

# worldsportslawreport

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# NCAA: amateurism policies and the international student

The National Collegiate Athletic Association has recently amended a bylaw to allow international students who have played alongside professionals to compete for University sports teams. Dr. Anastasios Kaburakis, an Attorney who had proposed such an amendment in past research, explains the background to the change, why it is needed and the potential impact that it will have for both amateur and professional sport in the US.

Amateurism policy as defined, applied and interpreted by National Collegiate Athletic Association (NCAA) governance actors and member institutions has a rich history, especially pertaining to the impact on international student-athletes. Recruitment of the latter by US college and university coaches has been long established as a way to jump-start a program, recruit solid talent where otherwise it would be difficult to recruit top-notch American talent, or simply obtain a competitive advantage over competitors. Select US institutions traditionally recruit internationally for students and in these institutions, the pipelines and systems have been in place for some time, allowing these schools to extend international recruiting to the sports sector.

These international student-athletes originate from several different systems of sport structure, and usually from a federalized, club-based, socio-cultural system of sport governance, which is significantly incompatible with the system of US sport structure, mainly administered through education-based sport programs. These school-based athletic programs and governance entities in the US

have traditionally attempted to clearly distinguish college sport from professional sport as opposed to the international federalized, club-based system, in which professional sport actors support and maintain grassroots sport at the junior age levels. The problems seeded in this incompatibility have been complex and prevalent, especially during the latter part of the 20th Century and the first decade of the new millennium. They range from a fundamental lack of knowledge and understanding of each system by main stakeholders - such as coaches, parents, administrators, and federation/governing body staff members - to practical difficulties of documentation and establishment of clear guidelines by which each prospective student-athlete and recruiting institution would have to abide.

This contribution is focusing on strictly amateurism policy problems. Other facets of incompatibility encompass educational system differences and the transition from one country's system to the other. The NCAA staff and legislating membership have demonstrated a profound appreciation of each educational system. Currently there is a separate process by which resolution to educational documentation problems and consistency are sought (including the NCAA Eligibility Center encouraging member institutions to sign up - if financially feasible - for UK-based NARIC<sup>1</sup>, also a partner with ENIC<sup>2</sup>, and/or AACRAO EDGE<sup>3</sup>). International educational information notwithstanding, the processes by which educational documents and transition to the US system of higher education and sport are allowed to constantly evolve; prudently so, considering continuous educational reform

efforts, especially in the European Union.

Amateurism - the very backbone of college sport in the US - has been highly contested, as well as occasionally litigated, as to whether contemporary practices of the Association and its membership are aligned with the original mission and the principles on which college sport structure in the US was founded. The efforts to uphold the amateurism ideal, the clear demarcation between college and professional sport, as well as the delicate balances between other constitutional principles for the Association - such as student-athlete welfare, competitive equity, and institutional control - have led to past deregulation attempts not succeeding, due to pressure from idealist and originalist proponents, who pontificated that compromising amateurism would lead to the end of college sport as the enterprise evolved during the 20th Century. The last major deregulation movement of the late 1990s and early 2000s was largely unsuccessful, due to the aforementioned concerns and an overall aversion toward accepting 'failed professionals' into the world of US college sports.

Thereafter, for the full first decade of the new millennium, there were many discussions, exchanges of ideas and proposals, unsuccessful legislative initiatives and a general status of partly trying to maintain the standards the Association and its membership aspired to promote, via controlled protectionism and conservative applications of amateurism policy and partly trying to find ways to bend such archaic interpretations and unenforceable regulations that were detrimental for recruiting institutions wishing to expand the pool of recruits they would pursue. In addition, it progressively became evident that 21st Century sport

reality was much different than the 19th Century one the original definition of amateurism was aspired by, hence more policy-affecting actors began listening to the clamor of membership's coaches, administrators, and student-athlete woes.

It is also important to note that subsequent to the late Dr. Myles Brand assuming the reigns of an Association in somewhat of an identity crisis, in January 2003, there were significant initiatives that took place that instrumentally contributed to a more flexible, responsive, and attentive to the membership reality, as opposed to the glacier-pace unwieldy bureaucracy of old. Empowering the staff, allowing informed decisions as well as faster reactions to errors and upholding the constitutional principles in favor of the student-athletes first - when conflicts between their interests and those of institutions and competitive equity arose - led to a new reality. There was still great concern in regard to maintaining a balanced playing field among the many member institutions, however the scale tipped toward attending to student-athlete needs and interests, with their educational pursuits in mind as much as possible, considering commercial considerations and practical reasons of maintaining the financial well-being of the Association and its member institutions.

Old habits die hard, nonetheless, and the handling of these difficult cases of international student-athlete eligibility and amateurism certification continued to create a multitude of problems for the membership, as well as kept the Association's staff consumed with a backlog of cases. Most of the cases that led to certain penalties - including repayment of received benefits from their previous

**Prospects would compromise their amateur status, not because of what they did, but because of what their team-mates received as compensation**

athletics participation that were considered impermissible under amateurism regulations, withholding conditions such as being declared ineligible for a number of games, and others - involved international student-athletes. In a great number of cases, these sanctions were very broad in scope and the governance bodies of the Association progressively attempted to align them with contemporary conditions in sport competition. Figures 1 and 2 illustrate the progress of amateurism policy and withholding conditions application in cases of international student-athletes who were considered to be compromising amateur status because they participated in professional competition.

To clarify, an example which would epitomize the problems posed above is as follows: an international prospective student-athlete in the sport of men's basketball, whilst progressing through the system of competition in Germany, had the opportunity to attend a team run by an educational institution, participating in the Second Bundesliga. Although this prospect - who was very talented and pursued by top Division I NCAA institutions - selected to forego signing a professional contract, and essentially paid out-of-pocket to

attend the particular institution and participate on said team, he still was considered having compromised his amateur status by the mere fact he participated in competition alongside players deemed professional, i.e. receiving above and beyond actual and necessary expenses as defined by NCAA Division I Bylaw 12.02.4. This situation has been coined as 'vicarious professionalization', meaning that prospects would compromise their amateur status, not because of what they did, but because of what their team-mates received as compensation and the circumstances of their team-mates' athletic employment. In this case and hundreds of others, because of the fact the prospect participated for a given length of time - i.e. at the time s/he was 16-18 years-old - on such a team, the prospect's eligibility would be impacted up to the point of losing an entire collegiate basketball season (recent pre-2010 application per figures 1 and 2). These sanctioned prospects would still be able to maintain a scholarship to attend a NCAA member institution. Importantly, even if only one player was receiving above what would be considered permissible under Bylaw 12.02.4, had a contract and/or had an agent representing him or her in professional sport opportunities, then the entire team

**Figure 1: Decision-making Philosophies and withholding conditions progress**

Philosophy	Intent to professionalise	Intent revised	Reasonable person	Less restrictive	Equitable & focus on SA - No vicariously professionals
Year	Through 2000	2001	2002-2005	2006-2010	2010-
Prior to first opportunity to enroll	1 for 1 withholding	20% withholding 8 games max	1 for 1 withholding 1 season max	1 for 1 withholding 1 season max	No penalty
After first opportunity to enroll	1 for 1 withholding	20% withholding 8 games max	Ineligible	2 for 1 withholding no max	One season of competition per year (1st post HS year OK) + first year red shirt

was considered professional, adversely affecting the junior age prospects, who might not have received any compensation, and certainly within the allowable expenses regulatory framework of the amateurism Bylaw.

As the figures illustrate, the application of amateurism policy went through considerable changes during 2000-2010. The most recent legislative amendment, Proposal 2009-22<sup>4</sup> - adopted during the NCAA Convention in January 2010 - resulted in a significant overhaul of these cases and pre-emptively treats these problems, ensuring that such prospects would not be adversely impacted due to team-mates' compensation and professional conditions. Instead, the focus of the investigation and amateurism policy analysis shifted to the prospect him/herself. There were further details pertaining to the post-high school/secondary school graduation situations for these prospects. The theory on this point was that upon the first opportunity to enroll, a prospect should not delay matriculation with the member institution he/she agreed to attend. As the figures show, in recent past these cases were handled much more

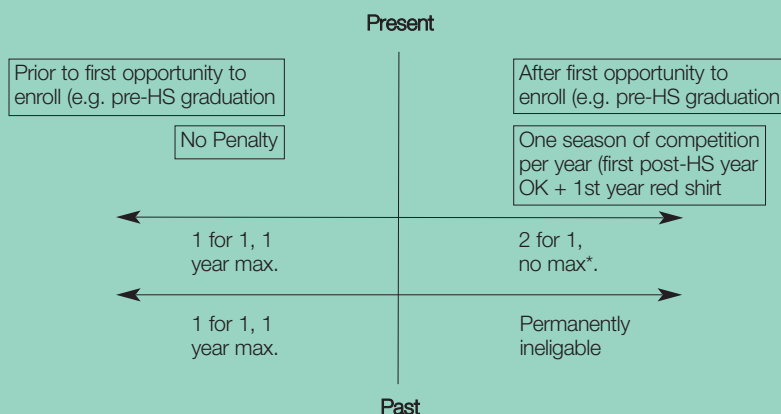
severely, should a prospect continue to play professionally subsequent to secondary school graduation and after the first opportunity to enroll in a US institution. With the advent of Proposal 2009-22 and its adoption effective 1 August 2010, the new reality sees prospects able to play in professional competition up to a year subsequent to their graduation from their secondary school, without sanctions, provided they fell within the permissible expenses of Bylaw 12.02.4. Should they continue professional competition beyond that year mark, they will be charged a full season of collegiate eligibility for each year they played professionally, and will have to complete a year in residence ('red-shirt' year) at the matriculation institution, thus attend classes and pursue their degree without playing in games/competing in events for their first year. NCAA student-athletes have four eligibility years total within five calendar years, with exceptions, i.e. medical hardship waivers, etc. It is important to note that the sports of men's ice hockey, skiing, and tennis have slightly different treatment by the new policy.

Overall, the adoption of Proposal 2009-22 was very well received and had been anticipated for many years by stakeholders and researchers of NCAA policy. It also creates an intriguing phenomenon: US coaches now will be able to 'aim higher' whilst pursuing international recruits. These prospects will conceivably be the 'difference-makers', who are able to compete on the top (professional) competition level due to their talent and skills. However, the fact they will now fall within the coverage of Bylaw 12, not having received above and beyond permissible expenses, will allow them to proceed to NCAA competition unaffected. Thus, the membership will be well served by consistent research, communication and clear compensation-related benchmarks for each global region, disseminated by Eligibility Center and Amateurism Certification staff in the NCAA National Office of Indianapolis. Once NCAA institutions have had the opportunity to observe the application of this new policy, and after receiving all pertinent information on permissible compensation, which prospects would be fine to receive from their club teams in the country of origin, it is conceivable that the Association's principles of student-athlete welfare and competitive equity will be better served.

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1. www.naric.org.uk
2. www.enic-naric.net
3. aacraoedge.aacrao.org/register
4. www.kaburakis.com/2010/01/19/amateurism-policy-news-and-props/

**Figure 2: Withholding conditions for professional competition amateurism violations**



\* e.g. exhausting remaining eligibility if total of pro games played ≈ 56 (56 x 2 = 112, the approximate total of four regular seasons of college basketball).



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