



Collegiate Sports Practice Group Newsletter

November 2005

Bond, Schoeneck & King, PLLC Collegiate Sports Practice Group*

Michael S. Glazier
Richard J. Evrard
Stephen R. Morgan
Thomas S. Evans

7500 College Boulevard, Suite 910
Overland Park, KS 66210-4035
Phone: 913-234-4400
Fax: 913-234-4401
www.bsk.com

* Practice concentrates on
NCAA and other collegiate
sports matters.

BOARD CONTINUES TO REFINE ACADEMIC EVALUATION

The Division I Board of Directors (“Board”) continued its efforts to make adjustments in the Academic Performance Program to assure that it is a fair measure of the academic efforts of members of teams at Division I institutions at its fall 2005 meeting. The Management Council (“Council”) prepared for the January NCAA Convention and reviewed legislative procedures during its meeting.

Academic Progress Rates

The Committee on Academic Performance provided a report to the Board that included recommendations for legislative proposals, which the Board agreed to sponsor, to be considered during the 2005-06 legislative cycle. Among the proposals are: (1) an opportunity for an impacted institution to appeal the Academic Performance Program (APP) “public-warning penalty” (which is the initial consequence for inadequate academic performance); (2)

authority for an institution or team subject to the APP second-occasion penalties to be directed to apply restrictions on playing and practice seasons; (3) a requirement that any student-athlete who transfers must have earned academic eligibility for the next regular term at the previous institution in order to be eligible for athletically related financial aid during the first academic year at the new institution; and (4) a requirement that institutions include Graduation Success Rate and

This edition of the *Collegiate Sports Practice Group Newsletter* features a compilation of the actions taken by the NCAA Division I Management Council at its October 17-18, 2005, meeting and the Board of Directors at its October 27, 2005, meeting. The Newsletter is published quarterly, following each Board meeting to assist athletics administrators, compliance coordinators, general counsel offices and others interested in NCAA governance activity. We have formatted the Newsletter to summarize the key actions and issues in the Division I governance structure and to serve as a convenient, quick reference for any legislation adopted. This format should aid individuals responsible for disseminating such information to their institutional staff members. The brief summaries of the actions and legislation are not a substitute for reading reports and minutes of the bodies and the actual legislation, nor do they constitute legal advice or opinion about any action. To review the specific language of a meeting minute, new legislation or an interpretation, please consult with the person designated on your campus to provide legislative interpretations.

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Academic Progress Rate (APR) data in the recruiting materials provided to prospects.

The committee also presented a possible program of incentives and rewards for teams and institutions that demonstrate academic success through the APP. Previously, attention has been focused on the consequences and penalties for teams that fail to achieve an adequate APR. The incentive program currently being considered by the committee includes three major elements: (1) a public recognition program; (2) awards for academic improvement; and (3) academic support partnerships and need-based institutional grants. Membership feedback is being sought concerning these preliminary recommendations, which will be further reviewed by the committee and considered by the Board at its January 2006 meeting.

The public recognition program under consideration contemplates identifying the top 10 percent of teams in regard to their APRs and highlighting their academic performance. The committee suggested that the NCAA staff seek a corporate sponsor with the stipulation that the student-athlete academic achievement remain the central focus and that the program would not become "over commercialized." The awards for academic improvement would be intended to reward the teams with the top increase in their academic performances. The committee noted a desire to maintain a balanced distribution of the recognition among members of the three subdivisions of Division I.

As proposed, the academic support partnerships would involve the development of programs focused on providing academic support for historically underperforming student-athlete populations through the use of training, professional development and educational programs to assist institutional personnel in the implementation of appropriate academic performance program policies and procedures. The need-based program under consideration would

provide assistance to institutions that have received academic performance penalties but show a steady improvement of team APRs and demonstrate a financial need due to limited resources. A matching-grant program that requires an application and long-term plan, including an institutional commitment of funding to be used in conjunction with NCAA grant money, is being contemplated.

The committee will review the second year of APR data prior to its recommendations to the Board in January. The appropriate cut scores for the APR, whether there should be a gradual implementation with the cut point increasing over time, and whether the cut score should reflect a certain projected graduation rate are among the issues to be evaluated. Whether the Graduation Success Rate information should be reported only by team or also as an institutional rate is also being considered. One possibility is the publication of institutional rates sometime after a release of team-specific data.

Amateurism Clearinghouse

The timeline for implementation of a clearinghouse to certify the amateur status of all Division I student-athletes has been adjusted to begin with those student-athletes first enrolling in an NCAA member institution in the fall of 2007. Both the Board and the Council received reports on the progress of efforts to establish the clearinghouse and were informed that a revision of the effective date was recommended because of the complexity of the endeavor, the volume of prospects that would require certification and the impact of the early National Letter of Intent signing periods. Concern had been expressed about the risk of prospects arriving on campus before learning whether their eligibility had been certified. Accordingly, the Council agreed to modify the effective date of Proposal No. 2005-37 (which would create the clearinghouse and require its use) so that the legislation first applies to those student-athletes initially enrolling in a Division I institution on or after August 1, 2007.

The suggested revised phase-in schedule includes beginning data collection at the earliest possible date after signing a contract with an outside vendor to operate the clearinghouse, with a target date of early spring 2006 for prospects to begin registering with the clearinghouse and completing amateurism questionnaires. It is contemplated that the prospects who register in the spring of 2006 will be provided with preliminary eligibility decisions to assist in the recruiting process. Final amateurism certification decisions are anticipated to begin being issued in late spring 2007.

Financial Aid – Exceptions to Counting

In April 2005, the Council gave final approval to two proposals (Nos. 2002-82 and 2003-23-A) that would have exempted student-athletes from counting toward team financial aid limitations under certain conditions. Rather than adopt the proposals, the Board referred them back to the Council for further evaluation primarily because of concerns about the lack of limitations on the possible sources of the exempt aid. The Council considered a variety of options and attempted to assess the possible impact on competitive equity of various approaches to exempting institutional non-athletics financial aid from team limits. After a number of straw votes, the Council reported to the Board possible alternatives to the original proposals.

The Board considered the additional input from the Council and the Division I-AA/I-AAA Presidential Advisory Committee (which had also been asked to react to the proposals) and voted to defeat the pending legislation (Proposal Nos. 2002-82 and 2003-23-A). In place of the original proposals, the Board used its emergency authority to adopt two alternatives (Proposals Nos. 2005-173 and 2005-174) that place limitations on the sources of the exempt financial aid. Proposal No. 2005-173 provides an exception to the counting limitations for

a football or basketball student-athlete who has completed at least one academic year at the certifying institution and has achieved a minimum cumulative grade-point average of 3.300, provided the only institutional financial aid received is academic aid based solely on the recipient's academic record at the certifying institution. Proposal No. 2005-174 provides a similar exemption from counting toward equivalency limits in other sports for institutional academic scholarships but allows such aid received by a counter to be used toward meeting the minimum financial aid requirements for Division I membership.

2006 NCAA Convention

The Board and Council reviewed the schedule for the 2006 NCAA Convention, which will be held January 6 through 9 in Indianapolis, and noted significant events for Division I members, including a Division I Legislative Forum on Saturday, January 7, from 9 a.m. to noon, and the Division I Issues Forum on Sunday from 9 to 11:30 a.m. For the first time since the governance restructuring was fully implemented after the 1997 Convention, Division I members will vote on a legislative proposal. The vote on whether to override the Board's adoption of Proposal No. 2004-21, which would increase the maximum team grant-in-aid limits in four women's sports (gymnastics, cross country/track and field, soccer and volleyball), will take place at a Division I Business Session beginning at 11 a.m. during the Legislative Forum on Saturday.

The vote will be by roll call with each institution having one vote, and there will be a separate vote on each of the four impacted sports. Rather than casting a vote for or against each of the parts of the proposal, the votes will be for or against overturning the Board's adoption of the proposal. Accordingly, a "yes" vote will be a vote to override the Board's earlier action and a "no" vote will be to sustain the Board's

action. At least a five-eighths majority vote will be required to overturn the Board's adoption of the proposal.

Other Actions

1. American Indian Mascot Policy. The Council and the Board each reviewed the NCAA Executive Committee's August 2005 actions concerning the use of Native American mascots, names and imagery at NCAA championships and the decision to identify some member institutions that were determined to be utilizing such mascots inappropriately. The Board noted the importance of sending "consistent messages" and encouraged the Executive Committee to "stay the course."

2. Promotional Activities Involving Student-Athletes' Names or Pictures. The Council discussed Proposal No. 2005-26 that is sponsored by the Board and would revise restrictions related to the use of a student-athlete's name, picture or appearance in institutional, charitable, educational or nonprofit promotional activities. The Council determined that the proposal should not be considered noncontroversial and should be considered during the normal legislative cycle. The Board agreed that the legislation should not be adopted immediately and recommended that educational materials, including examples illustrating the application of the proposal, should be provided to the Council members before initial consideration of the legislation in January 2006.

3. Membership Requirements – Provisional and Reclassifying Members. The Board adopted noncontroversial legislation on the recommendation of the Council (and its Membership Subcommittee) to modify the deadline for required applications for members seeking to move to Division I, to specify when Division I rules must be applied by such institutions, and to require attendance at an NCAA Regional Rules Compliance Seminar by representatives of such members.

4. Division I-AA Enhancements. At its meeting in conjunction with the full Council meeting, the Division I-AA Governance Committee reviewed a status report regarding the possibility of providing enhancements to Division I-AA football. The appropriate "label" for what are currently identified as Division I-AA institutions will be discussed during a meeting of the Division I-AA Football Committee with the Division I-AA conference commissioners held at the site of the December championship. In addition, the governance committee noted that there appears to be growing support for increasing the number of seeded teams in the football championship, increasing the size of a institution's championship travel party and providing funding for local transportation for all rounds of the Division I-AA Football Championship.

5. NCAA Hurricane Relief Efforts. The Board noted that the NCAA and Habitat for Humanity have formed a partnership under which the NCAA will provide \$1.5 million in funding plus additional voluntary donations to be collected at all 88 NCAA national championships to help with long term rebuilding efforts in the hurricane impacted areas. Further, through this partnership, the NCAA will work with various Habitat for Humanity programs to mobilize the national Student-Athlete Advisory Committees, member institutions and coaching associations to help provide volunteer support for building homes for families in need of affordable housing.

Legislative Actions

The Board adopted the following 10 proposals, as noncontroversial or emergency legislation, during its October 27, 2005, meeting:

Financial Aid

No. 2005-173 – Financial Aid – Counters – Football or Basketball, Varsity Competition – Exception – Academic Aid Only

Permits in football or basketball a student-athlete who was recruited by the awarding institution and whose only source of institutional financial aid is academic aid based solely on the recipient's academic record at the certifying institution, awarded independently of athletics interests and in amounts consistent with the pattern of all such awards made by the institution, to compete without counting in the institution's financial aid team limits, provided he or she has completed at least one academic year of full-time enrollment at the certifying institution and has achieved a cumulative grade-point average of at least 3.300 (on a 4.000 scale) at the certifying institution.

Effective Date: August 1, 2006 [Adopted as "emergency" legislation]

No. 2005-174 – Financial Aid – Countable Financial Aid – Team Limits – Institutional Academic Scholarships

Specifies that institutional academic scholarships based solely on a student-athlete's academic record at the certifying institution are exempt from an institution's equivalency computation, provided the recipient has completed at least one academic year in residence at the certifying institution and has achieved a cumulative grade-point-average of 3.300 (on a 4.000 scale) at the certifying institution; further,

specifies that all institutional financial aid (including aid that is exempted from an equivalency computation) awarded to a counter may be used to meet the minimum financial aid requirements for Division I membership.

Effective Date: August 1, 2006 [Adopted as "emergency" legislation]

Governance

No. 2005-33 – NCAA Organization – Definitions and Applications – Senior Woman Administrator

Specifies that an institution with a female director of athletics may designate a different female involved with the management of the member's program as a fifth representative to the NCAA governance structure and specifies that this provision is a common legislative provision; further, clarifies the definition of a conference senior woman administrator and specifies that a conference with a female commissioner may designate a different female involved with the management of the conference as a representative to the NCAA governance structure.

Effective Date: Immediately (October 27, 2005) [Adopted as "noncontroversial" legislation]

No. 2005-34 – Legislative Process – Process for Adoption or Amendment of Bylaws – Management Council Action – Initial Review

Permits the Management Council, on initial review of a legislative proposal, to (1) approve and forward the proposal to the Board of Directors for consideration and possible adoption; (2) initially approve and forward the proposal to the membership for review and comment with Management Council support; or (3) if the proposal

does not receive initial approval, on motion, forward the proposal to the membership for review and comment without taking a formal position of support or opposition.

Effective Date: Immediately (October 27, 2005)
[Adopted as “noncontroversial”
legislation]

Membership

No. 2005-165 – NCAA Membership – Reclassification – Year One – Application of Division I Legislation

Specifies that during the first year of reclassification, an institution must apply all Division I legislation except scheduling requirements and progress-toward-degree requirements for student-athletes who are completing their final season of competition and were enrolled at the institution at least one year prior to the institution’s “exploratory year” as it began the membership change.

Effective Date: Immediately (October 27, 2005)
[Adopted as “noncontroversial”
legislation]

No. 2005-166 – Membership – Provisional and Reclassifying Process – Application Date

Specifies that the date by which a provisional or reclassifying institution must submit its application and fee to the national office is June 1.

Effective Date: Immediately (October 27, 2005)
[Adopted as “noncontroversial”
legislation]

No. 2005-167 – Membership – Provisional and Reclassifying Process – Regional Compliance Seminar Attendance

Requires a provisional or reclassifying institution to attend an NCAA regional compliance seminar during the “exploratory year” and requires a reclassifying institution to attend a regional compliance seminar each year of the reclassifying process.

Effective Date: Immediately (October 27, 2005)
[Adopted as “noncontroversial”
legislation]

No. 2005-168 – Membership – Provisional Membership – Election Procedures – Voting Requirement

Specifies that the procedures for election to provisional membership are federated provisions.

Effective Date: Immediately (October 27, 2005)
[Adopted as “noncontroversial”
legislation]

Miscellaneous

No. 2005-157 – Recruiting Calendars – Quiet Period – Women’s Ice Hockey

Establishes in women’s ice hockey a quiet period beginning with the Monday prior to the American Hockey Coaches Association Convention through May 31.

Effective Date: Immediately (October 27, 2005)
[Adopted as “noncontroversial”
legislation]

**No. 2005-175 – Executive Regulations –
Banned Drugs – Phenylephrine**

Removes phenylephrine from the list of banned drugs.

Effective Date: Immediately (October 27, 2005)
[Adopted as “emergency”
legislation]

Proposals Defeated by Board

The Board defeated the following two proposals during its October 27, 2005, meeting:

Proposal No.	Title
2002-82	Financial Aid – Counters – Football or Basketball Varsity Competition
2003-23-A	Financial Aid – Countable Financial Aid – Team Limits

BS&K Collegiate Sports Practice Group

This *Collegiate Sports Practice Group Newsletter* is a periodic publication prepared by the Collegiate Sports Practice Group of Bond, Schoeneck & King, PLLC, and is designed to provide information on the latest developments impacting intercollegiate athletics and compliance with NCAA legislation in NCAA Division I. The information contained in the *Newsletter* is not a substitute for professional counseling, advice or binding interpretations of NCAA legislation.

Bond, Schoeneck & King, PLLC, is engaged in the general practice of law with approximately 160 attorneys located in Kansas, New York and its affiliate, Bond, Schoeneck & King, P.A. in Florida. The work of the firm's Collegiate Sports Practice Group is concentrated in the representation of colleges and universities in NCAA infractions matters, compliance consulting and other collegiate sports matters. The group includes Mike Glazier, former NCAA director of enforcement and founding partner of the group; Rick Evrard, former NCAA director of legislative services; Steve Morgan, former NCAA group executive director and Division I chief of staff; Chris Schoemann, former NCAA staff member and campus compliance coordinator; and Tom Evans, general counsel to several Division I and II institutions. Collectively, the group has represented more than 100 colleges and universities in NCAA-related matters.

If you have any questions about this Newsletter, please contact any of the following members of our Collegiate Sports Practice Group:

In Overland Park, call 913-234-4400 or e-mail:

<i>Stephen R. Morgan</i>	smorgan@bsk.com
<i>Michael S. Glazier</i>	mglazier@bsk.com
<i>Richard J. Evrard</i>	revrard@bsk.com
<i>† Christopher D. Schoemann</i>	cschoemann@bsk.com

† Not licensed to practice law

In Syracuse, call 315-218-8000 or e-mail:

<i>Thomas S. Evans</i>	tevans@bsk.com
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