BE ON THE SPORTS PAGE AND NOT ON THE FRONT PAGE:
PRESSURE POINTS IN COLLEGE ATHLETICS

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I. Introduction.

The public's seemingly insatiable appetite for sports has made college athletics an ever hotter market for the media. Almost every paper in America has traditionally had a sports section, and sports have long been part of any radio or television newscast. With the proliferation of cable channels devoted to sports twenty-four hours a day, the media now needs even more sports news to fill the time. A lawsuit, a scandal or even simple misconduct involving a player or coach on your campus can be blown up to fill that media space, and your school can move from the sports page to the front page overnight. An understanding of the "hot spots" in intercollegiate athletes today and what the NCAA rules require can help you prevent your campus from being the lead off story of the day.

II. Starting with the basics: What is the NCAA?

A. The NCAA is a voluntary, unincorporated association consisting of colleges and universities, conferences and associations, and other educational institutions. Student-athletes, community and junior colleges are not members of the NCAA.

1. The NCAA is a federation of three groups of members, Divisions I, II and III.

   a. Division I colleges and universities must offer at least seven sports for men and seven for women, or six for men and eight for women. They tend to have fairly elaborate sports programs. They must meet minimum athletic financial aid requirements. Division I schools are subdivided for the sport of football into
Division I-A and I-AA with Division I-A having to meet certain minimum attendance requirements.

b. Division II schools must offer at least four sports for men and four for women. They may award athletic financial aid. Division II schools are allowed to have one men's and one women's sport classified as a Division I sport, other than football and basketball. Division II believes in offering intercollegiate athletics participation to as many of its students as possible, whether or not they are recruited or receive financial aid.

c. Division III institutions must also offer at least four sports for men and four for women. Division III colleges and universities cannot offer athletic financial aid. Like Division II, a Division III school can have one men's and one women's sport classified as a Division I sport, other than football and basketball.

2. General policies and rules of the NCAA are established by the members of Divisions II and III at annual conferences and Division I by vote of elected representatives.

3. The NCAA Constitution and Bylaws require that NCAA members adhere to NCAA rules in their relations with their student-athletes engaged in intercollegiate athletics.
4. Member institutions act pursuant to their own interests in maintaining membership in the NCAA so that they may compete in intercollegiate athletics with other member institutions that also have agreed to abide by the regulations of the NCAA.

B. The fundamental purpose of the NCAA is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body, and, by doing so, retain a clear line of demarcation between intercollegiate athletics and professional sports.

C. The NCAA's administrative structure is headed by an Executive Committee of 20 individuals, of whom 16 can vote and are presidents or chancellors who also sit on their respective boards of presidents in their divisions, with Division I having the predominance of membership. The Executive Committee oversees Association-wide issues. This is the body with authority to authorize and settle litigation.

1. Each division is operated by a board of presidents or chancellors. They are chosen to represent their athletic conference. Reporting to each such board in each division is a management council of athletics administrators, faculty athletic representatives and conference representatives that makes recommendations to its respective division's board and handles responsibilities delegated to it.
2. In addition, each division has a multitude of committees composed of faculty representatives, athletic administrators and other campus administrators that are assigned specific areas of responsibilities in each division.

3. An NCAA staff member is assigned as a liaison to each committee, subcommittee, board, and council. The staff members are not decision makers, but facilitators.

III. What is an athletic conference?

A. An athletic conference is a group of institutions who associate together to provide mutual scheduling and championship opportunities as the core of each member school’s intercollegiate activities. Conferences also are now the basis for institutions’ representation in the NCAA governance system, especially in Division I.

1. Historically, conferences have been based on their members’ geographic proximity and on rivalries between different pairs or groups of schools. Often all or most of the schools are similar in size, public or private identity, and admissions standards.

2. Increasingly, conferences seek members who can bring exposure in new geographic regions or media markets, or which are well known athletically, in order to improve attendance and, especially in Division I, television and other revenue possibilities.

B. In Division I, conferences also are the basis for their members’ participation in important parts of the NCAA’s revenue-distribution formula, especially that part of the
formula which is based on a conference’s teams’ participation in the Men’s Basketball Championship.

IV. Hot Spot #1: Gambling.

A. Gambling by student-athletes is becoming one of the biggest concerns of collegiate administrators and coaches for the integrity of their athletic program and the welfare of the student-athlete. The concern is stretched across schools in all three NCAA divisions. There has been a noticeable increase in the number of sports wagering-related cases processed by the NCAA enforcement staff.

1. Incidents involving basketball and football players from such institutions as Northwestern University, Notre Dame, Boston College, Arizona State University and Fresno State University have been front-page news.

2. A recent study by Michael E. Cross and Ann G. Vollano of the University of Michigan Department of Athletics, "The Extent and Nature of Gambling Among College Student Athletes," shows that most student-athletes (72%) gamble, and many gamble on sports in general (35%).

3. The gamblers are both men and women student-athletes. Among male student-athletes, over 45% have gambled on sports in general.
4. According to the study, a considerable number of student-athletes acted in ways that called into question the integrity of their contests or put them in contact with individuals who may have tried to affect the outcome of their games. Over 5% of male student athletes provided inside information for gambling purposes, bet on a game in which they participated, or accepted money for performing poorly in a game.

5. Student-athletes who gamble with bookmakers wager substantial amounts of money. The mean amount of money wagered on a single sports bet through a bookmaker was $57.25. Student-athletes who gamble on sports with bookmakers wager an average of $225 each month.

B. What the NCAA forbids: NCAA Bylaw 10.3: "Staff members of a member conference, staff members of the athletics department of a member institution and student-athletes shall not knowingly: (a) Provide information to individuals involved in organized gambling activities concerning intercollegiate athletics competition; (b) Solicit a bet on any intercollegiate team; (c) Accept a bet on any team representing the institution; (d) Solicit or accept a bet on any intercollegiate competition for any item (e.g., cash, shirt, dinner) that has tangible value; or (e) Participate in any gambling activity that involves intercollegiate athletics or professional athletics, through a bookmaker, a parlay card or any other method employed by organized gambling."
1. The penalty for violation NCAA Bylaw 10.3 is as follows: "Prospective or enrolled student-athletes found in violation of the provisions of this regulation shall be ineligible for further intercollegiate competition, subject to appeal to the Academics/Eligibility Compliance Cabinet for restoration of eligibility. Institutional staff members found in violation of the provisions of this regulation shall be subject to disciplinary or corrective action as set forth in 19.6.2.2 of the NCAA enforcement procedures, whether such violations occurred at the certifying institution or during the individuals previous employment at another member institution.

C. The NCAA Position on Gambling states that the NCAA opposes all forms of legal and illegal sports wagering. Sports wagering has the potential to undermine the integrity of sports contests and jeopardizes the welfare of student-athletes and the intercollegiate athletics community. Sports wagering deems the competition and competitors alike by a message that is contrary to the purpose and meaning of "sport." Sports competition should be appreciated for the inherent benefits related to participation of student-athletes, coaches and institutions in fair contests, not the amount of money wagered on the outcome of the competition.

1. From these premises, and from the following discussion of the risks of gambling, it will be seen that it’s irrelevant whether gambling is on college or pro athletics or whether or not an athlete is gambling on (for or against) his or her own team. Sports gambling is simply DANGEROUS for athletes!
D. The same characteristics that may make a young person a star student-athlete can lead that person to be a gambler: A risk taker, confident, strong ego, a belief that he/she can control outcomes, or a belief that nothing really bad will ever happen to him/her. Since ALL athletes share these traits to some degree--and since all college athletes are by definition good athletes--ANY college athlete is at risk for gambling.

E. This is not a victimless crime. Like drug addiction, it can create other crimes--like stealing to get money to continue to gamble--and it has the substantial danger of making the gambling student beholden to gambling or other potentially criminal interests, and thus of drawing unsavory characters to campus.

F. Note, too, that all student bookies are almost certain to be somehow related to organized crime. Gambling is a highly sophisticated operation.

G. What should a college administrator do?

1. Student life administrators need to talk about gambling with ALL students in residence halls, fraternities and sororities. This is not just a student-athlete problem, it's a potential problem for ANY student. This is an enormously difficult problem, especially with the proliferation of on-line gambling opportunities--but is important to try to narrow student gambling as much as possible.
2. Administrators need to be educated by local police and the local FBI about the gambling activities in the community, e.g., which bars have bookies.

3. Athletic departments need well thought-out gambling education programs which coaches believe in, and are part of, to educate student-athletes about the dangers of gambling. It’s essential that the program include outsiders whom the students will respect and listen to, and who can bridge the "generation gap."

4. If you suspect that gambling is going on, don't look the other way—deal with it. Bill Saum at the NCAA is the person to contact for help from the NCAA (913-3391906 x 7416). He also has direct contacts with the FBI. Even if the NCAA enforcement office needs to be advised, or law enforcement authorities brought in, a self report with full institutional cooperation is ALWAYS better than legal authorities or the NCAA learning of it from another source.

V. Hot Topic #2: Disciplining the Student-Athlete.

A. It is not new for student-athletes to get into trouble. However, the increased access of the media to institutional reports to the NCAA of student-athlete misconduct means there should be heightened awareness on the campus as to the fallout from an adverse incident so as to prompt administrators to be more cognizant of areas to monitor to prevent problems.
1. The recent decision by the Maryland Court of Appeals in *Kirwan, et al v The Diamondback, et al*, 1A2d __, 1998 (December 8, 1998), is the latest in a string of cases allowing a newspaper access to records of student misconduct.


2. In *Kirwan*, the University of Maryland was sued under its state records disclosure act by its student newspaper. The University had refused to give the newspaper copies of all correspondence between the University and the NCAA involving a student-athlete basketball player who was suspended for three games as a result of the student-athlete accepting money from a former coach to pay the student-athlete's parking tickets, citing, among other arguments, that the Federal Rights and Privacy Act (FERPA), which precludes disclosure of education records of students, prohibited their release. There were additional allegations that other members of the basketball team were parking illegally on campus, for example, parking in handicapped spaces, and were receiving preferential treatment from the University with respect to the parking violation fines imposed.

3. The paper also sought all records relating to campus parking violations committed by other members of the men's basketball team and those committed by its head
coach. The University cited exemptions in the state disclosure statute for personnel records and financial information to prevent disclosure of these records. The University also argued that disclosure of the student-athletes' records would be contrary to the public interest because it would have a chilling effect on the University's obligation to self-report any NCAA violations and would discourage students from coming forward to admit to or advise the University about potential NCAA violations.

4. The Circuit Court for Prince George's County granted the newspaper's motion for summary judgement and ordered the University to turn over the records. The University appealed to the Maryland Court of Special Appeals, but before it was heard, the case went directly to Maryland's highest court, its Court of Appeals, on a writ of certiorari. *Kirwan v Diamondback*, 346 Md 372, 697 A2d (1997). The U.S. Department of Education, which administers FERPA, and the NCAA both filed amicus briefs in the action on behalf of the University.

5. The Court of Appeals ruled that all the documents had to be turned over to the student newspaper. The Court found that FERPA was intended only to keep private those aspects of a student's education that relate to academic matters or status as a student. It said that prohibiting disclosure of any document containing a student's name would allow universities to operate in secret, which would be contrary to one of the policies behind FERPA. It therefore held that "education records" within the meaning of FERPA do not include records of parking tickets or correspondence
between the NCAA and the University regarding a student-athlete accepting a loan to pay parking tickets.

6. The Court also ruled that the coach's parking record was not a personal record as it had little or nothing to do with his employment, his status as an employee, or his ability as a coach. It also said it was not financial information as contemplated by the state disclosure act because it was not similar to other types of financial information defined in the statute and a parking ticket is a citation charging a misdemeanor, not a record of indebtedness.

7. The Court said the University's public interest argument failed because the records requested did not fall within any of the specific categories of records described in the state disclosure law where the public interest was allowed to prevent disclosure of a record. It said the University's argument that disclosure of the parking records would be an invasion of privacy forbidden by the state disclosure law also failed because it would only be relevant if the records were personnel or financial information records, and it had already deemed they were not.

B. Avoiding the problem: be aware of potential issues like that at Maryland.

1. Institutions need to know what their students are doing - and need to ask in ways that will provide necessary information without unnecessarily invading students' privacy.
2. The athletic department should have a clear structure for making inquiries and should inform student-athletes of the kinds of circumstances that may lead to questions - so that athletes are not surprised when inquiries are made. Telling athletes up front about institutional concerns will lessen the possibility of resentment when an innocent student is questioned.

3. When there is a problem, be sure that discipline is given fairly and consistently.

C. Possible problems areas include:

1. Parking: Is a student-athlete getting special parking privileges? Are parking fines being dismissed without payment?

2. Vehicles: Is a star student-athlete driving a late model vehicle? There may be innocent reasons - or there may be a problem. Telling athletes in advance that this may be a concern is important. Your school might want to consider a vehicle registration program for student-athletes, to help flag the situation where a booster or agent has bought the vehicle.

3. “Gifts” - Remember, it’s contrary to NCAA rules, and in many states it’s now also contrary to state law, for a student-athlete to receive gifts from an agent. Gifts of jewelry are often one of the first gifts from an agent.
4. Reduced bail or no bail; reduction in charges or no charges: Are the local or campus police treating the student-athlete differently than other students?

5. The standard for determining if a problem exists is found in NCAA Bylaw 16.01.2 which says: “Exception for Benefits Available to Other Students. The receipt of a benefit by a student-athlete or his or her relatives or friends that is not authorized by NCAA legislation is not a violation if it is demonstrated that the same benefit generally is available to the institution’s students, their relatives or friends or to a particular segment of the student body (e.g., foreign students, minority students) determined on a basis unrelated to athletics ability.”

D. If a problem is found, self-report it to the NCAA.

1. Most schools want to nip a problem in the bud, rather than let it grow. Additionally, a self report will likely result in a lesser punitive action by the NCAA. See NCAA Bylaw 32.2.1.2 which states, “Self-disclosure shall be considered in establishing penalties, and, if an institution uncovers a violation prior to its being reported to the NCAA and/or its conference, such disclosure shall be considered as a mitigating factor in determining the penalty.”
VI. Hot Spot #3: Physically Disabled Student Athletes.

A. As society mainstreams the physically disabled student-athlete into its public K-12 schools, colleges and universities will be confronted with increasing numbers of such students who wish to participate in intercollegiate athletics. The NCAA has published NCAA Guideline 3A Participation by the Impaired Student-Athlete, a copy of which is attached to this outline, which describes the NCAA’s position supporting the participation of such student-athletes if they qualify for a team without any lowering of standards for achievement, attendance, or completion of required tasks and if they do not put others at risk.

B. The legal right for the physically disabled student-athlete to play intercollegiate sports comes from Section 504 of the Rehabilitation Act of 1973 which states in its implementing regulations that in providing athletics to its students, a college or university receiving federal funds may not discriminate on the basis of a handicap and shall offer to qualified handicapped students an equal opportunity for participation in intercollegiate athletics. 34 CFR 104.47 (a)(1) (1994); 45 CFR 84.47 (a)(1)(1994). The Americans with Disabilities Act also provides a legal basis for such a right for students at higher education institutions covered by its public entity or public accommodations sections.

C. These laws require colleges and universities to provide physically disabled student-athletes, who makes known their disabilities, reasonable accommodation, defined on a case-by-case basis, to ensure access to their intercollegiate athletic programs if that
disability "substantially limits" a major life activity. If an accommodation would cause an undue hardship or burden to the school, the accommodation does not need to be made.

D. Declaring a young person who wants to play a sport ineligible because of a physical handicap can draw media attention because of the public's natural sympathy towards a person who tries to overcome a disability. The college or university should be certain it is on solid ground before it does so. The NCAA Guideline referenced about provides a procedure that the NCAA recommends be followed before such a determination is made. In addition, there have been several court decisions that provide some help in deciding how defensible such a decision will be.

1. *Knapp v Northwestern University*, 101 F3d 473 (7th Cir 1996), *cert. denied*, 117 US 2454 (1997). Knapp, a student-athlete basketball player, sued Northwestern University for allegedly violating the Rehabilitation Act because the team physician declared him ineligible to play. Knapp had had a cardiac arrest his senior year in high school, and doctors had placed a device in his body to detect heart arrhythmia and to shock an abnormal heart rhythm back to normal, if that occurred. Knapp had been recruited by Northwestern, which told him that it would continue to offer him a full scholarship even if he could not play.

   a. The trial court held for the student-athlete saying Knapp was disabled as defined in the Act because playing intercollegiate basketball was a major life activity for
him, integral to his education experience. The court also was convinced by three experts that the risk of injury to Knapp due to his heart was insubstantial due to the device implanted in his body.

b. On appeal, the Seventh Circuit disagreed with the trial court. It held playing basketball was not a major life activity, and was only one part of the education available to Knapp at the university. His scholarship had continued, so he still had access to that experience. Also, the Seventh Circuit said Knapp was not "otherwise qualified" to play ball as medical determinations of physical qualifications to play are best made by the university as long as they are made with reason.

2. Pahulu v University of Kansas, 897 F Supp 1387 (D Kan 1995). This Rehabilitation Act suit, which preceded Knapp, involved a student-athlete football player who had an abnormally narrow cervical canal that team physicians felt gave him a high risk of permanent, severe neurological injury, including quadriplegia, if he continued to play ball. A federal district court found that Pahulu had a physical disability and that intercollegiate football was part of a student's major life activity of learning. However, the court also found that because Pahulu still had an opportunity to learn that was not substantially limited by not playing football—like Knapp he continued to have a scholarship—he was not "disabled" as defined in the Act as his access to education was not affected by his disability. The court also said Pahulu was not "otherwise qualified" because he lacked medical clearance to play, a
program requirement. The court further found the team doctor's opinion to be reasonable and supported by evidence.

3. *Wright v Columbia University*, 520 F Supp 789 (ED Pa 1981). Wright was a student-athlete football player who sued Columbia University under the Rehabilitation Act because its team physician found him ineligible to play because he had sight only in one eye. The Columbia coaches sided with Wright saying, aside from his handicap, he was "otherwise qualified" to play. Wright's expert said there was no substantial risk of eye injury from his playing. Wright and his family were willing to release the university from any liability incurred by his participation. The court found Wright "otherwise qualified" to play, that he understood the risks, and that the school was acting too paternalistic in refusing to let him play.

VII. Hot Spot #4: Gender Equity in Coaches Salaries.

A. Although the issue of pay equity between men and women coaches in intercollegiate sports have existed even before the passage of Title IX in 1972, the issue has received increased attention recently due to the Equal Employment Opportunity Commission (EEOC)'s issuance of its *Enforcement Guidance on Sex Discrimination in the Compensation of Sports Coaches in Educational Institutions*, EEOC Notice Number 915.002 (October 27, 1997). For internet access to the Guidance, go to <<www.eeoc.gov/docs/coaches.txt>>. Although the majority of information in the Guidance is a restatement of traditional Equal Pay Act law, new is the EEOC's
comment that it will use Title IX standards in reviewing allegations of pay inequities, including comparing the overall salaries paid to men versus women coaches, as opposed to the traditional comparison of an individual male coach's salaries to that of a female coach's. A lawsuit by a female coach can be front-page news, and colleges and universities should use the *Guidance* as an opportunity to review how well its coaches' contracts conform with the law.

B. The EEOC emphasizes that it will compare the functions performed by coaches, not the sports coached. If a school, in deciding if a pay inequity exits, gives a male coach additional responsibilities, it will examine if the female coach was given the opportunity to take on those additional responsibilities too. For example, if a male coach gets paid more because he supervises assistant coaches, the EEOC will look to see if that is because the school has discriminated against the female coach in giving more financial support to the sport coached by the male coach.

1. This provision, and some other similar issues (see “D” and “E-3” below), emphasize the importance of having clear job descriptions - including clear expectations for each team’s development over time - so that differences are stated clearly in advance and not seen as after-the-fact justifications.

2. “Team expectations” also can be stated over a period of more than one year, to take into account the different levels of competition of different teams and the different goals which a school may set for them.
3. From a student's perspective, Title IX requires equally effective resources and equal competitive objectives for the men's and women's teams as GROUPS. But that standard permits variation in resources and expectations among different men's and women's teams, and those variations are acceptable bases for different expectations and compensation for coaches - so long as there is not a pattern of the better-paying coaching positions (for men's OR women's teams) going to male coaches.

C. While the EEOC will compare the skills required to perform the job, it will also look to see if the school provides unequal training to its coaches to acquire the skills that it may use to try to justify a disparity in salary. For example, if the male coach is given training on his speaking skills and the female coach is not, that cannot justify giving the male coach more money because he has special speaking skills.

D. The EEOC will examine the effort to perform the job. It says that all coaches typically do teacher/training, counseling/advising of students, general program management, budget management, fund-raising, public relations, and recruiting. Therefore, it says it can do comparisons of coaches coaching different sports to determine if a salary inequity exists. The Guidance gives the example of comparing the men's hockey coach to the women's crew coach as two jobs requiring equal effort. However, it does note in a different example that it may be difficult to compare a head football coach with any other coach.
1. The "job description" element of "B" (above) is relevant here, too.

E. If a salary disparity is found, it may not be illegal if an institution is able to justify it under one of the "affirmative" defenses that courts have allowed to date. The EEOC commented on those defenses in the Guidance as follows:

1. More revenue produced: The EEOC said it would challenge this defense if the sport coached by the woman traditionally has received fewer resources as that may have prevented it from becoming a revenue producer. The burden is thus on the institution to demonstrate that the women's sport has received resources that would allow it to reach its revenue-producing potential, and if that potential is less than exists for the men's sport, to demonstrate to the EEOC that this is not the institution's fault. This is an issue where the institution may have to be prepared for an inadequate understanding of the overall structure of college sports - but where the institution also must do its own homework about its own realistic possibilities.

2. Competition in the marketplace: The EEOC will require the institution to demonstrate that it has assessed the value of each coach's job-related characteristics to make certain that any salary discrepancy is not due to gender and also will look to see if the marketplace comparators are infected with gender discrimination. Again, in this area the EEOC may be asking more than is appropriate of individual institutions - but institutions must be sure that they have in fact done all that it is realistic to do.
3. Greater duties required: The EEOC will look to see if the additional salary is specifically related to extra duties. As stated above, it will also look to see if the male coach got greater opportunities to assume extra duties than the female coach.

4. Prior salary higher: The EEOC will require the hiring institution to show it consulted with the prior employer to determine the basis for the coach's salary, that it accurately reflected the coach's ability based on education, experience, or other factors, and it was not relied on solely in determining the coach's new salary.

5. Superior experience and education: These will be accepted only if they are not also based on gender discrimination. For example, paying a male coach who has coached football for five years and basketball for five years more than a female coach who has coached basketball for ten years would be deemed by the EEOC to be discriminatory.

6. Gender of the athletes being coached: This will not be accepted by the EEOC as a justification, and indeed paying coaches less because they coach either men or women would be a Title IX violation in terms of resources that are available to the athletes.

F. The Guidance does not have the force of law, but may be deferred to by the courts in analyzing a salary inequity case.
G. Recent cases have not found discrimination in coaches' salaries. See, *Stanley v University of Southern California*, 13 F3d 1313 (9th Cir 1994); *Bartges v University of North Carolina at Charlotte*, 908 F Supp 1312 (WDNC 1995); and *Deli v University of Minnesota*, 863 F Supp 958 (D Minn 1994). The EEOC says this is because the plaintiff in *Stanley* failed to present evidence on the failure of USC to allocate funds to support women's basketball and in *Bartges* and *Deli* the court did not address the question of discrimination in the terms and conditions of employment.

H. For assistance in drafting defensible contracts, see the material from the Women's Sports Foundation which suggests tailoring a part of your standard coach's contract to reflect the extra expectations that you have for a particular coach. Also see NCAA Educational Outreach: World Wide Web Sites on Gender Equity and Women in Sports.

VIII. Hot Spot #5: "Sweat Equity": Sweatshop Manufacturing of Athletic Apparel.

A. Colleges and universities are increasingly being asked to develop policies on allowing their name and logo to appear on athletic apparel manufactured abroad in sweatshop conditions. A number of different efforts have been going forward simultaneously by various groups to deal with this issue. Additionally, some colleges like Notre Dame, Duke and Brown have individually adopted codes of conduct for apparel manufacturers to follow. Your campus may be the next to have student protests over this issue.

B. Four major efforts have been going forward:

1. The Apparel Industry Partnership, which is sponsored by Department of Labor, focuses on certifying that a "brand" or company is acceptable by "certifying" a sampling of the facilities in which its clothes are manufactured;

2. The Responsible Apparel Production Principles, which have been developed by the American Apparel Manufacturers Association, focuses on certifying specific factories regardless of how many different companies may use each one;

3. Work by the Collegiate Licensing Corporation, which manages licensing activities for hundreds of institutions, and has focused on the development of a common code for licensees regardless of which certification process is used; and,
4. Work by the American Collegiate Licensing Association, the professional association of collegiate licensing officers, which has focused on involving colleges in the development of the two major certification approaches.

C. Each of these activities is dealing with four principal issues:

1. Developing a "code of conduct" which manufacturers must assure is adhered to by their domestic and overseas (especially) contractors and subcontractors.

2. Providing for effective cooperation of foreign governments, especially those which do not have, or do not enforce, laws about minimum wages and child labor. A major issue for students is a focus on guaranteeing a "basic living wage" for foreign workers, which is often more than local wage laws require and may be difficult either to quantify or to enforce.

3. Providing for effective cooperation by the manufacturers all the way down the chain of their subcontractors. Although most major manufacturers are actively involved in promoting either or both of the AIP and RAPP/AAMA programs, most also are resisting student urgings that all facilities which every company uses must be disclosed to the public (the so-called "transparency" issue).

4. Providing for effective certification and monitoring that includes involvement of credible human rights organizations. The AIP and RAPP/AAMA programs have different and thus far competing approaches (the former focuses on companies, the
latter on specific factories), but they share the problems of not yet actually being “in the field,” and of concerns that the major auditing firms on which they are likely to rely often have extensive other business relationships with the manufacturers whom they would be monitoring.

D. Representative Bibliography.


Participation by the Impaired Student-Athlete

January 1976

Revised June 1993

Although descriptive terms such as impaired, disabled, handicapped and physically challenged are commonly found in current medical and legal literature, exact definitions are evasive. The World Health Organization has defined "impaired" as "any loss or abnormality of psychological, physiological or anatomical structure or function." This definition will be accepted for the purposes of this guideline. As such, "impaired student-athletes" may include, but not necessarily be limited to, the following:

1. Those confined to a wheelchair;
2. Those who are deaf, blind or missing a limb;
3. Those who have only one of a set of paired organs; and
4. Those who may have behavioral, emotional and psychological disorders that substantially limit a major life activity.

The American Academy of Family Physicians and The Americans With Disabilities Act (effective July 1992), encourage participation of impaired persons in sports and physical activities to the full extent of their ability in an appropriate setting. The American Academy of Orthopaedic Surgeons states that physicians involved with disabled athletes need to accurately assess their medical needs and specific limitations so that medical precautions will be appropriate and needless restrictions will be avoided.

In support of the intent of these statements, the NCAA recognizes the right of impaired individuals to high-quality sport or recreational programs. These individuals should be eligible for intercollegiate programs if they qualify for a team without any lowering of standards for achievement, attendance or completion of required tasks, and if they do not put others at risk.

Medical exclusion of an impaired student from an athletics program should occur only when the impairment presents unusual risk of further impairment or disability to the individual and/or other participants. When impaired students who are not qualified to participate in existing programs are identified, every means should be explored by member institutions to provide suitable sport and recreational programs in the most appropriate, integrated settings possible to meet their needs.

It is recommended that an institution require joint approval from the physician most familiar with the impaired student-athlete's condition, the team physician, and the most appropriate official of the institution, plus the parent(s) (in the case of a minor), before permitting an impaired student-athlete to participate in an athletics program.

In instances in which the absence or nonfunction of one of a set of paired organs constitutes the specific impairment mentioned previously, serious consideration of the risks and benefits of athletics participation must be weighed by student-athletes, their parents (in the case of a minor), the team physician and the institution. This
Guideline 3-A Continued

Participation by Impaired Student-Athletes

discussion, and the subsequent process by which the decision for or against participation is made, should take into account the following factors:

1. The quality and function of the remaining organ;

2. The probability of injury to the remaining organ, and

3. The state of the art in protective equipment and the capability of such equipment to prevent injury to the remaining organ.

When the decision is made to allow the impaired student-athlete to compete, a properly executed document of understanding and a waiver/medical release concerning the ramifications of sports participation relative to the impairment should be established. Participants in such a document should include all relevant parties (e.g., the student-athlete, parents/guardians in the case of a minor, the consulting physician, a representative of the institution's medical staff, a representative of the athletics department and legal counsel). Such statements are not a guarantee against legal action should an unfortunate circumstance occur, but serve to document the student-athlete's acknowledgement of the risks incurred and the institution's and medical staff's intentions and efforts on behalf of that student-athlete.

References


