

The University of Montana should seek review and adjustment of the NCAA's sanctions as new facts demand objective reconsideration

A Call to Action by families, friends and supporters of the Montana Grizzlies Football Program

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Summary:

On July 26, 2013 the NCAA issued a "Public Infractions Report" ("Report") regarding certain actions concerning "the provision of extra benefits to student athletes" of the University of Montana's football program. This case was decided by a committee that used a process called "the cooperative summary disposition process in which all parties agree to the violations and the penalties." Under the sanctions levied by the NCAA, and agreed to by the University administration, the football program is now penalized for years to come with fewer scholarships, among other sanctions.

Now five months later, in a clearer and objective light, the loss of football scholarships is threatening the legacy of excellence and success that took decades and generations of student athletes, coaches, administrators and fans to earn. Analysis of recent NCAA sanctions illustrates that the penalties now being borne by the Montana Football program are dramatically out of line with recent sanctions imposed on other NCAA Division I schools that admitted to much more egregious and obviously blatant acts to violate (and cover-up) the NCAA rules.

Further research and analysis highlights other facts and circumstances that raise serious issues about the objectivity of the NCAA proceedings and the fundamental fairness of the result. These issues include;

- the process that conceived and determined the sanctions was tainted by a highly politicized and media-frenzied environment, which effectively made an objective determination impossible,
- the loss of scholarships does not appear fair, reasonable or deserved given the humanitarian nature of the "extra benefits" and the unreported facts that cast them in a different light, and
- the NCAA-specified violations Montana is charged with are the very type of activities the NCAA is now actively considering dropping as rule violations.

While the report stated at the time that all parties agreed and there is no appeal, there is ample precedent for such actions to be reconsidered when the facts and circumstances surrounding a case present compelling rationale that the process may have been flawed and the results of which now appear unduly harsh and objectively unfair.

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The families, friends and supporters of the University of Montana Grizzlies football program call upon the administration and others to review this situation and take all actions necessary to obtain a more fair and just outcome.

Discussion:

There are a number of updated facts and circumstances that support a new and more objective review of this case;

1. **The sanctions appear overly severe in light of other recent NCAA sanctions:** Since the Report, the NCAA announced sanctions against other NCAA member football programs, in many cases for direct violations regarding recruiting infractions and other actions that were materially different, and arguably more serious than Montana's. However, the sanctions for these infractions were by contrast limited and minor given the level of Football Bowl Subdivision scholarships and the nature of the infractions. Measured against these cases, Montana's penalties appear disproportionately severe and unjust.

While recent NCAA penalties to college football programs do not show a conclusive trend or formula to determine the amount of scholarship losses to a program and each violation is unique, Montana's scholarship loss count is the 4th highest levied in recent history. The following chart illustrates the amount of total scholarship losses imposed by the NCAA going back to 2008.



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A lay-person's analysis of these penalties illustrates that Montana's penalties appear excessive, especially when compared to the nature, extent and severity of the other school's violations (In order of severity);

1. Penn State: Sexual assault and cover-up scandal.
2. USC: Major infraction regarding housing and benefits that violated the rules of amateurism, cover up and failure to report.
3. North Carolina: Academic fraud, playing ineligible players over two seasons, and failure to cooperate with the NCAA.
4. **Montana:** Free home-cooked meals, alleged non-payment of legal fees in the "estimated" amount of \$3,000 for two student athletes and playing two ineligible players for five games.
5. Ohio State: Players selling/trading their autographs for services, receiving payment for work not performed, and the covering up of knowledge of these violations by the head coach.
6. Boise State: Extensive recruiting violations over the course of four years, which involved 63 perspective student athletes.
7. Miami: Extensive booster benefits, which included provided to student athletes clothing, drugs, and attendance to parties on yachts, in bars, and in strip clubs.
8. South Eastern Louisiana: Playing 35 football players over the course of two years who were academically ineligible to play.
9. Florida State: Cheating scandal where over two dozen football players had academic advisors taking online classes for them.
10. South Carolina: Football players received \$59,000 in impermissible benefits through reduced rates at hotels and through mentoring programs.
11. New Mexico: Two assistant football coaches helped obtain fraudulent academic records to ensure the enrollment of three football recruits.
12. West Virginia: Exceeded the limits of possible coaches for two years.
13. Mississippi State: Offering a recruit a \$2000 discount on a car, giving a free cell phone and a cash card.
14. Oregon: Paid \$25,000 to a recruiting firm to aid them in recruitment
15. Arkansas State: Had six sports, (with football being one of them) that played academically ineligible players, and also had an academic advisor get two football players' grades changed.

Given the relative comparisons, it is clear Montana's infractions, in number and in character are materially different. On the facts, it is highly questionable that the Montana infractions are enough to warrant the 4th highest scholarship loss since 2008.

Additionally, at the Football Championship Subdivision level the number of scholarships lost hurts the University of Montana program disproportionately more because the FCS

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programs are allowed 22 fewer football athletic scholarships than the Football Bowl Subdivision schools.

2. **The process that conceived and determined the sanctions was tainted by a highly politicized and media-frenzied environment:** The environment surrounding the NCAA investigation of the University of Montana football program, the Infraction Committee's deliberations and the University's own actions to agree to such drastic and far reaching penalties was unfairly affected by an unprecedented barrage of political and media pressures – plus the national pressures created by the situation at Penn State. This unprecedented negative environment tainted any notion of objectivity and equally casts doubt on the penalties agreed to at the time by the University. Consider the following political and media pressure that the committee and University administrators were subjected to, which included:

- Federal Department of Education investigation.
- Federal Justice Department investigation.
- The termination of the former football coach and athletic director.
- State criminal proceedings against the football team's star quarterback. Statements by a former Congressman, who as an acting board member of the Montana Board of Regents, referred to members of the UM football team as "thugs." It should be noted that this individual soon thereafter was not approved by the state legislature for his position on the regents as the result of the inappropriate statement.
- Daily coverage in local, regional, state and national media.
- And mounting pressure on the NCAA, which was also under increasing criticism, complaints and litigation for its actions and even its standing on matters of a controversial nature at other institutions across the country.

In almost all United States judicial, quasi-judicial and / or administrative deliberations at every level, objectivity and the presumption of innocence are held as the foundation blocks of fairness and due process. This is why trials are often moved to jurisdictions where a fair proceeding can be conducted, why courts regularly review and overturn verdicts of lower bodies, and "official findings" are later reconsidered. Even the University administration's own capability to objectively consider the fairness and ramifications of its own actions is suspect under the cloud of firings, political pressure and lack of experience in such athletic governance proceedings. This is not intended as a criticism of the individuals involved, only an objective view of the facts and circumstances in which they found themselves. It should also be considered, that other than the unique case of Penn State (which is now legally challenging the NCAA) there appears to be nothing even close to such an environment surrounding a similar NCAA investigation and ruling. This unfair and biased environment clearly taints the NCAA Report and the sanctions agreed to at the time by the University and its administrators.

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- 3. The loss of scholarships does not appear fair, reasonable or deserved given the humanitarian nature of the “extra benefits”:** The facts underlying the Montana football program’s NCAA infractions all relate to helping student athletes in unforeseeable situations and have additional facts and circumstances that indicate an intention to help student athletes, not actions in any way intended to gain the program an unfair recruiting or other competitive advantage. Simply put, these infractions taken together appear far afield from the types of anti-competitive activities the NCAA was originally conceived of to regulate. These claimed “extra benefits” and the facts that surround them are materially and obviously different from the clearly egregious and intentional violations occurring at other programs (sexual abuse cover-up, drugs, academic fraud, and parties on yachts, etc. see Paragraph 1).

From home-cooked meals by “Grizzly Moms” to claims of free legal representation for two minority student athletes who were “tazed” by Missoula Police officers outside a private party, the notion of penalizing the helping of student athletes appear to be highly subjective technicalities that are wholly separate from football programs intentionally trying to gain competitive advantage through improper benefits. Taken together, these actions were all local, unrelated, personal and humanitarian in nature. The individuals who took the actions did so with the best intentions and with no knowledge of or intention to violate any NCAA rules or regulations, let alone create a situation that would be deemed an improper benefit.

- 4. The NCAA-specified violations Montana was charged with are the very type of activities the NCAA is now actively considering dropping as rule violations:** The NCAA, now under increasing national scrutiny for its policies and practices, is reported to be considering changing the rules to reduce or possibly even eliminate the type of “extra benefits” infractions Montana was charged with violating. How can the NCAA allow Montana to suffer from unduly severe penalties when it is also considering the issue that such underlying “infractions” may not merit the scrutiny or penalties? The facts of this case seem in line with the very reasoning that is likely driving this reconsideration.

Conclusion:

The University of Montana football program, the university itself and the state have already suffered from what now appear in hindsight to be over-zealous investigations, institutional and political bias and unfavorable media coverage. All will now suffer for years to come; and perhaps the ones hurt most will be the student athletes as well as potential future recruits who will lose scholarship opportunities at the school.

The loss of four scholarships to the Montana football team is far more drastic than one might realize. Whereas schools at the FBS level have 85 scholarships to award, those at the FCS level at which Montana plays have only 63. Losing four scholarships – down to 59, will have a major impact to the program’s ability to recruit at a level with other FCS schools, and specifically Montana student-athletes. For example, each team usually loses a number of seniors, leaving most teams with +/- 50 members of the freshmen, sophomore and junior classes already in place.

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With nine scholarships remaining, the Montana football program will need to juggle aid for the qualified out-of-state athletes with the need to be competitive with in-state student-athletes. Four scholarships can often be divided up to as many as 16 Montana (in-state) student athletes. The impact of this loss for three straight years will be significant and increase in aggregate affect as Montana loses loyalty and following among qualified candidates and their school coaching staffs – let alone its supporters to athletics and other university programs.

Taking the 2011 Big Sky Conference championship away from the program is also unfair and should be reconsidered. The players, their coaches and the athletics staff worked countless hours to win those titles --- none of which had anything to do with the incidents described above that resulted in the unduly severe penalties the Montana football program is now burdened with. Is it just and fair to deprive these players, coaches and staff the recognition of their accomplishments and dictate that these achievements will be “officially wiped away” because of what many now understand were well meaning but were improper decisions by people outside the football program?

An appeal and NCAA consideration of Montana’s scholarship penalty is justified based on the facts discussed above. Some programs have appealed the NCAA, even when some self-imposed penalties have already been put forth and had their cases considered. Boise State, Penn State, and the University of Central Florida are all very recent examples. In addition, the NCAA has considered appeals, particularly where the university has demonstrated excellent adherence to the new penalties and regulations placed upon the programs. Montana has done just that as well.

While the NCAA, officials, institutions and media outlets move on, the wake of these events have unfairly altered individuals’ lives and besmirched not only the reputation of the Montana football program and many associated individuals, but also the University of Montana itself and the State. Given the new facts and circumstances that surround these NCAA sanctions, it is wrong to penalize future generations of student athletes and diminish a once nationally recognized football program.

Based on the facts and considering the precedent of recent appeals, the NCAA owes the University of Montana, the State it represents and the other NCAA members a duty to review this matter and act with objectivity and fairness.