

Recommendations for Sports Program Transparency and Reporting at the NCAA and Its Member Institutions

by Frank G. Splitt

INTRODUCTION

This commentary is part a sequence of essays in support of The Drake Group's congressional initiative. It builds on these essays – focusing on recommendations to the U. S. Congress for greater transparency and reporting that could be required of NCAA sports programs at colleges and universities. This transparency and reporting would provide supporters, the general public, present and future students and their parents, the media, and policymakers with a much better understanding of “what is going on.” The recommendations are followed by notes that provide rationale and clarifying detail.¹

To set the stage, attention is first called to the fact that the NCAA and its member schools use the Family Educational Rights and Privacy Act (FERPA) to shield academic corruption from public view.² This corruption not only allows them to sustain their phony ‘student-athlete’ ruse with its derivative tax-exempt status, but also to recruit, sign, and roster academically unqualified blue-chip athletes requisite to fielding professional-level teams for their college sports entertainment businesses.

The recommendations are rooted in the compelling need to require the NCAA and its member institutions to provide tangible evidence that their athletes function as real students. In the end, the implementation of these recommendations will help restore academic and financial integrity in colleges and universities supporting big-time (NCAA D-1A) sports programs, especially football and men’s basketball.

RECOMMENDATIONS

It is recommended that the NCAA and its member institutions:

1. Provide evidence that their athletes are maintained as an integral part of the institution's student body;³
2. Provide evidence that their athletes attend regular whole-period classes;⁴
3. Provide evidence that their athletes are on accredited degree tracks and are held to the same academic standards of performance as all other students;⁵
4. Provide evidence that their athletes realize a 2.0 grade-point average, quarter-by-quarter or semester-by-semester to gain and maintain eligibility for participation in athletic events, with the grades and academic records certified by the school's chief academic officer;⁶
5. Employ a standard uniform system of accounting in their athletic departments that is subject to public financial audits;⁷ and
6. Be advised that the need to vastly improve their transparency and reporting is a very serious matter; consequently, their operations will be subject to congressional oversight as well to severe penalties for noncompliance.⁸

EXPLANATORY NOTES

¹ The above recommendations and these notes are based on essays such as:

- a) “Are Big-Time College Sports Good for America?”
(http://www.thedrakegroup.org/Splitt_Good_for_America.pdf),
- b) “The U.S. Congress: New Hope for Constructive Engagement with the NCAA and Intercollegiate Athletics” (http://thedrakegroup.org/Splitt_Montana_Professor.pdf),
- c) “The U. S. Congress, Higher Education, and College Sports Reform”
(http://thedrakegroup.org/Splitt_The_Interface.pdf), and
- d) “The Congressional Challenge to the NCAA Cartel’s Tax-Exempt Status”
(http://thedrakegroup.org/Splitt_Congressional_Challenge.pdf).

These and other related publications are posted at <http://thedrakegroup.org/>.

² FERPA is part of the Federal General Provisions Concerning Education (GEPA), a set of unfunded conditions on the receipt of federal education funds. It is commonly referred to as the Buckley Amendment to GEPA. See Matthew R. Salzwedel & Jon Ericson, “Cleaning Up Buckley: How the Family Educational Rights and Privacy Act Shields Academic Corruption in College Athletics,” *Wisconsin Law Review*, Volume 2003, Number 6, 1053-1113.

³ Over the years, the NCAA has made a number of rule changes that have emphasized athletics over academics so as to move their D-1A football and men’s basketball programs to professional levels. Therefore, it is to be expected that the NCAA will resist providing college athletes the opportunity to function as real students by agreeing to:

- a) Restore first-year ineligibility for freshmen with expansion to include transfer athletes;
- b) Reduce 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;
- c) Restore multiyear athletic scholarships—five-year scholarships that can’t be revoked because of injury or poor performance (currently, an athletic scholarship is an agreement between athlete and coach/athletic department, renewed based on ATHLETIC performance), or, replace athletic scholarships with need-based scholarships – agreements between a student and the institution based on ACADEMIC performance. If the scholarship is need based, it will be awarded by the institution – just as the institution awards all other need-based aid – in that case, it does not need to be a five year award as the student will continue to receive his or her need-based aid, even if they leave the team. A strong case for switching to need-based aid as the only way to break the cycle of sponsoring professional teams on college campuses is made by John Gerdy in his most recent book, *Air Ball: American Education’s Failed Experiment with Elite Athletics*;
- d) Require athletes to honor the terms of their multiyear athletic scholarship with appropriate penalties to the school and athlete for broken commitments such as ‘one and out’ to the NBA, or
- e) Divest its professional-level sports programs from America’s higher education system. This would not only put a long overdue end to the NCAA’s contrived façade of ‘amateurism’ but also release the stranglehold the college-sports entertainment business has on America’s institutions of higher learning. Consideration could then be given to approaches involving the development of professional minor league football and basketball leagues modeled after the European and Australian club sports system, or, alternatively, the establishment of Age Group Professional Leagues along the lines proposed by Rick Telander in *The Hundred Yard Lie: The Corruption of College Football and What We Can Do to Stop It*. In any case, schools could serve as team sponsors – renting/leasing their sports facilities as part of their for-profit businesses.

⁴ Attending class is a public act; disclosing the names of courses and professors while not releasing students' grades provides the appropriate balance between a student's right to privacy and the public's right to know the conduct of faculty, administrators and governing board members. The purpose of transparency is to focus on the conduct of faculty, administrators and governing board members, not on student conduct.

Transparency would require disclosure of courses taken by the school's football and basketball team players as well as cohorts representing 50% of the 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 records for the athletes.

It is suggested that interpretive wording be added to FERPA's student privacy provisions to make abundantly clear that this legislation does not prohibit release of information on the academic performance of individual athletic teams in whole or in part, so long as the data do not identify individual team members, See NOTE 9 for more detail.

⁵ The schools should be required to:

- a) Name the National Advisory Committee on Institutional Quality and Integrity (NACIQI) approved accrediting organization responsible for accrediting the tracks, especially for the general studies and other 'diploma-mill-like' degree tracks commonly engineered for athletes by their school's academic support center staff, and
- b) Relocate and divest control of academic counseling and support services for athletes by athletic departments. Such services must be the same for all students and in no way under the influence of the athletic department.

⁶ It is reasonable to expect that a legitimate student have no less than a "C" average. The school's chief academic officer should be held personally accountable for academic corruption.

⁷ Convenience accounting and budgeting practices will continue to be used to deceive and confuse faculty, the public, and the government about athletic department financials unless and until schools are forced to employ a uniform system of accounting that includes total capital expenditures, depreciation, and total staff costs from all sources, as well as be subject to public financial audits. The threat of Sarbanes-Oxley would certainly bring the NCAA and its member institutions to sharp attention.

⁸ Conditioning the continuation of the NCAA's tax-exempt status on their meeting specific requirements such as outlined herein and plugging the tax loopholes that help subsidize the college sports arms race will provide a strong message as to the serious nature of the recommendations. Also, without congressional oversight and stringent penalties for noncompliance there will be no lasting reform.

Self assessment and reporting by colleges and universities, as well as weak enforcement by the NCAA, and even weaker penalties for infractions, provide an enormous incentive for schools to scheme and cheat. Failure to implement and comply with the requirements over a reasonable amount of time 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. In addition to the loss of nonprofit 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.

⁹ Supplementary recommendations relative to FERPA that will ensure academic integrity of institutions of higher education follow:

a) Under Department of Education guidelines, “Directory Information” shall be amended to insert “courses, including the name of the professor” following “major field of study.” b) Institutions shall make public academic records of members of student groups sufficient in number to protect the privacy of individual students, students’ courses including the grade, name of the professor and course GPA. The records shall be in the listed in order of grades received, i.e., courses in which the student received an A, courses in which the student received a B, and so forth as illustrated in the sample format below.

Sample Format for Assessment & Accountability

Major: _____
Adviser _____

Courses in which the student received an A

Course	Title	Instructor	Hours	Grade	Class GPA
Theatre	Theatre [fill in complete titles]	Elliott	1	A	3.8
Music	Education	Cox	3	A	4.0
Education	Education	Gerlovich	4	A	3.8
Education	Education	Ducharme	2	A	4.0
Education	Education	Stjernberg	2	A	3.9

Courses in which the student received a B

Course	Title	Instructor	Hours	Grade	Class GPA
Theatre	Theatre	Elliott	1	B	3.4
Journalism	Journalism	Woodward	3	B	3.1
English	English	Horner	3	B	3.6
Art	Education	Lewis	3	B	3.9
SPED	Education	Fejes-Mendoza	3	B	3.5
Education	Education	Sternberg	1	B	3.7

Courses in which the student received a C

Course	Title	Instructor	Hours	Grade	Class GPA

See Salzwedel & Jon Ericson (NOTE 2) for additional examples.

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Frank G. Splitt, a member of The Drake Group, a Senior Director and Fellow of the International Engineering Consortium, and a Life Fellow of the IEEE, is a former McCormick Faculty Fellow at Northwestern University, a Vice President Emeritus of Nortel Networks, and recipient of the *2006 Robert Maynard Hutchins Award* “for his courageous defense of academic integrity in collegiate sports.”