



Collegiate Sports Practice Group Newsletter

January 2005

Board and Council Review Division I Issues

The consequences for academic underperformance by teams, the availability of athletic financial aid prior to initial full-time enrollment and Division I-A membership criteria were among the topics of discussion by the Division I Board of Directors (Board) and Management Council (Council) at their October 2004 meetings. No final actions were taken on those subjects. Several noncontroversial legislative proposals were adopted and additional matters were addressed.

Academic Performance Program

The Board received a report from the Committee on Academic Performance (which had met after the October Council meeting) concerning the implementation of contemporaneous penalties for those institutions that have student-athletes leave while not in good academic standing and from a team that has a low Academic Progress Rate (APR). Although no specific recommendations for these contemporaneous penalties have been made by the committee, it presented examples for Board discussion, including (1) teams with APRs that would result in a projected graduation rate of 50 percent or less could be subject to penalties, and (2) a limit of five percent could be placed on the maximum numbers of grants that could be “lost” in any one year.

The Board provided comments to the committee including asking it to reexamine whether a five or 10 percent limit on the maximum number of grants to be lost in a year is too high or too low and whether the percentage limitation should be adjusted downward when the “historic” penalties (those based upon a team’s overall academic performance over time) are implemented. The Board also requested that the committee consider use of a label other than “projected graduation rate,” review the data to determine if a recommended “cut point” for penalties has a disparate impact on any student-athlete population, and ensure that the membership and media are educated about the components of the APR and how it is calculated. The Board indicated a desire to act on the contemporaneous penalties at its January 2005 meeting. Both the Council and Board approved policies and procedures for the committee and the Academic Performance Program.

Summer Financial Aid

The Council and the Board reviewed the issue of defining the pool of prospective student-athletes who would be eligible to receive financial aid during the summer prior to initial full-time enrollment beginning in 2005. Council members provided comments to the working group charged by the Board with developing the definition. Among the Council members’ observations were that there should be an academic nexus justifying the awarding of the aid, that concerns about costs and recruiting implications should be considered, that institutional discretion in providing the awards might be helpful and that the availability of such awards may result in additional pressure on prospects to attend summer school.

The Board discussed the benefits of implementing the regulations concerning summer aid in phases with institutions being provided flexibility “to be attentive to their institutional missions” during the initial period. But, once additional data is available, the Board observed that the criteria need to be reviewed to ensure that the provision of aid is having the “intended positive academic impact.” A motion that allows institutions the autonomy to develop specific non-athletically related criteria for use in identifying prospective student-athletes who would benefit from summer school prior to their first enrollment provided the criteria have an academic nexus and are published “to ensure ‘sunshine’ is provided in the process” was adopted by the Board. The Board also confirmed that recipients of the aid may not participate in an organized practice activity during the involved summer term.



One-Time Transfer Exception

The Council received a report from the One-Time Transfer Exception Ad Hoc Group, which was formed in response to a request from the Student-Athlete Advisory Committee that the one-time exception to the normal application of the Division I transfer requirements be examined to consider expanding the number of situations in which it is available. The ad hoc group included coaches, athletics administrators and student-athletes. The group decided previously not to recommend that the opportunity to obtain the exception be extended to all sports. Currently, the one-time transfer exception is not available to student-athletes in the sports of basketball, men's ice hockey and, in many situations, football.

Based upon the recommendations of the group, the Council agreed to sponsor five proposals for consideration in the 2005-06 legislative cycle to expand the availability of certain exceptions to the normal Division I transfer-residence requirement in specified situations. One proposal would expand the one-time exception to a student-athlete in any sport who was not recruited by the four-year institution originally attended and has never received institutional athletically related financial aid. Three proposals would relax the two-year nonparticipation exception, the exception for return to the original institution without participation, and the nonrecruited student exception, respectively, to allow use of those exceptions even if the involved student-athlete engaged in up to 14 consecutive days of countable athletically related activities, but not competition. The fifth proposal would provide an exception to the residence requirement for a student-athlete who is a graduate student and is now enrolled at an institution other than the one from which he or she graduated, regardless of whether the student had transferred previously.

Legislative Process

The Council reviewed the Division I annual legislative cycle and generally confirmed the current policies and procedures. Attention was given to the processes for modification of proposals after the July 15 deadline for submission. It was noted that the cabinets can not only take a position to support or oppose a proposal but also can offer suggested modifications to the sponsor and, if the sponsor does not support the modification suggested, offer an alternative proposal for consideration. Conferences are also permitted opportunities similar to those of the cabinets.

The Council adopted a change in the legislative process to permit it to sponsor a modification that expands the scope of the original proposal as late as its January meeting, provided the modification is supported by at least 75 percent of the Council members present and voting. Otherwise, such amendments must be made prior to the conclusion of the October Council meeting. During the 60-day period after the Council takes its initial actions on proposals in January, cabinets and conferences may offer amendments-to-amendments that are less expansive than the original proposal they seek to amend.

The Council also discussed frustration occasionally expressed by Council and Board members regarding the legislative process. It noted that the Board is not authorized to introduce a legislative proposal into the regular legislative cycle but rather may charge another element of the governance structure to consider a specific topic and the Board and Council can then act on the legislation submitted. The Board can draft and adopt any proposal it believes is appropriate through the use of its "emergency" legislative authority. Council members expressed a desire that the Board generally utilize the substructure and available expertise rather than the emergency authority. The Council noted that "unilateral actions often are unwise and usually have unintended consequences that could be avoided by more deliberate consideration."

Other Actions

1. **Task Force on Recruiting.** Both the Board and the Council reviewed interpretations questions that have been received by the NCAA national office since the adoption of recruiting reform legislation in August. It was suggested that the requests appear to illustrate that some in the membership are interested in maintaining recruiting "business as usual" rather than supporting a "true cultural change." Board and Council members noted that the new legislation was intended to reduce the celebrity environment of the official visit and to emphasize the opportunity for prospects and institutions to make informed decisions. The Council observed that meaningful change in attitudes is occurring on campuses and that the December 1 deadline for more

complete review of official visit policies and the requirement for presidential approval provide additional opportunities to emphasize the intent of the legislation. The Board acknowledged that presidential leadership is necessary to shift the focus from competitive equity concerns to making informed choices.

2. **Membership Issues.** The Board indicated that it would review the Division I-A membership requirements at its January 2005 meeting and asked the staff to provide historical data, to identify the principles used to develop the 15,000-average-per-home-game attendance standard and the other membership criteria, and to review how the standards align with the NCAA strategic plan. The Board noted that there was a sense of uncertainty among institutions while the Board is continuing its review of the criteria and that some schools are receiving negative media attention and hearing concerns from constituents about the meaning and impact of the Board's evaluation. It was agreed that the continuing examination of Division I-A membership requirements must be done in conjunction with a review of the enhancement of Division I-AA, and, as a sign of support, the Board endorsed the enhancement package supported by the Division I-AA commissioners.

3. **Division I-AA Governance Committee.** The Division I-AA Governance Committee reviewed legislative proposals that had been submitted in the 2004-05 legislative cycle for Division I-A consideration and agreed to move nine proposals forward with an opportunity for Division I-AA consideration as well. The action was taken without indicating a position of support for or opposition to any specific proposal. The Division I-AA group also unanimously supported the Division I-AA enhancement initiatives recommended by the Division I-AA commissioners. The committee expressed its belief that the initiatives are crucial to promoting membership in Division I-AA as a viable option and ensuring that the Division I-AA championship experience is analogous to participation in a postseason bowl.

Legislative Actions

The Board adopted the following eight proposals, all as noncontroversial legislation, at its October 28, 2004, meeting:

Amateurism

No. 2004-150 – Amateurism – Definitions and Applications – Professional Athletics Team

Amends the criteria concerning a professional team by replacing the term "other reasonable expenses incidental to participation," which is in reference to expenses allowed without triggering the professional team definition, with "other reasonable expenses."

Effective Date: Immediately (October 28, 2004)

Awards & Benefits

No. 2004-156 – NCAA Championships – Awards – Additional Awards

Permits an institution, in all sports, subject to the director of athletics' discretion, to purchase NCAA championship participation awards for all eligible members of the squad list, for all nonparticipant members of the official travel party and for institutional personnel.

Effective Date: Immediately (October 28, 2004)

Eligibility

No. 2004-151 – Eligibility – Season-of-Competition Waiver – Competition While Eligible

For the season-of-competition waiver for a student-athlete who competes while eligible in extenuating circumstances that are beyond the student-athlete's and institution's control, removes the requirement that the student-athlete must officially withdraw from the institution and the consequence of withholding from some competition the student-athlete who meets all of the conditions

and administrative criteria for the waiver. Further, amends the numerical conditions of the amount of competition and when it can occur to reflect current hardship-waiver legislation (i.e., 20 percent and during the first half of the season).

Effective Date: Immediately (October 28, 2004)

No. 2004-152 – Eligibility – Hardship Waiver – Administration

Permits an institution to appeal a conference denial of a hardship waiver to the NCAA Division I Student-Athlete Reinstatement Committee.

Effective Date: Immediately (October 28, 2004) [May be applied retroactively]

Financial Aid

No. 2004-154 – Financial Aid – Definitions and Applications – Honorary Academic Award/Research Grant

Eliminates as an element of the definition of an honorary academic award or research grant, the requirement that an award or grant be published in an institution's catalog.

Effective Date: Immediately (October 28, 2004)

Recruiting

No. 2004-125 – Administrative Regulations – Recruiting Calendars – Women's Basketball – April Contact and Evaluation Periods

Eliminates in women's basketball the April contact period and establishes a five-day evaluation period during the third week in April (e.g., April 15-19, 2005).

Effective Date: Immediately (October 28, 2004)

No. 2004-149 – Recruiting – Official Visit – Test Score Requirements

Specifies that an institution may provide an official visit to a prospect who has provided a test score in writing on a high school (or college) academic transcript (official or unofficial) or through the use of the applicable testing agency's automated-voice system.

Effective Date: Immediately (October 28, 2004)

No. 2004-153 – Administrative Regulations – Recruiting Calendars – Softball – Quiet Period

Modifies the recruiting calendar in softball to eliminate the quiet period following the NCAA Division I Women's Softball Championship.

Effective Date: Immediately (October 28, 2004)

Proposal Reviewed by Council

Tabled

The Council during its October 18-19, 2004, meeting tabled consideration of the following proposal as emergency legislation until April 2005:

<u>Proposal No.</u>	<u>Title</u>
2003-24	Financial Aid – Terms and Conditions – Period of Award

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 more than 150 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; 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.

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