of time (i.e., "transfer window") for that sport.
- b. The institution failed to provide the football staff adequate rules education and training regarding when and under what circumstances they could permissibly contact student-athletes enrolled at other NCAA institutions.

B. Agreed-upon aggravating and mitigating factors.

Pursuant to 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 and Level II – Standard for Fitzgerald.

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)].
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. Affirmative steps to expedite final resolution of the matter [Bylaw 19.12.4.1-(d)].

- c. The absence of prior conclusions of Level I, Level II or major violations committed by the institution within the past 10 years [Bylaw 19.12.4.1-(h)].

Involved Individual (Fitzgerald):

1. Aggravating factors (Bylaw 19.12.3.2).
 - a. Multiple Level I and/or multiple Level II violations [Bylaw 19.12.3.2-(a)].
 - b. Persons of authority condoned, participated in or negligently disregarded the violation or related wrongful conduct [Bylaw 19.12.3.2-(d)].
 - c. Intentional, willful or blatant disregard for NCAA bylaws by a person with institutionally derived authority [Bylaw 19.12.3.2-(i)].
2. Mitigating factors (Bylaw 19.12.4.2).
 - a. Prompt acknowledgement of and acceptance of responsibility for the violation(s) [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 the involved individual [Bylaw 19.12.4.2-(e)].

III. OTHER VIOLATIONS OF NCAA LEGISLATION SUBSTANTIATED; NOT ALLEGED

None.

IV. REVIEW OF OTHER ISSUES

None.

V. PARTIES' AGREED-UPON PENALTIES²

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 from May 29, 2024, through May 28, 2025.
2. Financial penalty: The institution shall pay a fine of \$5,000 to the NCAA.
3. Recruiting restrictions: The institution shall prohibit all recruiting activities for the football program for two weeks during a permissible recruiting period in 2024. One week (seven consecutive days) must take place from April 15 through 21, 2024, during the spring transfer window for football.

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

4. Show-cause order: Fitzgerald engaged in impermissible contact with two prospective student-athletes. Therefore, Fitzgerald shall be subject to a two-year show-cause order from May 29, 2024, through May 28, 2026. In accordance with Bylaw 19.12.6.4 and Committee on Infractions Internal Operating Procedure (COI IOP) 5-15-5, any employing member institution shall require Fitzgerald to self-fund his attendance at the June 2024 Regional Rules Seminar and restrict the head football coach from all recruiting activities for two weeks during a permissible recruiting period in 2024. One week (seven consecutive days) must take place from April 15 through 21, 2024, during the spring transfer window for football. Additionally, any employing member institution shall restrict Fitzgerald from all recruiting communications for one week (seven consecutive days) during the spring 2025 transfer window for football. Southern Utah, or any member institution that employs Fitzgerald in an athletically related position during the two-year show-cause period, shall abide by the terms of the show-cause order unless it contacts the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why the terms of the order should not apply.
5. Suspension: Fitzgerald violated NCAA legislation when he engaged in impermissible contact with two prospective student-athletes. Bylaw 19.12.6.5 and

² 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 Committee on Infractions aware of the impossibility and must complete the penalty at the next available opportunity.

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the Figure 19-1 penalty guidelines contemplate suspensions. Therefore, on November 4, 2023, Southern Utah suspended Fitzgerald from one regular season contest. This suspension corresponded with approximately 10% of the 2023 football regular season contests. During the one-contest suspension period, Fitzgerald had no pre-game, in-game or immediate post-game contact or communication with football coaching staff members or student-athletes.³ On the day of the contest, Fitzgerald did not participate in any coaching activities, including, but not limited to, team travel, practice, video study, recruiting and team meetings. The results of the contest from which Fitzgerald was suspended shall not count toward his career coaching record.

6. Public reprimand and censure through the release of the negotiated resolution agreement.
7. 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 OCOI by August 15, 2024, setting forth a schedule for establishing this compliance and educational program.
 - c. File with the OCOI a compliance report indicating the progress made with this program by April 1, 2025. Particular emphasis shall be placed on rules education and monitoring related to recruiting contacts.
 - d. Inform prospects in the sport of football 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.
 - 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

³ While finalizing the negotiated resolution, the institution informed the enforcement staff that Fitzgerald was present at the stadium for a short time before the game on the day of his suspension to visit with his guests visiting from out-of-town and some parents of senior football student-athletes during the program's senior day. According to the institution, Fitzgerald left the stadium before the game started and did not return. While these activities are atypical for suspensions pursuant to Bylaw 19.12.6.5, the parties agree that this deviation from standard practices regarding suspensions, while not ideal, is acceptable under the specific facts and circumstances of this case.

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public infractions decision located on the athletics department's main webpage "landing page" and in the media guide (if applicable) 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.

8. Following the receipt of the final compliance report and prior to the conclusion of probation, the institution's president shall provide a letter to the Committee on Infractions affirming that the institution's current athletics policies and practices conform to all requirements of NCAA regulations.

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 NCAA Division I Committee on Infractions will review the negotiated resolution. The parties acknowledge that the negotiated resolution contains agreed-upon findings of fact of NCAA 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 and Level II – Standard for Fitzgerald.

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

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

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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 Southern Utah and Level II – Standard for Fitzgerald. 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, 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 Southern Utah and Fitzgerald 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 or Fitzgerald 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

Kendra Greene

Steve Madva

Dave Roberts, chief hearing officer

APPENDIX

SOUTHERN UTAH UNIVERSITY'S CORRECTIVE ACTIONS

1. The institution will work with their conference office to complete a thorough audit of all its athletics compliance and certification processes by December 31, 2024.
2. The institution added a full-time senior associate director of athletics position to oversee compliance, academic and student services.
3. The institution added a full-time athletics compliance intern.
4. The institution implemented a required Bylaw 13.1.1.3 attestation form from all head coaches as part of their transfer student-athlete certification process.
5. The institution implemented several NCAA rules education initiatives, including but not limited to, enrolling all head coaches in rules education modules in the NCAA Learning Portal and added targeted NCAA rules education to the monthly athletics department newsletter.