

How About a Quid Pro Quo?

a CLIPS GUEST COMMENTARY

Our highly principled author proposes verifiable checks to keep everyone on the up and up vis-a-vis academic benchmarks for student-athletes.

by Frank Splitt

PREFACE – This comment followed Elia Powers' November 16, 2005, "Inside Higher Ed" column, "The NCAA Responds," insidehighered.com/news/2006/11/16/ncaa, wherein the author summarizes NCAA President Myles Brand's response to a series of questions posed by House Committee on Ways & Means Chairman Bill Thomas that were aimed at ascertaining the justification for the tax-exempt status of the NCAA and its member schools. Predictably, Brand did not give cogent answers to questions related to the academic life of college athletes – taking refuge in the privacy provisions of the Family Education Right to Privacy Act (FERPA).

SCANDALS AND MULTIMILLION DOLLAR COACHING CONTRACTS make for attention-getting headlines and stories. However, the core of the issue surrounding the tax-exempt status of the NCAA cartel and so-called 'student-athletes,' is this: lacking tangible and verifiable evidence, the government must presently take the word of school administrators that athletes are really students on track to receive a bona fide, rather than a "pretend" college education. Course tracks for athletes that must pretend to be students are usually engineered by academic support center staff members who work at the behest of the school's athletic department. This is a surefire recipe for academic corruption since the primary motivation for the athletic department is not education, but winning and revenue generation.

As Walter Byers, who served as NCAA executive director from 1951 to 1987, said when speaking of a college's reporting on the necessary progress that has been made on the rehabilitation of at-risk high school graduates: "Believe me, there is a course, a grade, and a degree out there for everyone."

It gets down to the fact that the government is now in a position where it must trust schools that, in many instances, give every appearance of being secretive and untrustworthy. Besides the potential loss of big-money, there is a compelling need for some schools to report very high graduation rates to justify/rationalize their high-profile programs and their extraordinary investments in academic support center staffs and facilities.

The above, combined with self assessment and reporting, as well as weak enforcement, and even weaker penalties for infractions, provide an enormous incentive for these and other less conflicted schools to scheme and cheat. After all, the schools apparently believe that it's only wrong if they get caught. But, who's going to catch them and what's to lose if they do get caught?

Also, school administrators seem to believe that outcomes assessment is none of the government's business and are quick to appeal to the privacy provisions of the Family Education Right to Privacy Act (FERPA) to avoid disclosure, especially in the case of the academic performance of the athletes in their moneymaking sports programs. However, FERPA's privacy provisions do not apply so long as individual students are not identified in aggregated data.

A 'QUID PRO QUO' TACTIC would make the NCAA cartel's tax-exempt status contingent upon the provision of tangible and verifiable evidence that their athletes are really students and that the cartel is meeting requirements aimed at reclaiming academic primacy in higher education while assuring that college athletes are provided with an opportunity to obtain a real college education.

Many would say that a government quid pro quo with the NCAA and its member schools is long overdue. In fact, it was suggested by Congressman Cliff Stearns (R-FL) at a House subcommittee hearing in the fall of 2004 to review proposed changes in NCAA rules in response to the 2003 recruiting scandal at the University of Colorado at Boulder. It is certainly not a new idea, but, in view of NCAA President Myles Brand's 'empty' response to Chairman Thomas' Question # 8, it is an idea whose time has come. (Chairman Thomas' questions and Myles Brand's responses can be found at www2.ncaa.org/portal/media...to_housecommitteeonwaysandmeans.pdf)

The following requirements are suggested for consideration by the Congress. They are requirements that would need to be satisfied by NCAA cartel schools in order to maintain the tax-exempt status of its programs:

1. Disclosure of courses taken by Buckley compliant cohorts representing 50% of the school's football and basketball team players with the most playing time, the average grades for the athletes and the average grades for all students in those courses, the names of advisors and professors who teach those courses, and whole-period class attendance;
2. Restoration of first-year ineligibility for freshmen with expansion to include transfer athletes;
3. Restoration of multiyear athletic scholarships—five-year, need-based, scholarships that can't be revoked because of injury or poor performance;
4. Realization of a 2.0 grade-point average, quarter-by-quarter or semester-by-semester, in accredited, degree-track courses, to gain and maintain eligibility for participation by an athlete;
5. Employment of a standard uniform system of accounting by athletic departments that includes capital expenditures and is subject to public financial audits;
6. Relocation and divestiture of control of academic counseling and support services for athletes. Such services must be the same for all students and in no way under the influence of the athletic department;

7. Reduction of the number of athletic events that infringe on student class time, with class attendance made a priority over athletics participation—including game scheduling that won't force athletes to miss classes.

Finally, failure to implement and comply with these corrective measures over a reasonable amount of time (determined by Congress) should put the NCAA and/or individual institutions at risk of losing their nonprofit status. Once implemented, evidence of a continuation of existing patterns of fraud, continued efforts by universities and colleges to circumvent the intent of these reform measures, or, retaliation against whistleblowers, should garner severe penalties—two strikes and you're out! In addition to the loss of not-for-profit IRS tax classification, penalties reflecting contempt of Congress should be of such severity as to make the risk of noncompliance not even worth thinking about.

Frank Splitt is a member of The Drake Group. His commentary was originally posted on insidehighered.com on 11-16-06, in response to Elia Powers' column "The NCAA Responds." This commentary has been reprinted on College Athletics Clips with the permission of the author.

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