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Compliance Officers' Guide to Navigating NCAA Student-Athlete Reinstatement Cases Involving Amateurism Violations

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This research examined all 430 amateurism student-athlete reinstatement (SAR) cases between 2004 and 2006. This paper reports on the trends in the SAR staff decision making process, including the benchmark results of cases on the basis of the bylaw violated by the athlete and the mitigating factors considered by the SAR staff. Results indicated athletes violating professional teams and agent legislation face the most significant penalties, and the SAR staff permits mitigating factors such as unique personal circumstances and the actions of the athlete to influence the penalty issued. These findings lead to practical recommendations and prudent practices for compliance officers, coaches, athletes, and other stakeholders in intercollegiate athletics. Further, this research may serve academicians who wish to be of service and provide meaningful contributions to contemporary intercollegiate athletics policy. The implemented research method that examines the written case analysis of the SAR staff may serve as a useful paradigm for future research addressing the policy concerns of academics and practitioners in the field.

Athletic department staff members are constantly challenged to operate a clean program while concurrently attempting to achieve a competitive advantage in the intercollegiate athletics industry. Coaches need to win whereas compliance officers need coaches to abide by the rules. Coaches will occasionally recruit players who have violated or will violate an NCAA regulation, and compliance officers will need to pursue the process of student-athlete reinstatement (SAR) to restore the affected players' eligibility.

One objective of this article is to assist institutional staff members when pursuing such cases by identifying trends in the decision making of the SAR staff and benchmark the results of amateurism SAR cases on the basis of the violation committed by the athlete. Also identified are mitigating factors considered by the SAR staff that could potentially lead to a reduced penalty. A set of recommendations for compliance officers and athletes is developed to assist member institutions in seeking a positive reinstatement decision from the SAR staff.

While National Collegiate Athletic Association (NCAA) definitions of amateurism have received significant coverage in academic scholarship (Allison, 2001; Glader, 1978; Sack & Staurowsky, 1998; Smith, 1993; Staurowsky, 2004; Wheeler, 2004; Zimbalist, 1999), academic treatments of amateurism have consistently failed to examine the actual policies used by the NCAA to enforce amateurism, as it defines it. Research needs to investigate contemporary NCAA decision making processes to identify areas that need the attention of intercollegiate athletics administrators and policy makers. Recommendations may then be offered that are feasible and useful to pursue the Association's and its membership's purposes, as they are embodied in Bylaw 2 of the NCAA Manual (i.e., Principles of Institutional Control, Student-Athlete Well-Being, Ethical Conduct, Rules Compliance, and Competitive Equity) (Kaburakis, 2005). Pursuing a practical and meaningful contribution, this article attempts to quantify the results of all amateurism SAR cases over a three-year period.

Methodology

The texts selected for examination were the published case summaries written by the SAR staff. Summaries written by the SAR staff are excellent ways to understand the decisions made. Case summaries included pertinent information and presented SAR staff reasoning for the decisions that could be analyzed using a research protocol. The cases were retrieved from the Legislative Services Database for the internet (LSDBi) Eligibility and Secondary Infractions case search on the NCAA website (www.ncaa.org). The dataset consisted of Bylaw 12 (Amateurism) reinstatement cases in 2004, 2005, and 2006. A total of 430 cases across all three divisions were identified and analyzed through the LSDBi's search function. Data collection commenced after receiving permission from the NCAA, Big Ten Conference, and the Indiana University compliance offices.

To develop a systematic method of identifying trends and establishing benchmarks for the decision making process under examination, a list of 12 questions was utilized for the purpose of collecting data on every case. After answering the questions, the resultant data were analyzed in the Statistical Package for the Social Sciences (SPSS) Version 14.0 software. Benchmarks were established by grouping similar cases on important factors using frequency counts, percentages, cross-tabulations, and comparison across groups.

Results

College athletes seeking reinstatement for violating amateurism rules were immediately reinstated in 42.3% of cases, reinstated with conditions in 51.9% of cases, and declared permanently ineligible in 5.8% of the cases. The most common violation was involvement with

impermissible promotional activities (Bylaw 12.5), 41.6%; receipt of prohibited forms of pay (Bylaw 12.1.2.1), 33.3%; competition with professional teams (Bylaw 12.2), 18.4%; signing with an agent (Bylaw 12.3), 4.2%; and employment (Bylaw 12.4), 4.2%.

Benchmarks for SAR Cases

This section benchmarks the results of SAR cases on the basis of the violation committed by the athlete. Violations were aggregated by bylaw section, including receipt of impermissible benefits (12.1.2.1), involvement with professional teams or events (12.2), involvement with agents (12.3), employment (12.4), and promotional activities (12.5). Table 1 and Table 2 summarize the number and percentage of cases in each bylaw. Figure 1 summarizes the benchmarks that were identified for each bylaw.

Table 1 - *SAR Staff Ruling by Bylaw*

<u>Bylaw</u>	<u>Reinstated</u>	<u>Conditions</u>	<u>Ineligible</u>	<u>Total</u>
Receipt of Payment	13	124	6	143
Professional Teams	7	57	16	80
Agents	1	7	10	18
Employment	1	17	0	18
Promotional Activities	159	20	1	180
Financial Donations	1	1	0	2

Note: Due to cases with multiple bylaw violations, the total number of cases in the table (441) exceeds the number of amateurism SAR cases (430)

Table 2 - *SAR Staff Ruling by Bylaw in Percentages*

<u>Bylaw</u>	<u>Reinstated</u>	<u>Conditions</u>	<u>Ineligible</u>
Receipt of Payment	9.1%	86.7%	4.2%
Professional Teams	8.8%	71.3%	20%
Agents	5.6%	38.8%	55.6%
Employment	5.6%	94.4%	0
Promotional Activities	88.3%	11.1%	0.6%
Financial Donations	50%	50%	0

Figure 1 - Summary of Benchmark Results by Bylaw

Bylaw	Benchmark	Exceptions
12.1 Receipt of Payment	Predominantly (87%) reinstated with conditions. Almost always (95%) required to repay value of benefit received, but depending on size of benefit, withholding conditions required in 1/3 of cases with conditions	If a second bylaw is also violated, more likely to lead to ineligibility International athletes typically must repay larger values and sit more games than domestic athletes
12.2 Professional Teams	Typically (71%) reinstated with conditions, but over 6 out of 10 cases resulting in ineligibility are 12.2 violations. 20% of 12.2 violations result in ineligibility	International prospective athletes reinstated at a higher percentage than other athletes Prospective domestic athletes and international post-enrolled athletes ineligible in 5 of 11 total cases
12.3 Agents	Don't expect much leniency from SAR staff. Less than 50% cases result in reinstatement and conditions are significant when reinstatement does occur.	Absent significant mitigation, only violations involving a talent/scout agency (12.3.3.1) result in reinstatement with conditions
12.4 Employment	Expect reinstatement by repaying the value of the benefit received.	
12.5 Promotional Activities	Predominantly (88.3%) reinstated immediately with no conditions.	When conditions are imposed, athlete repays benefit received – typically a small value – or ceases the act that caused the violation

Receipt of Impermissible Benefits (Bylaw 12.1.2.1). Athletes accepting impermissible benefits, which accounted for exactly one-third of all amateurism SAR cases, were reinstated with conditions in the form of repaying the value of the benefit received, and on occasion served a withholding condition. The SAR staff reinstated athletes with conditions in 124 (86.7%) of 143 cases, and declared an athlete permanently ineligible only six times. In the 124 cases requiring a condition to be served as a prerequisite for reinstatement, repayment was required in 118 (95.2%) instances, and serving a withholding condition in conjunction with repaying the benefit was required in 36 (29%) instances.

The only difference in the amount of money repaid based on demographic factors was the residence status of the athlete. The repayment value for international athletes was greater than for

domestic athletes. The repayment value for 73.4% of domestic athletes was under \$500, compared to 38.9% of international athletes. Likewise, 22.2% of international athletes repaid more than \$2,000, while only 9.4% of domestic students paid more than \$2,000.

When the SAR staff ruled for permanent ineligibility in Bylaw 12.1.2.1 cases, another bylaw was also violated in four of the six cases. In three of these cases, an agent violation also occurred. In only two instances was the violation simply a receipt of impermissible benefits. Both cases involved female athletes accepting prize money in excess of expenses subsequent to enrollment. However, in each case the athlete believed her playing career was over when the prize money was accepted. In conclusion, the SAR staff declared athletes ineligible in 4.2% of Bylaw 12.1.2.1 violations. However, if the receipt of impermissible benefits occurred in conjunction with another amateurism violation, the SAR staff was more likely to rule an athlete was permanently ineligible.

Involvement with Professional Teams or Events (Bylaw 12.2). Athletes violating Bylaw 12.2 faced a risk of being declared ineligible. While only 18.6% of all amateurism reinstatement cases involved a violation of professional competition legislation, 64% of all decisions resulting in permanent ineligibility (16 of 25) resulted from a violation of Bylaw 12.2. Overall, athletes were immediately reinstated in 8.8% of Bylaw 12.2 decisions, reinstated with conditions in 71.3% of the decisions, and declared permanently ineligible in 20.0% of the decisions.

Enrollment and residence status were important factors in shaping the outcome of a Bylaw 12.2 reinstatement case. Prospective international athletes (PIA) were reinstated with conditions in 87.2% (34 of 39 cases) of Bylaw 12.2 violations. PIAs were reinstated at a higher percentage than domestic athletes who were reinstated in only 23 of 33 cases (69.7%). Stated differently, PIAs were declared ineligible in 12.8% of cases, while domestic athletes were declared ineligible in 30.3% of Bylaw 12.2 cases.

Involvement with Agents (Bylaw 12.3). Athletes violating Bylaw 12.3 were heavily penalized by the SAR staff. While only 4.2% (n = 18) of amateurism SAR cases involved a violation of Bylaw 12.3 (Agents), this bylaw accounted for 40% (10 of 25) of all cases where the SAR staff ruled an athlete permanently ineligible. Thus, 55.6% (10 of 18) of cases involving a violation with agents resulted in ineligibility. In the seven cases where an athlete was reinstated with conditions, the SAR staff required the athlete to serve a significant withholding condition. The SAR staff required a withholding condition of at least four games (or 20% of the season) in six of the seven cases. In sum, an athlete seeking reinstatement for a violation of Bylaw 12.3 had less than a 50% chance of receiving reinstatement. However, when reinstatement was granted, significant withholding conditions were imposed by the SAR staff.

The NCAA does not often forgive athletes who sign an agreement with an agent. Signing with an agent is one violation that, according to the NCAA, compromises the "fabric of intercollegiate athletics" ("Reinstatement standard applied," 2005, p. 1). According to the December, 2005, reinstatement standard applied to amateurism violations ("Reinstatement standard applied," 2005, p. 4),

An individual who signs an agreement to be represented by an agent has shown a clear determination to explore the professional arena and, thus, has abandoned his or her NCAA eligibility. In addition, if an individual takes significant monetary benefits from an agent, the individual has crossed the threshold abandoning his or her amateur status.

Athletes who were declared ineligible for agent violations were unsuccessful in their attempt to present enough mitigation to convince the SAR staff that reinstatement was warranted.

Employment (Bylaw 12.4). Athletes violating employment restrictions in Bylaw 12.4, which accounted for 4.2% of all amateurism SAR cases, were conditionally reinstated through repaying the value of the benefit received. Athletes were reinstated with conditions in 17 of the 18 cases (94.4%) and reinstated with no conditions in the other case. Repayment was required in 12 cases, while repayment and a withholding condition were required in 5 cases. In 10 of the 18 cases, athletes were in violation of Bylaw 12.4.2.1, fee-for-lesson instruction, while the other eight cases involved a violation of Bylaw 12.4.1, criteria governing compensation to athletes.

Promotional Activities (Bylaw 12.5). Athletes participating in impermissible promotional activities, which accounted for 41.9% of all amateurism SAR cases, were generally reinstated without conditions. Athletes were reinstated without conditions in 88.3% of all cases involving Bylaw 12.5 violations. When conditions were imposed as a result of impermissible promotional activities, they were imposed in the form of repaying money or benefits received for participating in a charity event or commercial advertisement (such as a free lunch, clothing, money, or gift certificates), or the condition was to cease the activity that caused the violation, such as voiding a modeling contract or stopping distribution of music CDs or clothing.

Appeals to Student-Athlete Reinstatement Committee. The student-athlete reinstatement committee (SARC) received 20 appeals (4.7%) of SAR staff decisions. The SARC typically upheld the initial ruling by the SAR staff, and on occasion granted relief from the initial withholding conditions. In special circumstances the SARC overturned a decision of permanent ineligibility. Overall, the SARC upheld the initial staff ruling in 13 instances, granted relief from the initial withholding conditions in 5 instances, and overturned the staff's ruling of permanent ineligibility twice.

The SARC showed the greatest leniency when considering cases where the staff had initially imposed withholding conditions. The SARC heard 12 cases in which the athlete was appealing the imposition of a withholding condition, and relief in the form of sitting out fewer games was granted in 5 cases. Stated differently, the SARC granted relief in 41.6% of the cases where an athlete was appealing the initial staff ruling that withholding conditions must be imposed.

Penalties were still imposed in the two instances where the SARC overturned the staff's initial ruling of ineligibility. In these two cases, the SARC still imposed a withholding condition consistent with SAR guidelines. Overall, the SAR staff decided for permanent ineligibility in 25 cases, and 8 of those cases were appealed to the SARC, with two cases being overturned. Stated differently, 32% (8 of 25) of cases initially resulting in permanent ineligibility were appealed to the SARC, and 25% (2 of 8) of those cases that were appealed were overturned.

Mitigating Factors

As a result of the culture shift in SAR that resulted in the staff's approaching each case on the merits of its unique mitigating factors (Brown, 2003; 2004; Reinstatement groups gain comfort, 2004), the NCAA altered its application of amateur principles (Pierce, 2007). This

section identifies the mitigating factors, which were recognized by the SAR staff in the rationale section of the written case summary, in making eligibility decisions.

Mitigating factors resulting in a reduced penalty for the athlete were categorized into the following areas: actions of the athlete, the extent to which the athlete had knowledge of the violation or NCAA regulations, personal hardship or unique family circumstances, the actions of the institution, the nature of the benefit received, related NCAA legislation, and the extent to which there was confusion in the sporting community regarding NCAA regulations when a potential violation may have occurred. Figure 2 displays the summary of mitigating factors identified by examining the cases.

Figure 2 - Summary of Mitigating Factors

Category	Mitigating Factor	Case #
Actions of the Athlete	Athlete immediately contacted compliance office regarding the permissibility of an activity	25552
	Athlete immediately returned prize money or voided accepted check	28756
	Athlete proactively attempted to preserve amateur status even after initial violation was committed	26705 27132
	Athlete did not accept compensation or expenses for competing in limited professional competition	26933 26736
	Athlete did not engage in any other actions that would affirm decision to become a professional athlete after committing violation	24719 26918
Athlete Knowledge	Athlete did not know or could not have known that the violation was occurring	27771 24510
	International prospective athlete had limited knowledge of or access to NCAA regulations	26856 26142
	Domestic athlete unfamiliar with NCAA regulations because he or she was not recruited in high school or decided to walk-on after enrollment	25771 24548 24863
Unique Personal Circumstances	Athlete endured injury or illness which contributed to the circumstances surrounding the violation	27927
	Family hardship in athlete's life played a role in committing the violation	26142
	Cultural differences between the U.S. and other cultures contributed to the violation	29166
Actions of the Institution	Athlete provided misinformation by a member of the institution's coaching staff	28309 26736
	Coach heavily involved in committing the violation and athlete committed violation as a result of coach's actions	26062 25922
	Compliance personnel provided athlete with erroneous information regarding NCAA regulations	24719 26918

	Compliance personnel demonstrated due diligence in attempting to ensure adherence to NCAA regulations	26493 26856
Nature of the benefit received	Athlete accepted or won small monetary value	27714
	Athlete accepted gift certificates or vouchers rather than cash	25771 24548
	Benefit received by athlete used only for educational purposes	29153 24863
	Violation committed by athlete was an isolated incident and not repeated in the future	26933 24688 28921
	Benefit received by athlete was permissible but for the method of distribution	26919 28851
	Recent legislative change by another sport organization makes benefit received by athlete permissible	27320
Related NCAA legislation	SAR staff applies related NCAA legislation when no rule exists to specifically address the unique facts of a particular case.	24863 27927 24644
Confusion within sporting community	Institution establishes confusion exists regarding NCAA legislation among key stakeholders such as coaches, professional teams, athletes, and tournament organizers	25870 25714 25625

Actions of the athlete. The SAR staff considered an athlete's action to immediately contact the compliance office regarding the permissibility of accepting prize money and returning or voiding prize money check as mitigation in violations regarding the impermissible acceptance of prize money. The SAR staff typically reduced the suggested withholding condition provided in the SAR guidelines. For example, a men's tennis player accepted prize money below expenses subsequent to enrollment, and SAR guidelines dictated a 20% withholding condition. However, the SAR staff imposed a 10% withholding condition because although SA accepted prize money, institution provided documentation that SA immediately contacted institution to determine whether he could accept the prize money. Immediately after realizing that he should not have accepted the prize money, SA donated the prize money to charity of his choice. The staff noted that SA's culpability was substantially decreased in this case (Case 25552).

Not only does the SAR staff reduce withholding conditions, but it also on occasion reinstated an athlete who would have otherwise been considered ineligible. For example, a men's tennis player accepted prize money greater than expenses subsequent to enrollment. Rather than declaring him ineligible, however, the SAR staff noted that he "contacted institution to determine how much prize money could be accepted and did not cash the checks, which demonstrate decreased culpability" (Case 28756). In this case, the athlete was given a 30% withholding condition rather than being declared ineligible.

The second action considered by the SAR staff is the extent to which the athlete attempted to preserve his or her amateur status after the initial violation occurred. This factor is

especially important in examining pre-enrollment violations. For example, a prospective women's tennis player indicated on three tournament entry forms that she was competing as a professional. Rather than being declared permanently ineligible, she was reinstated with a one-season withholding condition. One of the key mitigating factors in this case was that she "had taken proactive steps throughout her precollege career to retain her amateur status" (Case 26705). Similarly, a prospective men's soccer player accepted impermissible expenses from the manager of his club in Scotland. The SAR staff required repayment, but waived the withholding condition because, in part, he was "able to demonstrate that he had foregone opportunities to play on other teams because he was concerned the effect that would have had on his amateur eligibility status" (Case 27132). Thus, even though athletes may have technically violated NCAA regulations, they did not cross the threshold of permanent ineligibility if they demonstrated a commitment to retaining their amateur status.

Athletes who violated professional competition legislation may still be reinstated if they can show they did not accept compensation or expenses from the professional team. While other mitigation may need to be present for a favorable decision to be rendered for the athlete, the ability to document that the athlete did not receive payment is crucial. For example, PIA in men's basketball participated in one professional contest, but did not receive compensation for that contest. One of the key mitigating factors against permanent ineligibility was the fact he did not receive compensation for participation (Case 26933). In another case, a men's soccer player participated in one tryout with a professional team, but did not accept expenses for participating in the tryout (Case 26736).

Athletes who clearly violate agent legislation may still be reinstated if they can show they did not engage in any other actions that would affirm their decision to become a professional athlete. There were two examples where Division I football players were misinformed by the institution that their eligibility was exhausted and subsequently signed with an agent. In one example, the compliance office was unaware of newly adopted 80% progress toward degree requirements, while a trainer in the other case misinformed the athlete about his five-year participation clock. Both athletes, under the assumption their eligibility was exhausted, signed with an agent. The SAR staff required repayment and assessed a 30% withholding condition rather than ineligibility because

SA did not receive expenses or material benefits from the agent nor did the SA participate in further activities such as the draft, receive a salary, participate with a professional team, sign endorsements or participate in activities that further affirmed his decision to become a professional athlete (Cases 24719 and 26918).

Athlete Knowledge. The extent to which an athlete has knowledge a violation occurred or knowledge of NCAA regulations was also a mitigating factor considered by the SAR staff. In limited instances, an athlete was able to show that he or she had no knowledge the violation was occurring. A related mitigating factor was the athlete had limited knowledge of or access to NCAA rules. Taken together, depending on the unique facts of each case, an athlete received less significant reinstatement conditions if the athlete could demonstrate he or she was unfamiliar with NCAA regulations or there was no way to know a violation was taking place.

Two examples illustrate how an athlete argued that he or she had no knowledge of the violation. First, a prospective men's basketball player entered the NBA draft prior to signing a

National Letter of Intent and unknowingly received benefits from an agent while attending the IMG Training Academy. The agent was primarily communicating on the athlete's behalf to NBA teams unbeknownst to the athlete. He sought reinstatement after he was not drafted in the 2005 NBA draft. The SAR staff reinstated him without conditions because the prospective athlete had "no knowledge that agent was communicating to NBA teams on his behalf and did not authorize agent to do so...Based on his lack of knowledge, staff did not believe withholding was appropriate" (Case 27721).

Second, three baseball players participated on an amateur summer league team and received prize money based upon finishes in outside tournaments. Without the knowledge or consent of the athletes, the prize money was forwarded to the team's account after the season to help off-set expenses. The SAR staff

did not require repayment of the prize money earned by the teams since the SAs had no knowledge of the teams' receipt of the prize money, and the teams have indicated that the SA's expenses would have been provided regardless of the team qualifying for prize money (Case 24510).

A related mitigating factor was the athlete had limited knowledge of or access to NCAA rules. Two examples illustrate how the SAR staff considered limited knowledge of NCAA rules for international athletes. First, an international men's tennis player accepted 12 tennis rackets valued at \$720 from a distributor. The SAR staff required repayment, but did not impose a 30% withholding condition, for the following reason:

SA's limited previous NCAA rules education coupled with his inaccessibility to NCAA rules education during a three-year time period in which SA was forced to return to Morocco due to his father's death and his family's related financial hardships placed too high of a burden on SA's actions (Case 26142).

In a second example, an international men's soccer player participated in two professional games subsequent to his first opportunity to enroll but prior to initial college enrollment. He misinterpreted the amateurism guidelines posted on the NCAA website in the *NCAA Guide for the College-Bound Student-Athlete*. The SARC reduced the staff's withholding condition by two games, in part, because

it was reasonable to conclude that a prospect who had not been recruited prior to his initial participation on the professional team, and who had no other recruiting contact with other collegiate institutions, would rely on and be confused by the information presented on the NCAA Web site regarding his amateur status and be unaware of the complex process involved in determining whether the team in question was professional (Case 26856).

While athletes in the United States should be more familiar with NCAA rules than international athletes, the SAR staff nevertheless considered knowledge of NCAA rules for domestic athletes. Students who were not recruited by NCAA member institutions or who elected to walk-on to an intercollegiate athletic team may not have been exposed to NCAA rules education. For example, in two instances a student accepted \$125 or less in gift certificates for road racing subsequent to enrollment but prior to deciding to participate in intercollegiate athletics as a walk-on. In both cases the staff required repayment with no withholding condition due to the small value of the prize money coupled with the "SA's lack of previous collegiate

cross country experience” (Case 25771) meaning the SA “never participated as a collegiate track SA at the time she impermissibly accepted the gift certificates” (Case 24548). Similarly, the SAR staff assessed the extent to which a prospective student-athlete was recruited by NCAA member institutions in high school in assessing the culpability of the athlete (Case 24863).

Unique personal circumstances. While enduring personal hardships or having unique family circumstances was not a mitigating factor that eliminated all culpability from an athlete, the SAR staff considered it on occasion, especially in conjunction with other mitigating circumstances. In addition to the above case of the Moroccan tennis player, a men's lacrosse player was diagnosed with a rare form of bone cancer in his right leg during his freshman year, a condition that led to decreased playing ability and resulted in the athlete's decision to become a volunteer assistant coach. The athlete subsequently entered the Major League Lacrosse draft to get playing experience as a practice player prior to participating on the 2006 Canadian World Cup lacrosse team. However, when the goalie on the institution's team quit, the athlete wanted to rejoin the team and compete for the open goalie position. In addition to noting the athlete did not intend to completely professionalize as he only intended to become a practice player, sought advice from the head coach, and took affirmative steps to withdraw his name from the draft, the SAR staff also considered as mitigation that “SA's serious illness was the original cause of his decreased participation and external decision to be a volunteer assistant coach” (Case 27927).

Unique family circumstances can also be a mitigating factor. In the case of an international prospective men's basketball player from Nigeria, cultural differences in regards to family relationships were identified as mitigation by the SAR staff. After spending a year participating in a basketball camp and continuing his education with his older brother in Manchester, England, the prospective athlete received from the owners of the camp impermissible travel expenses to travel from England to Nigeria to deal with a visa issue and subsequently to the member institution in the United States. The SAR staff required repayment for impermissible transportation expenses but did not impose a withholding condition in this case because of the following reasons (Case 29166):

1. Athlete's brother had a history of paying for athlete's expenses
2. Athlete's brother was fulfilling the role of the head of the family given their father had passed away
3. Athlete's brother had informed athlete that he was reimbursing the couple for their expenses.
4. Given culture, it was not appropriate for athlete to question his brother after he indicated he was paying for athlete's expense; and
5. Athlete's brother was a permissible source of payment for transportation.

In conclusion, the SAR staff assessed the actions and knowledge of athletes. Athletes' actions, commitment to maintaining or preserving their amateur status, the extent to which they were familiar with NCAA rules, whether or not they were aware a violation was committed, and unique personal or family circumstances were each considered by the SAR staff in determining future eligibility.

Actions of the institution. The SAR staff also accounted for the actions of institutional staff members. The SAR staff consistently noted that the culpability of an athlete was decreased

if the coach was intimately involved in committing the violation or if the athlete was given false information by coaches or other institutional staff members. The reverse was also true, however, in that if compliance personnel demonstrated due diligence in researching the facts of the case, then the SAR staff recognized the efforts of the staff as mitigation.

High involvement of coaches reduced the culpability of the athlete in reinstatement cases. One way coaches were involved in the violation was by providing misinformation. For example, the long snapper for a football team participated in three tryouts with a professional team after being told by the coach that it was permissible for him to snap for the punter, who was actually the focus of the tryout. The staff noted the athlete “relied on documented misinformation from an institutional employee when he advised SA that participating would not affect SA’s eligibility” (Case 28309) and provided relief from withholding conditions. Another example of misinformation by a coach occurred when an athlete participated in a tryout with a professional soccer team. The professional team was using the institution’s facilities and was short one player, and the head coach gave the player the option of participating in the practice session. The SAR staff immediately reinstated the athlete after determining the “head coach’s primary involvement in the violation warranted reinstatement without conditions” (Case 26736).

A coach could also be involved in the violation by facilitating the violation without the athlete’s knowledge. For example, a prospective athlete in men’s basketball at a two-year institution accepted \$1194.27 for work not performed as part of the Federal Work Study Program and State Student Work Assistance Program. However, the head coach was responsible for supervising students and administering both programs. The violation was discovered when the coach was indicted. The SAR staff provided relief from 30% withholding condition and imposed only a 10% withholding condition partly because of the “high involvement by coaching staff member in coordinating and supervising program” (Case 26062).

Another example demonstrating high levels of involvement by the coach occurred as part of a complex case. Prior to attending the institution submitting the reinstatement request, a men’s basketball player received educational expenses to attend a junior college from his junior college coach. Because the team had more than the permissible number of international players receiving scholarships on the team, the athlete lost his scholarship without his knowledge, and the head coach paid educational expenses with personal funds without the athlete’s knowledge. The SAR staff made this ruling in regards to this part of the case:

The staff did not require repayment or impose a withholding condition because JC No. 1 initially awarded permissible funds to SA and unbeknownst to SA, his then coach took the funds from SA’s account and substituted the funds with money from impermissible means. In addition, the staff believed it was inappropriate to penalize this SA when any one of the international SAs’ aid could have been reduced and SA had no knowledge that his aid was being provided in an impermissible way (Case 25922).

Compliance officers and other institutional staff members on occasion provided the athlete with misinformation that resulted in a violation. In two previously mentioned cases, institutional staff members informed athletes their eligibility had expired, a situation which resulted in the athletes signing with an agent. In one case compliance personnel were unaware of new NCAA legislation, and in the other case a trainer erroneously informed a football player he

would not have a chance at receiving a sixth year of eligibility. In both cases the SAR staff determined that the

SA's action of signing with an agent resulted from being misinformed by institutional representatives that he had no eligibility remaining and, thus, did not warrant permanent ineligibility. Specifically, SA only decided to sign with the agent after being told by the institution that he had no remaining eligibility (Cases 24719 and 26918).

While unethical conduct and misinformation on the part of institutional staff members were mitigating factors, due diligence, especially on the part of compliance officers, also worked to the benefit of the athlete. In two instances the SARC granted partial relief from staff-imposed withholding conditions based upon the institution's due diligence in attempting to certify the amateur status of an international athlete.

In the first case, a prospective athlete in women's soccer competed in 10 dates of competition with a professional team and accepted \$617.36 in impermissible expenses. The SARC upheld the staff's withholding condition of 10 games and repayment of \$617.36, but the SARC allowed the institution to suspend the withholding condition to permit her to play in the last regular season game and conference tournament because

The institution had demonstrated due diligence in certifying SA's amateur status when she initially enrolled at the institution in fall 2003. Moreover, the committee recognized the additional information that came to light from a comprehensive evaluation by the NCAA that was not available to the institution at an earlier date. Had the institution been provided with information about the violations earlier, SA could have fulfilled her withholding condition during the 2004-05 season without having to miss the conference championship. Based on the combination of the timing of notification and the clear efforts made by the institution in reviewing SA's amateur status, the committee concluded a suspension of the withholding condition was warranted (Case 26493).

In the second case, an international men's soccer player participated in two professional games subsequent to the first opportunity to enroll, but prior to initial college enrollment. The SARC granted relief by reducing the withholding condition by two games. Part of the SARC's rationale was to consider the "institution's due diligence to confirm that the team's amateur/professional status beyond what was available from NCAA resources, which at that time did not indicate the team was professional" (Case 26856).

Nature of the benefit received. The nature of the benefit received by the athlete was also considered by the SAR staff. The benefit was examined by the SAR staff on the basis of its value, form, use, prevalence, and distribution method. Recent legislative changes to national governing bodies with respect to the benefit received by the athlete were also considered in determining the appropriate reinstatement decision. First, the staff assessed the value of the benefit or prize money received. The smaller the benefit received, the more likely the staff would be more lenient (Case 27714). Second, the staff assessed the form of the benefit. Benefits in the form of gift certificates or vouchers were noted as mitigation by the SAR staff because they were not redeemable for cash (Case 25771 and 24548). Third, the staff considered the intended usage of the benefit received. Benefits that were intended to facilitate the athlete's education were identified as mitigation. For example, attending a standardized test review class paid for by someone else (Case 29153) and accepting prize money that is redeemable only in higher

education tuition were different from cash prizes (Case 24863). Fourth, the staff considered the prevalence, or how often, the violation occurred. Occasionally, the staff identified an isolated incident as mitigation. For example, an individual participating in one professional game for seven minutes (Case 26933), playing in one game for a promotional team (Case 24688), and accepting prize money in excess of expenses in one instance when the total expenses incurred as a result of participation exceeded total prize money (Case 28921) were considered limited competition by the SAR staff.

Fifth, the staff considered the way in which the benefit was distributed. The SAR staff identified mitigation in cases where the benefit received was permissible but for the method of distribution. In other words, the source of the benefit was the violation rather than the benefit itself. For example, a men's swimmer from Canada accepted training expenses from a provincial section of the national governing body. However, for the expenses to be permissible under NCAA legislation, the expenses needed to be approved by or provided directly by the appropriate national governing body. Basing their ruling on case precedent in similar cases, the SAR staff reinstated the athlete conditioned upon repayment. However, the SAR staff did not impose a withholding condition because "there would have been no violation if the Canadian national governing body had directly provided the training monies rather than a provincial arm" (Case 26919).

Similarly, the SAR staff granted relief from repayment and withholding conditions in a case where the institution impermissibly allowed two tennis players to receive racquets for free directly from the manufacturer. The staff noted in their rationale that the "institution was able to demonstrate benefit received was the same benefit institution could and would have provided permissibly but for the manufacturer sending racquets directly to the SAs" (Case 28851).

Lastly, the staff considered recent changes to the governance structure of national governing bodies. Mitigation was present when the legislative or structural modification changed an action that was previously impermissible to an action that was permissible. For example, a female bowler received impermissible prize money above expenses prior to enrollment through a program (SMART program) that placed the money in an escrow account for her education. Although the prize money directive indicated she should have been declared ineligible for accepting prize money above expenses, the staff reinstated her based upon repayment and 40% withholding condition. As mitigation, the staff considered

the recent change within the bowling community that resulted in the SMART program being administered by USA Bowling, bowling's national governing body (NGB). As a result of this, the acceptance of SMART prize money subsequent to the SMART program being administered by the NGB is now permissible. Given that the program itself and the criteria of the program did not change, the staff determined permanent ineligibility was not warranted (Case 27320).

Related NCAA legislation. Not only did the SAR staff consider recent legislative changes within other sport organizations, but it also attempted to apply related NCAA legislation when no rule existed to specifically address the unique facts of a particular case. Three examples illustrate this concept. First, the SAR staff found mitigation against ineligibility in the case of a prospective men's cross country runners who accepted prize money above expenses in the form of higher education tuition credits by applying related legislation regarding the receipt of

educational expenses. In the staff's view, the acceptance of tuition credits was "analogous to the receipt of educational expenses from an impermissible source, which according to the amateurism directive, requires repayment of expenses and withholding from competition" (Case 24863).

Second, in the case of the men's lacrosse player who entered the Major League Lacrosse draft thinking he did not want to pursue a fifth year of eligibility due to illness, the staff found mitigation against ineligibility in part because of the way draft legislation is applied in other sports. The staff noted that "the only violation in this case occurred when SA entered the draft, an action that is permissible in other NCAA sports by a legislated draft exception. Such a draft exception has not been explored in the sport of men's lacrosse" (Case 27927).

Third, the SAR staff applied related acceptance of prize money legislation in the case of a prospective female tennis player who won an automobile on the television show *Gladiators*. Her success as a tennis player was a contributing factor to her selection for the show, but was not the only factor considered. During the competition, none of the events involved any skills related to tennis. Because her tennis skills were in no way used to actually win the automobile, the staff applied NCAA legislation that allows an athlete to accept prize money in a sport other than the sport in which the athlete participates. The staff immediately reinstated her on the rationale that "none of the competitions had any logical tie to SA's tennis ability and SA won the automobile based on her winning competition" (Case 24644). The staff determined that this case was "most closely aligned with situations where SAs accept prize money in sports other than the sport they wish to compete" (Case 24644).

Confusion within the sporting community. If the institution established many stakeholders in the sport were confused by a particular NCAA policy, then the SAR staff on occasion was lenient in its ruling. Three examples illustrate this point. First, the SAR staff required only repayment – rather than repayment and withholding – in the case of a men's basketball player who impermissibly accepted expenses from seven NBA teams for tryouts because of confusion within the compliance office and the basketball community. The staff noted that he "was erroneously informed he could receive an invoice from the team and repay the expenses. Further, the staff noted confusion existed in the basketball community regarding the permissible method to pay for tryouts with professional teams" (Case 25870).

Second, confusion existed in the sport of tennis regarding the acceptance of prize money. A tournament director erroneously informed an athlete he could accept prize money up to expenses. According to the staff

As a result of a coaches meeting at the 2002 NCAA championship, the coaches were under the impression that it was now permissible for SAs to accept expense money at tennis events, provided the money was for actual and necessary expenses and that the proper reimbursement form was retained (Case 25714).

However, this policy only applied to prospective athletes and athletes already enrolled and participating. The staff reduced the mandated withholding condition by 10% due to "the confusion of the tournament director, coaches and SAs present at the event regarding the prize money legislation" (Case 25714).

Lastly, the staff required repayment – rather than ineligibility or withholding conditions – in three cases (Cases 25625, 24743, and 24660) involving the acceptance of gift certificates at

golf tournaments during the academic year. The athletes accepting gift certificates in these cases believe “it was permissible to accept the gift certificates since accepting them is permissible under USGA rules and under NCAA legislation during the summer” (Case 24743). The staff reinstated based upon repayment because of the “confusion surrounding the acceptance of gift certificates, the fact that it is permissible under USGA rules and the fact that it is permissible under NCAA legislation during the summer period” (Case 24743). While confusion within the golf community was one source of mitigation in this case, also evident are two previously discussed sources of mitigation, which include related NCAA legislation and the legislation of other sport governing bodies.

Crossing the Threshold of Permanent Ineligibility

It should be noted while the SAR staff has changed its approach to decision making and allowed mitigating factors to become a part of the decision making process, there are cases in which the SAR staff declares the athlete permanently ineligible. The SAR staff rendered 25 permanent ineligibility decisions. The SARC overturned two of those decisions, leaving 23 cases in which an athlete was ultimately declared permanently ineligible. Cases resulting in permanent ineligibility typically stemmed from violations involving agents, signing a professional contract, competing with or against professionals, or a combination thereof. Of the 23 cases that resulted in permanent ineligibility, ten involved agents, eight involved signing a contract, and five involved competition with or against professionals.

Three themes were identified in cases that resulted in permanent ineligibility from the rationale section of the case summary. First, the staff noted in many cases the athlete knowingly and willingly violated the rules. A willful violation of NCAA rules, even if some mitigation may exist, was a strong indicator of ineligibility. For example, signing with an agent is a willful violation of NCAA rules. Second, the rationale for ruling an athlete permanently ineligible stemmed from the excessive number of games participated in as a professional or the large value of impermissible benefits received. For instance, competing as a professional in 66 games or receiving \$13,760 from an agent contributed to the staff’s ruling against reinstatement.

Finally, the SAR staff identified the mitigation put forth by the institution, but then explained why it was not sufficient to warrant reinstatement. In other words, the mitigation submitted by the institution was not strong enough to overcome the decision of permanent ineligibility. For example, in two cases the fact that a college athlete signed a professional contract but failed the physical given by the professional team was not considered mitigation for reinstatement (Case 23638 and 25258). Likewise, because an athlete changed his or her mind about competing professionally was also not strong enough mitigation to gain reinstatement (Case 28788 and 27025). Other failed mitigation arguments included the athlete’s agent gave incorrect information regarding eligibility status (Case 27148), difficult financial circumstances within the family made it necessary to accept benefits from an agent (Case 28140), and a court ruling changed the eligibility rules for entering a professional draft (Case 25247).

Conclusion

Based on the probable outcomes and mitigating factors identified through examining every amateurism SAR case between 2004 and 2006, a set of recommendations was created to assist member institutions in seeking a positive reinstatement decision from the SAR staff. The fundamental notion undergirding the recommendations is the actions of compliance officers, coaches, and athletes are taken into account by the SAR staff. Figure 3 summarizes the recommendations for compliance personnel and athletes.

Figure 3 - *Summary of Recommendations for Compliance Personnel and Athletes*

Compliance Personnel

1. Documentation
2. Due diligence
3. LSDBi research
4. Education programs
5. Trust the student-athlete first philosophy

Athletes

1. Seek advice
2. Act immediately
3. Pursue retaining amateur status

Compliance Personnel

Documentation. Records of emails, memos, personal conversations, meetings, and any correspondence with the national office should be documented by compliance officers. In many cases the SAR staff requires documentation from the institution to establish the facts of the case. For example, the institution must be able to prove the athlete immediately contacted the compliance office after accepting impermissible prize money, or the institution must demonstrate the coach provided the athlete with misinformation regarding the application of NCAA rules. Thus, emails sent from the athlete to the compliance office or from the coach to an athlete may be the key piece of evidence and serve as a significant mitigating factor in the case.

Due diligence. Making a reasonable effort to provide truthful and thorough information in attempting to certify the amateur status of a prospective athlete can be considered mitigation by the SAR staff. Particularly in cases involving PIAs who participated in professional competition, certifying amateur status can be difficult due to limited access to accurate information and the unique sport governance system in that country. Because the NCAA has had a difficult time understanding the system of sport governance in foreign countries, a compliance officer is not necessarily required to know every detail of the professional sport system of

foreign countries. However, the ability to document a reasonable effort was made in attempting to certify an individual's amateur status can be a mitigating factor in the reinstatement decision.

LSDBi research. Engaging in a comparative analysis among reinstatement cases similar to the current case can help compliance officers identify patterns in the reinstatement decisions and rationales used by the SAR staff. The process used by compliance officers would be a small-scale version of the methodology used in the current investigation. For example, if the compliance officer believes a particular violation occurred because tournament organizers, coaches, athletes, and other sport organizations across the country were confused about how to apply a particular piece of NCAA legislation, then the compliance officer should search the *LSDBi* for cases in which the SAR staff granted relief in the reinstatement decision due to confusion in the sporting community.

Education programs. Compliance officers should also continue to develop and implement educational programs for coaches, athletes, and other key stakeholders. Not only do such programs inform stakeholders of NCAA rules, but they also demonstrate institutional control over the conduct of the athletics program. While it may be difficult to educate prospective athletes on amateurism at the institutional level, the compliance staff can reach enrolled student-athletes. The NCAA has the responsibility of educating prospective athletes on amateurism rules while simultaneously promoting competitive equity between member institutions.

Trust the student-athlete first philosophy. The core values of an athletic department will determine the institution's philosophy toward pursuing reinstatement for athletes. The institution has the option of being truthful about a violation committed and pursuing reinstatement, or deceitful to avoid the reinstatement process. However, being deceitful or not revealing a violation places the athlete at risk of being declared ineligible during an NCAA investigation. Deceitfulness also exposes the institution to charges of unethical conduct and demonstrates a lack of institutional control. Institutional staff members engaging in unethical conduct also place their future employment status in jeopardy. Nevertheless, the results of this investigation revealed telling the truth and pursuing reinstatement may result in the most favorable outcome.

Athletes

Seek advice. When an athlete believes a violation might be committed in the future, he or she should contact compliance personnel (preferably) or coaches regarding NCAA rules, because such action is a mitigating factor in reinstatement cases. Even if an institutional staff member misinformed the athlete, the fact that the athlete attempted to clarify the permissibility of a particular activity can be considered mitigation by the SAR staff. For example, consulting with a coach about entering a professional draft and consulting with a compliance officer about accepting prize money demonstrate to the SAR staff the athlete desires to follow NCAA rules. However, it must be recognized that seeking advice from institutional staff members does not completely absolve the athlete. Typically the SAR staff considers the act of seeking advice in determining the appropriate punishment – not in determining whether or not an athlete committed a violation.

Act immediately. In addition to seeking advice from institutional staff members prior to a violation, immediately contacting them after a violation occurs may benefit the athlete in a reinstatement case. In general, acting with immediacy is a mitigating factor in reinstatement cases. For example, contacting the compliance office or returning prize money immediately after receiving it demonstrates to the SAR staff the athlete is cognizant of NCAA regulations and desires to follow them. While acting with immediacy does not absolve the athlete, it may be considered a mitigating factor by the SAR staff and result in reduced repayment or withholding conditions.

Pursue retaining amateur status. Athletes are encouraged to pursue amateur status and avoid actions that would further indicate professionalization after the initial violation has occurred. In some cases, particularly with PIAs, the athlete may not know that a violation has occurred. In these cases, the athlete may not know what actions are considered amateur by the NCAA. However, with all enrolled athletes, even if an amateurism violation has already been committed, proactively attempting to preserve amateur status by not accepting compensation or signing with an agent is considered mitigation by the SAR staff. For example, if an athlete commits a violation as a result of acting upon misinformation provided by an institutional staff member regarding the procedures for entering a professional draft, the athlete can be reinstated provided he or she did not engage in any other actions that would affirm the initial decision to become a professional.

A Word of Caution

The mitigating factors identified in this research illustrate the SAR staff's decision making process. The presence of one mitigating factor in a particular case does not necessarily guarantee relief will be granted by the SAR staff. In fact, the SAR staff identified more than one mitigating factor in many of the cases where leniency was granted. Thus, it is often the combination of mitigating factors that results in the staff's granting relief from the penalties prescribed in the SAR guidelines. Not only does this observation lead to the conclusion that compliance officers should include as many mitigating factors as possible when submitting documentation to the SAR staff, but it also indicates that the SAR process does take into account the unique facts of each case in a manner that benefits athletes.

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