Published on Sports Management Resources

Q: What is needed to fix the NCAA enforcement system?

NCAA penalties often cause serious damage to the reputation of institutions of higher education, coach and athletic administrator loss of employment, and may cause loss of participation and scholarship benefits to college athletes. Strong processes need to be put in place commensurate with these risks. The NCAA's current "cooperative principle," which requires member institutions to self-report Association rules violations,' investigate themselves, and assist the NCAA in its own investigation or face enhanced penalties for not cooperating or taking appropriate corrective action, should be retained. However, the following new due process rules and actions should be in place before the NCAA (a) issues a "show cause" order; (b) suspends a coach, athlete, or other athletics personnel from representing a member institution in athletics events; (c) suspends the athletics events telecommunications privileges of a member institution; (d) levies a substantial financial penalty or (e) suspends a member institution from participating in a collegiate athletics event:

1. Professional judges from among candidates with experience as trial or appellate judges or administrative law judges, and experienced third party investigators, should be hired as independent contractors to remove the appearance or actuality of conflict of interest by NCAA staff or committees. These judges and investigators, would participate in enforcement cases involving severe and significant breaches of conduct enforcement cases, but would be excluded from participating in breaches of conduct and incidental issues for which penalties are not onerous. They would preside at hearings and appeals, issue subpoenas when necessary (such authority should be requested from Congress), and possess exclusive authority to adjudicate, resolve, and issue final judgments including penalties in enforcement cases under their jurisdiction.

2. In severe or significant breach of conduct cases, a pre-hearing "discovery" process (authority to be requested from Congress), including depositions and document production, during which Association staff and counsel for accused parties may gather and exchange pertinent information should be instituted;

3. In severe or significant breach of conduct cases, accused parties, including coaches, athletes, institutional employees, and institutions themselves, should be permitted to confront and cross-examine opposing witnesses at hearings;

4. At the discretion of the hearing judge, a nonparty whom the NCAA or the accused institution has identified as having engaged in wrongdoing, or having enabled wrongdoing to occur, should be asked to present an oral or written statement at the hearing, subject to rebuttal by the institution. At any party's request, the judge shall require the statements to be given under oath or affirmation (authority to be requested of Congress);

5. Member institutions should be prohibited from firing or permanently reassigning employees or disassociating themselves from representatives of the institutions' athletic interests whom the Association or the accused institution have identified as having engaged in or enabled wrongdoing until after the case has been resolved and the nonparty's role in it has been determined; and

6. All hearings and appellate proceedings should be open to the public, except when an accused party objects. This rule shall not apply to the post-hearing deliberations of the appellate panels, which should be closed to the public.

The above due process provisions should not be required in the case of reductions to an athlete's financial aid dollar amount or award period or claims for reinstatement of athletic eligibility, which claims should be the exclusive responsibility of arbitration panels. These college athlete decisions require timely action because loss of eligibility or financial support of education may be immediate. The following provisions should apply:

1. The NCAA should be required to hire and provide salary, benefits and administrative expenses for and NCAA member institutions should be required to provide all athletes with contact information for, an Athlete Welfare Advocate(s) who shall provide independent legal advice to college athletes at no cost regarding the application of Association rules and due process rights.

2. Athletes declared ineligible for competition by their respective educational institutions or national athletic association for reasons other than an insufficient grade-point average, failure to make satisfactory progress toward a degree, or similar academic failure, should have the right to appeal the eligibility determination and seek reinstatement by means of binding arbitration only.

3. A panel of arbitrators certified by the American Arbitration Association (AAA), and approved by the athlete and the athletic association, should conduct the arbitration process in accordance with the AAA Commercial Arbitration Rules and Mediation Procedures. Binding arbitration should replace an appeal to any NCAA committee that reviews an institution's requests for the reinstatement of athletic eligibility in accordance with NCAA rules.

4. The arbitration panel's decision should be final and should bind the athlete(s) involved, the athlete's educational institution, and any national athletic association of which the institution is a member.

Whistle-blower protection is another important provision that should be required. College athletes, faculty and other NCAA member institution employees who disclose unethical behavior or NCAA or institutional rules violations related to the conduct of athletics programs should be provided with protection from retaliation by their member institutions or its employees.

Acknowledgement: These ideas are the collective thoughts of a small working committee of The Drake Group of which I was honored to be a part: thanks to Gerry Gurney, Allen Sack, Brian Porto and Andy

Zimbalist -- with special thanks to Brian Porto for his legal expertise on this issue.

Topics

Ethics

Governance Organizations

Personnel Issues

Rules Compliance

Source URL: https://sportsmanagementresources.com/print/pdf/node/32