NCAA Division III Bylaw 12/16 Advanced Application

Agenda

- Promotional Activities
  - Institutional, Charitable, Educational or Nonprofit Promotions (Bylaw 12.5.1.1).
  - Modeling and Other Nonathletically Related Promotional Activities (Bylaw 12.5.1.3).
- Media Activities (Bylaw 12.5.2).
- Expenses Provided By the Institution for Practice and Competition (Bylaw 16.8)
- Bylaw 12/16 Update
  - Recent Legislative Changes

Session Outcomes

- Understand NCAA Division III Bylaw 12 and 16 legislation.
- Identify areas of concern and potential problems within Bylaws 12 and 16.
- Apply relevant legislation and interpretations using case studies.
- Share thoughts and best practices for working through interpretive issues relevant to Bylaws 12 and 16.
Session Approach

- Follow the women’s basketball team through an academic year and address more complex Bylaw 12/16 questions.
- Present case studies in the manner in which questions are often posed to compliance administrators on campus.
- Identify specific legislation and interpretations that are relevant to the question at hand.
- Using all interpretive resources, work together to determine the appropriate response to the given question.

Case Study No. 1 - September

- Your women’s basketball coach plans to conduct a foreign tour this coming summer.
- Before she can make final arrangements for the foreign tour, the team needs to raise funds to pay for the trip.
- She wants to work with Westbay, a third party company who will create institutional apparel.

Case Study No. 1 - September

- Westbay will produce mock-ups for Compliance University (CU) apparel.
- Westbay will produce a catalog containing the CU apparel.
- Student-athletes at CU will use the catalog to promote the sale of the CU apparel.
- Can student-athletes promote the sale of Westbay institutional apparel?
- What are the concerns?
Case Study No. 1 - September
• Whenever you hear “promotion,” some questions to ask yourself:
  – Are student-athletes involved? Are student-athletes using their name or likeness as part of the promotion?
  – Is this promoting a commercial product or service? Or is this an institutional fundraiser?

Case Study No. 1 - September
• Are student-athletes involved?
  – Yes.
• Are student-athletes using their name or likeness as part of the promotion?
  – Yes – by directly soliciting apparel sales, student-athletes use their name/likeness to promote the fundraising activity.
• Based on the responses to the first two questions, we know that this will have to fit somewhere in Bylaw 12.5.1.

Case Study No. 1 - September
• How to determine whether this scenario is a promotion of a commercial product or service or an institutional fundraiser.
• Some additional questions to ask:
  – Institutional control of funds? Who are the consumers making the checks out to?
  – Are student-athletes exclusively promoting the sale of the institutional apparel? Or are they generally promoting Westbay?
Case Study No. 1 - September

• If...
  – Consumers submit payment directly to Westbay**;
  – Student-athletes are involved in promoting Westbay, generally; or
  – Any of the provisions of Bylaw 12.5.1.1 are not met
• Then...
  – It would not be permissible for CU student-athletes to be involved in using Westbay for their institutional fundraiser.

Case Study No. 1 - September

• If...
  – Consumers submit payment to CU and CU then places an order with Westbay;
  – Student-athletes are involved only in promoting the sale of the institutional apparel and are not promoting Westbay, generally; and
  – All other provisions of Bylaw 12.5.1.1 are met.
• Then...
  – It would be permissible for CU to use Westbay for their institutional fundraiser.

Bylaw 12.5.1.1
Case Study No. 2 – December

• Your women’s basketball team is 5-1 and about to begin conference play.
• Your women’s basketball coach sends you a link to a website that one of her players, Tina Bopper, has been distributing around campus.
• The website advertises the sale of an autobiographical documentary produced by a company that highlights high achievers in multiple areas.
• It is clear, from the information on the website, that the documentary focuses on Tina’s student-athlete, academic and artistic successes and Tina has been involved in promoting the sale of this documentary.

Case Study No. 2 – December

• Is there an issue with Tina promoting the sale of the documentary?
• Questions to consider:
  – Is Tina identified by name or face in her promotion of the documentary? Is Tina’s real name used in the documentary or in her promotions of the documentary?
  – Is Tina’s athletics ability referenced in the documentary or in her promotion of the documentary?
  – Is Tina’s involvement in intercollegiate athletics referenced?

Case Study No. 2 – December

• Bylaw 12.5.1.3 (Modeling and Other Nonathletically Related Promotional Activities).
  – Would allow Tina to be involved in promoting the sale of the documentary if…
    • Her athletics ability was not a component of the documentary;
    • No reference was made to her involvement in intercollegiate athletics; and
    • She is paid at a rate commensurate with her skills and experience and her payment is not based in any way upon her athletics ability or reputation.
Case Study No. 2 – December

• If Tina’s athletics ability/participation is referenced in the documentary, Tina could not be involved in promoting the documentary.
  • Why?

Bylaw 12.5.1.3

• It is permissible for an individual to accept remuneration for or permit the use of his or her name or picture to advertise or promote the sale or use of a commercial product or service without jeopardizing his or her eligibility to participate in intercollegiate athletics only if all of the following conditions apply:
  – The individual became involved in such activities for reasons independent of athletics ability;
  – No reference is made in these activities to the individual’s involvement in intercollegiate athletics; and
  – The individual’s remuneration under such circumstances is at a rate commensurate with the individual’s skills and experience as a model or performer and is not based in any way upon the individual’s athletics ability or reputation.

Case Study No. 2 – December

• If you determine that Tina’s involvement in the production and promotion of the documentary violates Bylaw 12.5.1.3…
  – Determine whether Tina has participated in any women’s basketball games after the first violation occurred.
  – File a secondary violation using RSRO.
  – Seek student-athlete reinstatement.
Case Study No. 3 - January

- Because of Tina Bopper’s violation and subsequent student-athlete reinstatement in December, your women’s basketball coach is very concerned about student-athletes appearing in any video.
- The women’s basketball coach comes to you to ask if another women’s basketball player, Bess Twishes, can appear on the Ellen Show in recognition of her work with a youth basketball team.

Case Study No. 3 - January

- Ellen wants to have Bess picked up by limo and transported to the set of her show.
- The Ellen Show will also provide Bess with meals and lodging associated with her appearance on the show.
- Can Bess appear on the show?
- Can Bess receive expenses related to her appearance on the show?

Case Study No. 3 - January

- Additional questions to ask:
  - Will Bess be paid in addition to the receipt of actual and necessary expenses?
    - Yes.
  - How much will Bess be paid?
    - Bess will be paid the same amount that all guests of the Ellen Show are typically paid.
  - Will The Ellen Show use Bess’ name for advertisement or promotion?
    - Yes. The Ellen Show will use Bess’ name and likeness to advertise her participation on the show but will not use her status as a student-athlete in the advertisement.
Case Study No. 3 - January

- Bylaw 12.5.2 would allow Bess to be a guest on The Ellen Show, even if her participation is related to athletics, provided:
  - Bess does not receive benefits in excess of actual and necessary expenses plus compensation commensurate with the going rate for similar services; and
  - Bess’ status as a student-athlete is not used for promotional purposes.

Tying it Together

- Your women’s basketball coach is having a hard time distinguishing between Tina’s situation in December and Bess’ situation in January.
- Why are they different?

Tying it Together

- Bylaw 12.5.2 only deals with the permissibility of being a participant in a media activity.
- In order for a student-athlete to be involved in promoting a commercial product or service, the promotion must meet Bylaw 12.5.1.3.
  - Tina was using her name and likeness to directly promote the sale of a commercial product. So she had to meet Bylaw 12.5.1.3.
  - Because her athletics participation was involved and she identified herself as a student-athlete, she did not meet Bylaw 12.5.1.3.
  - Bess was using her name or likeness as a participant in a media activity with no promotional activity. So she only had to meet Bylaw 12.5.2.
- Are there potential changes to Tina’s situation that would make interpretively permissible?
Case Study No. 4 – March

- March Madness is finally here!
- Your women’s basketball team has qualified for the conference championship in Wilmington.
- One of the women’s basketball student-athletes, Della Ware, is from Wilmington and her parents have plenty of room to house the team during the tournament.

Case Study No. 4 – March

- Your women’s basketball coach would like to have the team stay at Della’s parent’s house during the tournament in order to save money.
- Della’s parents would also like to provide dinner for the team during the first night of their stay.
- Is this permissible?

Case Study No. 4 – March

- Bylaw 16.8 generally addresses expenses that can be provided for practice and competition.
- Bylaw 16.8.1 is specific in saying that the practice and competition expenses that are permitted in Bylaw 16.8 specifically deal with expenses that can be provided by the institution.
- Bylaw 16.8.1 refers to Bylaw 16.10 for expenses that can be provided by individuals or organizations other than the institution.
- Bylaw 16.10 does not allow a parent or a booster to provide lodging in conjunction with practice or competition.
- Is there a way we can get there?
Case Study No. 4 – March

- Athletics departments can accept donations.
- Athletics departments are advised to have and follow an institutional policy for tracking such donations.
- Della’s parents could donate the use of their home to CU
  - NOTE: Della’s parents would become “representatives of athletics interests” (Bylaw 13.02.9).
- Bylaw 16.8.1.2 allows an institution to provide actual and necessary expenses to eligible student-athletes to represent the institution in intercollegiate competition.
- Would they have to donate the meal too?

Case Study No. 4 – March

- Bylaw 16.11.1.6 allows CU’s women’s basketball team to receive an occasional meal from Della’s parents at any location.

Bylaw 12/16 Legislative Changes

  - Bylaw 12.1.6 previously allowed for certain expenses to be provided from the USOC or a national governing body.
  - This proposal allows governmental entities to provide those same expenses.
  - Bylaw 16.11.1.13 previously allowed fundraisers for SAs and their families in extreme circumstances.
    - Required that the funds be disbursed through or paid directly to a third party.
  - This proposal allows the funds to be given directly to beneficiaries, with receipt kept on file by the institution.
Bylaw 12/16 Legislative Changes

  – Bylaw 16.8.1.3 previously allowed an institution to pay for a maximum of two national team tryout competition events.
  – This proposal allows an institution to pay for an unlimited number of national team tryout competition events.

Bylaw 12/16 Legislative Changes

• Proposal No. NC-2015-6.
  – Bylaw 16.7 was previously prescriptive on when an institution could permissibly provide team entertainment.
  – This proposal deregulates much of Bylaw 16.7 to allow an institution flexibility to provide reasonable entertainment in conjunction with practice or competition.
  – The restrictions relevant to practice sites on road trips remain.

Questions?