THE AUTHORITY OF THE NCAA AND ITS MEMBER INSTITUTIONS
OVER STUDENT ATHLETES

by

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ABSTRACT

Growing litigation between the National Collegiate Athletic Association (NCAA), its member institutions, and student athletes has caused concern for both student athletes and colleges and universities. This qualitative research utilized a legal-historical, document-based method of inquiry. The research analyzed cases between 1953-2012 involving conflicts between student athletes, the institutions of higher education they attend, and the NCAA. Cases involving Title IX were not included. An analysis of pertinent cases was conducted to identify applicable laws influencing judicial decisions. Cases were briefed using Statsky and Wernet’s (1995) method. Themes emerging from the research involved issues concerning constitutional/civil rights, workmen’s compensation, and anti-trust.

Case law revealed that most challenges brought against the NCAA involved by-laws concerning the areas of amateurism, recruiting, eligibility involving academic and general requirements, compensation, and enforcement. Other issues involved violations under the Americans with Disabilities Act, First Amendment, Fourteenth Amendment, and Title VI. The courts have ruled that the NCAA is not considered a state actor because it is a private institution set up to protect amateurism and the education of student athletes. As a result, the NCAA is cloaked with immunity while the colleges and universities are not. The research revealed that the NCAA has a pattern of settling cases and revising its by-laws when there is a concern that the courts will rule against the NCAA. As a result, the NCAA is able to escape court rulings that will set a precedent for future litigation.
The research gleaned from the data provided practical guidelines for athletic departments and recommendations for future research.
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CONTENTS

ABSTRACT .................................................................................................................. ii

ACKNOWLEDGMENTS .............................................................................................. iv

LIST OF FIGURES .................................................................................................... ix

1 INTRODUCTION ....................................................................................................... 1

   Significance of the Research .................................................................................... 3
   The Statement of Purpose ....................................................................................... 4
   Research Problem .................................................................................................... 4
   Research Questions ................................................................................................ 5
   Limitations ................................................................................................................. 5
   Assumptions ............................................................................................................. 6
   Definitions ............................................................................................................... 7
   Positionality Statement ........................................................................................... 13
   Organization of the Qualitative Research ............................................................... 14

2 LITERATURE REVIEW ............................................................................................. 16

   Background of the Research/History ...................................................................... 16
   NCAA By-laws ......................................................................................................... 21
   Right of Publicity .................................................................................................... 24
       Anti-trust .............................................................................................................. 24
   Rights ...................................................................................................................... 26
   Commercialization .................................................................................................. 28
   Current Push to Restructure NCAA ...................................................................... 29
3 METHODOLOGY .................................................................................................................. 32
   Introduction ..................................................................................................................... 32
   Research Questions ....................................................................................................... 33
   Data Collection ............................................................................................................... 33
   Case Brief Method .......................................................................................................... 34
   Data Analysis .................................................................................................................. 35
   Summary ......................................................................................................................... 36

4 ANALYSIS OF DATA ....................................................................................................... 37
   Case Briefs ...................................................................................................................... 37
      1953 .......................................................................................................................... 37
      1963 .......................................................................................................................... 39
      1972 .......................................................................................................................... 40
      1973 .......................................................................................................................... 42
      1974 .......................................................................................................................... 44
      1975 .......................................................................................................................... 46
      1976 .......................................................................................................................... 49
      1977 .......................................................................................................................... 53
      1978 .......................................................................................................................... 56
      1979 .......................................................................................................................... 58
      1980 .......................................................................................................................... 59
      1981 .......................................................................................................................... 61
      1983 .......................................................................................................................... 62
      1984 .......................................................................................................................... 68
      1985 .......................................................................................................................... 70
      1986 .......................................................................................................................... 71
1987.......................................................................................................................74
1988.......................................................................................................................77
1989.......................................................................................................................78
1990.......................................................................................................................79
1992.......................................................................................................................83
1993.......................................................................................................................86
1994.......................................................................................................................87
1996.......................................................................................................................88
1997.......................................................................................................................90
1998.......................................................................................................................93
1999.......................................................................................................................95
2000.......................................................................................................................97
2001.......................................................................................................................100
2002.......................................................................................................................108
2003.......................................................................................................................109
2004.......................................................................................................................112
2005.......................................................................................................................116
2007.......................................................................................................................120
2009.......................................................................................................................122
2012.......................................................................................................................123

Data Analysis.......................................................................................................125

Number of Cases...............................................................................................126

Number of Cases per State...............................................................................129

Issues....................................................................................................................132

Workmen’s Compensation...............................................................................132
LIST OF FIGURES

1  Income received from intercollegiate sports from 2005-201 ............................................................... 29
2  Number of cases by decade: 1953-2012 ......................................................................................... 126
3  Trend of rulings in favor of each party by decade ............................................................................. 127
4  Themes and sub-themes of the cases ................................................................................................. 128
5  Number of cases per originating state .............................................................................................. 130
6  Number of cases by issue .................................................................................................................. 130
7  Prevailing parties in court rulings: 1953-2012 ................................................................................... 134
8  Count of ruling in favor of .................................................................................................................. 135
9  Court rulings by court type ................................................................................................................ 136
CHAPTER 1
INTRODUCTION

College football and team rivalries have spurred hundreds of thousands of fans to travel throughout the United States in support of their beloved team. There is no doubt that college sports is a multi-billion dollar business for colleges and sports marketing companies. However, in the process have we lost the integrity of the game and the responsibility owed to student athletes? The NCAA was formed over a century ago as a way to protect student athletes, with emphasis on both safety in athletics and academic excellence. Over the years, however, revenues earned from sports marketing makes it difficult for the NCAA to focus on their mission. In fact, some would contend that the rules and regulations of the NCAA have caused some discrimination or at least some ethical issues where Constitutional/Civil Rights and business laws are concerned, and that financial stability has been the first and foremost goal with protection of student athletes second (Steiber, 1991). The NCAA and institutions of higher education seek to increase revenue through cartel like actions. (Fleisher, Goff, & Tollison, 1992; Grant, Leady, & Zygmont, 2008; Kahn, 2006). There is another view that argues that the NCAA “forces its memberships to discriminate against the student athlete in comparison with other student groups and . . . places the NCAA in violation of U.S. anti-trust laws” (Steiber, 1991, p. 446). This is accomplished by setting the wages that student athletes can earn which is set through regulations of the NCAA Bylaws that prohibit student athletes from receiving any revenue other than in-kind scholarship payments. Students who receive academic scholarships or other kinds of scholarships are not subject to these same restrictions. For example, students “who receive
scholarships in music can and do augment their income by performing for pay” (Steiber, 1991, p.445). It appears that price fixing scholarship agreements that limit the income of student athletes discriminates against a whole class of scholarship recipients. This could be construed on the part of colleges and universities that make up the membership of the NCAA as highly unethical and may even be illegal.

NCAA Bylaw 12.4.1.1 prohibits a student athlete from receiving “any remuneration for value or utility that the student athlete may have for the employer because of the publicity, reputation, fame or personal following that he or she has obtained because of athletics ability” (NCAA Manual, 2010, p. 74).

Growing litigation between the NCAA and student athletes, and the complexity of the litigation issues have caused concern for both student athletes and colleges as they continue to ensure the protection of student athletes. Compliance with Constitutional/Civil Rights and business laws is becoming increasingly difficult as the controlling members, presidents of the colleges, find themselves torn between what is best for the student athlete and the financial stability of the colleges. This conflict has caused much discussion about the need for change in the rules and regulations of the NCAA. Students receiving athletic scholarships are held to a different standard than students receiving academic scholarships, and at times the NCAA can become a stumbling block, as students try to reach their full potential and be successful in areas outside of the sport in which they receive their scholarship. Colleges must be proactive in educating its personnel and the families of student athletes relative to the rules and regulations of the NCAA, while protecting the rights of their student athletes.
Significance of the Research

The NCAA continues to impose rules and regulations on colleges that prove to have an adverse effect on the education of student athletes, sometimes preventing those students from pursuing additional career paths. There is also a prevalence of sports marketing and the overwhelming list of rules and regulations contained in the NCAA manual (444 pages) that can jeopardize a student athlete before and during his/her NCAA careers. These activities affect both their ability to play sports and to further their education. In addition, the literature review indicates a growing concern that student athletes are being exploited for commercial gain and a possible conflict of interest exists between the college presidents’ responsibility to protect the student athlete and their financial obligation to their college. As a result, there has been a growing push for a reform and restructure of the NCAA and a need to develop educational programs for student athletes, parents, and athletic departments to gain a better understanding of those activities that may adversely affect the student athlete and his/her future.

The literature review demonstrates that there are limited studies that comprehensively look at how the courts have ruled on cases involving student athletes and the authority of intercollegiate sports (NCAA). The purpose of this qualitative research was to examine state and federal court cases concerning student athletes and the authority of intercollegiate sports (NCAA). The qualitative research examined court cases from 1953 to 2012. Data from the cases were reviewed, trends were determined, and administrative guidelines were offered to athletic departments to assist in developing and implementing programs to help educate student athletes, parents, and faculty/staff members.
The Statement of Purpose

The purpose of this qualitative research was to examine how the courts have ruled on litigation involving conflicts between student athletes, the institutions of higher education they attend, and the National Collegiate Athletic Association, not including Title IX claims. The wide ramifications of the NCAA rules and regulations make it necessary for colleges, students, and parents to understand case law as it pertains to the rights of student-athletes and the situations that could pose questions of misconduct or deem student-athletes ineligible under NCAA rules and regulations. Further, there is a growing concern, and pending cases suggest, that student athletes are not afforded the same opportunities as other students and, in fact, are exploited by the NCAA and colleges. Therefore, there is a growing need to develop a better understanding of the issues, outcomes, and legal trends arising from litigation involving intercollegiate sports and student athletes.

Research Problem

The NCAA continues to impose rules and regulations on colleges that prove to have an adverse effect on the education of student athletes, sometimes preventing those students from pursuing additional career paths. The first and foremost responsibility of all colleges and universities is to ensure that all students receive a quality education from their respective institutions. There is a growing concern that our student athletes are now being exploited for commercial gain. A possible conflict of interest exists between the college presidents’ responsibility to protect the student athlete and their paid obligation to their college or university and the NCAA board they serve on. As a new era of technology emerges; students, parents, and college faculty members must educate themselves on the laws as they pertain to
Constitutional/Civil Rights and business law. Some of the decisions by the NCAA force students to limit their opportunities and may discriminate between them and non-athletic students who are also receiving scholarships. So what are the rights of student athletes, and is it possible that the NCAA rules and regulations cause a violation of student-athletes’ rights as they relate to Constitutional/Civil Rights and business law? Further, do the rules and regulations of the NCAA cause discrimination between students receiving academic scholarships and those students receiving athletic scholarships?

Research Questions

1. What are the issues in federal and state cases involving conflicts between student athletes, the institutions of higher education they attend, and the NCAA?

2. What are the outcomes in federal and state cases involving conflicts between student athletes, the institutions of higher education they attend, and the NCAA?

3. What are the trends in federal and state cases involving conflicts between student athletes, the institutions of higher education they attend, and the NCAA?

4. What guidelines can be discerned from cases involving conflicts between student athletes, the institutions of higher education they attend, and the NCAA?

Limitations

1. The cases selected for this qualitative research were conflicts involving student athletes, the institutions of higher education they attended, and the NCAA, from 1953-2012.

2. Cases involving Title IX claims were not included in the research.

3. The cases in this qualitative research were limited to those from the West Digest System, which is reference-book based, and the Westlaw system, which is computer-based; both
were employed as search methodologies for finding court cases for this qualitative research. For the Digest System, court cases were found by first looking at Key Number College & Universities 13, Intercollegiate Associations, and Key Number College & Universities 14, Rules and Regulations, and Key Number Colleges & Universities 15, Judicial Intervention. The reference-book based Digest System covered the years of 1981 to 2013. For the Westlaw computer-based system court cases were found by looking under 81K13 Intercollegiate Associations, 81K14 Rules and Regulations, and 81K15 Judicial Intervention. The computer-based Westlaw search engine covered the years dating back to 1953 to 2013. As a result, there was some overlapping after 1981 with the book-based search methodology. In addition, LexisNexis Academic was employed as a search method for finding court cases for the research having in common topics of student athletes, institutions of higher education, and the NCAA, not including those involving Title IX.

4. This qualitative research was limited to cases involving conflicts between student athletes, the institutions of higher education they attend, and the NCAA and may not represent all cases pertinent to the study.

5. The cases were analyzed by an educator conducting qualitative, document based research, not an attorney conducting legal research.

Assumptions

1. All court cases had been resolved in accordance with state, and federal laws.

2. Cases examined involved conflicts between student athletes, the institutions of higher education they attend, and the NCAA, not including Title IX claims.
3. Rulings were within the court’s jurisdiction and were binding for all student athletes and the authority of intercollegiate sports.

Definitions

In order to better understand this qualitative research, several definitions must be defined. The Black’s Law Dictionary will be used to define legal terms, and other definitions related to this topic are defined from the 2010-2011 NCAA Division I Manual or other sources.

**Antitrust Law**: The body of law designed to protect trade and commerce from restraints, monopolies, price-fixing, and price discrimination. The principal federal antitrust laws are the Sherman Act and the Clayton Act.

**Appeal**: “Resort to a superior court to review the decision of an inferior court or administrative agency” (Black & Nolan, 1990, p. 96).

**Appellant**: “The party who takes an appeal from one court or jurisdiction to another” (Black & Nolan, 1990, p. 97).

**Appellee**: “The party to an appeal arguing that the lower court’s judgment was correct and should stand” (Black & Nolan, 1990, p. 97).

**Appellate court**: “A court having jurisdiction of appeal and review; a court to which causes are removable by appeal, certiorari, error, or report” (Black & Nolan, 1990, p. 97).

**Agency contract**: An oral or written agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports contract or an endorsement contract (NCAA Manual, 2010).

**Athlete agent**: An individual who enters into an agency contract with a student athlete, or directly or indirectly recruits or solicits a student athlete to enter into an agency contract (this
does not include parents, spouse or attorney, as well as others listed in the NCAA Manual) (NCAA Manual, 2010).

**Athletic director:** An individual responsible for administering the athletic program of an educational institution (NCAA Manual, 2010).

**Benefits:** “Any special arrangement by an institutional employee or a representative of the institution’s athletics interests to provide a student-athlete or the student-athlete’s relative or friend a benefit not expressly authorized by NCAA legislation. Receipt of a benefit by student-athletes or their relatives or friends is not a violation of NCAA legislation if it is demonstrated that the same benefit is generally available to the institution’s students or their relatives or friends or to a particular segment of the student body (e.g., international students, minority students) determined on a basis unrelated to athletics ability” (NCAA Manual, 2010, p. 219).

**Case brief:** “A summary of essential components of an opinion” (Statsky & Wernet, 1995, p. 450).

**Case law:** “The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudicated cases, in distinction to statutes and other sources of law. It includes the aggregate of reported cases that interpret statutes, regulations, and constitutional provisions” (Black & Nolan, 1990, p. 220).

**Cause of action:** “The fact or facts which give a person a right to judicial relief. A situation or state of facts which would entitle party to sustain action and give him right to seek a judicial remedy in his behalf” (Black & Nolan, 1990, p. 220).

**Citation:** “Identifying information that will enable you to find a law, or material about the law, in a law library” (Statsky & Wernet, 1995, p. 450).
**Clayton Act**: Deals with specific types of restraints including exclusive dealing arrangements, tie-in sales, price discrimination, mergers and acquisitions, and interlocking directorates; carries only civil penalties and is enforced jointly by both the Antitrust Division and the Federal Trade Commission.

**Commission**: Refers to the Federal Trade Commission.

**Division I**: NCAA member institutions offering at least seven sports for men and seven sports for women (NCAA Manual, 2010 -Membership Section).

**Due process**: Going into the actual legal analysis and the process by which student athletes can challenge Athletic Association rules that deprive them of rights upheld by the Constitution, Due Process, via the 5th and 14th Amendment, refers to certain fundamental rights (Schoonmaker, 2003; Wong, 2002):

“*No person . . . shall be deprived of life, liberty, or property without due process of law*”

(U.S. Constitution, 5th Amendment)

“No shall any state deprive any person of life, liberty, or property without due process of law” (U.S. Constitution, 14th Amendment).

**Defendant**: “The person defending or denying; the party against whom relief or recovery is sought in an action or suit or the accused in a criminal case” (Black & Nolan, 1990, p. 419)

**Disposition**: “Whatever must happen in the litigation as a result of the holding which the court made in the opinion” (Statsky & Wernet, 1995, p. 128).

**Eligibility**: Students must be enrolled full-time and maintain a set percentage of progress toward a degree to be eligible for competition (NCAA Manual, 2010).
**Endorsement contract:** An agreement between and another party where the student athlete is employed or receives consideration for person, name, image, or likeness in the promotion of any product, service, or event.

**Fact:** “Any information concerning a person, thing or occurrence that is obtained through the senses” (Statsky & Wernet, 1995, p. 452).

**Federal Court:** “The court of the United States (as distinguished from state, county, or city courts) as created by Article III of the United States Constitution or by Congress” (Black & Nolan, 1990, p. 610).

**Holding:** “The answer to a legal issue in an opinion; the result of the court’s application of one or more rules of law to the facts of a dispute” (Statsky & Wernet, 1995, p. 452).

**Injunction:** “A prohibitive, equitable remedy issued or granted by a court at forbidding the latter to do some act, which he is threatening or attempting to commit” (Black & Nolan, 1990, p. 705).

**Intercollegiate sport:** A sport played at the collegiate level by a student athlete whose eligibility requirements are established by a national association for the promotion or regulation of college athletics (NCAA Manual, 2010).

**Issue:** “A question” (Statsky & Wernet, 1995, p. 452).

**Law:** “That which is laid down, ordained, or established; a rule or method according to which phenomena or actions co-exist or follow each other. Law, in its generic sense, is a body or rules of action or conduct prescribed by controlling authority, having a binding legal force.” (Black & Nolan, 1990, p. 884).
*Litigation:* “A lawsuit; legal action, including all proceedings therein. Contest in a court of law for the purpose of enforcing a right or seeking a remedy. A judicial contest; a judicial controversy; a suit at law” (Black & Nolan, 1990, p. 934).

*Opinion:* “A court’s written explanation of how and why it applied rules of law (and perhaps secondary authority) to the specific facts before it to reach its decision or holding” (Statsky & Wernet, 1995, p. 3)

*Plaintiff:* “A person who brings an action; the party who complains or sues in a civil action and is so named on the record. A person who seeks remedial relief for an injury to rights; it designates a complainant” (Black & Nolan, 1990, p. 1150).

*Precedent:* An adjudged case or decisions of a court, considering as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law. Courts attempt to decide cases based on principles established in prior cases. Prior cases, which are close in facts or legal principles to the case under consideration, are called precedents. A rule of law is established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases. (Black & Nolan, 1990, p. 1176)

*Preliminary injunction:* “An injunction granted at the institution of suit, to restrain the defendant from doing or continuing some act” (Black & Nolan, 1990, p. 705).

*Professional athlete:* “A professional athlete is one who receives any kind of payment, directly or indirectly, for athletics participation except as permitted by the governing legislation of the Association” (NCAA Manual, 2010, p. 65).

*Professional sports contract:* An agreement under which an individual is employed, or agrees to render services as a player on a professional sports team, organization, or as a professional athlete (NCAA Manual, 2010).

*Reasoning:* “The court’s explanation for reaching a particular holding for a particular issue on the opinion” (Statsky & Wernet, 1995, p. 112).
Reform: To put or change into an improved form or condition or to amend or improve by change of form or removal of faults or abuses (Merriam-Webster, 1998, p. 964).


Sherman Act of 1890: Prohibits contracts, combinations, and conspiracies in restraint of trade, and monopolization, includes criminal penalties when enforced by the government

State action: State Action requirement must be met in order for plaintiffs to bring violations of constitutional rights’ violations. Action taken by a state, local, or federal entity is considered a state actor. Private organizations that are performing public functions can also be considered a state actor (Altman, 2003; Wong, 2002).

Student athlete:

A student-athlete is a student whose enrollment was solicited by a member of the athletics staff or other representative of athletics interests with a view toward the student’s ultimate participation in the intercollegiate athletics program. Any other student becomes a student-athlete only when the student reports for an intercollegiate squad that is under the jurisdiction of the athletics department, as specified in Constitution 3.2.4.5. A student is not deemed a student-athlete solely on the basis of prior high school athletics participation. (NCAA Manual, 2010, p. 66)

Student athlete statement: “An active member shall administer annually, on a form prescribed by the Legislative Council, a signed statement for each student-athlete that provides information prescribed in Bylaw 14.1.3” (NCAA Manual, 2010, p. 10).

Transfer student: “a student who transfers from any collegiate institution after having met any one of the conditions set forth in Bylaw 14.5.2” (NCAA Manual, 2010, p. 147).

Waiver: “An action exempting an individual or institution from the application of a specific regulation” (NCAA Manual, 2010, p. 147).
Positionality Statement

I began my career working for former Speaker of the House and Attorney, Tom Drake, along with his wife, Chris Drake, who was also a practicing attorney (I worked in the legal field for approximately 10 years from 1983-1993). During this time, I gained valuable knowledge and insight into both the legal and legislative systems. My work focused mainly on personal injury and workmen’s compensation cases, along with wills, divorces, deeds, real estate loans, other legal issues, and various legislative projects. I returned to school and earned a B.S. in Elementary Education in 1997 from Athens State College. I attended the University of Alabama in Birmingham, and received my Masters in Educational Leadership in 2003 and my Educational Specialist Degree in Educational Leadership in 2004. I am currently pursing my Ed.D. in Educational Leadership, Policy, and Technology Studies from The University of Alabama. I have worked for the Cullman County School System for approximately 12 years. My unique path to education provides knowledge and skills in areas that many administrators do not possess. As a result, I am intrigued by legal and legislative issues surrounding education. My current responsibilities include being the coordinator for Special Projects, Community Development, and the Alabama Student Assistant Plan. My current position allows me to work with legislators, educators, and business leaders on legal and legislative issues and have included projects such as increasing tax revenue for the school system, and a recent referendum that returned the control of Section 16 Land back to the local school system.

I have always been interested in the way the legal and legislative systems make and reform laws and the way their actions impact the lives of its citizens. I became intrigued with the laws that affect student athletes and with the conflicts that exist between institutes of higher learning and student athletes (other than Title IX). I realized that my cousin, who is a talented
musician, was earning money on the weekends playing in a band. Likewise, he could also earn money tutoring students, even though he received an academic scholarship. This caused me to inquire further into the conflicts that exist between the institutes of higher learning (the colleges, universities, and NCAA) and student athletes. Why do the rules and regulations governing institutions of higher learning vary for a student receiving an academic scholarship, an athletic performance scholarship, or a non-academic scholarship? Why can a student-athlete not earn money related to a sport or interest outside of their scholarship sport? Why can baseball players come back and be considered eligible to play football, while others cannot? Should an outstanding athlete who helps bring in millions of dollars to his/her respective college forever forfeit any money from their image and likeness in return for his/her scholarship and education? What, if any, Constitutional/Civil Rights do students forfeit in return for their year-to-year scholarship? Finally, what do years of case law reveal concerning litigation involving conflicts between student athletes, the institutions of higher education they attend, and the NCAA, not including Title IX claims? The information gleaned from the qualitative research may provide valuable data to guide policy and reform involving student athletes, institutions of higher education, and the NCAA.

Organization of the Qualitative Research

This qualitative research is composed of five chapters. Chapter 1 is an introduction into the qualitative research and includes a statement of the problem, the significance of the problem, the purpose of the research, the research questions, definitions and terms, and the limitation of the research. Chapter 2 contains a review of literature and outlines the history and documentation related to this qualitative research. Chapter 3 gives a description of the methodology utilized in
this qualitative research. This chapter includes the research questions, procedures, and the review of court cases. Chapter 4 contains case briefs and an analysis of each case. Chapter 5 provides a summary of the research, conclusions, and recommendations for further research.
CHAPTER 2
LITERATURE REVIEW

Background of the Research/History

Prior to the 1890s, most athletic programs were run by students and were independent, at least financially, from the colleges. The rules of the games were not consistent, making it difficult to organize games between colleges. In order to develop common rules for the games, delegates from four colleges (Harvard, Columbia, Yale, and Princeton) met in 1876 and formed the Intercollegiate Football Association. By the mid-1890s, approximately 120,000 athletes were participating in 5,000 Thanksgiving Day football games and drew crowds of 40,000. (This included colleges, high schools and clubs.) The Yale-Princeton game of 1893 earned $13,000 for each school and quickly changed the course of college sports forever. Suddenly, a new source of revenue was generated for college athletic programs. The popularity of the game and the coverage it received from the media increased revenue from $13,000 per team to $100,000 per team by 1903. It is interesting to note that the first commercial competition was a rowing competition, which occurred on August 3, 1852, between Harvard and Yale, which was sponsored by the railroad company. The railroad paid all the expenses and travel for the schools (Smith, 1988). It was very similar to today’s bowl games and other events that are sponsored by major corporations. Unfortunately, this increased revenue, combined with the popularity of football, drove competition to a new level and as a result led to abuses at many schools. In fact, Chu (1989) noted, “The crew contest started what was to become the multi-billion dollar industry of college sports” (p. 53).
Many faculty members and university presidents felt that football was becoming a distraction from the true purpose--educating students. However, there was little they could do because students still managed the clubs, organized the contests and even hired the coaches. In 1895, several college presidents came together to form an association that would regulate college athletics. However, between 1890 and 1905 a total of 330 students died as a result of injuries sustained from football (Zimbalist, 1999). This does not include the large number of students that were seriously injured. As injuries and deaths continued, President Theodore Roosevelt called for a meeting to discuss ways to ensure the safety of the students (Byers, 1995). In 1905, after the death of William Moore, a student from Union College, the Chancellor of New York University organized a committee to look into ways to reform the rules of the game, which became known as the Intercollegiate Athletic Association of the United States (IAAUS) and replaced the student association.

It was Harvard Coach, William Reid, and Charles Eliot, the President of the institution, who insisted that new rules be established to protect the student athletes. In fact, they were willing to drop their football program if new rules were not established. Many committee members feared that if Harvard dropped its program, many schools would do the same. By 1906 there was a push to regulate all college athletics and the first bylaws were adopted focusing mainly on the issues of safety and amateurism. That same year the forward pass was introduced and six players were required to play on the offensive line as a way to keep players safe. In the beginning, member institutions (39 at the time) were not bound by the rules; however, by the next year the constitution was amended to state that all member institutions (95 at the time) were bound by their rules and regulations. The only way relief was granted was through an appeal to
the Executive Committee. In 1910, the IAAUS changed its name to the National Collegiate Athletic Association and forever changed intercollegiate sports.

In 1929, after the Carnegie Commission report, it was recommended that university presidents and faculty members take control of the NCAA. It is interesting to note that when the control was taken from the students and given to faculty and administrators, the number of games played each year increased. In addition, spring practices were also added. As a result, students practiced even more and spent longer time away from their studies. Why? Fans wanted to see the games and more games meant more money. The end of World War II and the expansion of television coverage made sporting events even more popular, and college athletics quickly became a billion dollar business.

Initially, one of the main goals of the NCAA was to protect students and amateurism. However, in 1893, James Hogan, who was 27 at the time, was given the following in return for his services at Yale: his tuition was paid for by the university, he was given a suite of rooms and free meals at the University Club, a $100 scholarship, and a share of the profits from game-day program sales. The university also provided him with an all-expenses paid, 10-day vacation to Cuba after football season. (Crowley, 2006). It was not until 1922, when the Ten Point Code of Eligibility was adopted, that students were prevented from receiving any payments for their participation in sports, and no athletic scholarships were allowed. However, in 1951, the NCAA decided that students could receive a scholarship based on their athletic ability and funds were to be administered through the financial aid office. By 1973, the NCAA voted to limit the number of scholarships to 105, which was reduced again in 1992 to 85. Scholarships were considered gifts from the college and could not be taken away from a student until 1967, at which time the NCAA adopted a rule allowing revocation for scholarships in the event an athlete voluntarily
withdrew from sports. Only those students who were forced to withdraw due to injury could retain their scholarship. However, in 1973, the NCAA reduced its scholarships from 4 years to 1 year, which questioned the pay for play scenario. Student athletes, however, had no representation within the NCAA to voice their concerns. It was not until 1989 that the NCAA allowed the formation of the Student athlete Advisory Committee. While all divisions would have representation, only Division II and III colleges were allowed to speak about legislative issues on the convention floor. This is also the year that Title IX of the Education Amendments of 1972 was passed ensuring equal opportunities for women and women’s sports.

By 1950, television began changing the game of football and the University of Pennsylvania received $150,000 from ABC to broadcast all of their home games. In the beginning, there were concerns that TV coverage might reduce attendance at the games which would result in less money. By 1983, the dollar value of the NCAA television contract was over $60 million, which was distributed between those schools appearing on TV, members of the NCAA, and the NCAA itself. The College Football Association was formed shortly after this contract to lobby for an increase in the number of televised games. As a result, the University of Oklahoma joined with the University of Georgia and sued the NCAA for violating the Sherman Act of 1890. In 1982, the courts sided with the universities and found the NCAA in violation of the Sherman Act. In 1984, the U.S. Supreme Court upheld their decision, giving individual schools and conferences the power to negotiate their own television contracts. However, the NCAA could ban a school from appearing on television for violation of NCAA rules. It was noted by two dissenting justices, that there was concern this would lead to a greater focus on winning games and less emphasis on academics. In 1995, CBS entered a contract with the Southeastern Conference for the rights to televise football over the next 5 years for 85 million
dollars. Today’s television coverage is much more complicated and involves multiple contracts with different television networks. Bowl games became another multi-billion dollar industry, with Notre Dame receiving $14.87 million to appear in the 2006 Fiesta Bowl. Ohio State, the opposing team, received slightly more, but had to share its profits with the other teams in the Big Ten Conference. In 2003, the BCS paid eight teams $117 million for their appearances in the BCS bowl games. In 2009-2010, the NCAA generated more than $455 million, with 60% of that amount being distributed to Division I members. Over the years, collegiate licensing and the merchandising market has grown to an estimated worth of $4 billion each year. Some believe the NCAA is a cartel because they set the prices for tickets, student athlete grants in aid, make contracts for television coverage, and control prices and output, and place limitations on competition. Fleischer et al. (1992), Koch and Leonard (1978), and others say the rules and regulations of the NCAA violate the rights of student athletes. There is a growing concern that the NCAA and colleges successfully earn billions of dollars at the expense of their student athletes. For example, during the 2007-2008 football season, the University of Texas was the top revenue producer, earning almost $7.3 million (Shulman & Bowen, 2001). In spite of this multi-billion dollar business, NCAA athletes do not share in the proceeds created by television, marketing, and licensing fees. So what are the rights of student athletes and is it possible that the NCAA rules and regulations cause a violation of anti-trust law and/or Constitutional/Civil Rights? There is much to gain from being a college athlete, such as an education, the opportunity to continue involvement in sport for enjoyment or a possible professional sports career, the opportunity for travel, and interaction with peers. There may be, however, potential costs as a result of focusing solely on sports and not education or other career possibilities. Therefore, it is necessary to take a closer examination of the student athlete experience and the importance of -
including sports in the college/university setting. First, sports aid in the overall development of young people. Second, sports can contribute to an increased academic performance and an upward occupational/social mobility. Third, athletic programs can help increase a school’s overall student enrollment and revenue (Miller, 2003). Duderstadt (2000) explained that “values such as dedication, sacrifice, teamwork, integrity, and leadership are all thought to be positive characteristics generated by sports. . . . All of these experiences can prepare the student athlete for life after college” (p. 189).

NCAA By-laws

The NCAA Manual contains approximately 3,952 bylaws, making it almost impossible for students to know and adhere to all rules and regulations. As a result, it is possible for students to unknowingly participate in rule violations. Coaches and athletic departments are constantly faced with the responsibility of educating student athletes and their parents on these rules, but is it realistic for the NCAA to expect all “student athletes” to truly understand the 444 page manual (NCAA Div. Manual, 2010)? There are some sections that students must clearly understand before accepting and signing documentation concerning scholarships. Here are few of the bylaws that student athletes find themselves in controversy over:

NCAA rules and regulations, 12.1.2–Amateur status.
12.1.2.1.1, under prohibited forms of pay states: “Any direct or indirect salary, gratuity, or comparable compensation.” (NCAA Division I Manual 2010, p. 74)

NCAA rules and regulations, 12.2.3.2 states: “An individual shall not be eligible for intercollegiate athletics in a sport if the individual ever competed on a professional team (per Bylaw 12.02.4) in that sport.” (NCAA Division I Manual 2010, p. 72)

NCAA bylaw 12.5.1.1.1 states, “You authorize the NCAA [or a third party acting on behalf of the NCAA (e.g., host institution, conference, local organizing committee)] to use your name or picture in accordance with NCAA Bylaw 12.5, including to promote NCAA
championships or other NCAA events, activities or program.” (NCAA Division I Manual, 2010, p. 76)

NCAA Bylaw Article 13 deals with Recruiting rules and regulations and covers 20 sections (pp. 81-143).

According to 14.01.1: “An institution shall not permit a student athlete to represent it in intercollegiate athletics competition unless the student athlete meets all applicable eligibility requirements, and the institution has certified the student athlete’s eligibility”. (NCAA Div. I Manual, 2010, p. 145)

In addition, according to 14.01.3: “A student athlete shall not be eligible for participation in an intercollegiate sport if the individual takes or has taken pay, or has accepted the promise of pay in any form, for participation in that sport, or if the individual has violated any of the other regulations related to amateurism set forth in Bylaw 12.”

Under section 14.02.15 of the NCAA Division 1 bylaws, a waiver may be granted by the committee. A waiver is an action exempting an individual or institution from the application of a specific regulation. This was the case for Clemson student athlete Ramon McElrathbey, who was the sole guardian for his younger brother. Clemson coaches requested a waiver exempting him from NCAA guidelines, which prevent student athletes from receiving gifts, cash, or other benefits not available to the general student population. As a result, McElrathbey was allowed to receive assistance from coaches’ wives and family related to local transportation and child care for his younger brother. A trust fund was established to coordinate financial contributions to cover their normal living expenses. A Special Assistance Fund became effective August 1, 2008, for student athletes. According to NCAA bylaw 16.12.2,

A student athlete may request additional financial aid (with no obligation to repay such aid) from a fund established pursuant to a special financial need program approved by the Management Council to assist student athletes with special financial needs. The institution may provide reasonable local transportation in conjunction with financial assistance approved under this program. (NCAA Division I Manual, 2010, p. 213)

According to the United States Code, Title 15, Chapter 104 § 7802,

“(a) Conduct prohibited
It is unlawful for an athlete agent to—
(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by—
   (A) giving any false or misleading information or making a false promise or representation; or
   (B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract, including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt;
(2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or
(3) predate or postdate an agency contract.

(a) Required disclosure by athlete agents to student athletes
(1) In general
In conjunction with the entering into of an agency contract, an athlete agent shall provide to the student athlete, or, if the student athlete is under the age of 18, to such student athlete’s parent or legal guardian, a disclosure document that meets the requirements of this subsection. Such disclosure document is separate from and in addition to any disclosure which may be required under State law.
(2) Signature of student athlete
The disclosure document must be signed by the student athlete, or, if the student athlete is under the age of 18, by such student athlete’s parent or legal guardian, prior to entering into the agency contract.
(3) Required language
The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete’s parent or legal guardian, a conspicuous notice in boldface type stating:
“Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract.”

(a) Unfair or deceptive act or practice
A violation of this chapter shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a (a)(1)(B)).

(b) Actions by the Commission
The Commission shall enforce this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter.
Right of Publicity

*Anti-trust*

The main objective of the Sherman Act was to prevent the restraints of free competition in any transactions that would restrict prices and production and as such would take advantage of consumers. The goals of the anti-trust laws are as follows: Prevent collision between competitors (Section One of the Act) and prevent monopolistic and oligopolistic market structures (Section Two of the Act). Under section one, in order to establish a claim the plaintiff must demonstrate the following:

1. There was a contract, combination or conspiracy.
2. The agreement made unreasonably restrained trade under the per se rule of illegality or a rule of reason analysis (unreasonable restraint of trade).
3. The restraint affected interstate commerce.

The failure of the plaintiff to show damages or allege injury to competition is a proper ground for dismissal. Rule one must identify co-conspirators and describe the nature and effects of the alleged conspiracy. An express agreement can be a written document, a handshake, or a call to action followed by the action called for. The rule of reason requires that the plaintiff must show that the alleged agreement (combination) produced adverse anticompetitive effects within the relevant product and geographic markets, that the adverse anticompetitive effects are outweighed by the pro-competitive objective, and whether there is a less restrictive alternative.

Under section two, plaintiffs must show the following:

1. The defendant poses monopoly power in the relevant market.
2. The defendant willfully acquired or maintained its monopoly through exclusionary conduct.
3. The defendant caused antitrust injury.

Section one is very broad, as a result it has been difficult to establish that the rules apply to the NCAA because of its non-profit status. In *Brown v. Pro-Football, Inc.*, (1996) the courts stated that the exchange of money for services; even for a non-profit is commerce. Further, a payment of tuition in return for services (in this case playing sports) constitutes commerce. The courts have begun to apply antitrust laws to non-profit associations that perform commercial activities. The Board of Regents case found that the NCAA is organized to maximize revenues--the court went on to specifically include institutions of higher learning. Most cases against the NCAA easily prove the first element of the test. Most are considered horizontal restraints that would be deemed illegal under the per se test, but due to the unique structure of the NCAA are being reviewed using the rule of reason analysis. Most cases can prove horizontal restraints--proving the agreements produced adverse, anticompetitive effects. However, as in *Tanaka v. Univ. South California* (2001), the plaintiffs have trouble identifying the relevant marketplace.

The plaintiff can also establish that professional sports cannot be a reasonable alternative market, which limits the market to amateur, college athletics. The NCAA continues to argue that the pro-competitive objective outweighs any adverse, anticompetitive effects. However, amateurism has been accepted as pro-competitive reasons for constraint. In the case of *Justice v. NCAA* (1983), the court ruled that the NCAA was engaged in two distinct kinds of rulemaking: one is the NCAA concern for protecting amateurism and the other is discernible economic purposes. *Gaines v. National Collegiate Athletic Ass’n* (1990) ruled that the NCAA is engaged in a business venture and is not totally exempt from antitrust litigation.

In *Law v. NCAA* (1998), the NCAA was found to be in violation of federal antitrust laws. The case came about when the NCAA enacted the Restricted Earnings Coaches Rule (REC).
According to the rule, which was enacted as a way to cut costs, assistant coaches in all NCAA Division I sports were limited to $12,000 per year, and up to $4,000 over the summer. The rule was challenged by a group of coaches who felt that this violated Section 1 of the Sherman Act. The federal court ruled that the rule was an unlawful restraint of trade. The court ruled in favor of the coaches and the NCAA settled the case for $54.5 million (Law v. NCAA, 1998).

Rights

In 1953, in the case of the University of Denver vs. Nemeth (1953), the Colorado Supreme Court upheld the lower ruling that Ernest Nemeth was an employee of the school. As a result of the court’s decision, Ernest Nemeth received worker’s compensation benefits for injuries he received while playing football (Univ. of Denver v. Nemeth). Again, in 1963, the family of Edward Gary Vanhorn filed a workmen’s compensation claim with the California Industrial Accident Commission, seeking compensation after he was killed in a plane crash while returning home from a game. The Commission ruled that he was not an employee and therefore his family was not eligible to receive benefits. However, the family filed a lawsuit against the Commission, and the California Court of Appeals reversed the decision stating that the “the only inference to be drawn from the evidence is that the decedent received the ‘scholarship’ because of his athletic prowess and participation. The form of remuneration is immaterial.” This case established that a scholarship given to football player was compensation for his athletic services and so served as a contract of employment with the university (Van Horn vs. Industries Acc. Comm., 1963). During this time, the NCAA was moving away from 4-year scholarships to 1-year scholarships, with renewal options requiring the following wording:

This award is made in accordance with the provisions of the Constitution of the NCAA pertaining to the principles of amateurism, sound academic standards, and financial aid to
student athletes. . . . Your acceptance of the award means you agree with these principles and are bound by them. (Van Horn v. Industrial Acc. Comm., et al., 1963)

At this time, the NCAA coined the term “student athlete.” Former University of Alabama head football coach, Paul “Bear” Bryant, stated,

I used to go along with the idea that football players on scholarship were “student athletes,” which is what the NCAA calls them—meaning a student first, an athlete second. We were kidding ourselves, trying to make it more palatable for the academicians. We don’t have to say that and we shouldn’t. At the level we play the boy is really an athlete first and a student second. (Chu, 1989, p. 190)

College students earning scholarships and performing services for the school, such as teaching or as research assistants, pass the common law test as an employee. Because student athletes receive their scholarship to play football and attend school, should they be considered “employees” of the universities they attend? As the NCAA and colleges/universities continue to receive billions of dollars as a result of the performance of their student athletes there is speculation that there is a need for the rules and regulations to be revised, allowing students to receive some type of compensation for their services and a possible restructuring of the NCAA.

The state of California introduced the Right of Publicity Statute that is found in Section 3344 of the California Civil Code and contains the following dispositions:

(a) Any person who knowingly uses another’s name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person’s prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of seven hundred fifty dollars ($750) or the actual damages suffered by him or her as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. In establishing such profits, the injured party or parties are required to present proof only of the gross revenue attributable to such use, and the person who violated this section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party in any action under this section shall also be
entitled to attorney’s fees and costs. (*Cal. Civ. Code § 3344* (a); West 1997 & Supp. 2011)

**Commercialization**

The main purpose of higher education is to educate. This is evident in the Academic Progress Rate (APR) recently implemented by the NCAA requiring colleges to track student athletes’ progress toward a college degree from the time they enroll in the school, thus ensuring that students are on track to graduate. Failure for student athletes to graduate can result in the school’s loss of scholarships. Some agree that the first objective of college sports is to provide a quality education for their students. Others argue that college sports are nothing more than a “minor league” that prepares student athletes for professional leagues. However, with the low number of spots available for professional players it is safe to say that the majority of students will not go to play professional sports. Athletic directors are considered CEOs and many universities have a chief financial officer within the athletic department. Murray Sperber suggested that athletic departments have become franchises (Sperber, 1990). In fact, Walter Byers (former NCAA Executive Director) stated, “I was charged with the dual mission of keeping intercollegiate sports clean while generating millions of dollars each year as income for colleges. I was inadequate at the first goal and highly successful with the second goal” (Byers, 1995, p. 1). Prior to 2001, finances and revenues from the colleges could be reviewed at the campuses, but since 2001 all financial information can be retrieved from the Department of Education-Equity in Athletics site: https://explore.data.gov/Education/Equity-in-Athletics - Disclosure-Act-Data/dg8t-ccra. According to data retrieved from the Department of Education, revenue from colleges and universities are steadily increasing each year.
## Table 1

<table>
<thead>
<tr>
<th>YEAR</th>
<th>FOOTBALL</th>
<th>BASKETBALL</th>
<th>ALL OTHER SPORTS</th>
<th>TOTAL FROM ALL SPORTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>$2,242,011,232</td>
<td>$1,433,334,009</td>
<td>$1,918,091,244</td>
<td>$5,593,436,485</td>
</tr>
<tr>
<td>2006</td>
<td>$2,516,007,234</td>
<td>$1,552,931,791</td>
<td>$2,190,056,499</td>
<td>$6,258,995,524</td>
</tr>
<tr>
<td>2007</td>
<td>$2,839,542,773</td>
<td>$1,757,761,212</td>
<td>$2,591,651,149</td>
<td>$7,188,955,134</td>
</tr>
<tr>
<td>2008</td>
<td>$3,035,195,800</td>
<td>$1,894,202,207</td>
<td>$2,849,169,060</td>
<td>$7,778,567,067</td>
</tr>
<tr>
<td>2009</td>
<td>$3,247,812,866</td>
<td>$2,056,936,582</td>
<td>$3,137,368,250</td>
<td>$8,442,117,698</td>
</tr>
<tr>
<td>2010</td>
<td>$3,430,180,675</td>
<td>$2,158,858,260</td>
<td>$3,399,418,325</td>
<td>$8,988,457,260</td>
</tr>
<tr>
<td>TOTALS</td>
<td>$17,310,750,580</td>
<td>$10,854,024,061</td>
<td>$16,085,754,527</td>
<td>$44,250,529,168</td>
</tr>
</tbody>
</table>

*Figure 1.* Income received from intercollegiate sports from 2005-2010. (Source: The Department of Education-Equity in Athletics website: https://explore.data.gov/Education/Equity-in-Athletics-Disclosure-Act-Data/dg8t-ccra)

After reviewing revenues from the Department of Education, it is easy to see that most of the questions concerning anti-trust law would only affect those students involved in the Division I football and basketball programs. Most of the college athletic programs do not break even and, in some cases, rely on the income generated from football and basketball to help fund those additional programs (NCAA Report, 2010).

**Current Push to Restructure NCAA**

There is a current push to restructure and reform the NCAA as it exists today. However, the push for reform has been recommended since the 1920s. Reform of the NCAA has been unsuccessful over the past 100 years. There is not an agreement as to how this can be accomplished, but people involved in the matter claim they would like to see reform happen. (Splitt, 2002, 2004) In 1929, the Carnegie Report researched some of the same issues still occurring in college sports today (Ridpath, 2002) such as extra benefits for athletes, academic fraud, impermissible involvement by boosters, and recruiting violations. In 1979, the American Council on Education suggested a need for major reforms in college athletics. The council
recommended that the NCAA board consist of college/university presidents and that they be
given the authority to veto or modify NCAA rules, and to create additional rules (Sperber, 1990).
In addition, the Knight Foundation Commission (2001) cited commercialism as one of the major
problems facing college athletics. The report also suggested a need for reform (Knight
Foundation Commission on Intercollegiate Athletics, 2001). In August of 2011, the NCAA
conducted a retreat and President Mark Emmert indicated that commercialism may be
overpowering amateurism. There is concern that the athletic department’s goals can be in
conflict with the responsibility of higher education. In 2002, the Coalition for Intercollegiate
Athletics was formed and was originally set up as a framework to reform areas dealing with
“Academic Integrity, Athlete Welfare, Governance, Finances, and Over Commercialization”
(Ridpath, 2008, p. 72). The Drake Group currently has a seven-point plan. A few of those points
were as follows: retire the term “student athlete,” since the terms was coined in the 1950s as a
way to avoid Worker Compensation Boards from viewing athletes as paid employees. David
Byers stated, “We crafted the term student-athlete, and soon it was embedded in all NCAA rules
and interpretations as mandated substitute for such words as players and athletes” (Byers 1995,
69). The NCAA began emphasizing the importance of attending classes and limiting athletic
competitions that conflict with said classes, and maintaining a required GPA. However there is a
continued moral and ethical struggle due to commercialism in intercollegiate sports which exists
between intercollegiate sports and higher education. Wyatt, a well-known Congressman gave the
following response to a constituent who asked the following question:

Where do you stand on whiskey? “If you mean the Devil’s brew, the poison scourge, the
bloody monster that defies innocence, dethrones reason and topples men and women
from the pinnacles of righteous, gracious living into the bottomless pit of degradation and
despair, then certainly I am against it with all my power,” the politician wrote. “But,” he
continued, “if you mean the drink that enables a man to magnify his joy and happiness
and to forget life’s heartbreaks and sorrows; if you mean the drink that pours into our
treasuries untold millions of dollars, which are used to care for our little crippled children, our aged and infirm, to build highways and schools, then certainly I am in favor of it.” So, too, with collegiate athletics. (Wyatt, 1999, p. A42)

Others suggest using the Student Athlete Opportunity Fund as a means of funding a summer bridge program, which was formed as a result of White, et al. v NCAA (2008) lawsuit settlement (Ridpath, 2008). The Opportunity Fund has now been merged with the special assistance fund and is now called the Student Assistance Fund. It is predicted to contain $57 million by 2013. The association also gives $50,000 annually to each of its Division I schools for academic support programs, an amount scheduled to increase by 4.25% percent per year (Ridpath, 2008). Some researchers feel that reform will not come unless it is mandated by Congress.
CHAPTER 3

METHODOLOGY

Introduction

The purpose of this qualitative research was to review the historical and legal research of case law dealing with the authority of the NCAA and its member institutions over student athletes. According to Merriam (1998), “a case study is an exploration of a ‘bounded system’ or case (or multiple cases) over time through detailed, in-depth data collection involving multiple sources of information rich in context” (Creswell 1998, p. 61). The research ranged from 1953-2012 and analyzed a substantial number of cases so that emerging legal trends could be identified. Court cases included those from the federal, state, and supreme courts. The cases in this qualitative research were limited to those from the West Digest System, which is reference-book based, and the Westlaw system, which is computer-based; both were employed as search methodologies for finding court cases for this qualitative research. For the Digest System, court cases were found by first looking at Key Number College & Universities 13, Intercollegiate Associations, and Key Number College & Universities 14, Rules and Regulations, and Key Number Colleges & Universities 15, Judicial Intervention. The reference-book based Digest System covered the years of 1981 to 2013. For the Westlaw computer-based system court cases were found by looking under 81K13 Intercollegiate Associations, 81K14 Rules and Regulations, and 81K15 Judicial Intervention. The computer-based Westlaw search engine covered the years dating back to 1953 to 2013. As a result, there was some overlapping after 1981 with the book-based search methodology. In addition, LexisNexis Academic was employed as a search method
for finding court cases for the research having in common topics of student athletes, institutions of higher education, and/or NCAA not including those involving Title IX. Cases were reviewed and cases were kept that included conflicts between student athletes, the institutions of higher education they attended, and the NCAA, not including Title IX claims. Themes that continued to appear were analyzed. Qualitative methods use historical research to answer questions in order to gain a better understanding “of present institutions, practices, trends, and issues in education” (Gall, Gall, & Borg, 2003, p. 514).

Research Questions

1. What are the issues in federal and state cases involving conflicts between student athletes, the institutions of higher education they attend, and the NCAA?

2. What are the outcomes in federal and state cases involving conflicts between student athletes, the institutions of higher education they attend, and the NCAA?

3. What are the trends in federal and state cases involving conflicts between student athletes, the institutions of higher education they attend, and the NCAA?

4. What guidelines can be discerned from cases involving conflicts between student athletes, the institutions of higher education they attend, and the NCAA?

Data Collection

Initial research began by reviewing the West’s Education Law Reporter and was continued at Mervyn H. Sterne Library at the University of Alabama in Birmingham, the McClure Education Library at The University of Alabama, and at Jacksonville State University Library. The research began with the West Digest System, which is reference-book based, and the Westlaw system, which is computer-based; both were employed as search methodologies for
finding court cases for this qualitative research. For the Digest System, court cases were found by first looking at Key Number College & Universities 13, Intercollegiate Associations, and Key Number College & Universities 14, Rules and Regulations, and Key Number Colleges & Universities 15, Judicial Intervention. The reference-book based Digest System covered the years of 1981 to 2013. For the Westlaw computer-based system court cases were found by looking under 81K13 Intercollegiate Associations, 81K14 Rules and Regulations, and 81K15 Judicial Intervention. The computer-based Westlaw search engine covered the years dating back to 1953 to 2013. As a result, there was some overlapping after 1981 with the book-based search methodology. In addition, LexisNexis Academic was employed as a search method for finding court cases for the research having in common topics of student athletes, institutions of higher education, and NCAA, not including those involving Title IX. The final list contained 68 cases. Themes involving Constitutional/Civil Rights, worker’s compensation, and anti-trust law emerged. Based upon the emerging themes, cases were briefed and then analyzed. This information will then be used to determine how the courts have ruled in the areas of intercollegiate sports from 1951-2012 and will guide future research.

Case Brief Method

The outline for the case brief analysis method followed the methodology discussed by Statsky and Wernet (1995) in *Case Analysis and Fundamentals of Legal Writing*:

1. Citation: “Identifying information that will enable you to find a law material about the law, in a law library” (p. 450).

2. Key facts: “A fact that is essential to the court’s holding. A fact that would have changed the holding if that fact had been different or had not been in the opinion” (p. 453).
3. Issue(s): “A specific legal question that is ready for resolution” (p. 452).

4. Holding(s): “The answer to a legal issue in an opinion; the result of the court’s application of one or more rules of law to the facts of the dispute” (p. 452).

5. Reasoning: “The explanation of why a court reached a particular holding for a particular issue” (p. 455).

6. Disposition: “Whatever must happen in the litigation as a result of the holdings that the court made in the opinion” (p. 128).

Data Analysis

This qualitative research utilized a legal-historical, document-based method of inquiry. An analysis of pertinent cases was conducted to identify applicable laws influencing judicial decisions. Trends, patterns, and themes emerged, which provided a synopsis of court decisions in cases occurring over a particular time span (1953-2012). The results of the case brief summaries were then sorted and categorized. This type of data collection and analysis is what Merriam (1998) referred to as “a simultaneous activity in qualitative research that begins with the first interview, the first observation, or the first document read” (p. 151). In order to conduct a true case study, Cresswell (1998) suggested analyzing the events in chronological order. Stake (1995) suggested the use of four phases: “categorical generalization, direct interpretation, correspondence and pattern, and naturalistic generalization.” Categorical aggregation is defined as “finding sums or distribution of coded data” (p. 169), direct interpretation is defined as “drawing key meanings even from a coded event” (p. 170), correspondence and pattern is defined as “the search for consistency in patterns and consistency in certain conditions” (p. 78), and naturalistic generalization is defined as “interpretation based largely on experience” (p. 172).
The court cases were organized by the year of the court cases, then categories were determined based on the areas of litigation, and finally key issues, holdings, and outcomes were identified.

Summary

Researching case law provided a better understanding of the rules and regulations of the NCAA and how those rules impact student athletes. Further, this qualitative research will assist in guiding reform issues concerning the authority of the NCAA and its member institutions over student athletes. In addition, once the data has been collected and an analysis of the data is completed, the researcher will make recommendations based upon the findings and conclusions of the qualitative research.
CHAPTER 4
ANALYSIS OF DATA

Chapter 4 provides an examination of court cases on the federal and state level involving the authority of intercollegiate sports, which includes the colleges and universities, NCAA, and student athletes. The cases were reviewed in chronological order and covered the time period between 1953 and 2012. Cases were briefed using Statsky and Wernet’s method. The briefing process gleaned key data to guide policy and reform.

Case Briefs

1953

Citation: University of Denver et al. v. Nemeth et al., 127 Colo. 285, 257 P.2d 423; (Supreme Court, Colorado, 1953).

Key Facts: The claimant was a university student who was injured while playing football at the University of Denver in April 1950. He was paid a monthly stipend of $50.00 per month and a meal ticket for keeping the tennis courts free from gravel and litter. He also received housing accommodations for cleaning the furnace and sidewalks. Further, Nemeth was informed by a university representative that, “it would be decided on the football field who receives meals and the jobs” (Nemeth v. Univ. of Denver, 1954). Other individuals concurred. The university contended that the claimant’s injury did not occur as a result of his employment.
Issue: Whether Nemeth fulfilled the worker’s compensation act requirement and to determine if the previous judgment in the district court should be reversed because the student athlete was in fact an employee of the University of Denver.

Holdings: The Supreme Court of Colorado determined that the injuries Nemeth sustained arose out of and in the course of his employment. The judgment of the Commission was affirmed by the district court.

Reasoning: The court reasoned that playing football was an essential duty to his employment. The student athlete, Nemeth, was paid $50.00 per month, and received a meal ticket contingent upon his playing football as well as how well he performed. Therefore, the injury arose out of and in the course of his employment. Further, the student athlete could show evidence of treatment for injuries and that Nemeth was on the university’s premises (his employer) when he was injured. The court cited *Thomas v. Proctor & Gamble Mfg. Co.* (2004) to support its case, and specifically in *Comstock v. Bivens* (1925) Judge Campbell stated,

> Workmen’s Compensation, section 114, says where an employee is doing something which, though not strictly in the line of his obligatory duty, is still doing something incidental to his work, and while doing the same is injured, the accident causing the injury may properly be held to arise out of and in the course of employment, and he will be entitled to compensation.

The court found that there was a sufficient relationship between Nemeth’s employment and playing football at the time of his injury to support the conclusion that he was entitled to worker’s compensation. The evidence in the record affirmed the findings of the Industrial Commission.

Disposition: On appeal, the court affirmed the ruling of the Industrial Commission to award workmen’s compensation benefits to the student athlete, Nemeth. A motion for a rehearing was denied.

Key Facts: The Industrial Accident Commission denied an application for death benefits to the widow and minor dependent children of Edward Gary Van Horn, who was killed on October 29, 1960, in an airplane crash while he was returning from Ohio to California with members of the football squad, officials, and faculty of California State Polytechnic College in a plane provided by the college after the team, of which decedent was a member, had engaged in a regularly scheduled intercollegiate football game.

Issue: Whether the student athlete, Edward Gary Van Horn--decedent--was considered an employee of the college according to the Workmen’s Compensation law and whether or not his widow and children would be entitled to death benefits from the state.

Holding: The student athlete was considered an employee under Workmen’s Compensation and was killed while in the line and scope of his employment. The court annulled the order denying the widow and minor dependent children’s application for death benefits.

Reasoning: A person who participates for compensation as a member of an athletic team may be an employee within the statutory scheme of the Workmen’s Compensation Act. Citing cases: Metropolitan Casualty Ins. Co. v. Huhn (1928; professional baseball player); University of Denver v. Nemeth (1953; state college football player). The student athlete, decedent, was issued checks by the college, the coach was a faculty member with the authority to conduct athletic activities on behalf of the university, and the football team represented the college. The funds were contributed by the Mustang Booster Club. Who contributed the funds that paid his scholarship is immaterial in determining the student athlete’s employer. The Court cited, “(State Comp. Ins. Fund v. Industrial ACC. Com., 1954; special nurse of polio patient held to be
employee of hospital although services paid for by a separate entity which received the money from the National Foundation for Infantile Paralysis; *Department of Natural Resources v. Industrial Acc. Com*, 1932, applicant held to be employee of Fish & Game Commission although paid by a commercial fisherman; *City of Los Angeles v. Industrial Acc. Com.*, 1935, deputy marshal held to be employee of City of Los Angeles although paid by county; *Claremont Country Club v. Industrial Acc. Com.*, 1917, caddy held to be employee of country club although paid by person he served.” Based on the evidence, the court inferred that the scholarship the student athlete received was because of this athletic ability and his participation on the football team.

Disposition: The original order was annulled and the matter was remanded to the commission for further proceedings.

1972

Citation: Gregg F. Taylor and George J. Taylor v. Wake Forest Univ., 16 N.C. App. 117; 191 S.E. 2d 379; (N.C. App. 1972).

Key Facts: Greg Taylor was solicited by several programs to play football. Taylor and his father submitted an application for grant in aid or a scholarship. The application was accepted by Wake Forrest and specified:

This grant, if awarded, will be for 4 years provided I conduct myself in accordance with the rules of the Conference, the NCAA, and the Institution. I agree to maintain eligibility for intercollegiate athletics under both Conference and Institutional rules. Training rules for intercollegiate athletics are considered rules of the Institution, and I agree to abide by them. If injured while participating in athletics supervised by a member of the coaching staff, the Grant or Scholarship will be honored; and the medical expenses will be paid by the Athletic Department. . . . This grant, when approved, is awarded for academic and athletic achievement and is not to be interpreted as employment in any manner whatsoever. (*Taylor v. Wake Forest*, 1972)
NCAA rules at the time prohibited the following:

(a) Gradation or cancellation of institutional aid during the period of its award on the basis of a student athlete’s prowess or his contribution to a team’s success.
(b) Gradation or cancellation of institutional aid during the period of its award because of an injury which prevents the recipient from participating in athletics.
(c) Gradation or cancellation of institutional aid during the period of its award for any other athletic reason, except that such aid may be gradated or cancelled if the recipient (1) voluntarily renders himself ineligible for intercollegiate competition, or (2) fraudulently misrepresents any information on his application, letter-of-intent or tender, or (3) engages in serious misconduct warranting substantial disciplinary penalty. Any such gradation or cancellation of aid is permissible only if (1) such action is taken by the regular disciplinary and/or scholarship awards authorities of the institution, (2) the student has had an opportunity for a hearing, and (3) the action is based on institutional policy applicable to the general student body. (*Taylor v. Wake Forest, 1972*)

Taylor agreed to the provisions of his scholarship and enrolled in Wake Forest in 1967. In order to maintain his eligibility, Taylor had to earn a 1.35 grade average after his freshman year, a 1.65 grade average after sophomore year, and a 1.85 grade average after his junior year. Taylor’s grade average of 1.0 did not meet the requirement specified by Wake Forest and agreed to by Taylor. He was notified by the University that he would not be eligible to play football or practice with the team at Wake Forest until he raised his grade average to the 1.65 required. The second semester he raised his average to 1.9 and was then eligible to participate in the athletic program. However, he decided not to participate in the football program. He earned a 2.4 the fall of his sophomore year, but refused to participate in the football program. As a result, the University held a hearing, of which Taylor was notified, and recommended that Taylor’s scholarship be terminated at the end of his sophomore year. Taylor continued classes at Wake Forest at his own expense and earned an undergraduate degree from the University in 1971. Taylor claims that he was entitled to $5,500.00 in damages as a result of the termination of his scholarship. The court granted a motion for summary judgment on behalf of Wake Forest University. The case was appealed.
Issue: Whether the court erred in granting a motion for summary judgment in favor of the University.

Holding: The court did not err in granting a motion for summary judgment based on the fact that there was “no genuine issue as to any material fact.”

Reasoning: Taylor and his father understood that the scholarship he received was awarded for academic and athletic achievement. Further, they agreed that he would maintain a certain grade average and participate in football practices and workouts. Once he refused to attend practices and workouts, without an injury, he was no longer in compliance with his obligations as set in the scholarship agreement. The evidence revealed that Wake Forest was in compliance with the agreement but Taylor was not. As a result, there was “no genuine issue as to any material fact and summary judgment was proper.” The court cited Kessing v. Mortgage Corp (1971).

Disposition: The court affirmed the judgment of the district court in favor of the University.

1973


Key Facts: Student athletes played on a Canadian amateur hockey team prior to attending the university. While playing for said team, both Buckton and Marzo moved away from home and were paid a weekly amount for the expenses of room and board, an additional $10.00 a week for expenses, and both received money for school books. Marzo moved back home and was given $300.00 to cover his travel expenses so he could finish his academic year. However, the
funds previously given to him for room and board, expenses, and books ceased. The associations contended that such aid violated their amateur standing according to its rules. Student athletes were deemed ineligible because the circumstances under which they played for said league prior to enrolling at Boston University was in violation of the amateur standards. As a result, they would not be allowed to play for the hockey team. It is to be noted that prior to 1971 neither defendant Association specified that playing for a Major Junior A hockey team would be grounds for ineligibility. As of the 1971-1972 season, however, such play was covered by the following regulation: Any student-athlete who has participated as a member of the Canadian Amateur Hockey Association’s major junior A hockey classification shall not be eligible for intercollegiate athletics” (Buckton et al. v. NCAA, et al., 1973).

Student athletes requested a preliminary injunction against the defendants from declaring them ineligible to participate in their athletic program and from imposing sanctions against Boston University. The plaintiff contended intentional interference with antitrust claims, Constitutional/Civil Rights violations, and contractual relations. The court focused only on the Constitutional/Civil Rights claim. The NCAA and ECAC filed a Motion to Dismiss, said motion was denied.

Issue: Whether or not the NCAA violated the Constitutional/Civil Rights of the student athlete by declaring them ineligible to play hockey.

Reasoning: The Court found that state universities make up one-half of the membership of the NCAA; that these public institutions pay dues to the NCAA; and that state involvement in the NCAA includes the support, control, and regulation of member institutions as well as the provision of state facilities for N.C.A.A. contests.
It was noted that the university receives both state and federal funding, and may utilize state-owned facilities for its athletic events. The rules show a disparity between students who have played hockey in the U.S. and those who have played in Canada. The judge made the following notation:

In this regard that one Canadian received more money in a single academic year in Deerfield Academy, Mass. than he had in two years of play with his Canadian team. The former did not affect his eligibility. The latter destroyed it. Affidavit of Eugene Kinasewich (who also testified before the court; p. 3). (Buckton v. NCAA, 1973)

Holding: The court granted preliminary relief and ordered that the student athletes be declared eligible to participate in intercollegiate sports, and that the NCAA be restrained from imposing any sanctions against Boston University.

Disposition: The Court granted the student athletes request for preliminary relief.

1974


Key Facts: During the 1973-1974 academic year, Glenn S. McDonald and Roscoe Pondexter were competitive basketball players for California State University Long Beach. The plaintiffs were notified by the university athletic director that they were no longer eligible to participate in intercollegiate athletics. However, they were not afforded a hearing according to the NCAA Bylaws. The plaintiffs filed a complaint for “injunction and declaratory relief, challenging the constitutionality of said NCAA By-law 4-6-B-1 and alleged violations of their due process rights under the U.S. Constitution, as the NCAA did not give the plaintiff student athletes notice or grant them a hearing on the claimed violation.
Issue: Whether the activities of NCAA and/or California State Univ. Long Beach were considered a “state action,” and thereby entitled to constitutional limitations imposed by the due process clause of the Fourteenth Amendment.

Holding: The plaintiffs had no standing to claim invasion of any protectable interest under the U.S. Constitution, concerning the NCAA; therefore, the case against them was dismissed. However, the court held that the actions of the university constituted state action and stated, “California State University Long Beach and all those acting in concert with it and/or acting under its direction or subject to its control should be and are hereby enjoined and restrained pending the trial in this matter from:

(a) Applying or imposing any sanction or continuing in effect any sanction previously imposed against Glenn S. McDonald and/or Roscoe Pondexter declaring them ineligible for further participation in intercollegiate athletics as a member of any team sponsored and/or maintained by California State University Long Beach.
(b) This injunction shall be effective pending trial of this matter or until Glenn S. McDonald and/or Roscoe Pondexter are afforded a hearing and a determination is made therein, whichever shall first occur. The aforesaid hearing and determination shall be had pursuant to Chancellor’s Executive Order 148 and shall concern themselves with the allegations which resulted in the plaintiffs’ ineligibility to participate in interscholastic athletics.
(c) Bond upon the preliminary injunction pursuant to Rule 65(b) Federal Rules of Civil Procedure is set at $100.00 (McDonald and Pondexter v. National Collegiate Athletic Assoc. and California State University, Long Beach, 1974).

Reasoning: The NCAA did not constitute state action and that an individual athlete had no constitutionally protected interest in an institution’s membership and participation in NCAA activities. The court also held that the actions of the university, a state institution, constituted state action, and the basketball players were entitled to a hearing regarding their eligibility.

Disposition: The plaintiffs’ case against the NCAA is dismissed. However, the university is a state institution, and is a state action. Therefore, the plaintiffs are entitled to a hearing regarding their eligibility.
1975


Key Facts: Members of the university’s soccer team were deemed ineligible to play soccer for violations of NCAA rules. As a result, sanctions were imposed on the University. Howard University and Mori Diane, a student athlete, sought relief from the order in District Court and contended that the foreign student rule of the NCAA Bylaws was in violation of the student athlete’s equal protection rights under the Constitution. The NCAA Foreign-Student Rule states:

Any participant in a National Collegiate Athletic Association event must meet all of the following requirements for eligibility. . . . He must not previously have engaged in three seasons of varsity competition after his freshman year, it being understood that . . . participation as an individual or as a representative of any team whatever in a foreign country by an alien student-athlete in each twelve-month period after his nineteenth birthday and prior to his matriculation at a member institution shall count as one year of varsity competition. (NCAA By-law 4-1(f)(2))

The plaintiff student athlete must establish that the NCAA’s rulings constitute state or federal action in order to state a claim under the Fifth and Fourteenth Amendment.

Issue: Whether or not the National Collegiate Athletic Association functions as a state actor and whether the “foreign-student rule” violated the student athlete’s equal protection right under the Constitution.

Holding: The district court found that state action was present and that the foreign-student rule violated the equal protection right of the student athlete, stating that it “created an unjustifiable alienage classification.” State action is present because approximately half of the NCAA’s membership is made up of colleges, universities, and other institutions of higher learning that receive state or federal funds.
Reasoning: The NCAA acts as a state actor because half of its members receive state or federal funds. The foreign-student rule violated the equal protection right under the Constitution.

Disposition: The case is affirmed. The foreign-student rule is declared to constitute a denial of equal protection under the Fourteenth Amendment of the Constitution to future enforcement by NCAA is refrained in engaging in said law and the NCAA is directed to remove any penalty imposed upon Howard University, or directly or indirectly on any soccer player enrolled at Howard University, based merely upon said By-law.


Issue: Plaintiff filed a Constitutional/Civil Rights claim alleging denial of due process and equal protection under the U.S. Constitution, as well as antitrust violations of the Sherman Act and requested a preliminary injunction.

Key Facts: The student athlete played intercollegiate ice hockey for a Canadian amateur team and received compensation for his services during the last 3 years of high school and for 2 years between his high school graduation and his admittance to Northeastern College. Further, the student athlete, Stephen Jones, received compensation which he alleged helped him to further his education. The student athlete sought an order preventing the NCAA from declaring him ineligible to play intercollegiate ice hockey. He also asked that the court restrain the defendants from imposing sanctions against Northeastern for permitting him to participate in intercollegiate hockey, or for providing him with financial assistance on the same grounds that it provided such aid to other student-athletes, based on financial need.

Holding: The plaintiff did not show a substantial likelihood of success. As a result, the request for preliminary injunction was denied.
Reasoning: Under the NCAA eligibility rules in effect at the time,

A college athlete is ineligible to participate in a particular sport if he has previously received pay of any kind for participation in that sport; or has entered into a contract to compete in that sport; or has played on a team in that sport in a foreign country on which other athletes have received compensation above N.C.A.A. limits. (Jones v. NCAA, 1975)

The court referenced Buckton v. NCAA (1973), but noted that the difference was that the student athletes played Major Junior A hockey in order to further their education. It was determined that the compensation received by the student athletes in the Buckton case, from their team, for room and board, expenses, books, and travel was significantly equivalent to the aid allowed and awarded by schools in the U.S. in the form of athletic scholarships. The only significant difference was that the source of the aid given to the student athletes was from the team, while the student athletes in the U.S. received their aid from academic institutions. Even if the plaintiff had not received any compensation, he signed an agreement in 1971 to compete in Canadian ice hockey. This alone would place him in violation of the NCAA rules and thus deem him ineligible to play intercollegiate sports. Further, the student athlete could not show a likelihood of his success as a professional hockey player.

Disposition: Student athlete’s preliminary injunction was denied. The student athlete could not establish a substantial likelihood of success as to his claims under Constitutional/Civil Rights or anti-trust.


Key Facts: Robert L. Parish, student athlete, and other basketball players challenged a decision rendered in the U.S. District Court for the Western Division of Louisiana in favor of the National Collegiate Athletic Assoc. in a suit challenging an athletic academic eligibility rule and the constitutionality of the NCAA’s Bylaws and the 1.600 rule.
Issue: Whether the actions of the NCAA violated the U.S. Constitution and whether or not the lower court had proper jurisdiction to render judgment.

Holding: The NCAA was acting as the role of coordinator and supervisor of college athletics, and was performing a traditional governmental function. The student athletes were not part of a suspect class, and therefore strict scrutiny did not apply. The judgment of the lower court was affirmed.

Reasoning: The NCAA was performing a traditional governmental function as supervisor and coordinator of college athletics. The National Collegiate Athletic Association (NCAA) instituted a minimum grade point average rule as a way to predict academic performance in college. Other cases have been heard on Constitutional due process and equal protection grounds in which the student athlete sought to prevent the NCAA from sanctioning their college for failure to abide by the grade point average rule. With only one exception (McDonald v. NCAA, 1974), the courts have affirmed all federal courts that have considered this question. The college basketball players were not part of a suspect class.

Disposition: The Court affirmed the judgment for the National Collegiate Athletic Assoc.

1976


Key Facts: The NCAA filed a motion to dismiss the case brought against them which claimed that defendants’ actions, sanctioning the university and forcing them to declare several of its hockey players’ ineligible violated plaintiffs’ procedural and substantive due process and equal protection rights. Plaintiffs sought summary judgment and a preliminary injunction.
Issue: Whether or not the plaintiff was entitled to summary judgment and a preliminary injunction.

Holding: The court held that the plaintiffs had no protected interests under procedural due process. Therefore, the court did not consider the merits of the substantive due process violation claimed. The NCAA’s regulations did not unconstitutionally discriminate against any of the classes suggested by the plaintiffs. Further, the court held that the “defendants did not violate the university’s equal protection rights by the manner in which is sanctioned the university.”

The court plaintiffs’ motions for summary judgment and a preliminary injunction are denied. However, the defendants were not to take action against the university based on its refusal to forfeit its trophy and earnings from the 1973 National Collegiate Hockey Championship without: considering the court’s opinion concerning its regulations and without providing the university with a hearing according to the court’s opinion.

Reasoning: Membership of colleges into the NCAA is voluntary, but member institutions are obligated to apply and enforce NCAA legislation enacted in furtherance of these policies and principles. The enforcement program of the Association applies to an institution when it fails to fulfill this obligation. A provision of the NCAA By-law states that a student-athlete shall not be eligible for participation in an intercollegiate sport if,

(1) he takes or has taken pay, or has accepted the promise of pay, in any form, for participation in that sport, or . . . (3) he has directly or indirectly used his athletic skill for pay in any form in that sport; however, a student-athlete may accept or have accepted scholarships or educational grants-in-aid administered by his educational institution which do not conflict with the governing legislation of this Association. (NCAA Bylaws)

Prior to October 25, 1974, the “Official Interpretations” relevant to these proceedings were:

“0.1.5. A student-athlete may have played ice hockey on a team in a foreign country prior to his matriculation at a member institution, provided that any student-athlete who has been a member
of any ice hockey team in a foreign country shall be ineligible if he has received, directly or indirectly, from a hockey team any salary division or split of surplus, educational expenses, or has received payment for any expenses in excess of actual and necessary travel expenses on team trips, a reasonable allowance for one meal for each practice and home game and actual and necessary travel expenses to practice and home games. . . . 0.i.6. Any student-athlete who has participated as a member of the Canadian Amateur Hockey Association’s major junior A hockey classification shall not be eligible for intercollegiate hockey.” The case of Buckton v. NCAA (1973) challenged these official interpretations as constituting unconstitutional discrimination based on alienage.” As a result of this case, the NCAA required all student athletes who participated in intercollegiate ice hockey during the 1974-1975 school year fill out a new hockey questionnaire. Based on the information from said questionnaire, the school was to determine if the students were eligible to participate in the athletic program. However, the University of Denver refused to comply, on more than one occasion. After reviewing the questionnaires the official interpretations 5 and 6 were rescinded effective October 26, 1974, and new interpretations were adopted including the following:

0.i.1. . . . (b) The term ‘pay’ specifically includes, but is not limited to, receipt directly or indirectly of any salary, gratuity or comparable compensation, division or split of surplus, educational expenses not permitted by governing legislation of this Association, and excessive or improper expenses, awards and benefits. Expenses received from an outside amateur sports team or organization in excess of actual and necessary travel and meal expenses for practice and game competition shall be considered pay.

It was determined that the Univ. of Denver willfully refused to comply with the NCAA and, as a result, the school was deemed ineligible and put on probation for 2 years.

Disposition: Motion for summary judgment and preliminary injunction is denied, with recommendations for a hearing in accordance with the opinion.
Citation: Shelton v. National Collegiate Athletic Assoc. et al., 539 F.2d 1197, (U.S. App. 1976).

Key Facts: Student athlete, Lonnie J. Shelton, signed a contract to play basketball for a professional team; however, he stated that the contract was not binding because it was signed under undue influence and fraud. The student athlete contends that the university erroneously deemed him ineligible to play intercollegiate sports. Further, he contended that the litigation against the American basketball team at the time of this case challenging said contract, was still pending. Therefore, the plaintiff requested that he be deemed eligible to play until said case was resolved.

Issue: Whether it is unconstitutional to restrict student athletes from signing a contract in a certain sport and, as a result, declaring them ineligible to participate in intercollegiate sports.

Holding: The court reversed the order granting a preliminary injunction for the student athlete in his suit against the NCAA declaring the eligibility rule unconstitutional. The court concluded that there was no evidence of probable success on the merits that would justify granting injunctive relief. The NCAA rule was related to the NCAA’s goal and did not violate student athlete’s rights under the U.S. Constitution. The order granting the preliminary injunction is reversed.

Reasoning: The NCAA constitution declares as one of its goals the promotion and preservation of amateurism in college athletics. In order to advance this goal, the NCAA has specific rules and regulations which are to be enforced by the membership institutions. Citing the Associated Students, Inc. v. NCAA (1974), the court found that the eligibility rule did not violate the equal protection clause. The Bylaws of the NCAA state that you become ineligible to play sports if you enter into an oral or written contract to play professional sports.
Disposition: The court reversed the order granting a preliminary injunction.

1977

Citation: National Collegiate Athletic Assoc. et al. v. Larry J. Gillard, et al., 352 So. 2d 1072 (Miss. Sup. Ct. 1977).

Issues: Whether the NCAA rules and regulations concerning student athlete’s ineligibility was in violation of his due process rights under both the Mississippi Constitution and the U.S. Constitution.

Key Facts: Larry Gillard was deemed ineligible to participate in intercollegiate sports after the NCAA imposed sanctions against him after finding that the football player received articles of clothing at a 1/3 discount from a store that had an interest in the athletics of the university. The student athlete contends that he knew free merchandise was not allowed under the NCAA rules, he did not know that discounts were not permitted. In addition he contends that he was not a member of the NCAA and that he was not afforded his due process rights and was not given an opportunity to be heard. The court deemed that Gillard had the opportunity for a professional career in football and that this right was protected under the Mississippi Constitution. Evidence showed that neither Mississippi State, nor Gillard exhausted their administrative remedies before filing a case in the lower court and further, that this information was not disclosed to the court. The court further concluded that the football player had been deprived of that right under the facts and circumstances presented. However, the court did not review similar cases involving due process and student athletes.

Holding: The court reversed the lower court’s judgment and dismissed the cause, concluding that the football player’s right to engage in intercollegiate football was not a property
right that fell within the due process clause of either the Mississippi or the U.S. Constitution (Fourteenth Amendment). Although the university, and not the football player, was the member of the NCAA, the court concluded that university had the opportunity to request an appeal in the rule violation in order to protect the student athlete’s interests. Because the case was disposed of on constitutional grounds, the court did not consider appellants’ failure to exhaust administrative remedies.

Reasoning: Mississippi State University and Gillard admitted that they did not exhaust the administrative remedies available. The right to appeal was refused by appellant concerning decision made by NCAA committees. The courts concur that the plaintiff should seek administrative remedies before resorting to the courts. Further, the court cited similar cases that had already been heard, but not reviewed by the lower court: *Howard Univ. v. NCAA* (1975), *Parish et al. v. NCAA* (1975), and *Associated Student, Inc. etc. v. NCAA* (1974).

Disposition: The case in the lower court was reversed and the case is dismissed.


Key Facts: Three student athletes were deemed ineligible by the NCAA for the following Reasoning: (1) Michael Thompson admitted he had sold his two 1974-1975 complimentary season tickets, with a face value of $78, for a price of $180. Subsequent investigation revealed that he had previously signed a statement that complimentary ticket sales were a violation of Big Ten Conference rules and that the sanction for violation was ineligibility. (2) David Winey admitted he accepted “two invitations to Paul Johnson’s Wisconsin cabin, that the visits included lodging, meals, and entertainment,” and (3) Philip Saunders “had on three occasions accompanied assistant Coach Wilson to a downtown Minneapolis office and there placed
between two and six telephone calls to his parents on a WATS line. They also found that Saunders was afforded cost-free overnight lodging at Gustavus Adolphus College while attending head basketball coach Musselman’s summer basketball camp.” The specific eligibility standards are set out in NCAA constitution 3-1-(a)-(3), 3-1-(g)-(6), and 3-4-(a), all of which concern impermissible payments and other benefits to student athletes.

The University refused to declare three student basketball players ineligible, because doing so would violate their constitutional rights and due process of law. Further, the university filed a case requesting a permanent injunction be issued directing the association to lift the indefinite probation imposed on the university’s athletic teams and to refrain from imposing further sanctions until the case could be heard.

Issue: Whether or the not the permanent injunction issued in the lower court should be dissolved.

Holding: The University did not demonstrate a substantial likelihood of success on the merits and the district court erred in granting the preliminary injunction. The preliminary injunction previously issued by the district court was dissolved. The cause was remanded to the district court for further proceedings. Further, the student athletes were not a party to the law suit.

Reasoning: The University, as a member of the NCAA, was obligated to deem student athletes ineligible for infractions specified in the NCAA constitution and Bylaws. Further, multiple opportunities were available for the university to deem the student ineligible and then request an appeal on their behalf. In addition, previous cases ruled the NCAA a “state action.” Further, the University did not demonstrate a substantial likelihood of success on the merits.
Disposition: The preliminary injunction issued by the district court was reversed and dissolved. Said case was remanded to the district court for further proceedings.


Key Facts: Clifford Wiley was a student athlete at the University of Kansas. He was from a low socioeconomic family and he was in need of additional funds to help pay for the cost of his education. As a result, Wiley applied for a Basic Education Opportunity Grant, which awarded him $1,400.00 for the 1975-1976 school year. He also received an athletic scholarship from the University in the amount of $2,621.00. The combined total from both scholarships exceeded the amount a student athlete could receive under the NCAA rules and regulations.

The NCAA rules state as follows:

The NCAA Constitution, Art. 3, Sections 1(f)(2), provided at the time the dispute arose: In the event (financial aid awarded by an institution) exceeds commonly accepted educational expenses (i.e., tuition and fees; room and board; required courses related supplies and books, and incidental expenses not in excess of fifteen dollars per month) during the undergraduate career of the recipient, it shall be considered “pay” for participation in intercollegiate athletics.

Section 4(b) further stated: Where a student’s athletic ability is taken into consideration in any degree in awarding him unearned financial aid, . . . such aid combined with that received from the following and similar sources may not exceed (“commonly accepted educational expenses”). The “sources” of financial aid that must be combined with an institutional athletic grant included:

Governmental grants for educational purposes, except (i) benefits received by student-athletes under the G.I. Bill of Rights; (ii) payments to student-athletes for participation in military reserve training programs (E.g., ROTC); or (iii) payments by the U.S. Government under the terms of the War Orphans Educational Program, Social Security Insurance Program or Non-Service-Connected Veteran’s Death Pension Program. Id. § 4(b)(2).”
The excess he received totaled $1,265.00 and was considered “pay;” therefore, the student was declared ineligible to play sports at the University.

The University of Kansas appealed and requested that his eligibility be restored, but did nothing further. The student athlete filed suit against the NCAA alleging that the defendant’s rules did not afford Wiley the same opportunity to receive financial aid available to other non-athletic students. The student athlete (appellee) filed a case in the U.S. Dist. Court, Dist. of Kansas; the Court ruled that the rules of the NCAA (appellant) were unconstitutional because they violated the plaintiff’s equal protection law. However, the court did not apply the supremacy clause analysis to confirm said ruling. The NCAA appealed on the equal protection ruling and Wiley appealed under the supremacy clause issue.

Issue: Whether the district court erred in its judgment ruling the NCAA’s rule concerning financial aid was unconstitutional and in violation of equal protection rights on the issue of federal questions jurisdiction.

Holding: Both parties to an action concerning rules governing the financial aid permissible to college athletes appealed a judgment of the United States District Court for the District of Kansas that found the rule unconstitutional because it violated the student athlete’s equal protection rights. However, the court did not apply a Supremacy Clause analysis to the rule. The court dismissed the case on federal questions jurisdiction.

Reasoning: The plaintiff, at the time of the case, had already graduated from college, and had taken full advantage of his financial opportunities. Under the federal question of jurisdiction the court cited *Hagans v. Lavine*, 1974). The federal question jurisdiction did not require the court take a case where the issues involved were insubstantial or frivolous. The court also held that, unless clearly defined constitutional principles were at issue, the suits of student-athletes
displeased with the high school athletic association or National Collegiate Athletic Association rules did not present substantial federal questions (*Wiley v. NCAA*, 1977).

Disposition: The court dismissed the issue involving financial aid to college athletic students because the issues presented were not substantial enough to support federal question jurisdiction. Holloway and Logan dissented.

1979


Key Facts: Student athlete, Boyd, received a full grant in aid scholarship to attended Livingston University in 1975. The grant was for a 1-year period only for 1975-1976. Coach Crowe offered Boyd a written renewal of his scholarship, but Boyd declined the offer. He was encouraged by the coach to return to Livingston to play football. He informed the coach that due to his asthma problems he could not play as a running back and was also moving to Enterprise, Alabama, where he could work part time for his father while attending college at Enterprise State College. He was then offered a position as a punter, but Boyd still declined. He attended the junior college and upon graduation discussed transferring to Troy and participating on their football team as a punter. However, it was there he learned that he had been deemed ineligible to play football by the GSC. The goal of the GSC is to promote “fair competition between the schools by developing rules and regulations mutually agreed upon by the member schools.” The association is also affiliated with the NCAA and is also subject to its rules and regulations (*Board of Regents of the Univ. of Oklahoma v. NCAA*, 1977).

Issue: Whether the district court had proper jurisdiction to intervene in the internal affairs of the association.
Holding: The court had proper jurisdiction to render a judgment in favor of student athlete.

Reasoning: The general non-interference doctrine concerning voluntary associations did not apply to a case involving a dispute between the college athlete and the athletic association. The court based its ruling on the fact that the athlete was not a member of the association, so that the freedom of association principle did not exist. In addition, the student athlete was ruled eligible to play because of his 2-year absence from participation and the nonrenewal of the initial scholarship.

Disposition: The court affirmed the decision of the district court.

1980


Key Facts: The plaintiff, Hays Williams, received a scholarship to play soccer at Guilford College in North Carolina. He developed back problems that prevented him from participating in soccer, but he still attended practices and traveled with the team. In 1980, Williams decided to transfer to a school closer to his family and transferred to New England College in New Hampshire. Initially, he was admitted to the sophomore class at New England College for the 1980-1981 academic year. He was then deemed ineligible to participate in intercollegiate sports for 16 weeks from his residency in New Hampshire. He contended that certain rules of the NAIA concerning eligibility were unconstitutional and he brought a Constitutional/Civil Rights action against NAIA and also against George Hamilton, the NAIA and others. The plaintiff argued that he has been deprived of due process by the application of the residency eligibility requirement.
Issues: Whether or not the student athlete is entitled to preliminary injunction in the case.

“The equitable relief which the plaintiff herein seeks requires this Court to consider the factors of (1) the significance of the threat of irreparable harm to plaintiff if such relief is not granted; (2) the balance between such harm and the injury that injunctive relief would inflict on plaintiff; (3) the probability of the plaintiff’s success on the merits; and (4) the public interest.”

Holding: The Court finds and rules that the plaintiff was not entitled to preliminary injunction and said request for petition for preliminary injunction is denied, and the temporary restraining order entered by this Court is herewith dissolved. The plaintiff shall respond to the motion for summary judgment within 10 days of the date hereof, filing such counter affidavits and memos as he desires and, in the absence of appeal, the Court will proceed to disposition of the defendants’ summary judgment motion without further hearing.

Reasoning: The court relied on a line of recent cases to determine that the plaintiff’s due process claim was without merit. Some of the cases the court cited follow: Rivas Tenorio v. Liga Atletica Interuniversitaris (1977), relating to property interest; Board of Regents v. Roth (1972); Parish v. NCAA (1975). There is no constitutional protection available for participating in intercollegiate sports; it is merely a privilege. The Court finds and rules that the plaintiff lacks probability of success on the merits of the instant litigation. Public interest accordingly requires that the Court deny the petition for preliminary injunction.

Disposition: Petition for preliminary injunction is denied and the temporary restraining order was dissolved.
1981

Citation: Barile, Appellant v. University of Virginia, Appellee, 2 Ohio App. 3d 233; 441 N.E.2d 608, (Ohio App. 1981).

Key Facts: The plaintiff was heavily recruited to play football for the University of Virginia, which encouraged him to apply for a scholarship. Eventually the plaintiff signed a letter of intent and was told that should he receive any injuries while playing football or during any other athletic competition that his medical care would be taken care of by the University. In 1983, the student athlete broke his wrist while playing football. The medial staff taped his wrist and he returned to play football (he received no other medical treatment). He later had two surgeries on his wrist.

Issue: Whether the in personam jurisdiction (judgment can be enforceable against a person wherever he is) could be obtained over the university.

Holding: The court held that there was a lack of personal jurisdiction in the student athlete’s complaint alleging breach of contract against the University.

Reasoning: First, the complaint failed to state if the promise to provide medical care was made in writing or was oral. The affidavit submitted by the student athlete does not allege said promise of medical care, nor was it properly certified. In addition, the promise does not constitute a business transaction in Ohio because it had no credible impact on commerce nor could the University have foreseen there would be consequences in Ohio.

Disposition: The court reversed the judgment dismissing the student athlete’s breach of contract action against the University based on a lack of personal jurisdiction.
1983


Key Facts: Plaintiff association representing women’s intercollegiate athletics brought an action against the defendant association representing amateur intercollegiate athletics (national association) charging the national association with violations of §§ 1-3 of the Sherman Act.

Issues: Whether or not the defendant was in violation of the Sherman Act.

Holding: The court entered a judgment in favor of the defendant holding that (1) the sale of the women’s basketball championship was not in violation of Section 1 of the Sherman Act and (2) the women’s association failed to prove the intent necessary to sustain a claim of attempted monopoly under Section 2 of the Sherman Act.

Reasoning: The women’s association alleged that the national association violated the Sherman Act by “conspiring” with its own officials to anti-competitive ends and by using its dominant position as a purveyor of men’s intercollegiate athletics to project that power into the women’s market to stifle competition there. The court entered judgment in favor of the national association, holding that

(1) the sale of the women’s basketball championship was not an illegal tying agreement in violation of Section 1 of the Sherman Act, because it was merely collateral to a much larger transaction which would have gone forward with or without the women’s event and (2) the women’s association failed to prove the specific intent necessary to sustain its claim of attempted monopoly under Section 2 of the Sherman Act, because the evidence established that the national association’s governance plan for women’s intercollegiate athletics originated with its members rather than its leaders and took shape in public view for over more than a year.

Disposition: The court ruled in favor of the defendant.

Key Facts: The student athlete was enrolled in Arizona State University and then transferred to the University of Pennsylvania. While a freshman at the Arizona State University, the plaintiff played varsity tennis and was nationally ranked by the U.S. Tennis Team. The NCAA bylaw 5-1-(j)-(7) states as follows:

A transfer student from a four-year institution shall not be eligible for any NCAA championship until the student has fulfilled a residency requirement of one full academic year (two full semesters or three full quarters), and one full calendar year has elapsed from the first regular registration and attendance date at the certifying . . . institution.

Therefore, Weis was ineligible to play tennis at the university for the 1982-1983 school year. Weis, a student athlete, filed a motion for preliminary injunction seeking to prohibit the athletic associations from applying the transfer rule to him.

Issues: Whether a preliminary injunction should be granted prohibiting Eastern College Athletic Conference and the National Collegiate Athletic Association from applying the transfer rule to him. Further, whether the student athlete would suffer irreparable harm if relief was not granted, and whether the student athlete was likely to succeed on the merits of his claim.

Holding: The student could not prove that he would suffer irreparable harm if relief was not granted nor could he offer evidence that he would succeed on the merits of the claim.

Reasoning: The student did not offer evidence that established that he would suffer irreparable harm if relief was not granted, nor could the student offer evidence that he was likely to succeed on the merits of his claim.

Disposition: The plaintiff’s motion for preliminary injunction was denied and the temporary restraining order prohibiting the association from applying its transfer rule to the student athlete was dissolved.

Citation: Rensing v. Indiana State University Board of Trustees, 444 N.E.2d 1170, (Sup. Ct. Ind., 1983).
Key Facts: The student athlete filed a claim for workman’s compensation, as well as medical and hospital expenses when he was injured in a football practice which left him a quadriplegic. He states he was totally and permanently disabled as a result of an injury. The Industrial Board of Indiana found that there was not an employer-employee relationship; however, the lower court determined that the student athlete was an employee for pay of the University and as such was entitled to workmen’s compensation benefits. The University’s board of trustees appealed the decision.

Issues: Whether there was intent by the University to enter into an employer-employee relationship when it granted the student athlete a full scholarship, which covered all expenses.

Holding: The court held that there was no intent to enter into an employer-employee relationship. The court noted that student athletes are not permitted to accept pay for sports and financial aid was not pay or income. Therefore, the student athlete was not entitled to workmen’s compensation benefits.

Reasoning: Rensing and his father signed two agreements for Financial Assistance, one in 1974 and one in 1975, both agreements contained the following:

This is to advise you that the committee on student financial aid has awarded you an Athletic Grant-In-Aid as described below to continue your education at this institution. The award is made in accordance with the rules of this institution and the applicable provisions of the Constitution and Bylaws of the National Collegiate Athletic Association (NCAA). Your acceptance means that you also accept these provisions and agree to abide by them. The agreement also contained a summary of the applicable rules of the NCAA.

[Further], “. . . in both cases, the students received benefits based upon their past demonstrated ability in various areas to enable them to pursue opportunities for higher education as well as to further progress in their own fields of endeavor. (Rensing v. Indiana State Univ. Board of Trustees, 1983)

Further, Courts in other jurisdictions have found that student athletes are not considered “employees” within the meaning of the Workmen’s Compensation Act unless, in addition to
their scholarship, they are also employed by the university (*Van Horn v. Industrial Accident Commission*, 1963).

Disposition: The opinion of the Appeal’s Court is vacated and the findings of the Industrial Board are affirmed because the student athlete failed to show that an employer-employee relationship existed between the student athlete and the university.


Key Facts: The women’s association alleged that the NCAA was in violation of the Sherman Act because it “conspired” with other officials to create a monopoly by projecting its power into and into women’s athletics to stifle its competition.

Issue: Whether the NCAA was in violation of the Sherman Act.

Holding: The court held that the sale of the women’s basketball championship would have gone through with or without the women’s event and was not in violation of the Sherman Act and the women’s association failed to prove its claim of an attempted monopoly under the Sherman Act. The court denied the application for a preliminary injunction, denied summary judgment on the constitutional claims, and granted summary judgment on the antitrust claim.

Reasoning: The women’s association failed to prove its claim of an attempted monopoly under the Sherman Act.

Disposition: Judgment entered was in favor of the defendant, NCAA.

Citation: *English v. National Collegiate Athletic Association and Tulane University of Louisiana*, 439 So. 2d 1218, (La. App., 1983).

Key Facts: Jon English was awarded a football scholarship to play football at Michigan State University in the spring of 1979. He enrolled in Allegheny Junior College in Pennsylvania
in 1980 because at the time his family was living in Pittsburgh. He then enrolled in Iowa State University in 1981. His father and family were living in New Orleans where his father had taken a coaching position at Tulane. Once again, he transferred to another college, Delgado Junior College in New Orleans. After his graduation from the junior college he enrolled in Tulane where he wanted to play football. He was deemed ineligible to play football at Tulane. He contended that under the NCAA Bylaws 5-1-(j) and 5-1-(k) enforced at the time that he had met all of the requirements and should be eligible to participate in intercollegiate sports at Tulane.

While attending Iowa State the student athlete read the following from a NCAA published booklet entitled *NCAA Guide for the College-Bound Student Athlete*:

3. A student who transfers to an NCAA member institution from a junior college after transferring from any four-year college must complete one calendar year of residence at the NCAA member institution in order to be eligible for NCAA championships or post-season football games, unless the student has completed a minimum of 24 semester or 36 quarter hours at the junior college following the student’s transfer from the four-year college and also has graduated from the junior college, and one calendar year has elapsed since the transfer from the first four-year college. . . .

4. When a student has been in residence at two or more junior colleges, the terms of residence at all junior colleges may be combined in order to satisfy the residence requirements described in Paragraph Nos. 1, 2 and 3 of this section. . . .

As a result of reading said booklet, he interpreted that the first 4-year college was Michigan, and not Iowa State. However, the NCAA had inserted the following statement in the introduction of the booklet:

The information contained in this publication is designed to provide a general summary of NCAA rules and regulations in easy-to-read form to prospective student-athletes. . . . This publication does not include all applicable provisions of NCAA legislation. Also, NCAA legislation may be subject to additional official interpretations when its application-specific situations are not readily apparent. Individuals should contact the NCAA national office if they have any questions about NCAA legislation. Therefore, this pamphlet should be considered only as a guide to a general understanding of NCAA rules and regulations, with a view to avoiding involvement in a violation of NCAA legislation which might result in the loss of an individual’s eligibility or disciplinary action against a member institution.
The NCAA was contacted for a ruling concerning the matter and English was deemed ineligible to play intercollegiate sports at Tulane University. Tulane requested a reconsideration which once again ruled English ineligible. Because English had begun to practice with Tulane he could no longer return to Iowa State to play sports. English requested a restraining order, which allowed to him play ball until further notice. Evidence indicated that English had questions concerning his eligibility and should have contacted someone with the NCAA before enrolling in Tulane. English did show that,

some years ago the NCAA adopted the present rule to add the first four-year college language to close a loophole which previously existed and which enabled players to move from one four year college to another in successive years, but this is not plaintiff’s situation and his charge of discrimination gets no support from these facts.

Issue: Whether the student athlete should be granted a preliminary injunction against the defendant based on the transfer rule by law applied to English.

Holding: The court held that the student athlete was a third party to the contract and had not prevailed on the basis of equitable estoppel. Further, the student athlete failed to show an abuse by the trial court in dismissing his application for preliminary injunction.

Reasoning: The court found it unreasonable for the student athlete to rely on the transfer rule located in the NCAA’s guide and that if there were any questions the student athlete is instructed to contact the NCAA before enrolling in a college where there might be a question of eligibility.

Disposition: The court affirmed the trial court’s ruling and the restraining order was recalled, vacated, and set aside. (Judge Barry dissented in the opinion because he felt that English should be declared eligible to participate in intercollegiate football because he had met all of the requirements listed under the NCAA’s published By law (5-1-(k)-(1) under the 19983-
1984 manual). Judge Barry contended that what the NCAA published and what it intended were two different things, and that the NCAA’s intent was immaterial.

1984

Citation: Arlosoroff v. National Collegiate Athletic Association, and Duke University, 746 F.2d 1019, (U.S. App., 1984).

Issue: Whether or not the National Collegiate Athletic Association’s action is considered a “state action” that is subject to the equal protection clauses of the U.S. Constitution, Amendment XI, and whether a preliminary injunction granted in the lower court should be upheld.

Key Facts: The plaintiff, Chaim Arlosoroff, was an Israeli citizen, who joined the army and then participated in 17 amateur tournaments for three years after his discharge from the army. The plaintiff was also a member of the Israeli Davis Cup Team. He enrolled in Duke University in 1981 and was the number one single’s position on the team his freshman year. However, the NCAA declared the plaintiff ineligible for further competition on the basis of NCAA Bylaw 5-1-(d)-(3), because he had completed his 4 years of eligibility. The plaintiff brought a case against the NCAA and Duke University requesting a preliminary injunction, concerning enforcement of the eligibility rule, claiming violation of his due process and equal protection rights. In making its decision, the court treated the NCAA as a “state action.” (More than half of the NCAA members are public entities.) As a result, the plaintiff would have had a course of action under the U.S. Constitution, Amendment XIV. The defendants appealed the lower court’s decision.
Holding: The court reversed the decision of the lower court and vacated the preliminary injunction, holding that a lack of state action made the equal protection and due process clauses inapplicable. The court found that regulating intercollegiate athletics was not reserved to the state exclusively.

Reasoning: The defendant’s act could not have been considered to be state action subject to the equal protection and due process clauses of the U.S. Const., Amendment XIV. The court held that although the defendant could have been said to have performed a public function as the overseer of the nation’s intercollegiate athletics, the regulation of intercollegiate athletics was not a function that was traditionally exclusively reserved to the state. The court further determined that the fact that approximately one-half of the defendant’s members were public institutions did not affect its status as a private entity. “The NCAA serves the common need of member institutions for regulation of athletics while correlating their diverse interests.” The colleges and universities’ representatives adopted bylaw 5-1-(d)-(3), not as a result of governmental compulsion, but in interest of its members, and was a private action, not a state action.

Most of the courts considering the matter have held that its actions are state actions subject to the limitations of the Fourteenth Amendment: Regents of the University of Minnesota v. NCAA, 560 F. 2d 352 (8th Cir. 1977); Howard University v. NCAA, 166 U.S. App. D.C. 260, 510 F. 2d. 213(D.C. Cir. 1975); Parish v. NCAA, 506 F. 2d. 1028 (5th Cir. 1975); Associated Students v. NCAA, 493 F. 2d. 1251 (9th Cir. 1974), but see McDonald v. NCAA, 379 F. Supp. 625 (C.D. Cal. 1975). It was said that the NCAA performs a public function regulating intercollegiate athletics, see, Parish v. NCAA, 506 F. 2d. 1028 (5th Cir. 1975) that there was substantial interdependence between the NCAA and the state institutions that comprise about one-half of its membership (e.g., Howard University, 510 F. 2d. at 219), and that the state institutional members played a “substantial although admittedly not pervasive” role in NCAA funding and decision making. Parish, 506 F.2d at 1032, see Howard University, 510 F. 2d at 219. (Arlosoroff v. NCAA, 1984)
The earlier cases concluded that indirect involvement of state governments could change what was considered an isolated conduct into state action. The notion has since been rejected by the Supreme Court (Blum v. Yaretsky, 1982; Rendell-Baker v. Kohn, 1982).

Disposition: The court reversed the district court’s decision and vacated the preliminary injunction.

1985


Key Facts: Thomas McHale attended the University of Maryland from 1982-1984 and played football for the University of Maryland. In the summer of 1984, he withdrew from Maryland, and later in January of 1985 transferred to Cornell University, a private institution. He transferred to Cornell for academic reasons and Cornell did not offer him a scholarship. In fact, Cornell did not offer scholarships. Said student athlete then decided to participate in athletics at Cornell. The NCAA advised Cornell that McHale was not eligible to play sports nor was he eligible for a waiver under NCAA By-law 5-1-m. “The NCAA suggested three purposes of the transfer rule: (1) to prevent transfers solely for athletic reasons, (2) to avoid exploitation of student athletes, and (3) to allow transfer students time to adjust to their new environment.” The student athlete contended that the transfer rule should not apply to him because he transferred strictly for academic purposes. He further contended that his participation in intercollegiate sports at Cornell would not undermine the purpose of the transfer rule. The student athlete filed a motion for preliminary injunction.
Issue: Whether Bylaw 5-1-(j)-(7) (the transfer rule), violates the Fourteenth Amendment of the U.S. Constitution concerning the equal protection and due process rights of the student athlete, Thomas McHale and whether the NCAA or Cornell University performed a public function which would deem them a state actor.

Holding: Neither Cornell University nor the NCAA’s actions, in applying said eligibility rules, was a public function that is usually reserved for the state. The plaintiff, student athlete, did not show a likelihood of success on the merits.

Reasoning: The student athlete failed to demonstrate that the NCAA, in applying its rules, had performed a public function that is usually reserved for the state. The court cites Arlosoroff v. National Collegiate Athletic Assn., 746 F.2d 1019 (4th Cir. 1984).

Disposition: Student athlete’s request for preliminary injunction was denied.

1986

Citation: Graham et al. v. National Collegiate Athletic Assoc., 804 F.2d 953, (U.S. App. 1986).

Key Facts: Stephen Graham and Brett Lohrke received athletic scholarships from the University of Louisville to play football for the 1983-1984 school year. The University cancelled their scholarships when they withdrew from the team due to personal reasons. During the semester, they appealed the cancellation of their scholarships. The University Financial Aid Committee held a hearing and upheld the termination of the scholarships. In 1984, the plaintiffs filed a law suit seeking to recover the amount of the tuition and fees they paid when their scholarships were cancelled. However, Graham had successfully been readmitted to the University football team before the case was filed. Graham contends he was kicked off the team
when the University found out he had filed suit. Graham repeatedly requested to be readmitted to the team, but was denied. The court entered summary judgment in favor of the plaintiffs and the University was ordered to pay the costs of tuition, board, and fees as was stipulated in the contract for the fall semester of 1983, which the University complied with. However, in 1984, he transferred to another Division I school in Kentucky and was denied eligibility to play football. (Under NCAA Rules, a student-athlete transferring from one Division I school to another is not eligible to participate in NCAA sports at the new school for one academic and calendar year.)

The transfer rule states in pertinent part:

A transfer student from a four-year institution shall not be eligible for any NCAA championship until the student has fulfilled a residence requirement of one full academic year (two full semesters or three full quarters), and one full calendar year has elapsed from the first regular registration and attendance date at the certifying Division I or Division II institution. At a Division III institution, eligibility is not permitted for one calendar year from the student’s official withdrawal date from the previous institution. NCAA Bylaw 5-1-j-(7)

The second pertinent NCAA rule provides that an athlete’s eligibility must be completed within 5 calendar years from the time the athlete first enrolls in college. The “five-year rule” states in pertinent part,

(a) Division I -- The student-athlete shall complete his or her seasons of participation within five calendar years from the beginning of the semester or quarter in which the student-athlete first registered at a collegiate institution, time spent in the armed services, on official church missions or with recognized foreign aid services of the U.S. government being excepted.

Lohrke, on the other hand, never requested re-admittance to the University of Louisville’s football program. Instead, he enrolled at a Division III school, where he wanted to play football. NCAA rules state that a student transferring from a Division I to a Division III school is exempt from the transfer rule, and does not have to sit out for one year, as long as the Division I school issues a written release or waiver. “The exception provision states in pertinent part:
A transfer student from a four-year collegiate institution is not subject to the residence requirement for NCAA championships under the following conditions:

If the student transfers to a Division III member institution from a Division I or Division II institution after competing in that sport at the previous institution provided the student received a written release from the director of athletics at the institution from which the student transferred. (NCAA Manual in effect at that time)

Issue: Whether the conduct complained of was committed by a person who was a state actor (under color of law); and whether this conduct deprived a person of rights, privileges, or immunities secured by the U.S. Constitution, in this case access to the courts.

Holding: The courts held that the NCAA could not be liable under the U.S. Constitution because it had not deprived the student athletes of a right secured by the constitution because participating in intercollegiate sports was a non-protected interest. Further, the student athletes could not show the NCAA was a state actor. The court referred to Arlosoroff v. NCAA (1984), in order to conclude that the NCAA’s conduct is fairly attributable to the state it must be established (1) the NCAA was serving a function which was traditionally and exclusively the state’s prerogative, or (2) the state or its agencies caused, controlled or directed the NCAA’s action. In the Arlosoroff case, the court concluded that “the regulation of intercollegiate athletics . . . is not a function ‘traditionally exclusively reserved to the state’” (Arlosoroff v. NCAA, 1984) The University had granted Lohrke’s request for waiver so his claim was moot. Graham could not show a claim for which relief could be granted. Therefore, all Courts affirmed the lower Court’s decision dismissing all claims.

Reasoning: The NCAA could not be liable under the U.S. Constitution because it had not deprived them of a right secured by the constitution. Further, the defendants had not denied the plaintiffs’ access to the Courts, because they successfully pursued a state action and recovered
tuition, board, and fees and the plaintiffs also successfully pursued their claim in federal court. Lohrke’s request for waiver was granted; therefore, his claim was moot.

Disposition: Affirmed the actions of the lower court dismissing all of the student athlete’s claims.

1987


Key Facts: In applying this analysis, the courts have found that the courts must address each case on a case-by-case basis, being careful to sift through the facts and weigh the circumstances. The entanglement theory provides that the government’s involvement need not be either exclusive or direct; rather, government action may be found even though the government’s participation was peripheral, or its action was only one of several cooperative forces leading to the constitutional violation.

Issue: Whether the actions of the NCAA violated the student athletes’ rights of due process and equal protection under the U.S. Constitution.

Holding: The court held that the students’ due process and equal protection claims failed because the student athletes failed to show state action was taken. Further, the students did not have a life, liberty, or property interest in participating in playing basketball or other sports.

Reasoning: The actions of the NCAA did not constitute a state action. The court ruled that the student athletes had no protected property interest. The court referred to Parish v. NCAA (1975). Further, the court determined that notice was given to the university as well as an opportunity to appeal. Therefore, the NCAA satisfied the due process standards. The courts
referred to *Justice v. NCAA* (1983). The court declined to publish its discussions concerning the claims of tortious interference with contractual relations or laches. (The court noted that the NCAA has been as a state actor in some cases (citing *Howard v. NCAA* (1975)--entanglement theory. However, in *McHale v. Cornell* (1985) and in *Graham v. NCAA* (1986), the courts determined the following: “Although the NCAA may perform a public function in overseeing the nation’s intercollegiate athletics it is still a private institution,” and determined that the NCAA was not a state actor. The Supreme Court decisions of Blum and Rendell developed a three prong test for determining state action.)

Disposition: The defendant’s Motion for Summary Judgment is granted (this refers to Count II claiming violations of due process and equal protection rights). The court’s discussions under Count II and IV were not published.

Citation: *Karmanos et al. v. National Collegiate Athletic Association, et al.* , 816 F.2d 258 (6th Cir. 1987).

Key Facts: Peter Karmanos III played ice hockey with a professional hockey league, but his contract contained a rider stating that he would not be compensated for his services and that his father, Peter Karmanos, Jr. would pay all of his expenses. He later enrolled at the University of Michigan and was deemed ineligible to play hockey, according to the NCAA Bylaws Article III, Section which states, “if [an] individual participates or has ever participated on a team known to the individual or which reasonably should have been known to the individual to be a professional team in that sport, the individual no longer shall be eligible for intercollegiate athletics in that sport.” The University of Michigan defendants were named both individually and in their official capacities. The University of Michigan defendants were immune from suit for damages in their official capacities under the U.S. Constitution, Eleventh Amendment. The
decision was appealed on the grounds that said student did not receive compensation and therefore was not considered a professional athlete. Further, Karmanos, Jr. held that the NCAA bylaw interfered with his constitutional right to raise his child. The court stated, “The right to direct the upbringing and education of one’s child does not extend so far as to give a father a right to direct his child to play hockey on a professional team without losing his amateur status.”

Issues: Whether or not the defendant, NCAA, acted under color of state law (as a state actor) and whether or not the plaintiff was in violation of the NCAA bylaw concerning amateurism.

Holding: The plaintiff was in violation, according to the NCAA bylaws, and while he did not receive compensation, he did play for a professional team. Also, the NCAA did not act under color of law. Therefore, the decision of the lower court was affirmed.

Reasoning: The complaint had failed to state a constitutional infringement cognizable under federal law, and that plaintiffs failed to demonstrate that the defendant acted under color of state law. The NCAA “cannot be considered to have acted under color of state law unless (1) it was serving a function which was traditionally and exclusively the state’s prerogative; or (2) the state or its agencies caused, controlled or directed the NCAA’s actions” (Graham v. NCAA, 1986).

Disposition: The court affirmed the lower Court’s order dismissing the claim related to a declaration by an eligibility committee of defendant, the National Collegiate Athletic Association. The decision of the lower court’s judgment was affirmed and the plaintiff, Peter Karmanos, III, was ineligible to participate in collegiate hockey.

Key Facts: A class action lawsuit was filed by football players, cheerleaders, and alumni of Southern Methodist University claiming the NCAA violated Constitutional/Civil Rights and antitrust laws by declaring and enforcing rules under the NCAA bylaws that restricted benefits awarded to student athletes. The court contended that the alumni and cheerleaders had no claim of property injury under antitrust violation and agreed with the district court to dismiss their claims. The court did not resolve whether the players were property plaintiffs, but assumed they had proper standing allowing them to continue. However, the student athletes were not able to prove antitrust claims under the rule of reason analysis. The NCAA actions were not deemed a state action (under color of law).

Issue: Whether or not the court erred in dismissing their class action against the NCAA contending that the NCAA violated antitrust and Constitutional/Civil Rights law by declaring and enforcing rules that restricted benefits awarded to student athletes.

Holding: The court held that the eligibility rules of the NCAA are reasonable and that the plaintiffs have failed to state a claim for which relief can be granted and do not allege any facts to the contrary.

Reasoning: The court contends that the plaintiffs failed to state a claim for which relief could be granted and the NCAA was not a state actor.

Disposition: The court affirmed the decision of the District Court to dismiss the complaint.
Citation: *Bally v. Northeastern University*, 403 Mass. 713; 532 N.E.2d 49 (Sup. Mass., 1989).

Key Facts: Bally was a student at Northeastern University, a private, non-profit institution of higher education, in Boston. Bally was a member of the indoor and outdoor track teams, as well as the cross-country team until 1987. A condition for participation in intercollegiate athletics was signing the National Collegiate Athletic Association student athlete statement. The statement includes an NCAA drug testing consent form. Northeastern began to require that varsity athletes also sign the university’s drug testing consent form in 1986. The consent form authorized drug testing by urinalysis as a condition of participating in intercollegiate athletics. Northeastern University is a private, voluntary member of the NCAA and therefore must comply with NCAA requirements in order to complete in NCAA events. Bally signed the NCAA’s consent form for the 1986-1987 academic year, but revoked it in March of 1987 and refused to sign said drug testing form or the NCAA’s student athlete statement for the 1987-1988 academic year. As a result, Bally was deemed ineligible to participate in the varsity indoor track and cross-country teams. (Bally had met all of the conditions for eligibility at Northeastern, except for his refusal to sign the NCAA and Northeastern consent forms.) David F. Bally brought a claim challenging Northeastern University’s drug testing program for student athletes on intercollegiate athlete teams alleging a violation of Constitutional/Civil Rights and his right to privacy. The court granted a summary judgment in favor of the plaintiff, declaring that defendant’s drug testing program violated the Massachusetts Constitutional/Civil Rights Act and the right of privacy statute. The Defendant appealed said judgment.
Issue: Whether or not the University’s drug testing program violated the plaintiff’s Constitutional/Civil Rights under the Massachusetts Constitutional/Civil Rights Act.

Holding: The court reversed the lower court’s judgment because the plaintiff’s claim “failed for lack of proof of threats, intimidation or coercion” (Bally v. Northeastern, 1989). The court determined that the defendant conducted indiscriminate, impartially administered testing, and there was no claim for which relief could be granted under the Act.

Reasoning: Northeastern University’s requirement for student athletes to admit to a drug testing by urinalysis in order to participate in intercollegiate athletics is indiscriminate, impartially administered testing, and is not comparable with the direct assault found in cases where we have granted relief under the Massachusetts Constitutional/Civil Rights Act. The student athlete could not show an individualized threat or a threat of serious harm, only that he was excluded from participating in intercollegiate sports. The court noted that in Bell v. Mazza (1985), and O’Connell v. Chasdi (1987), there was an act of physical confrontation with the threat of harm. Therefore, the plaintiff was not entitled to relief.

Disposition: Judgment in favor of the plaintiff is reversed.

1990


Key Facts: Gaines received a scholarship from 1986-1989 to play football for Vanderbilt. However, in 1990, Gaines made a petition for special eligibility and renounced his college eligibility to the National Football League, declaring himself eligible for the NFL draft. The paragraph immediately preceding his signature on the Petition contained the following language:
“I hereby irrevocably renounce any and all remaining college football eligibility I may have.”

Gaines was not drafted by any team in the NFL and was never compensated by any of the parties involved. He then enrolled at Vanderbilt to complete the 13 additional semester hours he needed to graduate. He was denied eligibility to play on the grounds that he violated the NCAA eligibility rules 12.1.1(f), 12.2.4.2 and 12.3.1, the player became ineligible to complete his fourth year of eligibility as a football player at Vanderbilt. The football player argued that the defendants’ action in preventing him from returning to college play was an unlawful exercise of monopoly power. He then filed a claim seeking a preliminary injunction against the defendants. The court denied his request for preliminary injunction.

Issue: Whether the NCAA eligibility Rules are “unreasonably exclusionary” or “anticompetitive” and whether the defendant could state a claim for which relief could be granted.

Holding: The court denied Gaines application for preliminary injunction. The NCAA’s eligibility rules were not subject to antitrust scrutiny because they could justify enforcing the rules for business reasons. Therefore, the final conclusion was that the rules could not be deemed unreasonably anticompetitive or exclusionary.

Reasoning: The Plaintiff, Gaines, failed to show a substantial likelihood of success on the merits and further, he could not show that he would suffer immediate and irreparable injury upon the denial of his request. The NCAA eligibility Rules were not subject to antitrust scrutiny and could show strong business justifications for enforcing its eligibility rules and that said rules could not be deemed unreasonably exclusionary or anticompetitive.

Disposition: The court denied student athlete, Gaines’ application for preliminary injunction.

Key Facts: The NCAA developed a drug testing program out of growing concern of the use of drugs by students participating in college athletics. The NCAA contended that the drug testing program was needed to ensure the student athletes’ health and safety. The testing programs deter the use of drugs. Further, the NCAA required Stanford “to require its student athletes to submit to drug testing without reasonable suspicion of drug use (thereby waiving their constitutionally protected right of privacy), or be excluded from all intercollegiate athletic competition.”

Issue: Whether the drug testing program developed by the National Collegiate Athletic Association was in violation of student’s rights under California Constitution.

Holding: The court held that the drug testing program violated students’ state constitutional right to privacy under California Constitution.

Reasoning: The National Collegiate Athletic Association’s drug testing program violated the plaintiff’s state constitutional right to privacy and there were less offensive alternatives that could be used.

Disposition: The court affirmed the trial court’s judgment which permanently enjoined the NCAA from enforcing the drug testing program against Stanford students.


Key Facts: The plaintiff, Michael Lesser, was offered and accepted a baseball scholarship at Neosho Community College. (Prior to his acceptance, the plaintiff and his parents were informed that he would have to have a haircut.) Coach Murry advised the players that due to the number of individuals on the team he would be making cuts to the roster after the first four practices, of which Lesser participated. During said practices, Lesser was assessed $4 in fines for
allegedly violating four of the team rules: the written rule of not having a close shave and three unwritten rules: wearing a wrist bracelet, being in the wrong place at the wrong time, and not wearing a “cup.” Lesser was observed during the four practices and Murry concluded that the plaintiff did not have a sufficient fast ball to help the team and did not have good control on his pitches. Peter recommended to Murry that the plaintiff be one of the individuals cut from the team. The athletic director of NCCC sent a letter requesting an exception to the conference rule and a request that Lesser be released from his letter of intent and attend another conference. The commissioner denied said request on the grounds that there was no grounds under KJCCC’s bylaws and advised them of how to appeal the case. Lesser was never informed of the decision or the right to appeal. As a result, Lesser filed suit against Neosho Community College and its coach alleging “violation of his due process rights, fraud by concealment, intentional misrepresentation, breach of contract, assault, and battery.” The college and the coach filed a motion for summary judgment.

Issue: Whether the plaintiff suffered some injury within the zone of interest to be protected by the U.S. Constitution, and there was a traceable connection between the alleged deprivation or injury and the challenged conduct of the defendants.

Holding: The court granted partial summary judgment to the school and coach, holding that,

(1) the recruit’s agreement to abide by the fine system and his failure to appeal his fines to the team’s “kangaroo court” did not preclude a claim that he was deprived of his money without due process; (2) the recruit could not maintain a claim that the team appearance rules deprived him of a liberty interest, as his participation on the team was voluntary; (3) the recruit was informed prior to accepting the scholarship that he could be cut from the team and thus could not maintain a fraudulent concealment claim; (4) there were material fact issues as to whether the coach made misrepresentations about the baseball program; and (5) there was a fact issue as to whether the “cup check” placed the recruit in apprehension of immediate bodily harm.
Reasoning: The court found that the plaintiff had an alleged injury in the form of economic loss since he was fined $4.00 and was deprived of his money, which is traceable to the defendant’s conduct with the enforcement of the fine system. The property interest sought to be protected by plaintiff is clearly within the zone of interest intended to be protected by the Fourteenth Amendment. Therefore, plaintiff was able to show loss of money due to said fines and was able to assert his deprivation of property claim.

Disposition: The court granted the defendants’ motion for summary in part and denied in part. The court granted the defendants’ motion for summary judgment on plaintiff’s claims of deprivation of liberty interest in violation of due process, fraud by silence, battery, and breach of contract. Defendants’ motion for summary judgment on plaintiff’s claims of deprivation of property in violation of due process, fraudulent misrepresentation, and assault is denied.

1992


Key Facts: Banks, the plaintiff, received a full scholarship to participate in football at the University of Notre Dame. Banks started in four or five games and in fact played in all 11 games as a freshman. Banks injured his knee in the first game of his sophomore year. Due to his injury, he only played seven games. His junior year he played in only six games. Banks did not play his senior year because he wanted to make sure that his knee fully recovered before he played again. Banks decided to enter the 1990 NFL draft after being approached by two NFL scouts. As a result, representatives of various NFL teams visited Notre Dame and administered athletic efficiency drills to test his skills. In addition, Banks participated in an NFL tryout in
Indianapolis, Indiana, for college players who had entered the draft before completing college eligibility. As a result of his performance, Banks was not selected in the draft or as a free agent. Banks felt he was not drafted because of his injury.

Issue: Whether the district court erred when it dismissed the plaintiff’s case for failing to state a claim for which relief could be granted.

Holding: Banks had no authority to bring the suit claiming ineligibility and he failed to show an anti-competitive market whereby anti-competitive relief could be granted.

Reasoning: The plaintiff claimed violation of the Sherman Act, which was set up to resolve any injuries received as a result of reduced competition. The student athlete failed to show such actions and failed to state a claim for which relief could be granted.

Disposition: The court affirmed the order dismissing the student athlete’s claim because he failed to show a cause of action under the Sherman Act.


Key Facts: The student athlete was a sophomore at Brown University and was enrolled at the University of Nebraska his first two semesters. Collier had failed a course and did not retake the course to make up his credit. Collier was notified in September that he would not be eligible to wrestle for the 1991-1992 academic year for failure to make up his course credit. The plaintiff requested a preliminary injunction preventing the NCAA from deeming him ineligible to participate in any wrestling matches for the rest of the year.

Holding: The NCAA actions do not deem it a state actor. The court refers to McHale v. Cornell University (1985). Further, the student athlete could not show a likelihood of success on the merits, as a result his due process rights have not been violated.
Reasoning: According to NCAA rules, Collier was required to accumulate a total of 24 credits during his first two semesters in order to play during the 1991-1992 academic year. However, Collier only earned 21 credits for the 1990-1991 academic school year and as a result was ineligible under NCAA rules and regulations. Therefore, he would not be able to compete at Brown University under the transfer exception rule (NCAA Bylaws § 14.6.6.3.10(c)).

Disposition: Student athlete’s motion for a preliminary injunction was denied.

Citation: Conard et al. v. The University of Washington, et al., 119 Wn.2d 519; 834 P.2d 17, (Sup. Ct. Washington, 1992).

Key Facts: The student athletes were recruited by the University of Washington to play football and signed national letters of intent and received offers of athletic financial assistance for three consecutive quarters. According to NCAA Bylaws, students who transfer to another university after signing letters of intent will lose 2 years of athletic eligibility. The agreement stated that scholarships would be renewed during subsequent periods of attendance if the students were in compliance with the eligibility requirements and were students in good standing. The University of Washington did not renew petitioners’ aid as a result of several incidents of misconduct by petitioners. Plaintiffs, student athletes, brought suit against the University of Washington for breach of contract. The lower court dismissed the suit. The appeals court affirmed the breach of contract and the claim of interference of contractual relations. The appeals court found that the student athletes had a constitutionally protected claim and were entitled to the renewal of their scholarships. This claim was challenged in the Supreme Court of Washington.

Issue: Whether the University of Washington’s nonrenewal of the plaintiffs’ athletic scholarships violated due process under the federal constitution.
Holding: The duration of the scholarships was clear, and it was within the line and scope of the coach’s employment to recommend the nonrenewal of Conard’s scholarship. However, Fudzie’s had a legitimate claim to entitlement because the university’s policy was to renew for another four years and therefore he was entitled to due process. The court held that the hearing that took place did not meet the minimum constitutional safeguards. The court affirmed the judgment concerning Conard’s claim, but reversed Fudzie’s claim and remanded it for a new hearing.

Reasoning: There was no revocation of aid during the contract period; the court held that it was unnecessary to determine if petitioners were guilty of serious misconduct. The court found that petitioners did not have a protected property interest in the renewal of their scholarships.

Disposition: The Court of Appeal reversed the court’s decision holding plaintiffs had a protected property interest in the renewal of their scholarships. The court also remanded Fudzie’s case for a rehearing.

1993

Citation: University of Colorado et al. v. David Derdeyn, 863 P.2d 929, (Sup. Colo., 1993).

Key Facts: The University of Colorado appealed an order of the Colorado Appeals Court which affirmed the trial court’s order directing the University to cease the random, “suspiciousless urinalysis drug testing of student athletes.” The court rendered the drug testing of student athletes was unconstitutional under both the U.S. Constitution and the Colorado Constitution.
Issues: Whether the random, “suspiciousless,” urinalysis-drug-testing of intercollegiate student athletes by the University violated the Fourth Amendment of the U.S. Constitution or the Colorado Constitution.

Holding: The court held that the consent form was not voluntary because it was a contingency for receiving scholarships and for participating in intercollegiate athletics.

Reasoning: The University did not obtain the student athlete’s consent form voluntarily for said drug testing and as a result violated both the U.S. Constitution and the Colorado Constitution. (Fourth Amendment of the U.S. Constitution and Article II, Section 7 of the Colorado Constitution.)

Disposition: The court affirmed the court’s order and held that the university’s drug testing program was unconstitutional. The court granted the permanent injunction prohibiting CU from testing its athletes pursuant to its original program or any of its amended programs because the consents were not voluntarily given. Justices Rovira and Erickson dissented, feeling that the drug testing procedure was unconstitutional.

1994


Key Facts: The Pacific-10 assessed penalties against the University of Washington to NCAA violations, which banned the university from receiving revenue from television coverage of football games and other sanctions lasting 2 years, including a probationary period, a ban on participation in bowl games, and a reduction in the number of available scholarships and permitted recruiting visits. As a result, the five football players filed a suit against the Pac 10 in violation of claims including violation of federal antitrust laws pursuant to the Sherman Act, the
Washington Consumer Protection Act, breach of contract; tortious interference with a business expectancy; and deprivation of state constitutional due process guarantees. The defendants filed a motion to dismiss.

Issues: Whether the plaintiffs, student athletes, can show a cause of action for which relief can be granted in their complaint and if the motion to dismiss filed by the defendants should be granted.

Holding: The defendant’s motion to dismiss is granted in part and denied in part. The plaintiff’s claims are dismissed except the federal antitrust and state claims, in which the players have stated a cause of action as to which relief could be granted.

Reasoning: According to the Supreme Court guidelines, five factors are considered when determining if a plaintiff is a proper party to bring suit:

(1) The nature of the plaintiff’s claimed injury; (2) The directness of the injury; (3) The specific intent of the alleged conspirators; (4) The character of the damages, including the risk of duplicative recovery, the complexity of apportionment, and their speculative character; and (5) The existence of other, more appropriate plaintiffs.

The football players in this case were able to show a cause of action for which relief could be granted.

Disposition: The defendant’s motion to dismiss is granted in part and denied in part.

1996

Citation: Knapp v. Northwestern University, et al., 101 F.3d 473, (U.S. App 1996).

Key Facts: The plaintiff, student athlete Knapp, committed verbally (his junior year) to play basketball at Northwestern University. However, during his senior year he suffered cardiac death while playing basketball, but paramedics were able to bring him back to life. It was necessary for him to have an internal cardioverter-defibrillator implanted in his abdomen to
restart his heart in the event it ever stopped again. As a result of his medical condition, the University declared him ineligible to participate in its basketball program. While they honored his scholarship to receive his education, they felt his medical condition posed substantial harm for him to participate in athletic activities. The U.S. District Court entered a permanent injunction prohibiting the University from excluding him from playing basketball due to his medical condition and the motion for summary judgment was denied. Northwestern University appealed the court’s decision.

Issue: Whether or not the student athlete, is an “otherwise qualified” individual with a disability under the terms of the Disability Act of 1973.

Holding: The court held that Knapp was not disabled under the Disability Act of 1973. The court held that the court had to allow the university to make its own decision based on medical reliable evidence that there would be substantial harm in the future.

Reasoning: The plaintiff had an impairment that interfered with his ability to play basketball, but did not significantly decrease his ability to obtain a satisfactory education. Further, his impairment did not substantially limit his major life activity of learning. The court held that he was not disabled according to the meaning of the Disability Act. He was not physically “otherwise qualified” because the university could show that his medical condition provided a reasonable probability that there would be substantial harm in the future.

Disposition: The decision of the lower court was reversed and the case was remanded with instructions to enter summary judgment in favor of Northwestern University, the defendants-appellants.

Citation: National Collegiate Athletic Assoc. v. Brinkworth, 680 So. 2d 1081, (Fla. App., 1996).
Key Facts: Brinkworth enrolled in the University of Miami in 1991 and was redshirted his first year. He then played until 1995 at which time he was injured and underwent a lengthy recovery process. As a result he was deemed ineligible to play football. He requested a waiver before both the eligibility staff and committee. However both requests were denied. The waiver process changed in 1994 and he contended that he should fall under the eligibility rules that were in effect in 1991, since that was the year he entered the university. The case was ruled in favor of the NCAA.

Issue: Whether Brinkworth was entitled to injunctive relief.

Holding: The court held that the court could not intervene and the student athlete was not entitled to injunctive relief.

Reasoning: Under Florida law, courts do not intervene in the affairs of labor unions or private organizations (Rewolinski v. Fisher, 1984). The results of internal associations’ actions are subject to judicial reversal only if “(1) the association’s action adversely affects ‘substantial property, contract or other economic rights’ and the association’s own internal procedures were inadequate or unfair, or if (2) the association acted maliciously or in bad faith” (McCune v. Wilson, 1979).

Disposition: The judgment in favor of the student athlete was reversed and remanded with directions to enter judgment in favor of the NCAA.

1997

Citation: Reginald Hall Annette Hall v. National Collegiate Athletic Association, and Bradley University, 985 F. Supp. 782, (U.S. Dist. 1997).
Key Facts: Reggie attended a private Catholic school and had a core GPA of 2.346; however, his sum ACT score was 70, the corresponding required minimum core GPA was 2.425. Bradley University is a member of the NCAA. As a member institution, Bradley University’s eligibility requirements must comply with the NCAA Bylaws. The NCAA Bylaws establish minimum academic requirements for any new college student who wishes to participate in athletic activities and receive a scholarship. A student is deemed as a “qualifier” or a “non-qualifier.” A qualifier is eligible to practice and compete in intercollegiate events. In addition, they may receive financial aid or scholarships. A non-qualifier is prohibited from practicing or participating in any intercollegiate events and may not receive financial aid, except for that based purely on need. Therefore, he was deemed a non-qualifier and ineligible to practice or compete on Bradley University’s men’s basketball team, and was not allowed to receive any part of his full athletic scholarship. Plaintiffs filed a motion for preliminary injunction.

Issue: Whether the courses Reggie took at a private high school met the core course requirements, and met the GPA and standardized test minimums under the NCAA rules and regulations.

Holding: The academic eligibility requirement set by the NCAA was valid. The student failed to meet the minimum GPA and the same standards were applied to all races.

Reasoning: Reggie failed to satisfy the minimum eligibility requirements, with respect to his core GPA, under the NCAA Bylaws. There is no chance for success on the merits.

Disposition: The student athlete’s motion for preliminary injunction was denied.

Citation: John P. Brennan Plaintiffs v. Board of Trustees for the University of Louisiana, Defendants, 691 So. 2d 324, (La. App., 1997).
Key Facts: Under the NCAA rules, student athletes are required to submit to random drug tests. Brennan, a student athlete at the University of Southwestern Louisiana, tested positive for the use of drugs in two of three random tests. As a result of his positive tests, the university suspended him from participating in athletic competition for one year. The student athlete contended that a combination of factors caused a false result. Brennen filed a case requesting the court direct an order that the university refrain from enforcing the suspension of Brennen. He also claimed violation of due process and rights of privacy under Louisiana Constitution. The court concluded that Brennen’s blood test was flawed. The court granted student athlete’s request for preliminary injunction. The university appealed the judgment. The court determined there was state action, but said student athlete was not entitled to due process protection because there was no loss of property or liberty. The drug test did not violate his privacy interest, the student had been warned not to take anything, non-prescription or prescription without consulting with USL’s athletic department. It was determined that said drug test was reasonable. Further, the court determined the judge had committed manifest error in granting the preliminary injunction.

Issue: Whether the judge committed manifest error in finding that the test results were flawed and whether it was proper to grant said preliminary injunction in favor of the student athlete.

Holding: After reviewing the record in its entire, the court concluded that the trail court committed manifest error in determining that said drug tests were flawed. The University of Southwestern Louisiana was determined to be a state actor, and the preliminary action should not have been issued because there was a diminished expectation of privacy.

Reasoning: Based on evidence presented in court, the court found that the judge committed manifest error. The court concluded that the USL was acting as a state actor when it
suspended the student athlete when it complied with NCAA rules. The court cited the case of the *National Collegiate Athletic Assoc. v. Tarkanian* (1988). In addition, Brennen could not show that he had a privacy interest that had been invaded or any interest that was entitled to due process protection. The court cited the case of the *Hill v. National Collegiate Athletic Assoc.* (1994) and concluded that “student athletes have a diminished expectation of privacy.”

Disposition: The court reversed the order granting the preliminary injunction. The decision was in favor of USL.

1998

Citation: *National Collegiate Athletic Association, and Texas Tech v. Jones*, 982 S.W.2d 450, (Tex. App. 1998).

Key Facts: Student athlete, Joel Casey Jones, had played football for Texas Tech and was in his final year of eligibility and fifth year at the university. In the fall of 1996 he was informed that his grades and credit hours passed did not meet the eligibility requirements of the NCAA and could no longer play football for the university. However, the school filed three waivers requesting that Jones be allowed to compete in football for the remainder of the 1996 academic year. All three requests were denied. As a result, the student athlete filed a case against the NCAA seeking: an injunctive relief allowing him to play football for the remainder of the year and that the NCAA is restrained from enforcing their restitution rule against Tech for complying with said order. The court granted a temporary injunction granting said requests. The NCAA and Texas Tech appeal said order.

Issue: Whether the trial court has jurisdiction to render a judgment in the case.
Holding: The court held that the court lacked jurisdiction to further consider the appeal, and that the trial court’s temporary injunction had no present, operative effect. Therefore, the temporary injunction was set aside and the appeal was dismissed as moot.

Reasoning: The court has no present, operative effect and the case is therefore moot.

Disposition: The court set aside the temporary injunction against the NCAA; appeal was dismissed as moot.

Citation: *Tatum v. NCAA and St. Louis University*, 992 F. Supp. 1114, (U.S. Dist. 1998).

Key Facts: The student athlete was diagnosed with a generalized anxiety disorder while in high school. He suffered from a phobia related to testing and was permitted to take the American College Test. The NCAA did not recognize his score from the test to determine his eligibility. The student sought preliminary injunctive relief. The court ruled that the NCAA was governed by Title III of the American with Disabilities Act. The association operated a place of accommodations and the balance of harms weighed in favor of the student athlete. However, the court found that there was no likelihood of success on the merits.

Issue: Whether the NCAA and the university discriminated against the student athlete under Title III of the American’s with Disabilities Act.

Holding: The court held that the student athlete did not meet the required showing under ADA and that there was no likelihood of success on the merits.

Reasoning: The student athlete did not meet the required showing under the ADA that he had a significant mental impairment that substantially limited his life activity.

Disposition: The court denied the student athlete’s request for preliminary injunctive relief ruling in favor of the NCAA and university.

Key Facts: A class action law suit was brought against the NCAA alleging that the eligibility rule, specifically Proposition 16, unlawfully denied the plaintiffs of educational opportunities their freshman year. The student athletes’ claimed that the NCAA violated their rights under Title VI of the U.S. Constitution due to an eligibility requirement, namely Proposition 16, which required that student athletes must receive a minimum score on a standardized test. The student athletes claimed that the eligibility rule had an “unjustified disparate impact on African American student athletes.” The student athletes requested a declaratory judgment under Title VI and a permanent injunction ordering the discontinuation of Proposition 16. Both parties filed for summary judgment. The NCAA requested a motion for modification of a previous court order alleging that the injunction did not apply to the use of course requirements and minimum grade because the student athletes alleged claims referred to the standardized test score cutoffs only. They contended that a stay would result in substantial injury to both plaintiffs and public interests. Court was appealed to the U.S. Court of Appeal for District Three. The court reversed the decision of the lower court. The student athletes failed to include the fund the NCAA had control over in its lawsuit. The funds over which the court assumed the NCAA had control over were not implicated in the lawsuit. Further, the NCAA did not exercise control over its member institutions, which did receive financial assistance for their athletic programs.

Issue: Whether there are equally effective alternative practices to Proposition 16, which would have less disparity and whether defendants violated Title VI of the U.S. Constitution.
Issue of U.S. Appeal: Whether the NCAA governed federal funds which provided assistance only to a specific program and whether such program would fall under the disparate impact regulations of Title VI.

Holding: The eligibility rule known as Proposition 16 was in violation of the student athletes’ rights under Title VI of the U.S. constitution. There were equally effective methods for determining eligibility other than Proposition 16. The plaintiffs, student athletes, were able to show three viable alternative methods for determining student athlete’s eligibility their freshman year, other than Proposition 16.

Holding of U.S. Appeal: The court held that the plaintiffs’ claims failed because the disparate impact regulations under Title VI applied only to the specific program receiving financial assistance.

Reasoning: The plaintiffs, student athletes, were able to show three viable alternative methods for determining student athlete’s eligibility their freshman year, other than Proposition 16. In fact, plaintiffs were able to show three viable alternative methods which proved to have a less racial disproportion while still raising the graduation rates of student athletes.

Reasoning of U.S. Appeal: The student athletes failed to include the fund the NCAA had control over in its lawsuit and the NCAA did not exercise control over its member institutions, which did receive financial assistance for their athletic programs.

Disposition: The court ruled in favor of the student athletes and said motion was granted; the NCAA’s motion was denied. The NCAA was ordered to permanently discontinue any use of Proposition 16 in determining the eligibility of student athletes.

Disposition of U.S. Appeal: The previous judgment in favor of the student athletes was reversed and remanded with instructions to grant judgment for the NCAA.
Citation: *Hendricks v. Clemson University*, 529 S.E.2d 293, 339 S.C. 552 (Ct. App. 2000).

Key Facts: Hendricks (student athlete) attended St. Leo College on a 3-year baseball scholarship which covered 75% of his expenses. The student athlete decided to transfer to a larger school and contacted a representative from Clemson University. The University requested permission to contact St. Leo “to contact Hendricks for transfer and a one-time transfer exemption” (*Hendricks v. Clemson*, 2000). He transferred to Clemson with the intent of returning to St. Leo to graduate. Clemson did not offer the major Hendricks was pursuing; as a result, he received advice from his academic advisor. Unfortunately, his advisor made several errors which caused the NCAA to deem him ineligible to play. Mrs. Dixon testified that her responsibility as an athletic academic advisor was to make sure that student athletes maintained academic excellence and maintained eligibility according to the NCAA rules. During this time, Kennedy-Dixon was experiencing a personal crisis and spent a great deal of time away from her responsibilities. The NCAA’s 50% rule, a student athlete has to complete at least 50% of the course requirements for his degree to be eligible to compete during his fourth year of collegiate enrollment. Clemson requested a waiver of the 50% rule from the NCAA for Hendricks. Kennedy-Dixon provided a written statement detailing her mistake and her belief that Hendricks would have successfully completed the classes and earned the credits necessary to remain eligible if she had correctly advised him to enroll in them. The NCAA, however, denied the waiver request. Hendricks filed a claim in the district court alleging: negligence, breach of fiduciary duty, and breach of contract as a result being improperly advised by the athletic
academic advisor. Clemson requested a motion for summary judgment which was granted. Hendricks appealed

Issue: Whether the court erred in granting a summary judgment concerning negligence, breach of contract and fiduciary duty, and whether the student athlete could pursue a claim for lost damages.

Holding: The court erred in granting summary judgment because there were questions concerning the application of law that needed to be clarified. The court reversed the charges related to negligence and breach of fiduciary duty, and breach of contract, but affirmed the charges concerning lost opportunity damages.

Reasoning: Whether the counselor’s actions constituted gross negligence was a mixed question of law and fact and should be a question for the jury, unless there is only one reasonable inference supported by evidence. “In South Carolina, the existence of a fiduciary duty may be a factual question for the jury to determine.” In order for there to be a breach of contract, there must be an identifiable contractual promise that one party (in this case the defendant) failed to honor. “We agree with the trial court that Hendricks’s claims for lost professional baseball opportunities, lost 1996 College World Series experience, and lost NCAA Division I baseball experience are too speculative to be compensated” (Hendricks v. Clemson, 2000).

Disposition: The court reversed the trial court’s ruling on student athlete’s “negligence and contract causes of action.” The court affirmed the trial court’s determination that the “Tort Claims Act applied to Hendricks’s breach of fiduciary duty claim, but reversed the court’s determination that Clemson’s actions did not constitute gross negligence as a matter of law.” The court affirmed the trial court’s ruling that the student athlete’s “damages are speculative as related to lost professional baseball opportunities, lost 1996 College World Series experience,
and lost opportunity for playing NCAA Division I baseball.” The court reversed the trial court’s ruling as to the remaining damages. The case was remanded to the trial court for further proceedings consistent with the court’s opinion (Hendricks v. Clemson, 2000).

Citation: Cole v. National Collegiate Athletic Assoc., 120 F. Supp. 2d 1060, (U.S. Dist. 2000).

Key Facts: A student athlete was diagnosed with a learning disability in second grade. He enrolled at the University of Memphis and was going to receive a scholarship to play football for the university. He graduated from high school with a GPA of 2.367 (core courses of 2.075) and an ACT composite score of 14. Based on the NCAA eligibility rules, his scores were well below the sliding scale and therefore he was deemed ineligible to participate in intercollegiate sports at the Division I level. The student athlete then submitted a request for a waiver based on his learning disability. Said wavier was denied and the committee sent him a letter advising him of the same and that he had the right to appeal said decision. He requested that he be allowed to practice with the team, but not participate in any games and still receive his scholarship pending the outcome of his appeal. Student athlete and parent filed a claim seeking declaratory judgment for violation of Title III of the American with Disabilities Act. The court denied his request for a temporary restraining order. After depositions and new evidence were revealed, the NCAA approached Cole and suggested he resubmit his request for partial waiver on the grounds that there was new evidence. The NCAA granted a partial waiver allowing him to practice with the team and receive his scholarship but still declared him ineligible to participate in football games or other intercollegiate athletics during his freshman year. The NCAA then moved the court to dismiss the complaint because said student athlete had been declared a partial-qualifier and the claims were moot. As a result the court dismissed all claims.
Issue: Whether said case is viable and whether there is meaningful relief which can be granted.

Holding: The case in no longer viable, student athlete has no controversy, and there is no meaningful relief that can be granted.

Reasoning: Since the NCAA had declared a partial waiver deeming the student athlete as a “partial-qualifier” the claims were moot. As a result, the court no longer had judicial review over the matter and the student athlete would be able to compete for the remainder of his college football career, as long as he maintained his eligibility under NCAA rules. The case of controversy must be viable in all stages of litigation (which is no longer the case), and a federal court does not have the authority to make decisions on questions that concern matters that are moot. Therefore, all claims are dismissed.

Disposition: The NCAA’s motion to dismiss was granted and all other claims herein were considered moot and denied.

2001

Citation: Tanaka v. University of Southern California, et al. 252 F.3d 1059, (U.S. App. 2001).

Key Facts: Tanaka was a soccer player who was highly recruited in high school. University of Southern California (USC) authorities approached Tanaka and provided information about its soccer program. She inquired about their transfer program and was told she would be free to transfer from USC without suffering any penalty as long as she stayed at USC for 1 year and maintained the minimum academic requirements. However, when she became dissatisfied with the university’s soccer and academic programs she requested permission from USC to
communicate with other schools about transferring to their soccer program. The University of Southern California granted said request and she transferred to UCLA, which had a nationally ranked soccer program. The University of Southern California opposed the transfer and sought sanctions against her for violating the PAC-10’s transfer rule. The sanctions included that Tanaka sit out for 1 academic year and be declared ineligible for 1 year. In addition, she would not be allowed to receive any financial aid related to athletics during said time period. Tanaka filed a claim against the University of Southern California, the PAC-10, and others for breach of contract and violation of anti-trust, specifically Section one of the Sherman Act.

Section one of the Sherman Act (“Act”) provides in pertinent part: Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. In order to establish a claim under Section one of the Sherman Act, the plaintiff must demonstrate the following: “(1) that there was a contract, combination, or conspiracy; (2) that the agreement unreasonably restrained trade under either a per se rule of illegality or a rule of reason analysis; and (3) that the restraint affected interstate commerce.” The court cited Hairston, et al. v. Pac-10 (1996) and Bhan v. NME Hospital, Inc. (1991). “The district court concluded that Tanaka failed to meet the second part of this test, reasoning that the transfer rule is essentially ‘noncommercial,’ and hence does not involve ‘trade.’” The student athlete failed to state a claim either under the per se rule of illegality or a rule of reason analysis for which she could be entitled to relief. (The transfer rule was not subject to antitrust analysis.)

Issue: Whether the student athlete, Tanaka, may pursue her federal antitrust claim which challenged an intercollegiate athletic association’s rule that discourages student-athletes from transferring to member institutions while they are participating in intercollegiate sports.
Holding: The decision of the district court was affirmed, in favor of USC and other defendants.

Reasoning: Student athlete failed to state a relevant market for anti-trust purposes. First, limitation of the relevant product market to a single athletic program is especially unavailing insofar as the very existence of any given intercollegiate athletic program is predicated upon the existence of a field of competition composed of other, similar programs. Such programs compete in the recruiting of student-athletes and, hence, are interchangeable with each other for antitrust purposes.

She herself stated that she wanted to remain in Los Angeles to be closer to her family, further she stated that she was recruited to play soccer from colleges across the nation. The fact is she restricted her relevant market and product because of her personal choice to stay in the Los Angeles area. Further the court stated in its opinion that,

The existence of any given intercollegiate athletic program is predicated upon the existence of a field of competition composed of other, similar programs. Such programs compete in the recruiting of student-athletes and, hence, are interchangeable with each other for antitrust purposes.

The fact that Tanaka was recruited by soccer programs in colleges across the country shows that UCLA was not the only potential option for women soccer players in her position. Finally, “Tanaka has failed to allege that the transfer rule has had significant anticompetitive effects within a relevant market” (Tanaka v. USC, et al., 2001). She claimed that the reason for the sanctions was based on her claim of academic fraud by USC, but once again this would be considered an isolated incident within the PAC-10. The Sherman-Act is there to protect competition. Therefore, “failure to allege injury to competition is a proper ground for dismissal by judgment on the pleadings.” The court cited McGlincy v. Shell Chemical Co. (1988.)

Disposition: The decision of the district court was affirmed and was in favor of USC and other defendants.

Key Facts: Anthony Edward Molina played baseball for the University of Evansville at Indiana. While he was warming up, the pitcher for Wichita State University, Benjamin Christensen threw a baseball which struck him on his head. As a result Molina was seriously injured. There was no doubt that the injury was deliberate and the defendant, Christensen, contends that his actions were under the instruction of his coach. The student athlete, Molina, filed suit against WSU, alleging simple negligence on the part of Christensen, WSU’s manager, and one of its coaches.

Issue: Whether the recreational use exception was unconstitutional and in violation of the Equal Protection Clause of the Constitution of the United States.

Holding: The recreation use exception does not violate the Equal Protection Clause of the U.S. Constitution, and as a result WSU was immune from liability under the recreational use exception.

Reasoning: The student athlete alleged simple negligence only, and did not show wanton or gross negligence; therefore, WSU was immune for liability under the recreational use exception of the Kansas Tort Claim Act. The case cites *Barrett v. U.S.D.*, 259, 272 Kan. 250, 32 P. 3d 1156 (2001) in support of their ruling.

Disposition: The case was tried on Molina’s allegations of simple negligence. Therefore, the court affirmed the summary judgment granted by the trial court in favor of Christensen and Wichita State University.


Issue: Whether the NCAA violated Title III of the Americans with Disabilities Act when it failed to grant a waiver of the 75/25 Rule.

Holding: Granting a waiver of the 75/25 Rule would not give the student athlete any unfair advantage, but would simply allow him to play football at WSU while he pursued an academic degree with modifications catered to his learning disability. However, Matthews’ Title III claim was rendered moot because he would have the opportunity to complete his fourth year of eligibility for the upcoming football season.

Reasoning: Granting a waiver of the 75/25 Rule would not give the student athlete any unfair advantage, but would simply allow him to play football at WSU while he pursued an academic degree with modifications catered to his learning disability. Further, grant said waiver did not alter the NCAA’s purpose. The Title III claim was moot because the student athlete would be able to complete his final year of eligibility.

Disposition: The court,

1. Plaintiff’s Motion for Summary Judgment, Ct. Rec. 45, is GRANTED IN PART, and Defendant’s Cross Motion, Ct. Rec. 53, is DENIED IN PART, on the issues of whether
Title III of the ADA applies to Defendant NCAA, whether Plaintiff’s learning disability constitutes a disability protected by the ADA, and whether a waiver of the 75/25 Rule would be a reasonable modification to the NCAA’s eligibility rules. 2. Plaintiff’s Motion for Summary Judgment, Ct. Rec. 45, is DENIED IN PART, on the issue of whether Plaintiff’s failure to meet the NCAA’s eligibility criteria resulted from his disability and thus whether the NCAA discriminated against him based on his disability. 3. Defendant’s Cross Motion for Summary Judgment, Ct. Rec. 53, is GRANTED IN PART on the issues of whether Plaintiff’s ADA claim has become moot and whether the NCAA cannot be subject to liability under ADA. 4. Because the Court lacks the authority to grant Plaintiff any relief for his claimed injury under the ADA, Plaintiff’s ADA claim is DISMISSED WITH PREJUDICE. 5. Because Plaintiff’s due process allegations fail as a matter of law, Plaintiff’s claim ADA is DISMISSED WITH PREJUDICE. 6. Because the Court declines to exercise supplemental jurisdiction over Plaintiff’s remaining state law claim, Plaintiff’s claim under the WLAD is DISMISSED WITHOUT PREJUDICE. (Matthew v. NCAA, 2001)

Citation: National Collegiate Athletic Assoc. v. Lasege and University of Louisville, 53 S.W. 3d. 77 (Ken. Supp. 2001).

Key Facts: The student athlete, Lasege, lived in Nigeria, but went to Russia in order to obtain a visa and come to the U.S. so he could go to school. While in Russia he signed two contracts with a professional sports team to play basketball. The student athlete received living accommodations, meals, clothing, airline tickets, utilities, and a visa and airline ticket to Canada. An individual in Canada provided him with an airline ticket and a visa, as well as lodging and meals for 8 months. He also provided benefits for Lasege to visit a college and then a one-way ticket so he could enroll at the University of Louisville for the 1999-2000 academic year and play basketball. The athletic association would not allow him to play basketball for the university because he had played for a professional team overseas and received benefits as a result of this athletic ability. The student athlete and university filed for a temporary injunction that would require the athletic association to deem Lasege eligible to play basketball at the university. The trial court granted said relief. Further, the association was ordered not to enforce By-law 19.8, which would have allowed them to issue sanctions against the University for allowing an.
ineligible player to continue to play basketball. Lasege continued to play basketball at the University of Louisville for the 2000-2001 academic year. The NCAA filed for interlocutory (temporary) relief, the court denied said motion. The NCAA filed for interlocutory relief in the Supreme Court of Kentucky.

Issue: Whether the trial court abused its discretion and erred in granting a temporary injunction and ordering the NCAA not to enforce sanctions against the University of Louisville in compliance with By-law 19.8.

Holding: The trial court abused its discretion causing erroneous conclusions that constituted extraordinary cause warranting relief under Ky. R. Civ. P. 65.09. Relief was granted and the trial court’s temporary injunction was vacated.

Reasoning:

On appeal, the Supreme Court found that the trial court abused its discretion by: (1) substituting its judgment for that of the athletic association on the question of the student-athlete’s intent to professionalize; (2) finding that the athletic association had no interest in the case which weighed against injunctive relief; and (3) declaring the athletic association bylaw invalid. These clearly erroneous conclusions constituted extraordinary cause warranting Ky. R. Civ. P. 65.09 relief. (NCAA v. Lasege, 2001)

Disposition: The NCAA’s motion for CR 65.09 relief was granted and the trial court’s temporary injunction was vacated.


Key Facts: The University of Washington offered Toure Butler an athletic scholarship to play football. The NCAA declared Butler academically ineligible to play on the team or to receive his scholarship. Butler filed a claim against the NCAA in federal district court stating that the “NCAA’s academic eligibility criteria violated Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. Section 12181-12189” (Butler v. NCAA, 2001). A
temporary restraining order ("TRO") was issued and after a hearing issued a preliminary injunction. As a result, the NCAA could not enforce its ineligibility rule against Butler. However, before trial, the NCAA entered into a consent decree with the U.S. Department of Justice. Under said decree the NCAA agreed to abide by the requirements of the ADA. Upon the agreement of both parties, the district court dismissed the claim. Butler requested that the NCAA pay attorney’s fees provided under 42 U.S.C. Section 12205, which states that “in any action or administrative proceeding commenced pursuant to [the ADA], the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee, including litigation expenses, and costs.” Butler’s case against the NCAA was an “action . . . commenced pursuant to [the ADA].” Thus, whether he is entitled to attorney’s fees depends upon whether he qualifies as a ‘prevailing party.’” The district court denied the motion on grounds that Butler was not a prevailing party and as result was not entitled to attorney’s fees. The judgment was appealed.

Issue: Whether or not Butler (student athlete) was a prevailing party entitled to attorney’s fees under 42 U.S.C. Section 12205 of the Americans with Disabilities Act.

Holding: The order denying the plaintiff’s motion for attorneys’ fees was reversed.

Reasoning: The court determined that Butler was a “prevailing party” in his action against the NCAA. The court granted temporary relief forbidding the NCAA from enforcing its ineligibility rule against him. As a result, Butler had succeeded on a substantial issue, which achieved some of the benefit he was seeking in his claim.

Disposition: The court reversed the order that denied Butler (student athlete) attorney’s fees. The case was remanded to district court to determine the amount of attorney’s fees Butler was entitled to under the ADA fee provision. It was also noted “that this disposition is not
appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Circuit Rule 36-3” (Butler v. National Collegiate Athletic Association, 2001).

2002


Key Facts: The NCAA, in an effort to improve graduation rates among Black students, adopted Proposition 16. Proposition 16 established the criteria for scholarship and athletic eligibility for incoming student athletes. The student athletes alleged that Proposition 16 caused an increased number of Black students to lose their scholarships and athletic eligibility during their freshman year. Further, student athletes contend that the NCAA knew the ramifications of said Proposition 16, but adopted it to reduce the number of Black student athletes receiving athletic scholarships under the premise of increased graduation rates. Proposition 16 modified Proposition 48 by increasing the number of core high school courses in which a student athlete must have a minimum GPA, and it determines athletic eligibility based on a formula that combines a student athlete’s GPA and standardized test score. Proposition 16 essentially increases the minimum scores that a high school student athlete must attain to qualify for athletic scholarship aid and eligibility for practicing and competing as a college freshman. For example, if a student athlete had a 2.0 GPA in the core high school courses, he or she must score a 1010 on the SAT. The district court found in a similar case that Proposition 16 puts a greater emphasis on standardized test scores than did its predecessor. (Pryor et al. v. National Collegiate Athletic Association, 2002)

Issue: Whether Pryor and other student athletes have stated a claim for purposeful, racial discrimination under Title VI of the Constitutional/Civil Rights Act of 1964.
Holding: The court held that the Title VI and 42 U.S.C.S. Section 1981 allegations were sufficient to withstand a motion to dismiss. The ADA and Rehabilitation Act claims were dismissed.

Reasoning: The association had considered race as one of its reasons for adopting the policy and the complaint alleged that the association purposefully discriminated against Black student athletes because it knew the policy would prevent more Black athletes from ever receiving athletic scholarship aid. The ADA and the Rehabilitation Act claims were properly dismissed because the student athlete lacked standing given the fact that a year of eligibility could be restored. The association could not avoid Section 1981 concerning liability simply because the condition of not meeting academic standards was not satisfied, if that condition was an alleged product of purposeful discrimination.

Disposition: The court affirmed the district court’s dismissal of the Americans with Disabilities Act and Rehabilitation Act claims. The case was remanded for further proceedings.

2003

Citation: Hendricks v. Clemson University, 578 S.E.2d 711, 353 S.C. 449 (2003).

Key Facts: Hendricks (student athlete) attended St. Leo College on a 3-year baseball scholarship that covered 75% of his expenses. The student athlete decided to transfer to a larger school and contacted a representative from Clemson University. The University requested permission to contact St. Leo “to contact Hendricks for transfer and a one-time transfer exemption” (Hendricks v. Clemson University, 2000). He transferred to Clemson with the intent of returning to St. Leo to graduate. Clemson did not offer the major Hendricks was pursuing; as a result, he received advice from his academic advisor. Unfortunately, his advisor made several
errors which caused the NCAA to deem him ineligible to play. Mrs. Dixon testified that her responsibility as an athletic academic advisor was to make sure that student athletes maintained academic excellence and maintained eligibility according to the NCAA rules. During this time, Kennedy-Dixon was experiencing a personal crisis and spent a great deal of time away from her responsibilities. The NCAA’s 50% rule stated that a student athlete had to complete at least 50% of the course requirements for his degree to be eligible to compete during his fourth year of collegiate enrollment. Clemson requested a waiver of the 50% rule from the NCAA for Hendricks. Kennedy-Dixon provided a written statement detailing her mistake and her belief that Hendricks would have successfully completed the classes and earned the credits necessary to remain eligible if she had correctly advised him to enroll in them. The NCAA, however, denied the waiver request. Hendricks filed a claim in the district court alleging negligence, breach of fiduciary duty, and breach of contract as a result being improperly advised by the athletic academic advisor. Clemson requested a motion for summary judgment, which was granted. Hendricks appealed and the decision of negligence, breach of contract, and fiduciary duty were reversed, lost damages was affirmed (Hendricks v. Clemson University, 2000). The case was remanded to court for further proceedings (Hendricks v. Clemson University, 2003).

Issue: Whether the defendant (Clemson University) was guilty of negligence, breach of contract, and fiduciary duty, and whether the student athlete could pursue a claim for lost damages.

Holding: The court held that the student athlete (Hendricks) failed to show a written or oral contract and could not show any evidence to support his claims.

Reasoning: Concerning negligence, the court found that Clemson did not owe a duty to the student athlete, Hendricks. Therefore, “it is unnecessary to discuss whether Kennedy-Dixon’s
mistakes could amount to gross negligence as required for recovery under the Tort Claims Act (S.C.Code Ann. § 15-78-60(25)).” Concerning fiduciary duty, the court has recognized certain relationships are by nature fiduciary, such as the attorney client relationship (O’Shea v. Lesser, 1993). However, the court did not determine that the relationship between advisor and student was a fiduciary duty. Concerning breach of contract, the court found that Hendricks could not show any written or oral promise concerning his athletic eligibility, and provided no evidence to support his claim. As to damages, the plaintiff could show no contractual duty and therefore the court did not address any claims for damages.

Disposition: The court reversed the Court of Appeals findings and reinstated the trial court’s judgment granting summary judgment in favor of Clemson on all claims.


Key Facts: Kavanagh played basketball for Manhattan College. During the game there was a contested rebound, as a result there was some elbowing and shoving that ensued between some of the players. Kavanagh stepped in to help break up the shoving, and Levar Folk punched him in the nose. Folk was ejected from the game and Kavanagh was treated for a broken nose. After being treated he was allowed to return to the court and play in the game. Prior to the incident, Folk had never been in any physical altercations nor had any prior history of aggressive behavior on or off the court. Kavanagh filed a claim against the Trustees of Boston University and its coaches for intentional infliction and emotional distress, contending that the University was vicariously liable for the conduct of Folk as a scholarship athlete. The court dismissed the claims against the Trustees of Boston University and their coaches.
Issue: Whether the university and its coaches were negligent in not taking action against a player who punched Kavanagh, a student athlete on an opposing team, Boston University, and was therefore, liable for his actions.

Holding: The court held that the university or its coaches were not negligent in this claim and a scholarship athlete is not considered an employee of the institution issuing said scholarship.

Reasoning: The court cited Rensing v. Indiana State Univ. Bd. Of Trustees (1983), Coleman v. Western Mich. University (1983), and Korellas v. Ohio State (2004) to show that the courts have rejected the belief that athletes are “employees” of their schools and have rejected worker’s compensation claims as a result of injuries sustained because the student athlete is not considered an “employee” of the schools they attend. Further, athletes cannot be considered agents of “no duty to protect another from the criminal conduct of a third party” and there was no special relationship that existed between the university coaches and the injured party in this case. The court cited Luoni v. Berube (2000). Kavanagh could not show any recklessness on the part of the coach or that he encouraged violence but rather encouraged his players to play aggressively. The school was not rendered liable for the acts of its students.

Disposition: The Court affirmed the decision of the district court dismissing said claims brought by Kavanagh, student athlete. The case was ruled in favor of the university.

2004

Citation: Crue v. Aiken, 370 F.3d 668; 2004, (U.S. App., 2004).

Key Facts: The mascot at the University of Illinois was Chief Illiniwek and some people felt that the Indian mascot offended Native Americans. A group of faculty members and graduate
student teachers opposing said mascot requested to contact prospective student-athletes concerning the controversy surrounding Chief Illiniwek. On March 2, 2001, following their request, the chancellor of the University, Michael Aiken, sent an e-mail out to employees which stated,

Questions and concerns have been raised recently about potential contacts by employees, students or others associated with the University with student athletes who are being recruited by the University of Illinois. As a member of the National Collegiate Athletics Association (NCAA) and the Big Ten Athletic Conference, there are a number of rules with which all persons associated with the University must comply. For example, the NCAA regulates the timing, nature and frequency of contacts between any University employee and prospective athletes. It is the responsibility of the coaches and administration in the Division of Intercollegiate Athletics to recruit the best student athletes to participate in varsity sports at the University of Illinois. No contacts are permitted with prospective student athletes, including high school and junior college students, by University students, employees or others associated with the University without express authorization of the Director of Athletics or his designee.

The University faces potentially serious sanctions for violation of NCAA or Big Ten rules. All members of the University community are expected to abide by these rules, and certainly any intentional violations will not be condoned. It is the responsibility of each member of the University to ensure that all students, employees and others associated with the University conduct themselves in a sportsmanlike manner. Questions about the rules should be addressed to Mr. Vince Ille, Assistant Director for Compliance, Bielfeldt Athletic Administration Building, 1700 S. Fourth Street, Champaign, IL 61820, (217) 333-5731, E-mail: ille@uiuc.edu. (Crue v. Aiken, 1999)

A request was sent to the NCAA requesting clarification of the NCAA’s rules concerning the contact of student athletes:

Ille informed Hoxie that the directive applied in four situations: when a prospective student-athlete is identified for contact based on participation in athletics, if the contact is made to address any issue relating to athletics, if it is made to address the prospective student’s possible participation in athletics, or if it is made at the request of a member of the athletics department.

Mr. Aiken included both student athletes and faculty members. As a result, Crue and others filed a lawsuit alleging that the preclearance directive violated their right to free speech under the First
Amendment. The courts ruled in favor of the plaintiffs and the case was appealed to the U.S. District Court for the Central District of Illinois.

Issue: Whether an email sent by the chancellor violated free speech rights under the First Amendment of the U.S. Constitution.

Holding: The court held that the email sent out by Chancellor Aiken violated First Amendment free speech rights.

Reasoning: The preclearance directive infringed on the free speech of others. Furthermore, the chancellor’s claim of qualified immunity failed because the chancellor understood the right of public employees’ free speech when the email was sent.

Disposition: The court affirmed the lower court’s decision in favor of plaintiffs.


Key Facts: Jeremy Bloom was recruited to play football at the University of Colorado. Prior to enrolling at the University, Bloom had competed in the Olympics and Professional World Cup Skiing events. Bloom appeared on MTV, and thereafter was given several opportunities to earn money for paid entertainment. He also endorsed certain ski equipment and modeled clothing for Tommy Hilfiger. He had concerns that such endorsements might deem him ineligible to play football at the University. Therefore, he requested a waiver restricting his endorsements and media activities. The NCAA denied said request and Bloom decided to quit modeling, and discontinue any entertainment or endorsements of any products so he could play football for the University. As a result, Bloom filed a claim against the NCAA seeking declaratory and injunctive relief. He further contended that he needed the funds to support his
professional career in skiing, which as he understood it was permitted under the NCAA Bylaws and rules. “In his complaint, Bloom alleged the following:

(1) as a third-party beneficiary of the contract between the NCAA and its members, he was entitled to enforce NCAA bylaws permitting him to engage in and receive remuneration from a professional sport different from his amateur sport; (2) as applied to the facts of this case, the NCAA’s restrictions on endorsements and media appearances were arbitrary and capricious; and (3) those restrictions constituted improper and unconscionable restraints of trade. (Bloom v. University of Colorado, 2004)

The Court determined that Bloom was a third party beneficiary of the NCAA bylaws, but was not entitled to preliminary injunctive relief according to the “six part test of Rathke v. McFarlane (1982).” Bloom satisfied three parts of the test:

(1) there is a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; (2) no plain, speedy, and adequate remedy is available at law; and (3) the injunction would preserve the status quo pending trial on the merits.

However, he had not satisfied the other parts of the test: “(4) there is a reasonable probability of success on the merits; (5) granting a preliminary injunction would not disserve the public interest; and (6) the balance of equities favors the injunction.” A preliminary injunction should not be issued unless the moving party meets all six requirements of the Rathke test (Rathke v. McFarlane, 1982). NCAA v. Lasege (2001) was cited in the case to show that court ruled that the NCAA’s action represented those of a state actor in a previous case. However, in other cases, such as NCAA v. Tarkanian (1988) and Matthews v. NCAA (2001), the court found that the NCAA was not a state actor and the university’s adherence to NCAA rules did not constitute the state action necessary for a Constitutional/Civil Rights claim. Bloom was denied injunctive relief.

Issue: Whether the court erred in denying student athlete, Bloom injunctive relief.

Holding: The court held that the court was correct in denying Bloom injunctive relief.
Reasoning: Bloom failed to meet all six requirements of the Rathke test and failed to show probable success on the merits.

Disposition: The court affirmed the lower court’s decision to deny student athlete injunctive relief.

2005


Key Issues: Walk-on football players filed a claim against the NCAA alleging anti-trust violations under the Sherman Act. The players alleged that the NCAA limited the number of scholarships of its larger schools to 85 per school. Walk-on football players argued that the NCAA and Division I-A schools, in the name of ‘cost-containment,’ have entered into an ‘agreement’ or ‘rule,’ codified in Bylaw 15.5.5, which ‘artificially restrains the number of scholarships that a school may award to football team roster members’ (Am.Compl. ¶ 6). This practice, they allege, is an unlawful horizontal restraint of trade that violates Section 1 of the Sherman Act, 15 U.S.C. § 1, and is a monopolization of the ‘big-time college football market’ in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

The NCAA is not exempt from scrutiny under the Sherman Act and the courts have determined that awards of financial aid can be considered trade or commerce. In addition, the payment of tuition for educational services can constitute commerce. The court cites the following cases: Board of Regents of Univ. of California v. Bakke (1978) and U.S. v. Brown Univ. (1997). Also, in the case of Hamilton Chapter of Alpha Delta Phi v. Hamilton College (1997), the schools policy “requiring all students to live in college housing and participate in the college meal plan was an unlawful monopoly under the Sherman Act” (Hamilton Chapter of Alpha Delta Phi v. Hamilton College (1997). Metro. Intercollegiate Basketball Ass’n v. NCAA (2004) and Law v. NCAA (1998) held that NCAA rules and regulations implicate “trade or commerce.” In the Metro case,
the court held that certain rules affected Division I men’s college basketball post-season tournaments, while the Law case showed the rule limited the maximum compensation Division I members paid to one category of basketball coaches. As a result, the court determined that walk-on football students have alleged sufficient facts that should allow them to demonstrate antitrust injury.

Issue: Whether the NCAA rule limiting scholarships in Div. I schools constitutes a monopoly and anti-trust violations under the Sherman Act.

Holding: The court held that the walk-on football players should have the opportunity to demonstrate that there was an antitrust injury as a result of alleged monopoly and denied the NCAA’s Motion for Judgment.

Reasoning: The walk-on football players have alleged sufficient facts to indicate the NCAA has a monopoly power over the alleged market.

Disposition: The court denied the NCAA’s Motion for Judgment. (Note: A Motion to Modify Scheduling Order was granted, an agreement was reached by the parties, and the case was dismissed in May of 2007).

Citation: National Collegiate Athletic Assoc., et al. v. Yeo, 114 S.W. 3d 584, (Texas App. 2003) and 171 S.W.3d 863 (Supp. Texas, 2005).

Key Facts: Berkley’s swimming coach recruited Yeo, who was a world class swimmer in Singapore. She came to the United States and enrolled in Berkley. She received a stipend for books and later after earning a world record in the relay team was given a scholarship that offered more benefits. However, after her sophomore year, after her coach took a position with UT-Austin, she transferred to UT-Austin as well. However, Berkley refused to grant her a waiver allowing her a one-time transfer, which was allowed under NCAA rules. “A transfer student
from a four-year institution must fulfill “a residence requirement of one full academic year . . . at the certifying institution” (NCAA Bylaws, Rule 14.5.5.1). Under the rule, a transferring student athlete would not be able to participate in athletic competitions for two full semesters. However, under the One-Time Transfer Exception,

A student-athlete may be excused from the residency requirement if (1) she has not transferred previously from a four-year institution, (2) she was in good academic standing at the former institution, and (3) the former institution does not object to the transfer of the student-athlete. Id., Rule 14.5.5.2.1.10.

Yeo requested said waiver but Berkley declined and offered a date for an appeal that would have been too late for Yeo to qualify for the 2001 NCAA Swimming and Diving Championship. Yeo complied with the NCAA 1-year transfer rule and set out for the 2000-2001 season. Later it was determined that she was ineligible to swim for UT-Austin, but Yeo was never notified of the problem and was never given an opportunity to discuss the matter with the compliance officer at UT-Austin. As a result, Yeo filed a claim against UT-Austin contending that the university violated her due process rights under Texas Constitution, Article I, Section 19.

Under a decision of the United States Supreme Court, courts assess due process based on three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. (NCAA v. Yeo, 2003)

Further, the NCAA sought to intervene in said case; however, the court could not establish the NCAA as a necessary party. The court granted a temporary restraining order which deemed Yeo eligible to compete in the National Championship meet. The court also granted a “permanent injunction preventing the university from retroactively declaring the student ineligible.” The court affirmed the trial court’s decision.
Issue: Whether the court erred in granting a temporary restraining order and permanent injunction against UT-Austin and in deciding that Yeo had a property or liberty interest entitled to due course of law protection, and whether the court erred in striking the NCAA’s plea for intervention.

Holding: The appeals court affirmed the trial court’s decision to strike the NCAA’s plea in intervention, because the record provided to this court did not establish the NCAA as a necessary party. The student athlete, was able to show that she was a world-class swimmer prior to enrolling into Berkley or UT-Austin, and could establish her protected interest related to her swimming career. Therefore, Yeo was entitled to due course of law protection. The university should have given Yeo notification concerning her eligibility issue and should have given her the chance to discuss the matter with the compliance officer at the university before rendering the decision that she would be deemed ineligible. “The member-institutions of the NCAA that are also government actors, such as UT-Austin, have an obligation to protect that interest in making eligibility determinations” (NCAA v. Yeo, 2003).

Reasoning: Yeo, as a world-class swimmer in Singapore had already established a protected liberty interest. The court cited the University of Texas Med. School v. Than (1995) in which the Supreme Court of Texas recognized that Than, a medical student, had a protected interest in his graduate education and was entitled due course of law protection because he would suffer “not only serious damage to his reputation but also the loss of his chosen profession as a physician.” Further, UT-Austin, as a state actor, had a responsibility to protect Yeo’s interest when making eligibility determinations. Further, the NCAA could not establish themselves as a necessary party and did not allow them to become a party in this case.
Disposition: The Court affirmed the trial court’s decision in favor of Yeo, the student athlete. (Said case was appealed to the Supreme Court of Texas and the case was reversed in 2005).

Disposition of the Appeal: The Supreme Court reversed and dismissed the case.

Reasoning of the Appeal: Yeo asserted no interests protected by Article I, Section 19 of the Texas Constitution. The case must therefore be reversed and dismissed. (Yeo was unable to show any interests protected by Article I, Section 19 of the Texas Constitution. She argued that her “reputation and future financial interests are entitled to constitutional protection under our decision in University of Texas Medical School v. Than. There we held that a medical student charged with academic dishonesty had a protected liberty interest in a graduate education. But since Than we have refused to accord a student’s interest in athletics the same protection. We decline to equate an interest in intercollegiate athletics with an interest in graduate education.”) (National Collegiate Athletic Assoc. v. Yeo, 2005).

2007

Citation: Bowers v. The National Collegiate Athletic Association, 475 F.3e 424, (U.S. App. 2007).

Key Facts: Michael Bowers was diagnosed with a learning disability that interfered with his reading and writing skills. He had an individualized education plan (IEP) that provided for him to take most of his classes in a special education setting and untimed standardized tests. Bowers was heavily recruited by colleges across the United States. Bowers submitted his information to the NCAA for review and was deemed a “nonqualifier for two primary reasons: (1) his special education courses did not satisfy the NCAA’s core course requirement; and (2) he
took an untimed SAT exam, and his application lacked documentation required to accept such untimed standardized test scores.” As a result, he was not offered an athletic scholarship and was unable to participate or practice with any Division I or II football teams. He later had to have back surgery and developed an addiction to pain killers. In the summer of 2002, he died from an apparent drug overdose. Prior to his death, Bowers filed a complaint alleging that the NCAA violated Titles II and III of the American with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. His motion for preliminary injunction was denied and he amended his complaint to include Temple, The University of Iowa, and the American International College and added a discrimination claim under the New Jersey Law against Discrimination. He later filed a second amended complaint to clarify that he sought non-injunctive relief against Temple and the University of Iowa under the ADA and Rehabilitation Act.

Issue: Whether the athlete was a “qualified individual” for ADA and 29 U.S.C.S. Section 794(a) purposes at the time the discrimination occurred.

Holding: Congress acted within its Constitutional authority in abrogating sovereign immunity under Title II of the ADA. The court remanded the case.

Reasoning: Congress had validly abolished sovereign immunity under Title II of the ADA. “The district court’s summary judgment analysis was fundamentally flawed” (Bowers v. NCAA, 2007).

Disposition: The court reversed the summary judgment entered for the NCAA. (Only that portion of the order that precluded the mother from using evidence concerning her son’s drug abuse problem in stating her claim for damages was affirmed. The rest of the order was reversed.)

Key Facts: The student athlete attended a meeting in 2005 with his father, a former attorney, and a professional baseball team. The student athlete was offered $390,000.00 by the Minnesota Twins. On the advice of his father, the student athlete turned down the offer of the professional team and instead attended Oklahoma on a full scholarship. Since the student opted to attend college and receive a scholarship from OSU he would not be eligible for the draft until his junior year. He played for OSU and never received a bill from the attorney for any services. In 2008, the student athlete was sent a bill for $113,750 for legal services. The attorney sent a letter to the NCAA alleging NCAA violation of Bylaw 19.7 by Andrew Oliver, concerning his amateur status. The player was later suspended by the NCAA for having contact with the professional baseball team. As a result, the student athlete filed a claim requesting declaratory judgment and permanent injunction concerning NCAA Bylaws. The district court granted the relief requested.

Issue: Whether the student athlete should be granted declaratory relief and permanent injunction from NCAA consequences under NCAA bylaws, as a result of attorney’s actions.

Holding: The student athlete was entitled to declaratory relief and it was determined that the student athlete would suffer irreparable injury, loss, or damage if injunctive relief was not granted.

Reasoning: Without the injunctive relief, the student athlete would have suffered irreparable injury, loss, or damage. Bylaw 12.3.2, shows an exception to the no agent rule by allowing a student-athlete to retain a lawyer (not even the defendant can circumvent an individual’s right to counsel). Yet, the exception to the
rule, i.e., NCAA Bylaw 12.3.2 which allows legal counsel for student-athletes attempts to limit an attorney’s role as to that representation and, in effect, such as in the case here, puts the onus on the student-athlete. (See NCAA Bylaw 12.3.2.1)

“It allows for exploitation of the student athlete by professional and commercial enterprises”

(Oliver v. NCAA, 2009).

Disposition: The court granted a permanent injunction and declaratory relief.

2012


Key Facts: Former student athletes filed a civil complaint in the Northern District of California in July 2009 against the NCAA, the CLC, and other co-conspirators. Former athletes alleged that the NCAA had unreasonably restrained trade to commercially exploit former NCAA student athletes after leaving college. Sources of revenue from which the NCAA and its partners allegedly exploited current and former athletes include DVD sales, jersey sales, video games, and corporate advertising. The complaint further alleged that the NCAA used its bylaws to deliberately force 18-year-old college students to perpetually release their image rights for the financial benefit of the NCAA and third parties with whom it contracts. Plaintiffs argued that the NCAA accomplished student-athletes’ adherence to these bylaws by requiring all athletes to release their rights each year. This process requires athletes to sign a document titled “Student-Athlete Statement,” currently known as “Form 08-3a.” The complaint stated that Form 08-3a is a tool used by the NCAA to unconscionably obtain perpetual ownership of image rights of college athletes through consent that is “coerced and uninformed and is even signed, in some cases, by minors” (See Form 08-3a).
Issue: Whether former student athletes’ actions share a common question of law or fact and meet the standard for consolidation pursuant to Federal Rule of Civil Procedure 42.

Holding: The cases share a common question of law or fact and meet the standard for consolidation pursuant to Federal Rule of Civil Procedure 42.

Reasoning: The plaintiffs in the cases share a common question of law or fact pursuant to the Federal Rule of Civil Procedure 42 which justify a consolidation.


Key Facts: Agnew received a scholarship from Rice University to play football. His scholarship was renewed for a second year, but during his sophomore year he suffered an injury while playing football. As a result of his injuries and a coaching change his scholarship was not renewed. He appealed the decision, which was granted. The appeal allowed him to receive his scholarship for an additional year. However, he was not granted a scholarship for his senior year. As a result of Rice’s actions, he was forced to transfer to another school and pay for tuition on his own. Courtney had a similar experience with North Carolina A&T. The plaintiffs filed suit alleging that the 1-year limits to students and caps on athletic scholarships listed in the NCAA Bylaws prevent students from receiving multi-year contracts and cause them additional expenses to obtain their education. The court held that the plaintiffs failed to identify a relevant market for which relief could be granted and whether there a reasonable restraint of trade.
Issue: Whether the student athletes identified a relevant market for which relief could be granted.

Holding: The court held that student athletes failed to state a claim for which relief could be granted and failed to identify a relevant market in their complaint.

Reasoning: The plaintiffs had three opportunities to identify a relevant market in which the NCAA violated the Sherman Act, but failed to do so.

Disposition: The court affirmed the lower court’s decision and said claim was dismissed.

Data Analysis

The purpose of this qualitative research was to examine court cases involving conflicts between student athletes, the institutions of higher education they attend, and the NCAA, not including Title IX claims. The data represent 68 cases over a time period from 1953-2012. The data gleaned from the court cases were used for the purpose of determining patterns, trends, and outcomes over said time period.

The initial searches provided over 200 cases involving student athletes and/or the National Collegiate Athletic Association, or Colleges and Universities. The cases were reduced by removing any cases involving Title IX, cases involving high schools, cases that did not involve student athletes, and any other cases that the researcher was unable to locate or for which no opinions were available. The research revealed 68 cases related to key numbers and research topics and a spreadsheet in chronological order by year was developed, which included the case, citation, court presiding over the claim, the issue involved, area involved, the disposition of the case, reason for disposition, ruling in favor of, the state in which the case was litigated, dissenting opinions, and moot cases.
Number of Cases

The data revealed 68 cases of which there was one case from the 1950s, one case from the 1960s, 12 cases from the 1970s, and 16 cases in the 1980s. Litigation peaked during the 1990s, with 18 cases in that decade and began to decline in the 2000s, with 17 cases. While there have only been three cases in the 2010s, there are seven years remaining for litigation to be included in the current decade (Figure 2). The data revealed that the earlier years had no litigation involving Anti-trust and Constitutional/Civil Rights Issues, with cases increasing in the 1970s and steadily increasing though the 1990s. Since the 1990s, litigation has decreased slightly and data from the current decade will not be available until 2020.

![Number of Cases by Decade 1953-2012](image)

*Figure 2. Number of cases by decade: 1953-2012.*

The qualitative research revealed an increase in litigation in the 1970s with more cases being in favor of colleges/intercollegiate associations than students. Cases ruling in favor of
colleges and intercollegiate associations peaked during the 1980s. Cases ruling in favor of colleges and intercollegiate associations decreased slightly during the 1990s. The cases have continued to decrease since the 2000s. The amount of money produced from bowl games and T.V. appearances may have caused more litigation dealing with violations of NCAA Bylaws, of which some date back to the 1960s. It is also possible that the decrease began in the 2000s as rulings have caused revisions to the NCAA Bylaws. A review of the By-laws each year would be required to see if there was a trend between the litigation and NCAA By-law revisions.

Figure 3. Trend of rulings in favor of each party by decade.

Themes emerging from the data were issues of Constitutional/Civil Rights, Workmen’s Compensation, and Anti-trust. Under the theme of Constitutional/Civil Rights, the sub-themes that emerged were eligibility, disability, discrimination, and due process. Under the theme of
workmen’s compensation there was no sub-theme. The sub-themes of Anti-trust were the Sherman Act and Clayton Act.

**Figure 4. Themes and sub-themes of the cases.**

Sub-themes that emerged under eligibility were issues dealing with academics/GPA, transfer rule dealing with foreign students and U.S. students, and receiving benefits and/or compensation which were considered to be in violation of the intercollegiate association By-laws. Sub-themes that emerged in the disability-related cases were issues under the American with Disabilities Act under Title II and III. Sub-themes that emerged under discrimination were issues involving drug testing and learning disabilities. Sub-themes under Due Process and Civil Procedure were issues involving First Amendment, 14th Amendment and Title 42 of the U.S. Code, Section 2000d, and Title VI. There were no sub-themes under workmen’s compensation, but all issues in the grouping involved whether or not there was an employer-employee
relationship between the student athlete and the colleges/universities. Sub-themes emerging under Anti-trust were the Sherman Act and the Clayton Act.

**Number of Cases per State**

The data revealed litigation in 30 states and the District of Columbia. The state of California and the state of Washington had seven cases each. Colorado, Illinois, Pennsylvania, and Massachusetts each had four cases. Indiana, Kansas, Louisiana, Ohio, and Texas each had three cases, and Kentucky, North Carolina, and Oklahoma each had two cases. Alabama, Arizona, Florida, Georgia, Michigan, Minneapolis, Mississippi, Missouri, New Hampshire, New Jersey, New York, Oregon, Rhode Island, South Carolina, and Tennessee each had one case. Figure 5 indicates that litigation was more prevalent in the PAC-10, Southeastern, Big Ten, Big Twelve, Big East, and the Atlantic Coast Conferences than in other areas of the U.S.

Figure 6 illustrates the number of issues states faced from 1953 to 2012. Issues involving Constitutional/Civil Rights involved 50 cases, while there were 11 cases dealing with Anti-trust, four cases involving both Constitutional/Civil Rights and Anti-trust, and three cases dealing with Workmen’s Compensation.

According to the data of the 68 cases researched, 50 cases dealt with issues of Constitutional/Civil Rights, while 11 cases dealt with Anti-trust, four cases involved issues concerning both Constitutional/Civil Rights and Anti-trust, and three cases dealt with Workmen’s Compensation issues.
Figure 5. Number of cases per originating state.

Figure 6. Number of cases by issue.
The data revealed that 74% of all cases researched involved Constitutional/Civil Rights issues, with 16% involving anti-trust issues, 6% involving both anti-trust and Constitutional/Civil Rights issues, and 4% involving workmen’s compensation issues.

Appendix A (List of Cases) illustrates there were fewer cases dealing with discrimination issues related to disability. Those cases involving disability claims were found under the Americans with Disabilities Act under Title II, III, and also XI. The litigation of Butler v. NCAA (2001) concerned issues under the Americans with Disabilities Act and set a precedent for future litigation (Butler v. NCAA). Other cases fell under issues dealing with eligibility, drug testing, due process/civil procedure, Constitutional/Civil Rights issues related to First Amendment and Fourteenth Amendment, anti-trust issues involving the Sherman Act and the Clayton Act, disability issues, and discrimination. The researcher also looked at the number of cases that were considered moot. Any litigation in which the original allegations were no longer an issue was considered moot.

The sub-themes were civil procedure, civil procedure/drug testing, civil procedure/First Amendment Rights, disability considered under Americans with Disability Act, under Title VI, Title II, and Title III. Eligibility issues concerned: amateurism, recruiting, eligibility issues involving academic and general requirements, compensation, enforcement, and discrimination. The largest number of litigation claims fell under Constitutional/Civil Rights and eligibility issues. Section 2 of the NCAA By-laws: Involving the Principle of Institutional Control and Responsibilities, cites 16 principles that guide the direction of the NCAA and the responsibilities of the NCAA and its member institutions. Voluntary members of the NCAA must also abide by the NCAA rules and regulations or suffer sanctions administered by the NCAA. Case law revealed that most challenges brought against the NCAA involved By-laws in the areas of
amateurism, recruiting, eligibility involving academic and general requirements, compensation, and enforcement. While drug testing had the least amount of litigation alleging violation of Intercollegiate Associations and the Colleges and Universities drug testing program, following close behind were cases involving Workmen’s Compensation.

The data were retrieved by analyzing court cases from 1953 to 2012. The cases were revealed in chronological order to determine how the courts’ rulings have impacted case law and which cases have set a precedent for future litigation. The first case began with Nemeth v. University of Denver (1953) and ended with Agnew v. NCAA (2012). The analysis of the court cases focused on key facts and court reasoning to identify categories, patterns, and trends. Sixty years of cases revealed many categories and subcategories based on the claims and issues presented.

Issues

Workmen’s Compensation

Of the 68 cases researched, only three dealt with workmen’s compensation claims: 1953, 1963, and 1983. Nemeth v. University of Denver (1953), Van Horn v. Industrial Accident Commission and California Polytechnic College (1963), and Rensing v. University State Board of Trustees (1983). While the first two cases, both ruled in favor of the student athlete contending that there was an employee-employer relationship. The court ruled in Rensing v. University State Board of Trustees that there was never an intended employee-employer relationship and ruled in favor of the university.

The first case researched dated back to 1953. The case of Nemeth v. University of Denver involved a student athlete, Nemeth, who was injured while playing football at the University of
Denver in April of 1950. He was paid a monthly stipend of $50.00 per month and a meal ticket for keeping the tennis courts free from gravel and litter. He also received housing accommodations for cleaning the furnace and sidewalks. The court cited *Thomas v. Proctor & Gamble Mfg. Co.* (2004) and *Comstock v. Bivens* (1925) to support its decision. According to Workmen’s Compensation, Section 114,

> If an employee is doing something which, though not strictly in the line of his obligatory duty, is still doing something incidental to his work, and while doing the same is injured, the accident causing the injury may properly be held to arise out of and in the course of employment, and he will be entitled to compensation” (*University of Denver v. Nemeth*, 1953)

As a result, the appeals court affirmed the decision of the district court. The court also ruled in favor of the student athlete in *Van Horn v. Industrial Accident Commission and California Polytechnic College* (1963). This case involved the death of a student as a result of a plane crash. Although the Mustang Booster Club raised the funds to pay for his salary, the court held that the fund from which the student athlete was paid did not determine his/her employer. The court cited *State Comp. Ins. Fund v. Industrial ACC. Com* (1954) in which the court held that a special nurse of a polio patient was considered an employee of hospital although he was paid for his services by a separate entity, which received the money from the National Foundation for Infantile Paralysis. Again, in the case of the *Department of Natural Resources v. Industrial Acc. Com.* (1932), the court held that the plaintiff was an employee of the Fish and Game Commission even though he was paid by a commercial fisherman. A deputy marshal was also considered to be an employee of the City of Los Angeles even though he was paid by the county in the case of *City of Los Angeles v. Industrial Acc. Com.* (1935). An additional case, *Claremont Country Club v. Industrial Acc. Com.* (1917) also held that the caddy was an employee of the country club even though the funds he was paid from did not come directly from the country club. While in
Rensing v. Indiana State University Board of Trustees (1983), the court held that there was no intent to enter into an employee-employer contract, and as a result the student athlete was not entitled to workmen’s compensation benefits. Further, under NCAA By-laws student athletes are first and foremost students and are prohibited from receiving payments for sports or any forms of compensation. The court opinion revealed that the NCAA By-laws changed to ensure that athletes were not viewed as employees of the college. The 4-year contracts were reduced to 1 year and the wording was careful to use the term student athlete.

The research covered 68 cases of which 46 were found in favor of the NCAA and/or Colleges and Universities, while only 19 cases were found in favor of the student athletes. Three cases were found in favor of the student athlete and the NCAA and/or Colleges/Universities.

![Figure 7. Prevailing parties in court rulings: 1953-2012.](image)

Breaking down the NCAA/College section, the data revealed that the courts ruled in favor of the NCAA 26 times, with Colleges/Universities being favored 11 times, the NCAA and
Colleges being favored seven times, and the National Association of Intercollegiate being favored once.

Figure 8. Count of ruling in favor of.

It is important to look at data compiled by courts as well. The qualitative research looked at court ruling before and after McHale v. Cornell University (1985). McHale v. Cornell held that the NCAA’s application of the eligibility rule governing intercollegiate football was not considered a public function reserved exclusively for the state. While there were previous cases that held the universities and NCAA were state actors, McHale would set a precedent case for future litigation in which the NCAA would not be deemed a state actor. The research revealed that there were more cases in favor of the NCAA and/or Colleges and Universities than there were for student athletes both before and after the McHale ruling.

The data revealed more cases were ruled in favor of the NCAA/Colleges in District Court and Appeals Court than in the Supreme Court. In the District Court, the student athletes
prevailed nine times and the NCAA/Colleges prevailed 20 times. One case ruled in favor of the NCAA/Colleges and the student athlete. The research also indicated that cases held in favor of the student athletes in District Court were more likely to be reversed if they were appealed to a higher court. However, the data revealed that of 10 cases appealed to the Supreme Court, six were held in favor of the NCAA and/or Colleges/Universities and four were held in favor of the student athlete.

![Court Rulings by Court Type](image)

*Figure 9. Court rulings by court type.*

The eligibility issues dealt with academic grades, transfer-rules of the NCAA By-laws, compensation or benefits received by student athletes, drug testing policy, and other violations of
the NCAA By-laws. In addition, several of the eligibility issues had to first deal with a civil procedure issue before proceeding further.

Under the NCAA By-laws, member institutions must adhere to the NCAA eligibility guidelines and must notify the NCAA of any violations; all student athletes of member institutions are subject to the rules and regulations of the NCAA. The question in many eligibility issues was whether the NCAA’s actions deemed the NCAA to be a state actor. In the case of Buckton v. NCAA (1973), the court found that state action was present, and that the foreign-student rule violated the equal protection right of the student athlete, stating that it “created an unjustifiable alienage classification” (Buckton v. NCAA, 1973). State action was determined present because approximately half of the NCAA’s membership at the time was made up of colleges, universities, and other institutions of higher learning who received state or federal funds. As a result, the foreign-student rule was declared to constitute a denial of equal protection under the Fourteenth Amendment of the constitution and as such the NCAA was refrained from any future enforcement of the foreign-student rule. However, McCormack v. NCAA (1988) deemed the NCAA was not a state actor as defined by the Constitutional/Civil Rights Act and did not act under color of law (McCormack v. National Collegiate Athletic Association, 1988). Likewise, in Parish v. NCAA (1975) the court cited Rendell-Baker, et al. v. Kohn, et al. (1982) and Blum v. Yaretsky (1982) as the reason they held that the NCAA was not a state agency and therefore did not act under the color of law. The decisions of Rendell-Baker and Blum developed a three-prong test for determining state action. The case of Karmanos v. Baker (1987) was dismissed because the complaint failed to state a constitutional infringement cognizable under federal law; the student athlete failed to demonstrate that the defendant acted under color of state law. The courts have ruled that the NCAA is considered a state actor in
earlier cases, while more current cases have determined that the NCAA is not a state actor and as a private organization is “cloaked with immunity.”

The case of *Molina v. Christensen and Wichita State University*, (2001) questioned whether the recreational use exception was unconstitutional and in violation of the Equal Protection Clause of the Constitution of the United States. The court determined that there was no doubt that the injury to the player was deliberate and unjustifiable. However, the student athlete alleged simple negligence only, and did not show wanton or gross negligence. The courts determined that absent gross and wanton negligence the university was immune from liability under the recreational use exception for events that took place in the stadium under the Kansas Tort Claim Act. The case cited *Barrett v. U.S.D.* (2001) in support of their ruling. The purpose of the act is to provide immunity to a governmental entity when the claims arise out of and are a result of ordinary negligence. This encourages governmental entities to build recreational facilities without being able to fund them due to litigation costs. The public can enjoy recreational activities without having to pay a high cost and can enjoy the facilities with no cost. This case reveals the importance of the specific wording used in the original complaint.

The case of *Oliver v. National Collegiate Athletic Association* (2009) considered the issue of attorney-client privileged information in determining eligibility. In this case, the student athlete attended a meeting with his father and attorney. During the meeting, Oliver was offered $390,000.00 to play baseball for the Minnesota Twins. Oliver turned down their offer on the advice of his father and instead attended Oklahoma on a full scholarship. He never received a bill for the attorney’s services until 2008, at which time he received a bill for $113,750 for legal services, after terminating him and hiring a different firm. A dispute arose concerning the bill and the attorney sent a letter to the NCAA. In the attorney’s letter information was relayed
concerning a meeting that involved the student athlete and a representative of the Minnesota Twins. As a result, the student athlete was in violation of By-law 19.7, which related to his amateur status. By-law 12.3.2 shows an exception to the no agent rule by allowing a student-athlete to retain a lawyer (not even the defendant can circumvent an individual’s right to counsel). Yet, the exception to the rule, i.e., NCAA Bylaw 12.3.2, which allows legal counsel for student-athletes, attempts to limit an attorney’s role as to that representation and, in effect, such as in the case here, puts the onus on the student-athlete. (*Oliver v. NCAA*, 2009)

Only the client can waive the attorney-client privilege. A college/university or the NCAA cannot use methods to obtain evidence that violates a person’s legal right. Therefore, the court granted a permanent injunction and declaratory relief in favor of the student athlete.

Three cases the researcher reviewed dealt with the issue of impermissible payments or other benefits to student athletes. Minor amounts of money and something as simple as staying over at someone’s cabin can be deemed a violation according to the NCAA By-laws. A consequence, of which, results in the student athlete being ineligible to participate in intercollegiate sports.

In the case of *NCAA v. Gillard* (1977), the student athlete contended that he knew free merchandise was not allowed under the NCAA rules; however, he did not know that discounts were not permitted. (He received a 1/3 discount on his clothing purchase.) In addition he contended that he was not a member of the NCAA and that he was not afforded his due process rights nor was he given an opportunity to be heard. The court deemed that Gillard had the opportunity for a professional career in football and that this right was protected under the Mississippi Constitution. Evidence showed that neither Mississippi State nor Gillard exhausted their administrative remedies before filing a case in the lower court and further, that this information was not disclosed to the court. The court further concluded that the football player...
had been deprived of his due process right under the facts and circumstances presented. However, the court did not review similar cases involving due process and student athletes. The court held that the football player’s right to engage in intercollegiate football was not a property right that fell within the due process clause of either the Mississippi or the U.S. Constitution (14th Amendment). Although the university, and not the football player, was the member of the NCAA, the court concluded that the university had the opportunity to request an appeal in the rule violation in order to protect the student athlete’s interests. Because the case was disposed of on constitutional grounds, the court did not consider the appellants’ failure to exhaust administrative remedies. The court reversed the decision of the lower court and dismissed the case.

A second case involved a student from a low socioeconomic family who was in need of additional funds to help pay for the cost of his education. As a result, Wiley applied for a Basic Education Opportunity Grant which awarded him $1,400.00 for the 1975-1976 school year. He also received an athletic scholarship from the university in the amount of $2,621.00. The NCAA rules state as follows:

The NCAA Constitution, Art. 3, Sections 1(f)(2), provided at the time the dispute arose: In the event (financial aid awarded by an institution) exceeds commonly accepted educational expenses (i.e., tuition and fees; room and board; required courses related supplies and books, and incidental expenses not in excess of fifteen dollars per month) during the undergraduate career of the recipient, it shall be considered “pay” for participation in intercollegiate athletics. (Wiley v. National Collegiate Athletic Association, 1979)

Wiley’s combined total from both scholarships exceeded the amount a student athlete could receive under the NCAA rules and regulations. The excess he received totaled $1,265.00 and was considered pay; therefore, Wiley was declared ineligible to play sports at the university. The student athlete filed suit against the NCAA alleging that the defendant’s rules did not afford
Wiley the same opportunity to receive financial aid available to other non-athletic students. The student athlete (appellee) filed a case in the U.S. Dist. Court, Dist. of Kansas. The court ruled that the rules of the NCAA (appellant) were unconstitutional because it violated the plaintiff’s equal protection law. The NCAA appealed and the court ruled that since the plaintiff, at the time of the case, had already graduated from college, and had taken full advantage of his financial opportunities, the “federal question jurisdiction did not require the court take a case where the issues involved were insubstantial or frivolous” (Wiley v. National Collegiate Athletic Association, 1979). The case was dismissed. It is noted that after this case the NCAA exempted BOEG from its computation involving student athletes.

Another case, Regents of the University of Minnesota et al. v. National Collegiate Athletic Association (1977), involved three student athletes who were deemed ineligible by the NCAA for the following reasons: (1) Michael Thompson admitted he had sold his two complimentary season tickets, with a face value of $78, for a price of $180. An investigation revealed that Thompson had previously signed a statement that complimentary ticket sales were a violation of Big Ten Conference rules and that the sanction for violation was ineligibility. (2) David Winey admitted he accepted two invitations to a Wisconsin cabin, which included lodging, meals, and entertainment. (3) Philip Saunders accompanied an assistant coach to the Minneapolis office and there placed between two and six telephone calls to his parents and a friend on a WATS line. He was also permitted to use the automobile of Coach Wilson’s mother-in-law without charge and cost-free overnight lodging at Gustavus Adolphus College while attending the head basketball coach’s summer basketball camp (Regents of the University of Minnesota et al. v. NCAA, 1977). The specific eligibility standards are set out in NCAA constitution 3-1-(a)-(3), 3-1-(g)-(6), and 3-4-(a), all of which concern impermissible payments
and other benefits to student athletes. The university did not demonstrate a substantial likelihood of success on the merits because it could have declared the students ineligible consistent with any constitutional duty owed to them without violating their due process rights, and thus the unconstitutional interference claims necessarily failed. It should be noted that Judge Bright dissented because he felt that the NCAA required the University of Minnesota to enforce rules that inflicted punishment upon the student athletes that were “grossly disproportionate to the offense committed” by student athletes. However, the court lacked the power to redress the issue unless there was a constitutional violation. While the university could drop its membership with the NCAA, it would not be feasible for them to do so, based upon the financial benefits that such membership provides to the NCAA’s member institution (Reg. of Univ. of Minn. et al. v. NCAA, 1977).

Litigation involving eligibility claims dealt with transfer rules, impermissible payments and benefits to players, foreign student rules, and grades related to learning disabilities. Student athletes can request appeals and waivers prior to filing a claim against the parties involved. Granting waivers would save time and money for all parties involved. However, the data revealed a possible power struggle between the NCAA and the colleges and in some cases, between the colleges themselves. Litigation can take years to dispose of and as a result a student athlete’s case can be considered moot since the student athlete would be able to complete his/her 4 years of eligibility within the 5 years allowed. In the case of Cole v. NCAA (2000), the student had a claim against the NCAA because they deemed him ineligible to participate in sports, based upon a learning disability. New evidence gained during a deposition prompted the NCAA to advise Cole to request another waiver. Cole made his request and the waiver was granted, giving Cole a partial qualifier which enabled him to complete his 4 years of eligibility. As a result, his
case was dismissed as moot. His case was no longer viable; however, it would have been viable if he had not been granted a waiver. It is important for athletic departments to have a clear understanding of how the courts have ruled in cases involving eligibility issues.

**Civil Procedure/Due Process**

Yeo was a world class swimmer who complied with the NCAA 1-year transfer rule and sat out for the 2000-2001 season after her sophomore year when her coach took a position with UT-Austin, and she transferred to UT-Austin as well. Later it was determined that she was ineligible to swim for UT-Austin, but Yeo was never notified of the problem and was never given an opportunity to discuss the matter with the compliance officer at UT-Austin. As a result, Yeo filed a claim against UT-Austin contending that the university violated her due process rights under Texas Constitution, Article I, Section 19. The student athlete was able to show that she was a world-class swimmer prior to enrolling into Berkley or UT-Austin, and could establish her protected interest related to her swimming career. Therefore, Yeo was entitled to due course of law protection. The university should have given Yeo notification concerning her eligibility issue and should have given her the chance to discuss the matter with the compliance officer at the university before rendering the decision that she would be deemed ineligible. “The member-institutions of the NCAA that are also government actors, such as UT-Austin, have an obligation to protect that interest in making eligibility determinations” (*National Collegiate Athletic Association v. Yeo*, 2003). Yeo, as a world-class swimmer in Singapore, had already established a protected liberty interest. The court cited the *University of Texas Med. School v. Than* (1995) in which the Supreme Court of Texas recognized that Than, a medical student, had a protected interest in his graduate education and was entitled to due course of law protection because he
would suffer “not only serious damage to his reputation but also the loss of his chosen profession as a physician” (*National Collegiate Athletic Association v. Yeo*, 2003). The court ruled in favor of the student athlete, the case was appealed, and the Supreme Court reversed and dismissed the case. The court declined to equate an interest in intercollegiate athletics with an interest in graduate education.

Six cases researched involved academic ineligibility as a result of a disability. The cases were considered a violation under the Americans with Disabilities Act, Title II, III, and Title VI. *Knapp v. Northwestern* (1996) was considered a violation of the 504 Rehabilitation Act.

The NCAA declared Butler academically ineligible to play football or to receive his scholarship from the University of Washington. Butler filed a claim against the NCAA in federal district court stating that the “NCAA’s academic eligibility criteria violated Title III of the Americans with Disabilities Act (ADA)” (*Butler v. National Collegiate Athletic Association*, 2001). A temporary restraining order was issued and after a hearing, the court issued a preliminary injunction. As a result, the NCAA could not enforce its ineligibility rule against Butler. However, before trial, the NCAA entered into a consent decree with the U.S. Department of Justice. Under said decree the NCAA agreed to abide by the requirements of the ADA. Upon the agreement of both parties, the district court dismissed the claim. Butler requested that the NCAA pay attorney’s fees provided under 42 U.S.C. Section 12205, which allows reasonable attorney’s fees to be awarded to the prevailing party in the proceeding. Thus, the judge had the authority to grant reasonable attorney’s fees.

Another case involving both a disability and an eligibility issue was *Cole v. National Collegiate Athletic Association*, (2000). Cole was diagnosed with a learning disability in second grade. He graduated from high school with a GPA of 2.367 (core courses of 2.075) and an ACT
composite score of 14. Based on the NCAA eligibility rules, his scores were well below the sliding scale and therefore he was deemed ineligible to participate in intercollegiate sports at the Division I level. The student athlete then submitted a request for a waiver based on his learning disability. His request was denied and his father filed suit on his behalf, claiming that the NCAA had violated Title III of the Americans with Disabilities Act. After depositions were taken and new evidence was revealed the NCAA approached Cole and suggested he resubmit his request for partial waiver on the grounds that there was new evidence. The NCAA granted a partial waiver allowing him to practice with the team and receive his scholarship but still declared him ineligible to participate in football games or other intercollegiate athletics during his freshman year. The judge held that the student athlete’s claims were no longer viable and no meaningful relief could be granted because he would be able to compete and practice with the team during the remainder of his college eligibility. Therefore, there were no grounds for which relief could be granted and the case was dismissed as moot (Cole v. NCAA). The court dismissed Cole’s claim because the controversy must be viable in all stages of litigation, his eligibility had been restored, and the court no longer had judicial review over the matter. The student athlete would be able to compete for the remainder of his college football career, as long as he maintained his eligibility under NCAA rules.

The case of Knapp v. Northwestern Univ. (1996) questioned whether Knapp was an “otherwise qualified” individual with a disability under the terms of the Disability Act of 1973. Knapp suffered cardiac death while playing basketball, but the paramedics were able to bring him back to life. It was necessary for him to have an internal cardioverter-defibrillator implanted in his abdomen to restart his heart in the event it ever stopped again. As a result of his medical condition, the University declared him ineligible to participate in their basketball program his
senior year. While they honored his scholarship to receive his education, they felt his medical condition posed substantial harm for him to participate in athletic activities. The U.S. District Court entered a permanent injunction prohibiting the University from excluding him from playing basketball due to his medical condition and the motion for summary judgment was denied. Northwestern University appealed the court’s decision. The plaintiff had an impairment that interfered with his ability to play basketball, but did not significantly decrease his ability to obtain a satisfactory education. Further, his impairment did not substantially limit his major life activity of learning. The court held that he was not disabled according to the meaning of the Disability Act. He was not physically “otherwise qualified” because the university could show that his medical condition provided a reasonable probability that there would be substantial harm in the future. The court held that the court had to allow the university to make its own decision based on medical reliable evidence that there would be substantial harm in the future.

The research revealed that even though student athletes under a 504 plan may be cleared by their doctors to play sports, the colleges may still deem them ineligible if there is concern that the student athlete will suffer irreparable harm if allowed to continue to participate in intercollegiate sports.

Racial Discrimination

Three rules instituted by the NCAA, the 1.6 Rule and Propositions 48 and 16, have caused litigation concerning discrimination caused by academic requirements. The 1.6 rule was established in 1966 and was the first ever minimum academic standard used to determine financial aid. The rule was set to predict the success of students in their first year in college, and students had to maintain the minimum 1.6 GPA to retain their financial aid. In the case of Parish
et al. v. NCAA (1975), Parish and other basketball players challenged a decision rendered in the U.S. District Court for the Western Division of Louisiana in favor of the National Collegiate Athletic Association. The suit challenged an athletic academic eligibility rule and the constitutionality of the NCAA’s By-laws and the 1.600 rule. The court held that the NCAA was performing a traditional governmental function as supervisor and coordinator of college athletics. The National Collegiate Athletic Association (NCAA) instituted a minimum grade point average rule as a way to predict academic performance in college. Other cases have been heard on constitutional due process and equal protection grounds in which the student athlete sought to prevent the NCAA from sanctioning their college for failure to abide by the grade point average rule. With only one exception (McDonald v. NCAA, 1974), the courts have affirmed all federal courts that have considered this question. The college basketball players were not part of a suspect class. In the case of McDonald v. NCAA et al., the court held that the NCAA did not constitute state action and that an individual athlete had no constitutionally protected interest in an institution’s membership and participation in NCAA activities. The court also held that the actions of the university, a state institution, constituted state action, and the basketball players were entitled to a hearing regarding their eligibility. The court dismissed the case against the NCAA and held that the plaintiffs were entitled to a hearing regarding their eligibility. In 1986, the Division I members adopted proposition 48, which required “incoming high school athletes to have a minimum grade point average of 2.0 and a minimum 700 score on the Scholastic Aptitude Test in order to practice, play and receive an athletic scholarship.” Proposition 48 would be used to address the perception that its member schools were exploiting athletes “for their talents without concern for whether they graduated” (Cureton v. NCAA, 1999). Following the implementation of Proposition 48, graduation rates among athletes, especially among Black
athletes, increased. In 1992, eligibility rules were modified with the adoption of Proposition 16, NCAA Bylaw 14.3. Proposition 16 increased the number of required core courses to 13 and introduced an initial eligibility index or “sliding scale.” In the case of Pryor v. National Collegiate Athletic Association, (2002), the student athletes claimed that the eligibility rule had an “unjustified disparate impact on African American student athletes.” The student athletes requested a declaratory judgment under Title VI and a permanent injunction ordering the discontinuation of Proposition 16. Both parties filed for summary judgment. Proposition 16 was enacted as a way to raise academic standards for students. However, an indirect result of said rule prevented more Black students from receiving athletic scholarships than Whites. The court held the eligibility rule known as Proposition 16 was in violation of the student athletes’ rights under Title VI of the U.S. Constitution. There were equally effective methods for determining eligibility other than Proposition 16. The court held that Proposition 16 was illegal and that the NCAA was “permanently enjoined from continued operation and implementation of Proposition 16” (Cureton v. NCAA, 1999). The case was appealed and there the court ruled that the student athletes failed to include the fund the NCAA had control over in its lawsuit and the NCAA did not exercise control over its member institutions, which did receive financial assistance for their athletic programs. The court held that the plaintiffs’ claims failed because the disparate impact regulations under Title VI applied only to the specific program receiving financial assistance. Proposition 16 was again challenged in Pryor v. National Collegiate Athletic Association, (2002). In this case the courts held that the Title VI and 42 U.S.C.S., Section 1981 allegations were sufficient to withstand a motion to dismiss. The association had considered race as one of its reasons for adopting the policy and the complaint alleged that the association purposefully discriminated against Black student athletes because it knew the policy would prevent more
Black athletes from ever receiving athletic scholarship aid. The ADA and the Rehabilitation Act claims were properly dismissed because the student athlete lacked standing given the fact that a year of eligibility could be restored. The association could not avoid Section 1981 liability simply because the condition of not meeting academic standards was not satisfied, if that condition was an alleged product of purposeful discrimination. The case was remanded to court for further proceedings.

The courts have consistently ruled in favor of the student athlete in cases where student athletes are considered disabled according to its definition provided by the Americans with Disabilities Act and are deemed ineligible as a result of his/her disability. While the NCAA is not considered a state actor, the courts have ruled that the NCAA is not immune from issues of disability and discrimination under the ADA and U.S. Constitution.

**Drug Testing**

In the cases of *Univ. of Colorado v. David Derdeyn* (1993) and *Hill v. NCAA* (1990), the courts ruled in favor of the student athletes, while in the cases of *Bally v. Northeastern University* (1989) and *Brennen v. Board of Trustees of Louisiana Systems* (1997), the court ruled in favor of the NCAA.

David Brennen challenged the drug testing policy of the NCAA stating that it was flawed and as a result he was deemed ineligible to participate in college sports for 1 year. The court held that there was no violation of a privacy interest because the student had a diminished expectation of privacy. Although the urine test might be considered an invasion of privacy, the court held that it was reasonable and that student athletes could expect a diminished right of privacy. The significant interest by the university board to reduce incidents of drug abuse outweighed the
relatively small compromise of privacy under the circumstances. The court ruled in favor of the NCAA. In *Bally v. NCAA* (1989), the court ruled in favor of Bally because the student athlete could not show an individualized threat nor a threat of serious harm, only that he was excluded from participating in intercollegiate sports. In the cases of the *Univ. of Colorado v. David Derdeyn* (1993) and *Hill v. NCAA* (1990), the courts ruled in favor of the student athletes. The Court held that the drug testing of student athletes violated both the U.S. Constitution and the Colorado Constitution (Fourth Amendment of the U.S. Constitution and Article II, Section 7 of the Colorado Constitution), because the university did not obtain the student athlete’s consent form voluntarily for the university’s drug testing program. Again, in the case of *Hill v. NCAA* (1990) the court held that the drug testing program violated the students’ state constitutional right to privacy under the California Constitution because there were less offensive alternatives that could be used.

In the case of the *University of Colorado v. David Derdeyn* (1993), the court held that the university’s drug-testing program was unconstitutional under U.S. Const. Amendment IV and the Colo. Constitution, Art. II, Section 7. The court held that the student athletes did not have a lower expectation of privacy and that the program was significantly intrusive and the consents were not voluntarily given. The court ruled in favor of the student athletes. However, Chief Justice Rovira dissented stating,

> The suspicionless drug testing of intercollegiate student athletes is a reasonable search under the Fourth Amendment of the U.S. Constitution and article II, Section 7 of the Colorado Constitution. I would also conclude that CU may validly condition student athletes’ participation in intercollegiate athletics on a knowing and voluntary consent to the drug-testing program. Accordingly, I would reverse the judgment of the court of appeals. (*University of Colorado v. David Derdeyn*, 1993)

The NCAA cannot enforce rules and regulations that would discriminate against a student, such as a student with a learning disability as described under the ADA, or drug testing
policies that infringe upon their rights. Therefore, additional training for athletic departments and all personnel involved with student athletes should be conducted concerning any laws, such as the Americans with Disabilities Act that might cause the college or university to violate a constitutional or civil right of the student athlete.

Anti-trust

The main objective of the Sherman Act was to prevent “restraints of free competition in business and commercial transactions, which tended to restrict production, raise prices, or otherwise control the market to the detriment for the consumers of goods and services.” The goals of the anti-trust laws are as follows: Prevent collision between competitors (Section One of the Act) and prevent monopolistic and oligopolistic market structures (Section Two of the Act).

Under Section One, in order to establish a claim the plaintiff must demonstrate the following:

1. There was a contract, combination or conspiracy.
2. The agreement made unreasonably restrained trade under the per se rule of illegality or a rule of reason analysis
3. The restraint affected interstate commerce.

Under Section Two, plaintiffs must show the following:

1. The defendant poses monopoly power in the relevant market.
2. The defendant willfully acquired or maintained its monopoly through exclusionary conduct.
3. The defendant caused antitrust injury.

Most are considered horizontal restraints that would be deemed illegal under the per se rule, but due to the unique structure of the NCAA are being reviewed using the rule of reason
analysis. The per se rule is a judicially created principle of anti-trust law that a trade practice violates the Sherman Act if the practice is a restraint of trade, regardless of whether it actually harms anyone. Most cases can prove horizontal restraints, proving the agreements produced adverse, anticompetitive effects. However, as in *Tanaka* (2001), plaintiffs have trouble identifying the relevant marketplace. The Anti-trust cases revealed 15 cases involving Anti-trust issues. Of those, five ruled in favor of the NCAA, eight ruled in favor of the student athlete, and two ruled in favor of both the college and the NCAA. In *Banks v. NCAA* (1992), Banks alleged that the defendant’s no-draft and no-agent rules, which terminated his eligibility to participate in college sports, constituted an illegal restraint on trade in violation of 15 U.S. C.S. Section 1. The court concluded that Banks had no standing to bring the suit because his ineligibility to participate in college sports prevented him from having a personal stake in whether the NCAA continued to enforce its rules. The plaintiff student athlete could not identify a relevant market. The student athlete failed to state a claim upon which relief could be granted, and therefore the case was dismissed. The Sherman Act was designed to rectify injuries caused by diminished competition. The court held that there was no cause of action.

*NCAA v. Board of Regents of Oklahoma, et al.* (1994) was a landmark case that was eventually heard by the U.S. Supreme Court. The question at issue was whether the NCAA’s control over networks to air football games and how many games a college or university could televise constituted violation of the Sherman Act. The U.S. Supreme Court ruled that the NCAA’s ability to raise and lower constituted horizontal trade. As a result, the NCAA settled the case out of court; however, in the case of *Bloom v. National Collegiate Athletic Association* (2004), the court ruled in favor of the NCAA. Bloom was recruited to play football at the University of Colorado. Prior to enrolling in the university Bloom had competed in the Olympics.
and Professional World Cup Skiing events. Bloom appeared on MTV, and thereafter was given several opportunities to earn money for paid entertainment. He also endorsed certain ski equipment and modeled clothing for Tommy Hilfiger. He contended that his acting opportunities came from his good looks and not his athletic ability, but had concerns his endorsements might deem him ineligible to play football at the University. His request for a waiver was denied. Bloom filed a claim against the NCAA seeking declaratory and injunctive relief. While he was considered a third-party beneficiary to NCAA By-laws he was not entitled to injunctive relief under the six part test of Rathke v Macfarlane (1982). Bloom contended that he was in compliance with NCAA Bylaw 12.1.2, which states that “[a] professional athlete in one sport may represent a member institution in a different sport.” However, the NCAA By-laws prohibit every student-athlete from receiving money for advertisements and endorsements. All other By-laws have sport specific qualifiers; however, the endorsements and media appearance By-laws do not contain any such qualifier. Bloom was unable to show that the NCAA was arbitrarily applying its rules. Therefore, the district court ruled in favor of the NCAA. The case was appealed and the appeals court affirmed the trial court’s ruling, denying Bloom injunctive relief, because Bloom failed to demonstrate a reasonable probability of success on the merits.

In Re: NCAA 1A Walk on Litigation (2005), walk-on football players filed a claim against the NCAA alleging anti-trust violations under the Sherman Act. The players alleged that the NCAA limited the number of scholarships of its larger schools to 85 per school and was an unlawful horizontal restraint of trade that violates Section 1 of the Sherman Act, 15 U.S.C. §1, and is a monopolization of the college football market in violation of Section 2 of the Sherman Act, 15 U.S.C. §2. The court cited the following cases: Board of Regents of Univ. of California v. Bakke (1978) and U.S. v. Brown University (1997) to support that payment of tuition for
educational services would constitute commerce. *Metro. Intercollegiate Basketball Association v. NCAA* (2004) and *Law v. NCAA* (1998) held that NCAA rules and regulations implicate trade or commerce. The court determined that walk-on football students have alleged sufficient facts that should allow them to demonstrate antitrust injury. The court denied the NCAA’s motion for judgment. (Note: a Motion to Modify Scheduling Order was granted, an agreement was reached by the parties, and the case was dismissed in May of 2007).

The final case of 2012, *Agnew v. NCCA*, dealt with Anti-trust issues. Joseph Agnew alleged that the association’s cap on the number of scholarships given per team was in violation of the Sherman Act. Further, the association prevented them from obtaining scholarships that covered the entire cost of their college education. The court held that the former player’s complaint did not identify a relevant commercial market and dismissed the case.

Most cases can prove horizontal restraints, proving the agreements produced adverse, anticompetitive effects. However, student athletes have trouble identifying the relevant marketplace. As a result, there is no claim for which relief can be granted under anti-trust claims. While the NCAA can and has been found in violation of Anti-trust law, the NCAA is structured in such a way that very few cases meet the relevant market criteria. Anti-trust claims that do meet the anti-trust criteria have been settled out of court (*White et al. v. NCAA*, 2008; *Butler v. NCAA*, 2001; *Walk on Players Litigation*, 2008). It would appear that the cases are settled out of court as a way to avoid a ruling that would set a precedent for future litigation. As a result, the claims are dismissed and there is no case law to set a precedent for future claims.

Reviewing the judges’ opinions revealed 7 of the 68 cases had dissenting opinions by at least one judge, with some having two dissenting judges. Of the 68 cases, 89.7% had no
dissenting opinions. This is a reminder to us that the cases are based on an interpretation by judges who sometimes find themselves in a disagreement with the majority.

Litigation in which the original allegations were no longer an issue was considered moot. Student athletes who were able to fulfill their 4 years of eligibility with the 5-year period were considered moot and were dismissed. Therefore, even if a student athlete initially started off with a viable claim, but was able to complete 4 years of eligibility within the 5 years, the claim would be considered moot. The cases can last for several years and by the time the case comes to trial the plaintiff’s claim can become moot and no longer an issue for which a remedy can be administered.
CHAPTER 5
SUMMARY, COMMENTS, AND CONCLUSIONS

The purpose of this qualitative research was to examine court cases involving conflicts between student athletes, the institutions of higher education they attend, and intercollegiate associations, not including Title IX. Through this research, fact patterns, outcomes, and court case trends were determined. In addition, research provided guiding principles for athletic departments as well as parents and student athletes. The research covered the time period from 1953-2012, which provided an ample collection of court cases to establish patterns, trends, and outcomes. The researcher briefed 68 court cases to answer the research questions.

This chapter includes a research summary as it relates to the research questions, a conclusion based on the analysis of the court cases, and recommendations for future studies.

Summary

This research was guided by the following research questions:

1. What are the issues in federal and state cases concerning the NCAA, its member institutions, and student athletes, not including Title IX cases?

The research conducted identified the issues addressed by the courts as Constitutional/Civil Rights, anti-trust, and workmen’s compensation. The claims brought forth from these issues were eligibility, civil procedure/due process, discrimination, disability, employee-employer relationships, the Sherman Act, and the Clayton Act. Of course, these can be further broken down to reveal sub-themes. Sub-themes emerging under eligibility were issues
dealing with academics/GPA, transfer rule dealing with foreign students and U.S. students, and receiving benefits and/or compensation which were considered to be in violation of the intercollegiate associations By-laws. Sub-themes under civil procedure were 1st Amendment, 14th Amendment, Title II (Equal Rights), Title III (Equal Access), and Title VI (Prevents discrimination by government agencies that receive federal funds) under the U.S. Constitution. Sub-themes emerging under disability were issues under the Americans with Disabilities Act and Title II and III. Sub-themes emerging under discrimination were issues involving drug testing and learning disabilities. There were overlapping areas that involved eligibility and civil procedure. No sub themes emerged under workmen’s compensation, but all issues involved whether or not there was an employer-employee relationship between the colleges/universities. Sub-themes emerging under Anti-trust involved the Sherman Act and the Clayton Act.

The research revealed 68 cases, of which 19 cases were held in favor of the student athletes and 46 were held in favor of the NCAA and/or colleges/universities, three cases dealt with Constitutional/Civil Rights and anti-trust, and three cases dealt with issues concerning workmen’s compensation. Fifty cases involved Constitutional/Civil Rights issues, while 11 cases involved anti-trust issues, four cases involved both Constitutional/Civil Rights and anti-trust issues, and only three cases involved Workmen’s Compensation Claims

2. What are the outcomes in federal and state cases concerning the NCAA, its member institutions, and student athletes?

The cases briefed revealed that the courts support the National Collegiate Association more often than the student athletes. The data reveal 46 cases in favor of the NCAA and colleges and universities with only 19 cases in favor of the student athlete, and three in favor of both. Drilling down further the data revealed the court ruled in favor of the NCAA 26 times, with
The research also revealed that litigation is more prevalent in the conference areas.

The data also revealed the following:

Although a doctor may release a student to play sports, if the NCAA and/or college can show that a student athlete is not physically “otherwise qualified” to play sports and there is a reasonable probability of substantial future harm to the student as a result of a medical condition, said student may be deemed ineligible to play sports (Knapp v. Northwestern, 1996).

Colleges and Universities have the authority to drug test students; however, drug testing policies can be in violation of students’ constitutional right to privacy if less offensive alternatives are possible (Hill v. NCAA, 1990).

A college/university or the NCAA cannot use methods to obtain evidence that violates a person’s legal rights (Oliver v. NCAA, 1979).

Notice given by the NCAA to the university advising them of the opportunity to appeal satisfies the due process standard. Colleges and universities are responsible to the student athletes (Justice v. NCAA, 1983; Hawkins v. NCAA, 1987).

3. What are the trends in federal and state cases concerning the NCAA, its member institutions, and student athletes?
The research revealed that the NCAA is cloaked with immunity because they are a private organization and are not considered to be a state actor. The NCAA reiterates that it is a private organization with the purpose of promoting amateurism and education. As a result, the trends of the courts have been to grant the NCAA immunity—an immunity that is not afforded to the colleges and universities.

Litigation involving Rule 1.6 led to Proposition 48, which led to a revision that resulted in Proposition 16. While the intended goal of each rule was to improve the graduation rate of athletes, it inadvertently discriminated against Black athletes. Likewise, in the cases of *Wiley v. National Collegiate Athletic Association* (1978), the student athlete was deemed ineligible when his Basic Education Opportunity Grant (BEOG), when combined with his athletic scholarship, exceeded the computation amount allowed under NCAA By-laws. Wiley contended that he should have the same opportunity to receive financial aid available to non-athletic students and that the By-law involving the BEOG violated the equal protection law. However, because he had graduated from college and had taken full advantage of his financial opportunities, the case was dismissed. The NCAA changed the NCAA By-laws to exempt the BEOG from its computation in determining eligibility. The NCAA also changed their By-laws after the *Buckton v. NCAA* (1973) case, in which the foreign transfer rule was revised. Student athletes were entitled to workmen’s compensation benefits in *Univ. of Denver v. Nemeth* (1953) and *Van Horn v. NCAA*, et al. (1963) because student athletes were able to show that the student was employed in the activity at the time of his injury. Further, the fund from which the student athlete was paid did not determine his employer. However, the NCAA changed the wording of the NCAA By-laws to ensure that student athletes were not considered an employee of the colleges and universities and as a result were not entitled to workmen’s compensation benefits. The By-laws
further stated that student athletes who received pay would be deemed ineligible to participate in intercollegiate sports. This research revealed that the NCAA continues to revise its By-laws as a means to avoid future litigation which might set a precedent against the NCAA.

NCAA By-law 14.3.3.1 allows student athletes 5 years to complete their 4 years of eligibility. In the case of Matthews v. NCAA (2001), Cole v. National Collegiate Athletic Association (2000), National Collegiate Athletic Association and Texas Tech v. Jones (1998), and Graham v. NCAA (1986), either waivers were granted or students were able to complete their eligibility within the 5-year timeframe and the case became moot. Issuing the 5-year eligibility rule could have been a way to ensure that students graduated or was a way to ensure that cases would become moot during the litigation and as a result the cases would be dismissed. While this can be a benefit to some athletes, it can also deem their cases moot and without merit. Cases that would otherwise have merit are dismissed because he/she have successfully completed school and completed his/her 4 years of eligibility. As a result, transfer students who have to sit out a year and file claims will have their case dismissed because their claim will no longer be viable. (A claim must be viable in all stages of the case).

Although a doctor may release a student to play sports, if the NCAA and/or college can show that a student athlete is not physically “otherwise qualified” to play sports and there is a reasonable probability of substantial future harm to the student as a result of a medical condition, the student may be deemed ineligible to play sports (Knapp v. Northwestern, 1996).

College Athletic Conf. (1983), and Hall v. National Collegiate Athletic Ass'n (1997) also address protected interest. Hall held that there were no protected interests in an athletic scholarship, because the scholarship does not prevent a student from pursing their college education. It appears that the court does not intervene in the voluntary association unless it refuses to follow its own rules or violates statutory law.

The research revealed that the NCAA is not exempt from scrutiny under the Sherman Act. Plaintiffs are able to meet the first three components of Rule of Reason analysis and can show horizontal restraints and that the agreements in question produced adverse, anticompetitive effects. However, student athletes have trouble identifying the relevant marketplace. As a result, there is no claim for which relief can be granted under anti-trust claims. While the NCAA can and has been found in violation of Anti-trust law, the NCAA is structured in such a way that very few cases meet the relevant market criteria.

Litigation in which the original allegations were no longer an issue was considered moot. Student athletes who were able to fulfill their 4 years of eligibility within the 5-year period were considered moot and were dismissed. Therefore, even if a student athlete initially started off with a viable claim, but was able to complete their 4 years of eligibility within the 5 years, the claim would be considered moot. The cases can last for several years and by the time the case comes to trial the plaintiff’s claim can become moot and no longer an issue for which a remedy can be administered.

The courts have consistently ruled in favor of the student athlete in cases where student athletes are considered disabled according to the definition of the Americans with Disabilities Act and are deemed ineligible as a result of his/her disability. While the NCAA is not considered a state actor, the courts have ruled that the NCAA is not immune when issues of disability and
discrimination are involved under the ADA and U.S. Constitution. As a result of *Butler v. National Collegiate Athletic Association* (2001) the NCAA agreed to abide by the Americans with Disabilities Act.

In addition, cases that may set a precedent for future litigation appear to be settled out of court. The data revealed a trend to settle cases when there is the possibility of a court ruling against the NCAA.

4. What guidelines can be discerned from cases concerning the NCAA, its member institutions, and student athletes?

The research revealed data that I feel will provide practical guidelines for administrators of the athletic departments as well as personnel who work with student athletes. It would be my suggestion to look at areas of eligibility, especially focusing on issues concerning transfer rules, academic issues involving learning disabilities, issues concerning inappropriate payments and benefits to student athletes, and waivers. These are issues that the NCAA and the colleges and universities find themselves in court over. If I were hired by a university, I would create a manual to cover the issues revealed from the research and provide extensive training for athletic departments and personnel working with student athletes. The data revealed that colleges and universities are granted immunity from simple negligence; therefore, parties must show gross and wanton negligence in order to prevail in a claim against them. However, the schools still have a responsibility to provide accurate information to student athletes to assist them as they make decisions that can impact their scholarships and eligibility.

In addition, it is very important for student athletes and their parents to receive proper training on incidents that might deem them ineligible to participate in intercollegiate sports. Student athletes are required to sign form 10-3-A stating they understand the NCAA Manual,
which consists of 444 pages. Therefore, I would develop a workshop covering the rules and regulations of the National Collegiate Athletic Association for student athletes and their parents.

Finally, reform must be initiated by college presidents and/or legislators to ensure that the NCAA is held to the same standards as High School Athletic Associations and the colleges and universities. I would develop an advisory committee to work with both parties to develop new laws or guidelines that would ensure some type of checks and balances for the NCAA.

The research gleaned from the data provided practical guidelines for athletic departments to assist them in complying with the NCAA rules and regulations and in avoiding sanctions against them as well as student athletes.

Guiding Principles

1. Student athletes are entitled to due process and a hearing under the constitution, and colleges should provide proper hearings before deeming a student ineligible to play sports. Colleges have the opportunity to protect the student’s interest by filing or requesting appeals on their behalf prior to any litigation, as to exhaust all possible remedies before filing a claim with the courts (National Collegiate Athletic Association v. Gillard, 1977).

2. Students should receive proper orientation covering the NCAA Manual and its rules and regulations because the student athlete must sign form 10-3A which states,

Before you sign this form, you should read the Summary of NCAA Regulations, or another outline or summary of NCAA legislation, provided by your director of athletics or his or her designee or read the By-laws of the NCAA Division I Manual that deal with your eligibility. You are responsible for knowing and understanding the application of all NCAA Division I By-laws related to your eligibility. If you have any questions, you should discuss them with your director of athletics or your institution’s compliance officer, or you may contact the NCAA at 317/917-6222.
Various court cases indicate that student athletes do not clearly understand the NCAA rules and regulations concerning their eligibility (National Collegiate Athletic Association v. Gillard, 1977; Gulf South Conference v. Boyd, 1979; Regents of the University of Minnesota et al. v. NCAA, 1977).

3. Academic advisors must receive proper training and have a clear understanding of their responsibilities to “advise students on academic classes, to ensure that students remain eligible to participate in sports and ensure their academic progress” (Hendricks v. Clemson Univ., 2003). The court held that the student athlete failed to show a written promise from Clemson to ensure his athletic eligibility. As a result, the student athlete could not show Clemson had a fiduciary duty to ensure his eligibility, even though the counselor stated that her responsibilities were such. Therefore, it is important for athletic academic advisors to receive proper training concerning the eligibility rules and regulations as defined in the NCAA By-laws (Hendricks v. Clemson Univ., 2003).

4. Athletic department personnel must be educated on situations that can deem them or the school liable as a result of their actions. Coaches and other school personnel may not be held liable for players’ actions unless they have observed such a behavior that would have made them aware that an athlete would be a threat or danger to others. In order for the student athlete to prevail, he/she must show evidence of gross and wanton negligence on behalf of the university/college or intercollegiate associations (Kavanaugh v. Trustees of Boston University, 2003; Molina v. Christensen and Wichita State University, 2001).

5. Anti-trust violations existed concerning the limited number of scholarships that were found to be in violation of the Sherman Act and the case was settled out of court. Cases are often
settled to avoid a case that will set a precedent for future litigation (*Butler v. NCAA*, 2001; *In re NCAA I-A Walk-On Football Players Litig.*, 2006).

6. A college/university or the NCAA cannot use methods to obtain evidence that violates a person’s legal right (*Oliver v. NCAA*, 1979).

7. A student athlete has 5 years to complete his fourth year of eligibility. In a claim where colleges, universities, and/or the NCAA’s actions cause a student to miss a year of eligibility, but the student athlete is able to graduate and complete his/her fourth year of eligibility, the courts have held that the case is considered moot. Even if there was a violation by the defendant, the student athlete would have no claim at that point for which relief could be granted (*Cole v. National Collegiate Athletic Association*, 2000; *Matthews v. National Collegiate Athletic Association*, 2001).

8. Title III of the Americans with Disabilities Act protects students from discrimination based on a disability as defined by the Americans with Disabilities Act. The NCAA and Colleges must abide by the Americans with Disabilities Act pursuant to an agreement reached in *Butler v. NCAA*, 2001.

9. Colleges and Universities are deemed to be state actors, while the NCAA is “cloaked with immunity” as a private organization and is not considered a state actor. Therefore, colleges and universities are more likely to be sued over violations involving Constitutional/Civil Rights issues concerning actions of the state (*Graham v. NCAA*, 1986; *Howard v. NCAA*, 1975; *McCormack v. National Collegiate Athletic Assoc.*, 1998; *McHale v. Cornell University and the NCAA*, 1985).
10. Colleges and universities have the authority to drug test students; however, drug testing policies can be in violation of students’ constitutional right to privacy if less offensive alternatives are possible (Hill v. NCAA, 1990).

11. Notice given by the NCAA to the university advising them of the opportunity to appeal satisfies the due process standard. Colleges and universities are responsible to the student athletes (Hawkins v. National Collegiate Athletic Assoc., 1987 Justice v. NCAA, 1983).

12. Partial-qualifiers granted by the NCAA can render a case moot. As a result, a student athlete may not be able to participate in intercollegiate games his/her freshman year, but can complete their 4-years of eligibility within the 5 years allowed (Cole v. National Collegiate Athletic Assoc., 2000).

13. Limiting scholarships or placing salary caps on a select group of people violates the Sherman Act. While most cases fail to show a relevant market, those that do are often settled out of court. As a result the case will not set a precedent for future litigation (In re: NCAA I-A Walk on Football Players Litigation, 2005).

14. Bloom had to satisfy every part of the Rathke v. McFarlane (1982) test. Because he failed to satisfy the part requiring a reasonable probability of success on the merits, Bloom was not entitled to a preliminary injunction (Bloom v. National Collegiate Athletic Association., 2004). It is critical to know the new laws pertaining to Anti-trust and Constitutional/Civil Rights claims as well as the updated Rules and Regulations of the NCAA Manual.

15. While the NCAA form 10-3-A states you may use a guideline provided by colleges, etc. or you can read the manual, in the case of English v. National Collegiate Athletic Association and Tulane University of Louisiana, (1983), the student athlete read an abbreviated pamphlet that did not contain complete information concerning eligibility and transfer issues,
and as a result he was deemed ineligible. In addition, there was a dissenting opinion by Judge Barry who felt like English should be declared eligible. Therefore, it is important for the colleges and universities to provide extensive training to student athletes and parents to help them understand the entire 444 page manual as it relates to their eligibility (*English v. National Collegiate Athletic Association and Tulane University of Louisiana*, 1983).

**Comments and Conclusions**

The NCAA and the high school athletic associations essentially perform the same function, setting and enforcing the rules that frame high school and college athletics. However, the high school athletic associations are considered state actors, while the NCAA is granted immunity. Why should the high school associations be held to a higher standard than that of the NCAA who is earning billions of dollars each year?

The NCAA appears to be a rogue organization with power, money, and immunity. The research revealed that this perceived immunity has enabled the NCAA to escape litigation while requiring its member institutions to inflict punishment upon student athletes that is disproportionate to the offenses student athletes have committed. However, the research indicates that the NCAA has settled cases out of court as a way to avoid a ruling that would set a precedent for future litigation.

I believe there is a strong need to provide boundaries for the NCAA, as well as some type of checks and balances. This could come through some type of reform through the NCAA and its college presidents (since the college presidents are the controlling members of the NCAA) or through a legislative mandate.
Recommendations for Future Research

1. Cases should be reviewed that have been settled out of court. *White, et al. v. NCAA* (2008) was an anti-trust claim that argued that limiting student athlete grants-in-aid to tuition, room and board, and books in certain sports constituted a restriction of free trade. The case was settled by the NCAA for over $200 million to benefit student athletes through the Student-Athlete Opportunity Fund, and included $10 million to benefit former student athletes for their educational expenses. The case of *Law v. NCAA* (1998) was settled for approximately $56 million. While, *Butler v. NCAA* (2001) was a claim under the Americans with Disabilities Act, which was settled with an agreement that the NCAA would abide by the Americans with Disabilities Act. Settlements prevent the courts from making a ruling in the case, which would set a precedent for future litigation.

2. Additional key indicators should be reviewed to ensure all possible types of cases are reviewed.

3. Court cases that have been settled since 2012 should be reviewed in order to see if there are any new issues and relevant case law for future litigations.

4. Pending litigation should be reviewed, especially the ongoing litigation involving the anti-trust claims of *O'Bannon v. National Collegiate Athletic Ass 'n v. NCAA* (2010), which was consolidated into a class action law suit. While the current citations deal with admissible exhibits, consolidation of cases, etc., a final disposition of this case may set a precedent for future litigation or may be settled out of court with amendments to the NCAA By-laws.

5. A study should be conducted reviewing the NCAA manual revisions from 1953 to present, along with any case law that may have instituted said revision.
6. A study should be conducted concerning parent/student understanding of NCAA violations that can deem student athletes ineligible (i.e., discounts on clothing, etc.). *National Collegiate Athletic Association v. Gillard* (1977) revealed that student athletes may not understand ramifications of their actions.

7. A study should be conducted of students receiving scholarships--student athletes and others--to see what disparities exist between them. The research should include what each recipient is allowed or not allowed to do based on NCAA By-laws and regulations.

8. Additional research should be conducted on the topic of involuntary servitude under the Thirteenth Amendment. Under the Thirteenth Amendment, Congress was granted the power to enact laws to prohibit any conduct that results in slave-like conditions. It is possible that violations of the Thirteenth Amendment could withstand a claim against the NCAA, as a private actor, as well as those involving state actors. Under the Fourteenth Amendment, claims fail against the NCAA because they are not considered a state actor and are granted “immunity” as a private organization.
REFERENCES


Bhan v. NME Hospitals, Inc., 929 F.2d 1404 (9th Cir. 1991).


Board of Regents v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).


Cureton v. NCAA, 198 F. 3d 107, 110 (3d Cir. 1999)

Department of Natural Resources v. Industrial Acc. Com., 14 P.2d 746, 216 Cal. 434 (1932).


Hamilton Ch. of Alpha Delta Phi v. Hamilton College, 128 F.3d 59 (2d Cir. 1997).


Law v. NCAA, 134 F.3d 1010 (10th Cir. 1998).


Martin v. PGA Tour, Inc., 204 F.3d 994 (9th Cir. 2000).


Metropolitan Casualty Ins. Co. v. Huhn, 142 S.E. 121, 165 Ga. 667 (1928).


Rathke v. MacFarlane, 648 P.2d 648 (Colo. 1982).


Ridpath, B. (2002). NCAA division I athlete characteristics as indicators of academic achievement and graduation from college. Ann Arbor, MI: Pro Quest.

Rivas Tenorio v. Liga Atletica Interuniversitaris, 554 F.2d 492 (1st Cir. 1977).

Shelton v. National Collegiate Athletic Ass’n, 539 F.2d 1197 (9th Cir. 1976).


Tanaka v. University of Southern California, 252 F.3d 1059 (9th Cir. 2001).


University of Texas Med. School v. Than, 901 S.W.2d 926 (Tex. 1995).


STIPULATION-AND-AGREEMENT-OF-SETTLEMENT-BETWEEN


APPENDIX A

LIST OF CASES
<table>
<thead>
<tr>
<th>Year</th>
<th>Case Description</th>
<th>Citation</th>
<th>Court</th>
<th>Issue</th>
<th>Disposition</th>
<th>Prevailing Party</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td>1953</td>
<td><em>Univ. of Colorado vs. Nemeth</em></td>
<td>257 P.2d 423</td>
<td>Supreme Court of Colorado</td>
<td>Workmen’s Compensation</td>
<td>Affirmed - sustaining the Industrial Commission’s award of workmen’s compensation benefits to the student athlete for the injuries he suffered while playing football.</td>
<td>Student athlete</td>
<td>Colorado</td>
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<tr>
<td>1963</td>
<td><em>Van Horn vs. Industrial Accident Commission</em></td>
<td>219 Cal.App.2d 457</td>
<td>Court of Appeals California</td>
<td>Workmen’s Compensation</td>
<td>Order Annulled - rehearing denied. (The court annulled the order, and granted the widow and minor dependent children’s application for death benefits.)</td>
<td>Student athlete</td>
<td>California</td>
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<tr>
<td>1974</td>
<td><em>McDonald v. NCAA</em></td>
<td>370 F. Supp. 625</td>
<td>U.S. Dist. Court for Central Dist., California</td>
<td>Constitutional/Civil Rights</td>
<td>Court denied the Plaintiff’s request for an injunction against the NCAA. Granted an injunction against the university, in the players’ action challenging the constitutionality of an NCAA bylaw and alleging due process violations.</td>
<td>NCAA</td>
<td>California</td>
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<tr>
<td>Year</td>
<td>Case</td>
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<td>1975</td>
<td><em>Howard University v. NCAA</em></td>
<td>510 F.2d 213</td>
<td>U.S. Court of Appeals District of Columbia</td>
<td>Constitutional/Civil Rights</td>
<td>Affirmed district courts’ decision in favor of student athlete</td>
<td>Student athlete</td>
<td>Dist. of Columbia</td>
</tr>
<tr>
<td>1976</td>
<td><em>Shelton v. National Collegiate Athletic Asso.</em></td>
<td>539 F.2d 1197</td>
<td>U.S. Court of Appeals - 9th Circuit</td>
<td>Constitutional/Civil Rights</td>
<td>Reversed the order</td>
<td>NCAA</td>
<td>Oregon</td>
</tr>
<tr>
<td>1977</td>
<td><em>Regents of Univ. of Minn., et al. v. NCAA</em></td>
<td>560 F. 2d 352</td>
<td>U.S. Appeals</td>
<td>Anti-trust</td>
<td>Reversed and Dissolved</td>
<td>NCAA</td>
<td>Minnesota</td>
</tr>
<tr>
<td>1977</td>
<td><em>NCAA v. Gillard</em></td>
<td>352 So. 2d 1072</td>
<td>Supreme Court of Mississippi</td>
<td>Constitutional/Civil Rights</td>
<td>Reversed and Dismissed</td>
<td>NCAA</td>
<td>Mississippi</td>
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<tr>
<td>Year</td>
<td>Case</td>
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<td>1979</td>
<td>Gulf South Conf. V. Julian R. Boyd</td>
<td>369 So. 2d 553</td>
<td>Supreme Court of Alabama</td>
<td>Constitutional/Civil Rights</td>
<td>Affirmed. Trial court’s order in favor of student athlete.</td>
<td>Student athlete</td>
<td>Alabama</td>
</tr>
<tr>
<td>1981</td>
<td>Barile v. University of Virginia</td>
<td>2 Ohio App. 3d 233; 441 N.E.2d 608</td>
<td>Court of Appeals Ohio</td>
<td>Constitutional/Civil Rights</td>
<td>Reversed and remanded</td>
<td>Student athlete</td>
<td>Ohio</td>
</tr>
<tr>
<td>1983</td>
<td>English v. NCAA</td>
<td>439 So. 2d 1218</td>
<td>Court of Appeal - Louisiana - 4th Circuit</td>
<td>Constitutional/Civil Rights</td>
<td>Affirmed the order of the trial court and recalled, vacated, and set aside the restraining order issued by the court vest aside.</td>
<td>NCAA</td>
<td>Louisiana</td>
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<tr>
<td>Year</td>
<td>Case</td>
<td>Citation</td>
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<td>1983</td>
<td>Rensing v. Indiana State University Bd. of Trustees</td>
<td>444 N.E.2d 1170</td>
<td>Supreme Court of Indiana</td>
<td>Workmen’s Compensation</td>
<td>The court reversed the lower court’s determination that the football player was entitled to workmen’s compensation.</td>
<td>College/University</td>
<td>Indiana</td>
</tr>
<tr>
<td>1984</td>
<td>Board of Regents of Oklahoma v. National Collegiate Athletic Assoc.</td>
<td>707 F.2d 1147, 546 F. Supp. 1276</td>
<td>U.S. Court of Appeals, 10th Circuit</td>
<td>Anti-trust</td>
<td>Affirmed, upheld in U.S. Supreme Court</td>
<td>College/University</td>
<td>Oklahoma</td>
</tr>
<tr>
<td>1984</td>
<td>Arlosoroff v. NCAA</td>
<td>746 F. 2d. 1019</td>
<td>North Carolina</td>
<td>Constitutional/Civil Rights</td>
<td>Reversed and Vacated</td>
<td>NCAA</td>
<td>North Carolina</td>
</tr>
<tr>
<td>1986</td>
<td>Graham v. National Collegiate Athletic Assoc.</td>
<td>804 F.2d 953</td>
<td>U.S. Court of Civil Appeals 6th Circuit (Western Dist.- Kentucky)</td>
<td>Constitutional/Civil Rights</td>
<td>The court affirmed the district court’s judgment dismissing all claims against NCAA</td>
<td>NCAA, College/Univ.</td>
<td>Kentucky</td>
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<tr>
<td>Year</td>
<td>Case</td>
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<td>1989</td>
<td>Bally v. Northeastern University</td>
<td>532 N.E.2d 49</td>
<td>Supreme Judicial Court of Massachusetts</td>
<td>Constitutional/Civil Rights</td>
<td>Reversed</td>
<td>College/University</td>
<td>Massachusetts</td>
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<tr>
<td>Year</td>
<td>Case</td>
<td>Citation</td>
<td>Court</td>
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<td>1990</td>
<td><em>Hill v. NCAA</em></td>
<td>273 Cal. Rptr. 402</td>
<td>Court of Appeals California 6th Dist.</td>
<td>Constitutional/Civil Rights</td>
<td>Affirmed judgment in favor of Student athlete (plaintiff).</td>
<td>Student athlete</td>
<td>California</td>
</tr>
<tr>
<td>1992</td>
<td><em>Conard v. Univ. of Wash.</em></td>
<td>119 Wn.2d 519; 834 P.2d 17</td>
<td>Supreme Court of Washington</td>
<td>Constitutional/Civil Rights</td>
<td>Reversed summary judgment for the athlete, against college and affirmed for coach</td>
<td>Student athlete</td>
<td>Washington</td>
</tr>
<tr>
<td>1992</td>
<td><em>Collier v. NCAA</em></td>
<td>783 F.Supp. 1576</td>
<td>U.S. Dist. Ct. of Rhode Island</td>
<td>Constitutional/Civil Rights</td>
<td>Plaintiff’s (athlete) motion for preliminary injunction seeking to prevent the NCAA from imposing participation restrictions on the athlete was denied.</td>
<td>NCAA</td>
<td>Rhode Island</td>
</tr>
<tr>
<td>1992</td>
<td><em>Conard v. Univ. of Wash.</em></td>
<td>814 P.2d 1242</td>
<td>Court of Appeals - Washington - Div. One</td>
<td>Constitutional/Civil Rights</td>
<td>Conrad Case Dismissed, Fudzie’s case against James was dismissed, but revered the dismissal of Fudzie’s complaint against the university.</td>
<td>Student athlete, college</td>
<td>Washington</td>
</tr>
<tr>
<td>1993</td>
<td><em>Univ. of Colorado ex rel. Regents of Univ. of Colo. v. Derdeyn,</em></td>
<td>863 P.2d 929</td>
<td>Supreme Court of Colorado</td>
<td>Constitutional/Civil Rights</td>
<td>Affirmed, the drug testing policy at the university was unconstitutional.</td>
<td>Student athlete</td>
<td>Colorado</td>
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<tr>
<td>Year</td>
<td>Case</td>
<td>Citation</td>
<td>Court</td>
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<td>1996</td>
<td>Hairston v. Pacific 10 Conf.</td>
<td>101 F.3d 1315</td>
<td>U.S. Court of Appeals - 9th Circuit - Washington</td>
<td>Anti-trust</td>
<td>Court granted defendant’s motion to dismiss the complaint as to all claims except plaintiff football players’ claims under federal antitrust law and under the Washington Consumer Protection Act.</td>
<td>NCAA (Pac 10)</td>
<td>Washington</td>
</tr>
<tr>
<td>1996</td>
<td>NCAA v. Brinkworth</td>
<td>680 So. 2d 1081</td>
<td>Court of Appeals - Florida</td>
<td>Constitutional/Civil Rights</td>
<td>Temporary injunction in favor of student athlete was improvidently issued. The order was reversed and remanded.</td>
<td>NCAA</td>
<td>Florida</td>
</tr>
<tr>
<td>1997</td>
<td>Brennan v. Board of Trustees for Univ. of Louisiana Sys.</td>
<td>691 So. 2d 324</td>
<td>Court of Appeals - Louisiana</td>
<td>Constitutional/Civil Rights</td>
<td>Reversed, preliminary injunction. Ruling was in favor of college.</td>
<td>College/University</td>
<td>Louisiana</td>
</tr>
<tr>
<td>Year</td>
<td>Case</td>
<td>Citation</td>
<td>Court</td>
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<tr>
<td>1998</td>
<td>NCAA v. Jones</td>
<td>982 S.W.2d 450</td>
<td>Court of Appeals - Texas - 7th District</td>
<td>Constitutional/Civil Rights</td>
<td>The trial court’s temporary injunction has no present operative effect and is moot. Accordingly, the trial court’s temporary injunction is set aside as moot, and this appeal is dismissed.</td>
<td>NCAA</td>
<td>Texas</td>
</tr>
<tr>
<td>1999</td>
<td>Cureton v. NCAA</td>
<td>37 F. Supp. 2d 687</td>
<td>Pennsylvania</td>
<td>Constitutional/Civil Rights</td>
<td>The court denied the NCAA’s emergency motion for a stay of the amended injunction pending an appeal to the Third Circuit.</td>
<td>Student athlete</td>
<td>Pennsylvania</td>
</tr>
<tr>
<td>1999</td>
<td>Cureton v. NCAA</td>
<td>198 F.3d 107</td>
<td>U.S. Court of Appeals - 3rd Circuit</td>
<td>Constitutional/Civil Rights</td>
<td>Motion for Stay Denied</td>
<td>NCAA</td>
<td>Pennsylvania</td>
</tr>
<tr>
<td>2000</td>
<td>Cole v. NCAA</td>
<td>120 F. Supp. 2d 1060</td>
<td>U.S. Dist. Court Northern Div. - Georgia</td>
<td>Constitutional/Civil Rights</td>
<td>Motion to Dismiss, Granted to NCAA and Student athlete’s request for preliminary injunction denied-moot case.</td>
<td>NCAA</td>
<td>Georgia</td>
</tr>
<tr>
<td>2003</td>
<td>Hendricks v. Clemson Univ.</td>
<td>353 S.C. 552; 529 S.E. 2d 293; 339 S.C. 552; 529 S.E.2d 293</td>
<td>Court of Appeals South Carolina</td>
<td>Constitutional/Civil Rights</td>
<td>Reversed the decision of appellant court</td>
<td>College/University</td>
<td>South Carolina</td>
</tr>
<tr>
<td>Year</td>
<td>Case</td>
<td>Citation</td>
<td>Court</td>
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<tr>
<td>2001</td>
<td>Tanaka v. Univ. of S. Cal</td>
<td>252 F.3d 1059</td>
<td>U.S. Court of Appeals 9th Circuit</td>
<td>Anti-trust</td>
<td>Order of lower court affirmed.</td>
<td>NCAA, College</td>
<td>California</td>
</tr>
<tr>
<td>2001</td>
<td>Williams v. University of Cincinnati</td>
<td>752 N.E.2d 367</td>
<td>Court of Claims - Ohio</td>
<td>Constitutional/Civil Rights</td>
<td>Court ruled in favor of Univ. of Cincinnati</td>
<td>College/University</td>
<td>Ohio</td>
</tr>
<tr>
<td>2001</td>
<td>Molina v. Christensen</td>
<td>44 P.3d 1274</td>
<td>Court of Appeals Kansas</td>
<td>Constitutional/Civil Rights</td>
<td>Affirmed decision of lower court, pitcher and school were immune from liability.</td>
<td>Opposing student athlete/College</td>
<td>Kansas</td>
</tr>
<tr>
<td>2001</td>
<td>NCAA v. Lasege</td>
<td>53 S.W.3d 77</td>
<td>Supreme Court of Kentucky</td>
<td>Constitutional/Civil Rights</td>
<td>Motion for relief was granted and trial court’s temporary injunction was vacated.</td>
<td>NCAA</td>
<td>Kentucky</td>
</tr>
<tr>
<td>2002</td>
<td>Pryor v. National Collegiate Athletic Association</td>
<td>288 F.3d 548</td>
<td>U.S. Court of Appeals 3rd District</td>
<td>Constitutional/Civil Rights</td>
<td>Affirmed the dismissal of the ADA and Rehabilitation Act claims. Reversed the dismissal of the racial discrimination claims insofar as they rested on allegations of purposeful discrimination, not deliberate indifference.</td>
<td>NCAA, Student athlete</td>
<td>Pennsylvania</td>
</tr>
<tr>
<td>Year</td>
<td>Case</td>
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<td>2002</td>
<td><em>Shephard v. Loyola Marymount Univ.</em></td>
<td>102 Cal. App. 4th 837</td>
<td>Court of Appeal California</td>
<td>Constitutional/Civil Rights</td>
<td>Affirmed summary judgment in favor of Loyola Marymount Univ.</td>
<td>College/University</td>
<td>California</td>
</tr>
<tr>
<td>2003</td>
<td><em>NCAA v. Yeo</em></td>
<td>114 S.W.3d 584</td>
<td>Court of Appeals Texas 3rd District</td>
<td>Constitutional/Civil Rights</td>
<td>Affirmed</td>
<td>Student athlete</td>
<td>Texas</td>
</tr>
<tr>
<td>2003</td>
<td><em>Kavanagh v. Trs. of Boston Univ.</em></td>
<td>440 Mass. 195; 795 N.E.2d 1170</td>
<td>Supreme Judicial Court of Massachusetts</td>
<td>Constitutional/Civil Rights</td>
<td>Affirmed - granted motion for summary judgment in favor of defendants (Boston Univ.)</td>
<td>College/University</td>
<td>Massachusetts</td>
</tr>
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<td>2004</td>
<td><em>Bloom v. NCAA</em></td>
<td>93 P.3d 621</td>
<td>Court of Appeals - Colorado</td>
<td>Constitutional/Civil Rights</td>
<td>Affirmed district court’s judgment in favor of defendant, NCAA</td>
<td>NCAA</td>
<td>Colorado</td>
</tr>
<tr>
<td>2007</td>
<td><em>Bowers v. NCAA</em></td>
<td>475 F.3d 524</td>
<td>U.S. Dist. Court - New Jersey</td>
<td>Constitutional/Civil Rights</td>
<td>The court reversed the order of summary judgment, which had dismissed all claims, and remanded the matter to the district court</td>
<td>NCAA</td>
<td>New Jersey</td>
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<tr>
<td>Year</td>
<td>Case</td>
<td>Citation</td>
<td>Court</td>
<td>Issue</td>
<td>Disposition</td>
<td>Prevailing Party</td>
<td>State</td>
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<td>2011</td>
<td>In re NCAA Student Athlete Name (Jacobson, Wimprine, et al., v. NCAA</td>
<td>763 F. Supp. 2d 1379</td>
<td>U.S. Dist. Court for Northern Dist., California</td>
<td>Anti-trust</td>
<td>Request for Motion for centralization of actions was denied.</td>
<td>Student athlete</td>
<td>California</td>
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<tr>
<td>2012</td>
<td>Agnew v. NCAA</td>
<td>683 F.3d 328</td>
<td>U.S. Court of Appeals 7th Circuit</td>
<td>Anti-trust</td>
<td>Affirmed motion. United States District Court for the Southern District of Indiana granted a motion by college athletic association to dismiss an action that alleged that two of the association’s By-laws had an anticompetitive effect on the market for student-athletes in violation of § 1 of the Sherman Act.</td>
<td>NCAA</td>
<td>Indiana</td>
</tr>
</tbody>
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APPENDIX B

IRB APPROVAL
June 26, 2013

Tammy Franey
Department of ELTPS
College of Education
The University of Alabama
Box 870302

Re: "The Authority of the NCAA and Its Member Institutions over Student Athletes" (Dissertation Research)

Dear Ms. Franey,

This letter comes as a response to your request for IRB review received on June 20, 2013. Following initial review by the University of Alabama Office for Research Compliance, it has been determined that the activities outlined within the project description do not meet the criteria for human subjects research as set forth within UA IRB Form # 31 titled "Human Research Determination Checklist".

Because the activity is not considered research involving the use of human subjects, the activity does not require IRB approval and is therefore excluded from review by the IRB. If you have any questions or if I can be of further assistance, please do not hesitate to contact me.

Sincerely,

[Signatures]

Caroline T. Miller, MSM, CIM
Director & Research Compliance Officer
Office for Research Compliance
The University of Alabama