



Electronic Dispatch

Collegiate Sports Practice Group Newsletter

August 2008

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NEW DIVISION I GOVERNANCE STRUCTURE IMPLEMENTED

Division I governance, restructured in an effort to better support the Board of Directors (Board), became operational with the August meetings of the Board and the new Leadership Council. The Board received reports and took actions on a variety of topics of interest. At the opening of the meeting, the Board chair identified five significant issues impacting intercollegiate athletics: (1) ongoing academic reform efforts needed to help with meaningful change, (2) reliance by some institutions on the NCAA to establish academic policy rather than assuming responsibility at the institutional level, (3) assuring that financial pressures do not influence values, (4) early departures from high school by some student-athletes without knowing the full implication of the action, and (5) negative fan behavior and the effect on the collegiate model.

Leadership Council

The new Leadership Council, along with a Legislative Council, will assume much of the responsibility previously vested in the Management Council. The structural changes were intended to strengthen the foundation for the Board's policy setting role; provide the Board with high-quality advice from the governance substructure; and reduce the amount of material and the legislative load on the Board. It is anticipated that the level of communication about governance issues and coordination among governance bodies will be enhanced.

The Leadership Council is specifically intended to serve as the primary advisory group to the Board on strategic and policy issues; provide background information, advice and counsel to the Board; receive direction and authority from the Board in working on agendas consistent with those of the Board; and maintain a national focus rather than a conference/local one. The issues assigned by the Board to the Leadership Council include developing initiatives to enhance the level of diversity within the governance structure; offering recommendations on Division I membership standards; building on the work of a task force that has been reviewing commercial activity issues; and assessing appropriate strategies to evaluate Division I amateurism issues.

At its meeting the Leadership Council began the process of taking on the assignments from the Board and identified additional matters of importance to the division. Among the items recognized by the Leadership Council is the issue of ethics in sports and means of assisting coaches' associations and other constituent groups in having meaningful dialogs regarding ethics and professional approaches to their work. The council also raised concerns about the need to broadly examine time demands on student-athletes; the hiring practices in intercollegiate athletics and whether there is adequate "transparency" in the process consistent with other hiring practices on campus; and the need for additional professional development for coaches, including a possible program through which coaches receive education on a wide array of issues that are designed to assist in focusing on the overall well-being of student-athletes.

This edition of the *Collegiate Sports Practice Group Newsletter* features a compilation of the actions taken by the Board of Directors at its August 7, 2008, meeting. The Newsletter is published quarterly, following each Board meeting to assist campus chief executive officers, 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 other 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 Board or Council action, new legislation or an interpretation, please consult with the person designated on your campus to provide legislative interpretations.

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Academic Performance Program

The Committee on Academic Performance reported to the Board that the committee anticipates an increase in the number of appeals from academic performance program penalties as more severe sanctions are implemented. The penalties progress from financial aid, playing and practice season and recruiting limitations when an institution or team fails to meet the academic performance program standards for the second occasion to ineligibility for postseason competition and reclassification to restricted membership status on the third and fourth occasions, respectively. Such penalties can be appealed to the Committee on Academic Performance and, in the case of third or fourth occasion penalties, further appealed to the Board. The Board approved in principle policies and procedures for the administration of the occasion three and four penalty waivers and appeals.

In preparation for the committee's handling of waiver and appeal requests during the 2008-09 academic year, the Board used its emergency legislative authority to expand the committee from 11 to 15 members and to specify that, after a chair of the committee has served two full terms, the Board may extend the chair's term at two-year intervals. After adopting the legislative change, the Board extended for two years the term of the current chair, Walter Harrison, president of the University of Hartford. In addition, new voting members were identified.

In regard to the possibility of academic performance program penalties "following" coaches who change institutions and the possible development of a coaches' academic rate to be used to track the academic success of individual coaches, the Committee on Academic Performance reported to the Board that it did not support the concept due to the administrative and procedural complexities involved. The Board indicated a level of interest in having the issues further explored and noted that any additional discussion by the committee should include the benefit of a legal analysis. A subgroup of Board members, working with members of the committee and legal counsel, to further examine the issue of whether it is feasible to assign an academic progress rate to coaches was suggested by the Board. The concept of permitting access to archived Academic Progress Rates (including coaches' names) through the NCAA website was supported by the Board.

Legislative Override

Sixty-two Division I member institutions submitted requests to override the April 2008 adoption by the Board of Proposal No. 2007-30-C related to spring evaluations in the sport of men's basketball. The adopted legislation specifies that evaluation of live athletics activities during the April contact period in men's basketball shall be limited to regularly scheduled high school, preparatory school and two-year college contests/tournaments and practices and regular scholastic activities involving prospective student-athletes enrolled only at the institution at which the activities occur. The proposal also modified the April contact period to run from noon on the Thursday immediately after the NCAA Division I Men's Basketball Championship game through seven days following the initial date for the spring signing of the National Letter of Intent.

The Board discussed the legislation and its previous action and noted concerns about the proliferation of nonscholastic events conducted during the April contact period. The Board believed there are resulting consequences to the well-being of the prospects who participate in the nonscholastic events. The Leadership Council expressed similar concerns and recommended to the Board that it sustain its earlier adoption of the proposal. The Board voted unanimously to uphold its original action.

Accordingly, Proposal No. 2007-30-C will be subject to a membership vote at the 2009 NCAA Convention in January in Washington, D.C. At least a five-eighths majority vote of the Division I member institutions and voting conferences present and voting will be required to override the legislative action taken by the Board. The vote will be based on the principle of one institution-one vote and will be taken by electronic roll call.

Commercial Activity in Intercollegiate Athletics

The charge of the Division I Task Force on Commercial Activity was reviewed by the Board. It had asked the task force to find the balance point between the two extreme positions of "unrealistic idealism and crass commercialism" and to develop principles that clearly establish this balance position. These principles are to be sufficiently broad-based to "cover all sports and all commercial activity associated with athletics and not be so abstract that they do not relate to action." The principles are also to "reflect the values of higher education and respect that the participants are college students, not paid professional athletes."

The task force expects to develop principles and instructive guidelines to report to the Board in the fall. Once the Board receives the work of the task force it is anticipated that the Leadership Council will be asked to flesh out greater detail and determine whether changes in NCAA regulations are needed. It was noted that inasmuch as the work is important and must involve a values-based examination, a substantial period of time will be required “as the governance structure and membership seek to find a lasting approach.”

Other Actions

1. **Fantasy Sports Leagues.** Both the Board and the Leadership Council reviewed information indicating that based on a Federal Court of Appeals decision, in a case involving professional athletes that originated in Missouri, some fantasy sports games operators had concluded that offering a college football fantasy game that includes names and game statistics of college student-athletes would be permissible consistent with that ruling. It was noted that an NCAA interpretation states that the use of a student-athlete’s name in connection with a fantasy sports game is contrary to NCAA rules and that the NCAA would send a “cease-and-desist” letter on behalf of all members and student-athletes to any game operator who engages in such activities. The situation will be monitored and the Board may want to address whether fantasy sports games that adhere to certain parameters should be considered contrary to the principles of amateurism.
2. **Men’s Basketball and Football Academic Enhancement.** The Board established separate academic enhancement groups for men’s basketball and football to examine the academic performances of student-athletes involved in the respective sports. The groups are expected to think creatively about strategies for improvement of academic performance and, ultimately, graduation rates. Each group anticipates that it will provide a report with recommendations to the Board within the next year.
3. **Communications and Coordination Committee.** A Communications and Coordination Committee has been established as a part of the new Division I governance structure and consists of the chairs of the two new councils and each of the six new cabinets. The purpose of the committee is to enhance the level of communication about issues among the various governance bodies so that there is a more cohesive approach to managing the Division I agenda. It is also intended that the committee will assist with better informing the Division I membership. It is anticipated that the committee will meet by conference call before and after the groups of meetings of the councils and the cabinets.

Legislative Actions

Adopted by the Board

The Board adopted the following five items of legislation at its August 7, 2008, meeting:

No. 2008-5 – Committees – Division I Cabinets and Committees – Championships/Sports Management Cabinet – Football Issues Committee and Football Championship Committee

Specifies that: (a) the Football Championship Committee shall consist of one representative from each conference that is eligible for and applies for an automatic qualification for participation in the Division I Football Championship; (b) if an FCS conference that qualifies for a representative on the Football Issues Committee has a representative on the Football Championship Committee, the same representative shall serve on both committees; (c) the Football Issues Committee shall include one representative from the Football Rules Committee; and (d) the duties of the Football Issues Committee will include postseason bowl licensing responsibilities.

Effective Date: Immediately (August 7, 2008) (composition of committees will be achieved through normal attrition) [Adopted as emergency legislation]

No. 2008-7 – Eligibility – Definitions and Applications – Education-Impacting Disability

Establishes a definition of “education-impacting disability” as a current impairment that has a substantial educational impact on a student’s academic performance and requires accommodation; further, changes all legislative references of “learning disabilities” to “education-impacting disabilities.”

Effective Date: Immediately (August 7, 2008) [Adopted as emergency legislation]

No. 2008-8 – Academic Performance Program – Committee on Academic Performance – Composition and Term of Office of Chair

Increases the number of members of the NCAA Division I Committee on Academic Performance from 11 to 15 and specifies that the committee shall include a minimum of two chancellors or presidents; further, specifies that after the chair has served two full terms, the NCAA Division I Board of Directors may extend his or her term at two year intervals.

Effective Date: Immediately (August 7, 2008) [Adopted as emergency legislation]

No. 2008-9 – NCAA Membership and Championships and Postseason Football – Conditions and Obligations of Membership – Operating and Capital Financial Data Report

Specifies that an institution shall submit financial data detailing operating revenues, expenses and capital related to its intercollegiate athletics program to the NCAA on an annual basis, as specified, as a condition and obligation of membership and in order to be eligible to enter a team or individual in NCAA championship or postseason football competition.

Effective Date: August 1, 2009 [Adopted as emergency legislation]

No. 2008-10 – Personnel – Definitions and Applications – Minority Graduate Assistant Coach – Championship Subdivision Football

Establishes a program by which a minority graduate assistant coach position is awarded annually to each NCAA Division I Football Championship Subdivision (FCS) conference and establishes the parameters of the program and position.

Effective Date: August 1, 2009 [Adopted as emergency legislation]

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 190 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; Kyle Skillman, attorney with experience in NCAA compliance and enforcement matters; Tom Evans, general counsel to a Division I institution; and Chris Schoemann, former NCAA staff member and campus compliance coordinator. 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:

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