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Elisia J.P. Gatmen
Seattle University School of Law

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Cover Page Footnote

The author dedicates this article to G.A.K., J.G., and E.G. for all their love and support. The author also wishes to thank Ms. Pam Robenolt and Ms. Kim Durand from the University of Washington for their valuable insight.

Academic Exploitation: The Adverse Impact of College Athletics on the Educational Success of Minority Student-Athletes

Elisia J.P. Gatmen¹

I. INTRODUCTION

My job is to protect The Entertainment Product. My job is to make sure that The Entertainment Product goes to class. My job is to make sure that The Entertainment Product studies. My job is to make sure that The Entertainment Product makes adequate academic progress according to the NCAA guidelines. . . . It is who and what these kids are. You can hate that, you can hate the system. But at the end of the day, it's who they are. They're the raw material in a multibillion-dollar sports and entertainment business. And it's my job to protect them.²

—*Phil Hughes, Associate Director for Student Services
Kansas State University*

Integrity, sportsmanship, and academic excellence are some of the principles that collegiate athletic programs strive to instill in all members involved with college sports, especially student-athletes.³ However, because college athletics have never really been free from instances of corruption

¹ The author dedicates this article to G.A.K., J.G., and E.G. for all their love and support. The author also wishes to thank Ms. Pam Robenolt and Ms. Kim Durand from the University of Washington for their valuable insight. Finally, the author does not in any way intend for this article to offend the NCAA, its member institutions, or other sports lovers. The author herself is an avid spectator of college football and volleyball; however, this pressing issue must be brought to the forefront of social justice discussions.

² MARK YOST, VARSITY GREEN 13 (2010).

³ See *Core Values*, NAT'L COLLEGIATE ATHLETIC ASS'N, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/Who+We+Are/Core+Values+landing+page> (last updated June 29, 2010) [hereinafter *Core Values*].

and exploitation, achieving and adhering to these principles is difficult.⁴ Reports of exploits involving gambling, amateurism, and, as a consequence, academics have plagued the institution of college sports with criticisms since its inception.⁵ What initially began as student-organized sports⁶ transformed into a multibillion-dollar industry that frequently destroys the academic environment for student-athletes in order to produce an “entertainment product.”⁷ Because colleges can potentially gain millions of dollars from their athletics programs, numerous concerns have come forth that schools are becoming places for sports, not education⁸—especially with the sport of football.⁹

As collegiate athletics increased in popularity, the competition between university athletic departments to recruit the best high school student-athletes has become rampant—in many instances without regard to a student’s academic ability.¹⁰ Recruiting tactics include enticing these “star players” with athletic scholarships or promising early playing time and good athletic facilities.¹¹ As a result, the institutions sacrifice educational

⁴ See Welch Suggs, *Historical Overview: At Play at America’s Colleges*, in *NEW GAME PLAN FOR COLLEGE SPORT* 4–5 (2006).

⁵ See *id.*

⁶ See John U. Bacon, *No Denying NFL’s Popularity, but it’s Inferior to College Football*, *THE DETROIT NEWS* (Oct. 15, 2010), <http://detnews.com/article/20101015/OPINION03/10150417/No-denying-NFL%E2%80%99s-popularity—but-it%E2%80%99s-inferior-to-college-football>.

⁷ YOST, *supra* note 2, at 13.

⁸ Robert D. Benford, *The College Sports Reform Movement: Reframing The “Edutainment” Industry*, 48 *SOC. Q.* 5, 5–6 (2007).

⁹ See *History*, NAT’L COLLEGIATE ATHLETIC ASS’N, <http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa/who+we+are/about+the+ncaa+history> (last updated Nov. 8, 2010) [hereinafter *History*, NAT’L COLLEGIATE ATHLETIC ASS’N].

¹⁰ See Robert N. Davis, *Academics and Athletics on a Collision Course*, 66 *N.D. L. REV.* 239, 260 (1990).

¹¹ See NAT’L COLLEGIATE ATHLETIC ASS’N, ART. 13.2, 2010–11 NCAA DIVISION I MANUAL 102 (2010), *available at* http://grfx.cstv.com/photos/schools/beth/genrel/auto_pdf/2010-11NCAA.pdf (showing that the NCAA created a list of offers and inducements that are prohibited) [hereinafter *DIVISION I MANUAL*].

values, as evidenced by academic underperformance or cheating amongst student-athletes.¹² For many students, African Americans in particular, receiving an athletic scholarship is a gateway to a college education because their receipt of an athletic scholarship is a crucial factor in their ability to pay for school.¹³ However, attending college on an athletic scholarship becomes useless to student-athletes when colleges economically and academically exploit them.

Economic exploitation of student-athletes drives the academic exploitation of student-athletes. Colleges economically exploit student-athletes by using athletics to produce revenue for the school while subscribing to rules that substantially limit student-athletes from receiving compensation.¹⁴ Academic exploitation occurs when colleges focus too heavily on athletics over academics, resulting in instances of academic underperformance. Students engage in academic underperformance when they perform worse academically than would be expected from their academic credentials upon admission.¹⁵ Academic underperformance begets academic misconduct, such as cheating on exams or submitting work completed by another person, and it then ultimately denies student-athletes quality educations.¹⁶

¹² See generally Doug Lederman, *Another Case of Academic Fraud*, INSIDE HIGHER EDUC. (Jan. 21, 2010), <http://www.insidehighered.com/news/2010/01/21/gasouthern> (commenting that academic fraud in college sports is not a new problem).

¹³ See Luther Campbell, *NCAA Football is Modern-Day Slavery*, MIAMI NEW TIMES (Aug. 25, 2011), <http://www.miaminewtimes.com/2011-08-25/news/ncaa-football-is-modern-day-slavery>.

¹⁴ YOST, *supra* note 2, at 160 (stating that these restrictions make it extremely difficult for student-athletes who come from low socioeconomic backgrounds to afford everyday necessities, such as soap, food when the dining hall is closed, or a calling card to call home); See also Campbell, *supra* note 13.

¹⁵ See WILLIAM G. BOWEN & SARAH A. LEVIN, RECLAIMING THE GAME: COLLEGE SPORTS AND EDUCATIONAL VALUES 145 (2003).

¹⁶ Krystal K. Beamon, "Used Goods:" *Former African American College Student-Athletes' Perception of Exploitation by Division I Universities*, 77 J. NEGRO EDUC. 352, 352 (2008).

Standards must be implemented to promote preventative rather than remedial measures regarding academic misconduct and underperformance. Although participating in college athletics is a means through which students are given the ability to attend college, continued work on academic reform in college sports is necessary to ensure educational accountability. The National Collegiate Athletic Association (NCAA) and its member institutions have been criticized for merely instituting punishments instead of creating standards that prevent misconduct.¹⁷ Preventative measures should include instituting oversight committees to ensure accountability, providing adequate educational support to students, educating young student-athletes, and introducing alternative paths in athletics for students uninterested in higher education.

This article focuses on the academic exploitation of student-athletes that accompanies the widespread economic exploitation in revenue-generating sports, and specifically the deficient academic achievement of minorities who play college football.¹⁸ Part II presents the history of the NCAA, the evolution of student-athlete eligibility standards, the preferential treatment of student-athletes in college admissions, and the untouchable nature of the NCAA in the legal arena. Part III discusses academic misconduct and the reform measures taken by the NCAA. For decades, the NCAA strived to institute academic reform measures with the goal of helping student-athletes achieve academic excellence. However, the NCAA's actions thus far have not produced overall success. Part IV explores four approaches to eradicate

¹⁷ Mike Kline, *College Football: NCAA Probe of UNC is Just the Tip of the Iceberg*, BLEACHER REPORT (Aug. 27, 2010), <http://bleacherreport.com/articles/444420-college-football-ncaa-probe-of-unc-is-just-the-tip-of-the-iceberg>.

¹⁸ Football and basketball are generally considered the "high profile" sports that have the potential to generate a substantial amount of money for the institution. JAMES L. SHULMAN & WILLIAM G. BOWEN, *THE GAME OF LIFE* 4 (2001). This article solely focuses on football because of the author's interest in college football. To that effect, I will henceforth use masculine pronouns to denote my focus on male student-athletes in college football.

the academic exploitation of student-athletes and addresses potential criticisms and challenges.

The first strategy entails creating outreach programs to educate minority communities about the requirements to become student-athletes. The second strategy involves restructuring the NCAA by integrating external regulating bodies to ensure all member institutions adhere to and enforce academic policies for student-athletes. The third strategy includes upgrading each member institution's academic services department for student-athletes. The final strategy involves founding "farm teams" to eliminate apathetic athletes from the collegiate environment to ensure student-athletes receive an adequate education. Although all four approaches may pose significant difficulties in their implementation, each strategy aims to improve the institutional accountability and academic excellence of all student-athletes, especially minorities.

A. Focusing on the Exploitation of African American Student-Athletes

African American student-athletes are extremely impacted because they are the most heavily recruited race in sports with the greatest potential for exploitation and abuse due to their high levels of participation in football and basketball.¹⁹ African American student-athletes comprise many of the football recruits at the collegiate level.²⁰ As seen in Table 1, the number of African American football players has increased in the last decade and currently exceeds the number of white football players.²¹ Although getting the chance to attend college and play sports may equate to success for the average African American football player, the rampant academic

¹⁹ See generally NAT'L COLLEGIATE ATHLETIC ASS'N, 2009-010 NCAA STUDENT-ATHLETE ETHNICITY REPORT (2010), available at <http://www.ncaapublications.com/productdownloads/SAEREP11.pdf> [hereinafter NCAA ETHNICITY REPORT] (stating that African American was the ethnicity that comprised the highest percentage of all student-athletes in football and basketball).

²⁰ See *id.*

²¹ *Id.* at 197.

exploitation by member institutions in college sports today has a detrimental effect on student-athletes' long-term success.²²

Table 1. Number of Football Players in Division I Football by Ethnicity

| Year | American Indian/ Alaskan Native | | Asian/Native Hawaiian/Pacific Islander | | Black, Non-Hispanic | | Hispanic | | Other | | Two or More Races | | White, Non-Hispanic | |
|--------------------------------------|------------------------------------|-------|--|-------|------------------------|-------|----------|-------|-------|-------|----------------------|-------|------------------------|-------|
| | Men | Women | Men | Women | Men | Women | Men | Women | Men | Women | Men | Women | Men | Women |
| Football (Division I Overall) | | | | | | | | | | | | | | |
| 1999-00* | 73 | N/A | 313 | N/A | 9,711 | N/A | 439 | N/A | 1,398 | N/A | | | 12,619 | N/A |
| 2000-01* | 87 | N/A | 325 | N/A | 10,272 | N/A | 517 | N/A | 704 | N/A | | | 12,054 | N/A |
| 2001-02* | 107 | N/A | 358 | N/A | 10,535 | N/A | 521 | N/A | 705 | N/A | | | 12,407 | N/A |
| 2002-03* | 92 | N/A | 402 | N/A | 11,056 | N/A | 547 | N/A | 577 | N/A | | | 12,447 | N/A |
| 2003-04* | 91 | N/A | 407 | N/A | 11,241 | N/A | 610 | N/A | 598 | N/A | | | 12,260 | N/A |
| 2004-05* | 79 | N/A | 396 | N/A | 11,433 | N/A | 589 | N/A | 578 | N/A | | | 12,009 | N/A |
| 2005-06* | 236 | N/A | 403 | N/A | 11,434 | N/A | 529 | N/A | 603 | N/A | | | 11,872 | N/A |
| 2006-07* | 98 | N/A | 402 | N/A | 11,503 | N/A | 558 | N/A | 733 | N/A | | | 11,770 | N/A |
| 2007-08* | 101 | N/A | 452 | N/A | 11,904 | N/A | 607 | N/A | 580 | N/A | 65 | N/A | 11,949 | N/A |
| 2008-09* | 101 | N/A | 465 | N/A | 11,916 | N/A | 668 | N/A | 741 | N/A | 138 | N/A | 12,075 | N/A |
| 2009-10* | 112 | N/A | 511 | N/A | 12,058 | N/A | 644 | N/A | 775 | N/A | 354 | N/A | 11,871 | N/A |

Studies show that African American males are more likely to have a special connection with athletics: “The athlete can be identified as a symbol of success for many in the African American community, which influences the identity formation of African American boys.”²³ Both cultural and familial influences impart the importance of sports upon African American males at a young age.²⁴ Generally, the cultural interest in sports in the African American community, which is commonly viewed as an opportunity to escape from poverty,²⁵ as well as the pressure from one’s

²² Beamon, *supra* note 16, at 352.

²³ *Id.*

²⁴ Harry Edwards, *The Single-Minded Pursuit of Sports Fame and Fortune is Approaching an Institutionalized Triple Tragedy in Black Society*, EBONY, Aug. 1988, at 140.

²⁵ See Tonmar S. Johnson & Todd A. Migliaccio, *The Social Construction of an Athlete: African American Boy’s Experience in Sport*, 33 WESTERN J. OF BLACK STUDIES 98, 98 (2009).

family to play sports, can significantly affect African American student-athletes, causing some to view athletics as their foremost goal in life.²⁶

An overemphasis on sports in an African American child's life likely makes athletics a substantial time commitment, while other very important aspects of life, such as academics and family, may become secondary to sports.²⁷ Subsequently, these children tend to define themselves as—and attribute all their abilities to, being an athlete, which drives their decisions to choose a career as a professional athlete.²⁸ For instance, one third-grade boy mentioned that after graduating from high school, he wanted to “start basketball [as a career].”²⁹ According to another ten-year-old boy: “Well, if I’m good enough, I might go like right to the NFL, but if I’m not, I just go to college for about two or three years and go to the NFL.”³⁰ Unfortunately, what some of these children and their families do not realize is the degree of improbability associated with “going pro.” Table 2 illustrates the improbability of playing sports as a professional career.³¹

²⁶ See generally *id.* at 99–104 (explaining each of those factors as playing a large effect on an African American boy's connection to athletics).

²⁷ See *id.*

²⁸ See *id.* at 102.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Estimated Probability of Competing in Athletics Beyond the High School Interscholastic Level*, NAT'L COLLEGIATE ATHLETIC ASS'N (Feb. 26, 2011), <http://www.ncaa.org/wps/wcm/connect/public/ncaa/issues/recruiting/probability+of+going+pro>.

Table 2. Estimated Probabilities of a Student-Athlete Entering into Professional Sports

| Student-Athletes | Men's Basketball | Women's Basketball | Football | Baseball | Men's Ice Hockey | Men's Soccer |
|-------------------------------------|------------------|--------------------|-----------|----------|------------------|--------------|
| High School Student Athletes | 540,207 | 439,550 | 1,109,278 | 472,644 | 36,475 | 391,839 |
| High School Senior Student Athletes | 154,345 | 125,586 | 316,937 | 135,041 | 10,421 | 111,954 |
| NCAA Student Athletes | 17,008 | 15,423 | 66,313 | 30,365 | 3,945 | 21,770 |
| NCAA Freshman Roster Positions | 4,859 | 4,407 | 18,947 | 8,676 | 1,127 | 6,220 |
| NCAA Senior Student Athletes | 3,780 | 3,427 | 14,736 | 6,748 | 877 | 4,838 |
| NCAA Student Athletes Drafted | 44 | 32 | 250 | 600 | 33 | 76 |
| Percent High School to NCAA | 3.1% | 3.5% | 6.0% | 6.4% | 10.8% | 5.6% |
| Percent NCAA to Professional | 1.2% | 0.9% | 1.7% | 8.9% | 3.8% | 1.6% |
| Percent High School to Professional | 0.03% | 0.03% | 0.08% | 0.44% | 0.32% | 0.07% |

Parents who downplay the importance of education are especially damaging to African American male youths who identify themselves predominantly as athletes.³² “Quick money does not come through years of schooling for a doctor or a lawyer,” says one father; “You can’t captivate people with that.”³³ One sociologist, Harry Edwards, condemns this type of emphasis on athletics over academics:

³² See Johnson & Migliaccio, *supra* note 25, at 102.

³³ See *id.*

Black communities, black families, and black student athletes themselves also have critically vital roles to play in efforts to remedy the disastrous educational consequence of black sports involvement. . . . We have in effect *set up our own children* for academic victimization and athletic exploitation by our encouragement of, if not insistence upon, the primacy of sports achievement over all else.³⁴

In a study conducted to determine African American student-athletes' viewpoints on academic exploitation, it was found that feelings of exploitation were common.³⁵ Some student-athletes equated the time spent as a collegiate sports participant to being a servant of their institution's athletic program.³⁶ As one respondent stated, "[E]verybody say you [*sic*] a student-athlete, but coaches, they want you to be a [*sic*] athlete first then a student."³⁷ According to the study, "most (14 of 20) of the respondents actually employed phrases with the word 'used' such as 'used up,' 'used goods,' and 'used and abused' to describe the manner in which they felt they were treated by universities."³⁸ Furthermore, eighteen of the twenty athletes in the study stated that they left college unprepared for non-sports related careers.³⁹ Finally, while seventeen of the twenty student-athletes in the study obtained their undergraduate degrees, "most of them felt that their attainment was not a reflection of the university's emphasis on the academic success of student-athletes, but through their sheer determination."⁴⁰

While many student-athletes are affected by the consequences of academic and economic exploitation, minority student-athletes, especially African Americans, are particularly vulnerable.⁴¹ Socioeconomic

³⁴ SHULMAN & BOWEN, *supra* note 18, at 53.

³⁵ See Beamon, *supra* note 16, at 352.

³⁶ *Id.* at 358.

³⁷ *Id.* at 356.

³⁸ *Id.* at 358.

³⁹ See *id.* at 356.

⁴⁰ *Id.*

⁴¹ See Lowell Cohn, *Humiliation to Triumph: A Student-Athlete's Odyssey*, THE PRESS DEMOCRAT (Dec. 10, 2006),

considerations demonstrate that African American student-athletes are particularly vulnerable. Many minority students-athletes significantly depend upon athletic scholarships because they do not have the financial wherewithal to attend college.⁴² Among student-athletes from low socioeconomic backgrounds, white student-athletes “are not affected in much the same way as African-American players.”⁴³ It is estimated that the disproportionately high number of African Americans who play football and basketball have produced “more than a quarter of a trillion dollars over a 40-year period,” and “even if 100% of African American athletes earned degrees, the economic value of those degrees would only be 5% of the total value of their athletic contribution.”⁴⁴ Even without socioeconomic disparity, then, African Americans are still the racial group that is most negatively affected by the atmosphere of economic exploitation in college sports. This is explained by the fact that economic exploitation of student-athletes inevitably results in the academic exploitation of student-athletes.⁴⁵ Unfortunately, as studies have shown, the many challenges that arise from academic exploitation are experienced most by the African American student-athletes.

Minority student-athletes who participate in high revenue-generating sports (such as football and basketball) suffer from the effects of academic

<http://www.pressdemocrat.com/article/20061210/NEWS/612100344?p=1&tc=pg#>
(chronicling the story of Kevin Ross, an African American star basketball player who attended and played for Creighton University, but never graduated because he was illiterate. Ross left college and attended a preparatory grade school where he finally learned to read.)

⁴² See Rodney K. Smith, *When Ignorance is Not Bliss: In Search of Racial and Gender Equity in Intercollegiate Athletics*, 61 MO. L. REV. 329, 360 (1996).

⁴³ Otis B. Grant, *African American College Football Players and the Dilemma of Exploitation, Racism, and Education: A Socio-Economic Analysis of Sports Law*, 24 WHITTIER L. REV. 645, 650 (2003).

⁴⁴ Beamon, *supra* note 16, at 352.

⁴⁵ See Matthew J. Mitten et al., *Targeted Reform of Commercialized Athletics*, 47 SAN DIEGO L. REV. 779 (2010).

exploitation the most.⁴⁶ African Americans are typically admitted to college “with less impressive pre-collegiate academic credentials than their peers.”⁴⁷ Studies show that once enrolled, African American student-athletes generally do not achieve the same level of academic success as white student-athletes.⁴⁸ This disparity is usually attributed to the fact that African American student-athletes are unable to utilize academic resources that are available to them because of the inability to act as a student first, athlete second.⁴⁹ For example, African American collegiate football players are most likely to experience many academic problems because of in-season academic failures.⁵⁰ These are caused by the expansive amounts of time devoted to the sport during that time period, which materially limits any available time that the student-athlete can devote to academic work.⁵¹ To prevent further academic exploitation of African American student-athletes, education must be prioritized over athletics.

⁴⁶ See Michael J. Mondello & Amy M. Abernathy, *An Historical Overview of Student-Athlete Academic Eligibility and the Future Implications of Cureton v. NCAA*, 7 VILL. SPORTS & ENT. L.J. 127, 129 (2000).

⁴⁷ SHULMAN & BOWEN, *supra* note 18, at 83.

⁴⁸ See Robert M. Sellers, *Racial Differences in the Predictors for Academic Achievement of Student-Athletes in Division I Revenue Producing Sports*, 9 SOC. SPORT J. 54, 57 (1992).

⁴⁹ See Joy Gaston Gayles & Shouping Hu, *The Influence of Student Engagement and Sport Participation on College Outcomes Among Division I Student Athletes*, 80 J. HIGHER EDUC. 315, 316 (2009).

⁵⁰ Todd A. Petr & Thomas S. Paskus, *The Collection and Use of Academic Outcomes Data by the NCAA*, 144 NEW DIRECTIONS FOR INST. RES. 77, 91 (2009).

⁵¹ *Division I Committee on Infractions Issues Decision on Ball State University*, NAT'L COLLEGIATE ATHLETIC ASS'N (July 14, 2010), http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/NCAA/Media+and+Events/Press+Room/News+Release+Archive/2010/Infractions/20100714+Ball+State+COI+Release.

II. THE NCAA REGULATION OF INTERCOLLEGIATE ATHLETICS, ELIGIBILITY STANDARDS, AND ADMISSIONS OF STUDENT-ATHLETES

A. Background of the NCAA

After the creation of competitive college sports, the poor literacy proficiency among many professional athletes who attended and graduated from college⁵² illustrated that universities used students merely for their abilities to play sports. In response to public outcry against student-athletes attending college exclusively for the purpose of participating in sports rather than receiving an education, college athletics leaders joined to form a discussion group and rules-making body.⁵³ Thus, the NCAA was founded “to protect young people from the dangerous and exploitive athletics practices of the time.”⁵⁴

Initially established as the Intercollegiate Athletic Association of the United States (IAAUS) in 1906, the IAAUS was created at the request of President Theodore Roosevelt to encourage reform of the dangerous sport of football.⁵⁵ As of 1910, the IAAUS became known as the NCAA.⁵⁶ The NCAA is the principal and most well-known governing organization in college athletics.⁵⁷ The NCAA manages almost all elements of student-

⁵² John Steiber, *The Behavior of the NCAA: A Question of Ethics*, 10 J. BUS. ETHICS 445, 446 (1991).

⁵³ See *History*, NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 9.

⁵⁴ *Id.*

⁵⁵ See *id.*

⁵⁶ See *id.*

⁵⁷ WALTER T. CHAMPION, JR., *FUNDAMENTALS OF SPORTS LAW*, § 12:3 (2nd ed. 2009); *History of the NAA*, NAT'L ASS'N OF INTERCOLLEGIATE ATHLETICS, <http://naia.cstv.com/genrel/090905aai.html> (last visited Nov. 15, 2010) (noting that the National Association of Intercollegiate Athletics (NAIA) and National Junior College Athletic Association (NJCAA) are two of the other national collegiate athletic associations with membership consisting of smaller colleges and universities and junior colleges, respectively); *History of the NAA*, NATIONAL JUNIOR COLLEGE ATHLETIC ASSOCIATION, http://www.njcaa.org/todaysNJCAA_History.cfm?category=History (last visited Nov. 15, 2010).

athlete participation,⁵⁸ and its mission is “to govern competition in a fair, safe, equitable and sportsmanlike manner, and to integrate intercollegiate athletics into higher education so that the educational experience of the student-athlete is paramount.”⁵⁹

1. Governance

The NCAA is a voluntary association⁶⁰ that is comprised of approximately 1,070 institutions.⁶¹ Governance of the NCAA is unique because representatives from each member institution and athletic conference⁶² are responsible for regulating the NCAA.⁶³

Various committees make up the structure of the Association: (1) the NCAA is led by presidential committees, composed of presidents of member institutions; (2) representatives from the presidential committees are members of the NCAA Executive Committee who oversee Association-wide issues; and (3) other committees made up of experts responsible for evaluating a range of issues and functions.⁶⁴ Additionally, the NCAA is

⁵⁸ See CHAMPION, JR., *supra* note 57 (showing that for a school that wants to compete in athletics, it has to join an athletic association prior to being granted the ability to compete against other institutions); *How Athletics Programs are Classified*, NAT'L COLLEGIATE ATHLETIC ASS'N (March 19, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/Who+We+Are/About+the+NCAA+How+Programs+are+Classified>.

⁵⁹ *About the NCAA*, NAT'L COLLEGIATE ATHLETIC ASS'N (Nov. 15, 2010), <http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa>.

⁶⁰ NAT'L COLLEGIATE ATHLETIC ASS'N, ART. 4.02.1, 2010–11 NCAA DIVISION I MANUAL 20 (2010).

⁶¹ See Jeremy Bloom, *Show Us the Money*, N.Y. TIMES (Aug. 1, 2003), <http://www.nytimes.com/2003/08/01/opinion/show-us-the-money.html>.

⁶² In the NCAA, an athletic conference is comprised of sports teams from different universities that compete against each other. See *Conference*, MERRIAM WEBSTER, <http://www.merriam-webster.com/dictionary/conference> (last visited Nov. 8, 2011).

⁶³ Lisa Pike Masteralexis et al., *Principles and Practice of Sports Management*, in THE BUSINESS OF SPORTS 430, 431 (Scott R. Rosner & Kenneth L. Shropshire eds., 2004).

⁶⁴ *Rules and Committees*, NAT'L COLLEGIATE ATHLETIC ASS'N (last updated Feb. 17, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/How+We+Wo>

governed by a constitution, operating bylaws, and administrative bylaws.⁶⁵ Most NCAA legislation is created and amended during the Association's annual convention, which is attended by the entire NCAA membership.⁶⁶ Support groups and committees comprised of member institution presidents, athletic directors, and NCAA staff members are responsible for resolving issues that arise with the NCAA legislation between conventions.⁶⁷

Rule interpretation and violations are handled by two departments in the NCAA's governance structure—the Legislative Services department and the Enforcement and Eligibility Appeals department.⁶⁸ The Legislative Services department interprets the rules for a member institution or conference representative.⁶⁹ The Enforcement and Eligibility Appeals department investigates potential rules violations of the member institutions.⁷⁰ Additionally, Enforcement and Eligibility Appeals has the responsibility to restore eligibility statuses for student-athletes who were involved in investigations pertaining to alleged rules violations.⁷¹ Subsequent to the completion of an investigation, the Committee on Infractions determines culpability and assesses penalties, if necessary.⁷² Although issues regarding rules and potential violations are handled at the national level, member institutions are becoming increasingly proactive in

rk/About+the+NCAA+Rules+and+Committees (last updated Feb. 17, 2010) [hereinafter *Rules*, NAT'L COLLEGIATE ATHLETIC ASS'N].

⁶⁵ See Diane Heckman, *Tracking Challenges to NCAA's Academic Eligibility Requirements Based on Race and Disability*, 222 ED. L. REP. 1, 5 (2007).

⁶⁶ NAT'L COLLEGIATE ATHLETIC ASS'N, ART. 5.01, 2010–11 NCAA DIVISION I MANUAL 31 (2010).

⁶⁷ See Masteralexis et al., *supra* note 63, at 431.

⁶⁸ See *id.* at 432.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See Michelle Brutlag Hosick, *Many NCAA Infractions Cases Move Quickly, But Complications Can Slow the Process*, NAT'L COLLEGIATE ATHLETIC ASS'N (Dec. 21, 2010),

<http://www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/How+We+Work/Enforcement+process/Infractions>.

controlling the activities of their respective athletic departments by conducting in-house investigations.⁷³

2. Member Institutions

Member institutions are placed into one of three different legislative and competitive divisions—known as Division I, Division II, and Division III—so that the Association can better address the particular concerns of various schools.⁷⁴ An institution's decision to join a particular division depends upon its enrollment size, athletic budget, and fan support.⁷⁵ Each member institution can also join a conference wherein teams compete against one another. Importantly, the conference is the organizational structure that establishes rules for its members. In addition to policing admissions requirements, providing a fair competitive process for each member institution, and sharing revenues, another major responsibility held by the conference is negotiating television broadcast contracts.⁷⁶ This power is only held by the conference and its member institutions and is not available to the NCAA.⁷⁷

Additionally, each division governs student-athletes by its own specifically-tailored standards.⁷⁸ For example, a major difference in the rules between divisions is the ability of an institution to grant athletic scholarships.⁷⁹ Division I and Division II member institutions are allowed to

⁷³ See Jerome Solomon, *TSU Plays it Safe, Makes QB Sit Out*, HOUSTON CHRON. (Dec. 11, 2010), <http://www.chron.com/dispatch/story.mpl/sports/college/7334962.html>.

⁷⁴ Masteralexis et al., *supra* note 63, at 431.

⁷⁵ *Welcome to the NCAA Eligibility Center*, NAT'L COLLEGIATE ATHLETIC ASS'N, http://web5.ncaa.org/ECWR2/NCAA_EMS/NCAA_EMS.html# (last visited Oct. 17, 2011).

⁷⁶ SHULMAN & BOWEN, *supra* note 18, at 16.

⁷⁷ *Id.*

⁷⁸ See *Rules*, NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 64.

⁷⁹ See *Differences Among the Three Divisions: Division I*, NAT'L COLLEGIATE ATHLETIC ASS'N, <http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa/who+we+are/differences+among+the+divisions/division+i/about+division+i> (last updated Mar. 31, 2011); *Differences Among the Three Divisions: Division II*, NAT'L COLLEGIATE ATHLETIC ASS'N, <http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa/who+we+are/differences+among+the+divisions/division+ii/about+division+ii> (last updated Mar. 31, 2011).

give students athletic scholarships, but Division III institutions are unable to give athletic scholarships.⁸⁰ Division III institutions do not offer athletic scholarships to their students because those institutions emphasize a balanced dedication between excellence in rigorous academics and participation in college sports “for the love of the game.”⁸¹ Another major difference among divisions is the academic eligibility requirements for potential student-athletes; Division III has the strictest requirements while Division I requirements are the most flexible.⁸²

B. Initial-Eligibility Standards

One of the principles touted by the NCAA is its commitment to the educational well-being of each student-athlete.⁸³ The NCAA’s principle regarding initial-eligibility standards, or standards for the admission of student-athletes, reads, “Eligibility requirements shall be designed to assure proper emphasis on educational objectives, to promote competitive equity among institutions and to prevent exploitation of student-athletes.”⁸⁴ Three crucial items are used to determine a student-athlete’s eligibility: grade

ASS’N,

<http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa/who+we+are/differences+among+the+divisions/division+ii/about+division+ii> (last updated Mar. 31, 2011) [hereinafter *Division II*].

⁸⁰ *2010–2011 Guide for the College-Bound Student-Athlete: Your Path to the Student-Athlete Experience*, NAT’L COLLEGIATE ELIGIBILITY CENTER, <http://www.ncaapublications.com/productdownloads/CB11.pdf>.

⁸¹ *What Division III Has to Offer*, NAT’L COLLEGIATE ATHLETIC ASS’N, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/Who+We+Are/Differences+Among+the+Divisions/Division+III/Information+for+prospective+student+s+athletes+and+parents> (last updated Jan. 20, 2011) [hereinafter *Division III*].

⁸² DIVISION I MANUAL, *supra* note 11, at 3; *Differences Among the Three Divisions: Division III*, NAT’L COLLEGIATE ATHLETIC ASS’N, <http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa/who+we+are/differences+among+the+divisions/division+iii/about+division+iii> (last updated Apr. 20, 2011).

⁸³ DIVISION I MANUAL, *supra* note 11, at 3.

⁸⁴ *Id.* at 5.

point average (GPA), an adequate score on a standardized college entrance exam, and completion of required high school courses.⁸⁵

To become eligible to participate in intercollegiate athletics and receive an athletic scholarship, a potential student-athlete must become a “qualifier” by meeting the NCAA’s initial-eligibility standards.⁸⁶ Division III institutions strictly require their potential student-athletes to be accepted under each institution’s admissions policies,⁸⁷ which are usually academically rigorous standards.⁸⁸ Division II schools are slightly more flexible than Division III schools because they determine eligibility based upon the principle that athletics programs should be “properly aligned with the educational mission of the institution,”⁸⁹ which is a subjective standard that can vary with each school. Division I institutions need only have potential student-athletes meet what many critics view as relatively low eligibility standards set by the NCAA.⁹⁰ Student-athletes who lack adequate collegiate preparation depend on—and benefit from—the flexible eligibility standards set by the NCAA.⁹¹

The lenient eligibility standards of Division I continue to be recognized by college athletics proponents and critics alike as a primary cause of the

⁸⁵ See *id.* at 163–66.

⁸⁶ *Id.* at 163.

⁸⁷ *Becoming a Student-Athlete*, NAT’L COLLEGIATE ATHLETIC ASS’N, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Student-Athlete+Experience/Becoming+a+Student-Athlete> (last visited Oct. 5, 2011).

⁸⁸ See *Division III*, *supra* note 81.

⁸⁹ *Division II*, *supra* note 79.

⁹⁰ See Gabriel A. Morgan, *No More Playing Favorites: Reconsidering the Conclusive Congressional Presumption that Intercollegiate Athletics Are Substantially Related to Educational Purposes*, 81 S. CAL. L. REV. 149, 172–73 (2007).

⁹¹ See Brian White, *The Academic Experiences of and Utilization of Services by College Student-Athletes Deemed At-Risk of Not Graduating*, 55–56 (2008) (unpublished M.A. thesis, University of Maryland), available at <http://drum.lib.umd.edu/bitstream/1903/8189/1/umi-umd-5378.pdf>; see also Phillip C. Blackman, *The NCAA’s Academic Performance Program: Academic Reform or Academic Racism?*, 15 UCLA ENT. L. REV. 225, 236–37 (2008).

academic exploitation of student-athletes.⁹² Accompanying the increasing commercialization and popularity of college sports is the pressure to “win at all costs,” even if that includes making decisions that set the student-athlete up for academic failure, such as knowingly enrolling at-risk students who would not otherwise be eligible for admission.⁹³ Thus, in response to the numerous past and present eligibility rule violations and issues involving admissions standards,⁹⁴ the NCAA continually strives to establish more stringent initial-eligibility standards to ensure a prospective student-athlete’s success in the classroom.

1. Evolution of Eligibility Standards: The “1.6 Rule” to Proposition 16

The first illustration of the NCAA’s attempt to establish eligibility standards occurred in 1965 with the “1.6 Rule,” which all member institutions were ordered to follow.⁹⁵ The 1.6 Rule limited the ability of student-athletes to participate in college athletics or receive financial aid unless they were predicted to have at least a 1.6 GPA during their first year in college. Predictions were made based on a scale that combined high school GPAs, high school coursework, and Scholastic Aptitude Test (SAT) scores.⁹⁶ However, the 1.6 Rule soon gave way to the “2.0 Rule” because of its simplicity: potential student-athletes needed only to graduate high school with a GPA of 2.0 to be eligible to play college sports.⁹⁷

During the early 1980s, however, many individuals with a connection to college sports (from university faculty members to sports watchers) started

⁹² See Steve Wieberg, *Athlete Advisors Fear New NCAA Eligibility Rules Spur Cheating*, USA TODAY, July 8, 2009, http://www.usatoday.com/sports/college/2009-07-08-athlete-advisers_N.htm.

⁹³ Sid Hartman, *Pinning Blame on Boston Isn’t Fair*, STAR TRIB., May 22, 1999, at C3, available at 1999 WLNR 6438949 (1999).

⁹⁴ *History*, NAT’L COLEGIATE ATHLETIC ASS’N, *supra* note 9.

⁹⁵ See Jeffrey M. Waller, *A Necessary Evil: Proposition 16 and Its Impact on Academics and Athletics in the NCAA*, 1 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 189, 192 (2003).

⁹⁶ JOHN SAYLE WATTERSON, COLLEGE FOOTBALL: HISTORY, SPECTACLE, CONTROVERSY 333 (2002).

⁹⁷ Waller, *supra* note 95.

to complain about the exploitive consequences of eligibility standards that only took high school grades into account.⁹⁸ The low standards enabled at-risk students to become eligible for admission at schools where they were not academically prepared to succeed. In 1983, the NCAA responded by implementing stricter eligibility rules with Proposition 48.⁹⁹ Under Proposition 48, the NCAA added the following standards to the 2.0 GPA requirement: completion of an eleven-course core curriculum and a minimum SAT or ACT score of 700 and fifteen, respectively.¹⁰⁰ In 1989, Proposition 42 was instituted to supplement Proposition 48 after the NCAA received added pressure to create more stringent eligibility policies.¹⁰¹ The new proposition prohibited member institutions from receiving any financial aid if they accepted student-athletes who did not meet the minimum requirements in Proposition 48.¹⁰² However, due to its rigidity, Proposition 42 was shortly abandoned.¹⁰³

Although the NCAA answered the demands for academic accountability by heightening eligibility standards, critics lamented that Proposition 48 and Proposition 42 reflected a cultural bias and disparately impacted African American student-athletes.¹⁰⁴ While SAT scores and high school grades are good predictors of academic performance during a student's collegiate career,¹⁰⁵ critics asserted that using these factors in evaluating eligibility

⁹⁸ *History*, NAT'L COLLEGIATE ATHLETIC ASS'N, *supra* note 9.

⁹⁹ *See id.*

¹⁰⁰ Kenneth L. Shropshire, *Colorblind Propositions: Race, The SAT, & The NCAA*, 8 STAN. L. & POL'Y REV. 141, 143 (1997).

¹⁰¹ *See* Waller, *supra* note 95, at 192. *See also* Shropshire, *supra* note 100, at 146.

¹⁰² Shropshire, *supra* note 100, at 146.

¹⁰³ Cliff Sjogren, *Views of Sport: Prop 48 Makes Athletes Study*, N.Y. TIMES, Mar. 12, 1989, <http://www.nytimes.com/1989/03/12/sports/views-of-sport-prop-48-makes-athletes-study.html>.

¹⁰⁴ *See* George H. Raveling, *Black Coaches Want to Be Heard*, THE NCAA NEWS, Nov. 29, 1993, at 4-5, *available* at <http://fs.ncaa.org/Docs/NCAANewsArchive/1993/19931129.pdf>.

¹⁰⁵ Eddy Ramirez, *High School Grades and SAT: Still Best Predictor of College Success*, *Study Says*, U.S. NEWS & WORLD REPORT, June 18, 2008,

discriminates against minorities, especially African Americans.¹⁰⁶ After all, “There is one statistical trend that nearly all commentators agree upon: black students average between 100 to 200 points lower on the SAT than white students.”¹⁰⁷ To remedy the disparate impact on minorities, the NCAA replaced Proposition 48 in 1996 with Proposition 16.¹⁰⁸

Proposition 16 required student-athletes who desired to compete in Division I or II sports to report to the NCAA Initial-Eligibility Clearinghouse, an NCAA subsidiary that standardized the process to determine eligibility to compete in college sports.¹⁰⁹ To be eligible, students needed to complete a minimum of thirteen core courses of high school curriculum, earn least a 2.5 GPA upon graduation, and have a minimum SAT or ACT test score, which was dependent upon the students’ GPA.¹¹⁰ The NCAA developed a sliding scale technique that allowed flexibility with a student’s GPA and test scores.¹¹¹ For instance, potential student-athletes were still able to meet eligibility requirements if their GPA was lower than 2.5, provided that they had a high SAT or ACT score.¹¹²

Despite these seemingly adequate measures, Proposition 16 still disparately impacted African American student-athletes because of its focus on standardized test scores.¹¹³ Studies have shown that socioeconomic background affects a student’s likelihood of success on the SAT and

<http://www.usnews.com/education/blogs/on-education/2008/06/18/high-school-grades-and-sat-still-best-predictor-of-college-success-study-says>.

¹⁰⁶ See Wieberg, *supra* note 92.

¹⁰⁷ Waller, *supra* note 95, at 198.

¹⁰⁸ Opinion, *Fairness for Black College Athletes*, N.Y. TIMES, Mar. 11, 1999, <http://www.nytimes.com/1999/03/11/opinion/fairness-for-black-college-athletes.html>.

¹⁰⁹ Richard Pound, *NCAA’s Clearinghouse Rule –Who’s Looking Out for the Student Athlete?*, FASTWEB (Apr. 29, 2009), <http://www.fastweb.com/student-life/articles/347-ncaas-clearinghouse-rules-whos-looking-out-for-the-student-athlete>.

¹¹⁰ See *id.* Blackman, *supra* note 91, at 233.

¹¹¹ See Shropshire, *supra* note 100, at 147.

¹¹² Blackman, *supra* note 91, at 233.

¹¹³ *Id.*

ACT.¹¹⁴ Some critics argued that Proposition 16 disproportionately limited the opportunities for economically disadvantaged African American student-athletes to be eligible to participate in college sports.¹¹⁵ Examples of the disparity in the rates of ineligible potential student-athletes (PSA) based on ethnicity are highlighted in Tables 3 and 4.

Table 3. Rates of Ineligible PSAs based on Proposition 16 Requirements in 1997¹¹⁶

| 1997 PSA Ethnic Group | Ineligible for Any Reason | Test Score Only | Test & Courses | Test & GPA | Test Courses, & GPA | Test Score Total |
|-----------------------------|---------------------------|-----------------|----------------|------------|---------------------|------------------|
| White (Non-Hispanic) | 5.2 | 0.9 | 0.3 | 0.1 | 0.2 | 1.5 |
| African-American | 23.0 | 7.6 | 2.4 | 1.2 | 1.3 | 12.5 |
| Hispanic | 12.5 | 4.0 | 1.1 | 0.2 | 0.4 | 5.7 |
| Other | 8.3 | 2.2 | 0.5 | 0.3 | 0.2 | 3.2 |
| Missing Ethnicity | 12.8 | 2.3 | 0.9 | 0.5 | 0.6 | 4.3 |
| Division I IRL Total | 8.8 | 2.1 | 0.7 | 0.3 | 0.4 | 3.5 |

Table 4. Rates of Ineligible PSAs based on Proposition 16 Requirements in 1998¹¹⁷

| 1998 PSA Ethnic Group | Ineligible for Any Reason | Test Score Only | Test & Courses | Test & GPA | Test Courses, & GPA | Test Score Total |
|-----------------------------|---------------------------|-----------------|----------------|------------|---------------------|------------------|
| White (Non-Hispanic) | 3.8 | 0.7 | 0.2 | 0.1 | 0.1 | 1.1 |
| African-American | 20.8 | 8.2 | 1.9 | 1.0 | 0.9 | 12.0 |
| Hispanic | 9.3 | 3.1 | 1.0 | 0.3 | 0.3 | 4.7 |
| Other | 5.3 | 1.6 | 0.5 | 0.0 | 0.2 | 2.3 |
| Missing Ethnicity | 8.8 | 1.8 | 0.7 | 0.3 | 0.4 | 3.2 |
| Division I IRL Total | 7.0 | 2.1 | 0.5 | 0.3 | 0.3 | 3.2 |

¹¹⁴ See Waller, *supra* note 95, at 198.

¹¹⁵ Blackman, *supra* note 91, at 233–34.

¹¹⁶ NAT'L COLLEGIATE ATHLETIC ASS'N, NCAA RESEARCH REPORT 99–04: ACADEMIC CHARACTERISTICS BY ETHNIC GROUP OF DIVISION I RECRUITS IN THE 1997 AND 1998 NCAA INITIAL-ELIGIBILITY CLEARINGHOUSE (July 21, 2001), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Research/Academic+Initial-Eligibility+Research> [hereinafter NCAA RESEARCH REPORT] (click on “99–04: Academic Characteristics by Ethnic Group of Division I Recruits in the 1997 and 1998 NCAA Initial-Eligibility Clearinghouse”).

¹¹⁷ *Id.*

2. NCAA Race-Based Litigation

Shortly after instituting Proposition 16, the NCAA faced litigation regarding the constitutionality of Proposition 16 and alleged discrimination against minority student-athletes. Claims against the NCAA for race-based violations were brought under Title VI of the Civil Rights Act of 1964.¹¹⁸ Two key cases, *Cureton v. National Collegiate Athletic Association* and *Pryor v. National Collegiate Athletic Association*, reached the Third Circuit and ultimately decided Proposition 16's fate.¹¹⁹

In *Cureton v. National Collegiate Athletic Association*, the plaintiffs alleged that Proposition 16 was racially discriminatory and violated Title VI because eligibility standards focused on standardized tests, which discriminated against African Americans.¹²⁰ The plaintiffs in this case, Tai Kwan Cureton and Leatrice Shaw, were African American students who ranked twenty-seventh and fifth, respectively, in a graduating class of 305 students.¹²¹ However, the plaintiffs failed to meet the minimum SAT scores required by Proposition 16.¹²² Afterwards, the plaintiffs, who were once actively being recruited by Division I schools, failed to receive any athletic scholarship offers.¹²³ Although the NCAA was not prohibited from instituting standards for GPA and course requirements, the District Court ruled in favor of the plaintiffs because Proposition 16's requirement of SAT scores had a disparate impact on African American student-athletes.¹²⁴ On

¹¹⁸ 42 U.S.C. § 2000(d) (1994) (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).

¹¹⁹ See Blackman, *supra* note 91, at 289.

¹²⁰ See *Cureton v. Nat'l Collegiate Athletic Ass'n*, 198 F.3d 107, 111 (3d Cir. 1999).

¹²¹ *Id.* at 109–10.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Heckman, *supra* note 65, at 15.

appeal, however, the Third Circuit found that the NCAA was not a recipient of federal funds; therefore, the NCAA was not susceptible to Title VI jurisdiction without a showing of intentional racial discrimination.¹²⁵

Pryor v. National Collegiate Athletic Association was the second race-based suit brought against the NCAA and essentially involved the same issues as in *Cureton*.¹²⁶ The plaintiffs were also African American student-athletes.¹²⁷ In this case, however, the plaintiffs argued that the disparate impact of Proposition 16 on African Americans was a result of intentional discrimination by the NCAA.¹²⁸ A showing of Title VI violations by federally funded entities require “instances of intentional discrimination.”¹²⁹ The Third Circuit ruled that the plaintiffs successfully made a showing of purposeful discrimination by the NCAA.¹³⁰ The court reasoned that the NCAA was notified through studies that instituting Proposition 16 would significantly reduce the number of eligible African American student-athletes, yet the NCAA still adopted the policy.¹³¹ Shortly after *Pryor*, the NCAA abolished Proposition 16 for the NCAA’s current standards, which are discussed below.¹³²

The result in *Pryor* left the NCAA vulnerable to claims of intentional racial discrimination. However, because the Supreme Court has since found that the NCAA is not a state actor—and therefore will not be subject to Title VI violations¹³³—no further claims have been brought against the NCAA regarding intentional discrimination against minorities in admissions decisions after *Pryor*. Any further Title VI litigation against the NCAA

¹²⁵ *Cureton*, 198 F.3d at 118.

¹²⁶ *Pryor v. Nat’l Collegiate Athletic Ass’n*, 228 F.3d 548, 554 (3d Cir. 2002).

¹²⁷ *Id.*

¹²⁸ *Id.* at 552–53.

¹²⁹ *Alexander v. Sandoval*, 532 U.S. 275, 281 (2001).

¹³⁰ *Id.* at 565.

¹³¹ *Id.* at 564.

¹³² See Heckman, *supra* note 65, at 17.

¹³³ *Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 198–99 (1988); *Cureton*, 198 F.3d at 117–18.

would be unlikely to produce a favorable result for the student-athlete because the NCAA eradicated Proposition 16 when developing its current eligibility standards.

3. Current Eligibility Standards and Implications

Currently, to be eligible to participate in college sports at the Division I level, PSAs must successfully complete sixteen core high school courses and establish that their GPA and SAT/ACT scores fall within the initial-eligibility index. These requirements are depicted in Tables 5 and 6. The initial-eligibility index¹³⁴ is similar to the sliding scale employed in Proposition 16: “as the GPA increases, the required test score decreases, and vice versa.”¹³⁵

Table 5. Core Curriculum for Student-Athlete Eligibility in Division I Athletics¹³⁶

| | |
|---|---------|
| English. | 4 years |
| Mathematics. (Three years of mathematics courses at the level of Algebra I or higher.) (Computer science courses containing significant programming elements that meet graduation requirements in the area of mathematics also may be accepted.) | 3 years |
| Natural or physical science. (Including at least one laboratory course if offered by the high school). (Computer science courses containing significant programming elements that meet graduation requirements in the area of natural or physical science also may be accepted.) | 2 years |
| Additional courses in English, mathematics, or natural or physical science. | 1 year |
| Social science. | 2 years |
| Additional academic courses. (In any of the above areas or foreign language, philosophy, or non-doctrinal religion [e.g., comparative religion] courses). | 4 years |

¹³⁴ DIVISION I MANUAL, *supra* note 11, at 164.

¹³⁵ *A Seamless Eligibility Model*, NAT'L COLLEGIATE ATHLETIC ASS'N, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Academics/Division+I/Explanation+of+seamless+eligibility+model> (last updated Apr. 15, 2011) [hereinafter *Seamless Eligibility*].

¹³⁶ DIVISION I MANUAL, *supra* note 11, at 163.

Table 6. Initial-Eligibility Index¹³⁷

| Core Sum GPA | SAT | ACT | Core Sum GPA | SAT | ACT | Core Sum GPA | SAT | ACT |
|---------------|-----|-----|--------------|---------|-----|--------------|---------|-----|
| 3.550 & above | 400 | 37 | 3.025 | 610 | 51 | 2.500 | 820 | 68 |
| 3.525 | 410 | 38 | 3.000 | 620 | 52 | 2.475 | 830 | 69 |
| 3.500 | 420 | 39 | 2.975 | 630 | 52 | 2.450 | 840-850 | 70 |
| 3.475 | 430 | 40 | 2.950 | 640 | 53 | 2.425 | 860 | 70 |
| 3.450 | 440 | 41 | 2.925 | 650 | 53 | 2.400 | 860 | 71 |
| 3.425 | 450 | 41 | 2.900 | 660 | 54 | 2.375 | 870 | 72 |
| 3.400 | 460 | 42 | 2.875 | 670 | 55 | 2.350 | 880 | 73 |
| 3.375 | 470 | 42 | 2.850 | 680 | 56 | 2.325 | 890 | 74 |
| 3.350 | 480 | 43 | 2.825 | 690 | 56 | 2.300 | 900 | 75 |
| 3.325 | 490 | 44 | 2.800 | 700 | 57 | 2.275 | 910 | 76 |
| 3.300 | 500 | 44 | 2.775 | 710 | 58 | 2.250 | 920 | 77 |
| 3.275 | 510 | 45 | 2.750 | 720 | 59 | 2.225 | 930 | 78 |
| 3.250 | 520 | 46 | 2.725 | 730 | 59 | 2.200 | 940 | 79 |
| 3.225 | 530 | 46 | 2.700 | 730 | 60 | 2.175 | 950 | 80 |
| 3.200 | 540 | 47 | 2.675 | 740-750 | 61 | 2.150 | 960 | 80 |
| 3.175 | 550 | 47 | 2.650 | 760 | 62 | 2.125 | 960 | 81 |
| 3.150 | 560 | 48 | 2.625 | 770 | 63 | 2.100 | 970 | 82 |
| 3.125 | 570 | 49 | 2.600 | 780 | 64 | 2.075 | 980 | 83 |
| 3.100 | 580 | 49 | 2.575 | 790 | 65 | 2.050 | 990 | 84 |
| 3.075 | 590 | 50 | 2.550 | 800 | 66 | 2.025 | 1000 | 85 |
| 3.050 | 600 | 50 | 2.525 | 810 | 67 | 2.000 | 1010 | 86 |

As of 2007, all PSAs eligible to participate in college athletics are required to be certified by the NCAA Eligibility Center.¹³⁸ The NCAA Eligibility Center, previously known as the NCAA Initial-Eligibility Clearinghouse, verifies academic credentials and amateurism. For a student-athlete to be considered an amateur, he (1) cannot sign a contract, play, or practice with a professional team; (2) cannot receive a salary or any compensation for playing athletics; (3) cannot receive benefits from or be

¹³⁷ *Id.* at 164.

¹³⁸ *Id.* at 148.

represented by an agent; and (4) must agree to participate in organized-competition only.¹³⁹ PSAs may only participate in NCAA athletics after the NCAA Eligibility Center confirms that they meet the required standards.¹⁴⁰ In addition, the Eligibility Center is responsible for verifying that core curricula from various high schools in the country are not unfairly defined by member institutions.¹⁴¹ The Eligibility Center does this by contacting high school administrators all over the country to certify that each school's curricula comply with the NCAA's standards for core curriculum courses.¹⁴²

Despite the fact that the current eligibility standards open the door for more minority student-athletes to participate in intercollegiate athletics, the NCAA's standards also disadvantage minorities who are not athletes because those students are unable to access such flexible admissions standards. Unlike African American students who are not athletes, African American athletes are consistently being recruited and enjoy an "admissions advantage."¹⁴³ In fact, minority student-athletes are four times more likely to be admitted than minority non-student athletes.¹⁴⁴ Hence, the NCAA and its member institutions further instill in minorities the perception that success is more easily achieved through athletics, not academic excellence.¹⁴⁵

¹³⁹ *NCAA Amateurism Certification*, NAT'L COLLEGIATE ATHLETIC ASS'N, http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/NCAA/Legislation+and+Governance/Eligibility+and+Recruiting/Eligibility/Amateurism+Certification+Clearinghouse/index (last updated June 15, 2010).

¹⁴⁰ Hosick, *supra* note 72.

¹⁴¹ See Petr & Paskus, *supra* note 50, at 83–84.

¹⁴² See *High School Portal*, NAT'L COLLEGIATE ATHLETIC ASS'N, <https://web1.ncaa.org/hsportal/exec/homeAction> (last visited Oct. 5, 2011).

¹⁴³ SHULMAN & BOWEN, *supra* note 18, at 83.

¹⁴⁴ *Id.* at 327.

¹⁴⁵ Kathleen B. Overly, *The Exploitation of African-American Men in College Athletic Programs*, 5 VA. SPORTS & ENT. L.J. 31, 55 (2005).

C. College Admissions Standards and the Student-Athlete

There is no denying that college institutions are *granting scholarships to students* who are *unlikely to succeed on an academic level*. One glaring reason for this is because these universities know that elite athletes will bring in money for the school in the form of television revenue, merchandise, ticket sales, and countless other forms of income.¹⁴⁶

—Nick Caron, *Featured Columnist*

Bleacher Report

The admissions “game” for student-athletes and students in the general population varies each year.¹⁴⁷ An admissions committee chooses the incoming student body for a multitude of reasons that may or may not be shaped by outside influences.¹⁴⁸ However, one should not discount that instances exist where a non-athlete college applicant was rejected by the college of his dreams to grant a spot to a student-athlete.¹⁴⁹ Instances of granting preferential treatment to student-athletes adversely impact the admissions game by discriminating against all non-student-athletes who may be more qualified to be admitted than the student-athletes.

A student-athlete’s contribution to the athletics program, in addition to the institution’s desire to win in athletics competitions, can outweigh any concern about unfairness to regular applicants that have higher grades, test scores, and more impressive letters of recommendation.¹⁵⁰ For example, an institution like Stanford or Yale may give preferential admissions treatment to a football player because the academic standards of that institution make

¹⁴⁶ Nick Caron, *NCAA Not Doing a Favor to Athletes by Banning Endorsements*, BLEACHER REPORT (July 9, 2010), <http://bleacherreport.com/articles/418140-ncaa-not-doing-a-favor-to-athletes-by-banning-endorsements> (emphasis added).

¹⁴⁷ See generally SHULMAN & BOWEN, *supra* note 18, at 29.

¹⁴⁸ See *id.*

¹⁴⁹ See BOWEN & LEVIN, *supra* note 15, at 11.

¹⁵⁰ Daniel F. Mahony et al., *Ethics in Intercollegiate Athletics: An Examination of NCAA Violations and Penalties: 1952–1997*, in THE BUSINESS OF SPORTS 447, 447 (Scott R. Rosner & Kenneth L. Shropshire eds., 2004).

it difficult to recruit enough players who meet the admissions requirements.¹⁵¹ Because schools only admit a certain number of applicants yearly, for every student-athlete who is admitted a more qualified non-athlete applicant may be passed over.¹⁵² The fact that the process of making admissions decisions is so subjective, and dictated by the lucky few on admissions committees, makes unfairness difficult, if not impossible, to determine.

As a precursor for collegiate academic success, given the extra time and energy needed for student-athletes to focus on both academics and athletics, it is imperative that each PSA is academically prepared to complete college-level assignments. Admitting a student-athlete into college despite an inadequate academic profile may seem acceptable because it gives that student the opportunity to attend college. When admissions committees admit student-athletes who are not academically prepared for college, however, such practices are academically exploitative because such student-athletes are prone to academic underperformance.¹⁵³

Some institutions adhere to their educational missions of academic integrity by not allowing coaches and athletic departments to recruit potential student-athletes who do not meet the institution's admissions requirements.¹⁵⁴ More often than not, these schools believe that the forbidden act of giving preferential treatment to student-athletes contributes to the exploitation of at-risk student-athletes who may not have the tools to succeed in their undergraduate education.¹⁵⁵ At times known as the "heartbreak house,"¹⁵⁶ especially in the case of institutions with sports team having large followings, an admission committee's decision not to admit particular recruited student-athletes due to their lack of academic

¹⁵¹ See BOWEN & LEVIN, *supra* note 15, at 65.

¹⁵² See *id.* at 58.

¹⁵³ See *id.* at 145.

¹⁵⁴ See Wieberg, *supra* note 92.

¹⁵⁵ See YOST, *supra* note 2, at 15.

¹⁵⁶ *Id.*

preparedness deprives the institution of any expected benefits from that recruit.¹⁵⁷

Benefits to the college of having successful athletics teams run the gamut from a potential increase in revenue to a gain in popularity, with more potential student-athletes and non-student-athlete applicants seeking admission to the school.¹⁵⁸ Institutions with successful football and basketball teams (“winning teams”) can usually anticipate generating a substantial amount of money from winning seasons.¹⁵⁹ For example, during the 2007–2008 football season, the University of Texas was the top revenue producer, earning almost \$7.3 million.¹⁶⁰ Furthermore, institutions have an interest in producing winning teams in order to attract high-quality student-athlete applicants.¹⁶¹ A university with a winning team can also bolster its admissions numbers for non-student-athletes. This is because it is not uncommon for high school students to take into account factors such as a football team’s rank and school spirit when deciding which schools to apply to.¹⁶² Therefore, coaches in these winning institutions are constantly being made aware of the need to pursue only recruits meeting the school’s admissions requirements.¹⁶³ However, instances of coaches’ non-adherence to or disdain towards the school’s admissions requirements are not uncommon.

¹⁵⁷ SHULMAN & BOWEN, *supra* note 18, at 292.

¹⁵⁸ *See id.*

¹⁵⁹ *See e.g.*, YOST, *supra* note 2, at 53–56 (2010) (showing the amount of money that schools with successful football teams may earn from end-of-season bowl games).

¹⁶⁰ *Top Revenue Producers in College Athletics*, STREET & SMITH’S SPORTS BUS. J. (June 15, 2009), <http://www.sportsbusinessjournal.com/article/62825>.

¹⁶¹ *See* SHULMAN & BOWEN, *supra* note 18, at 292.

¹⁶² *See* Rick Green, *UConn Must Keep Standards High, Even if Coaches Say Goodbye*, HARTFORD COURANT (Jan. 7, 2011), http://articles.courant.com/2011-01-07/news/hc-green-uconn0107-20110107_1_uconn-officials-top-football-lee-melvin.

¹⁶³ SHULMAN & BOWEN, *supra* note 18, at xvii–xviii.

1. Football Drama On and Off the Football Field at the University of Connecticut

Some coaches are just not welcoming of high admissions standards.¹⁶⁴ To prevent losing student-athletes to high admissions standards, some coaches exert their influence on colleagues who sit on the school's admissions committee¹⁶⁵ or even leave one school to coach for another school with more flexible standards.¹⁶⁶

Randy Edsall became the winningest coach in the history of University of Connecticut football at the start of the fall 2010 football season.¹⁶⁷ Before the end of that football season, however, Edsall decided to end his tenure as head football coach at Connecticut.¹⁶⁸ He did not leave because of a need for more money, or because the athletic facilities were lacking (there was more than enough money donated to the football program through the school's booster club).¹⁶⁹ Edsall left because the school decided to enforce stricter admissions policies for all students—even student-athletes.¹⁷⁰

College applicants who are granted admission to the University of Connecticut had, on average, high school grade point averages of B+ or better, scored an average 1221 points on the SAT,¹⁷¹ and ranked in the top

¹⁶⁴ See Jeff Kalafa, *Notre Dame's Next Coach Will Demand Lower Academic Standards*, BLEACHER REPORT (Nov. 23, 2009), <http://bleacherreport.com/articles/296044-notre-dames-next-coach-will-demand-lower-academic-standards>.

¹⁶⁵ See BOWEN & LEVIN, *supra* note 15, at 57.

¹⁶⁶ See Trisha LaMonte, *Randy Edsall Leaves UConn to Take Job as Maryland's Head Football Coach*, SYRACUSE.COM (Jan. 3, 2011), http://blog.syracuse.com/sports/2011/01/randy_edsall_leaves_uconn_to_f.html.

¹⁶⁷ See *Randy Edsall*, UCONNHUSKIES.COM, http://www.uconnhuskies.com/sports/m-footbl/mtt/edsall_randy00.html (last visited Nov. 08, 2011).

¹⁶⁸ See *Randy Edsall to Coach Maryland*, ESPN.COM, (Jan. 3, 2011), <http://sports.espn.go.com/ncf/news/story?id=5981463>.

¹⁶⁹ See Neil Vigdor, *Buyer's Remorse: UConn Booster from Greenwich Wants His \$3M Back*, CT POST (Jan. 26, 2011), <http://www.ctpost.com/default/article/Buyer-s-remorse-UConn-booster-from-Greenwich-977685.php>.

¹⁷⁰ See LaMonte, *supra* note 166.

¹⁷¹ This score is based on the previous version of the SAT when the maximum score was 1600.

15 percent of their high school class.¹⁷² Despite this selective admission profile, no football player recruited by Edsall had ever been denied admission to the school.¹⁷³ Additionally, Edsall frequently met with the school's vice president of enrollment management and planning to discuss admitting all the football recruits.¹⁷⁴

One would not encounter much trouble inferring from these reports that Edsall probably rallied to admit many student-athletes who were inadequately prepared to succeed at the University of Connecticut. Connecticut state senator Beth Bye, co-chair of the General Assembly's Higher Education and Employment Advancement Committee, commented on the situation, stating that "college athletics have gotten a little bit out of control,"¹⁷⁵ but also commended the new stringent standards.

2. Special Admissions: A Potential Student-Athlete's Saving Grace

Even if a student-athlete fails to meet an institution's normal admissions requirements, it may still be possible for a college to admit the student-athlete through a "special admission" exception. The NCAA allows for the admission of student-athletes "under a special exception to the institution's normal entrance requirements,"¹⁷⁶ and this exception has reportedly been commonly practiced at most of the institutions with a top tier football team.¹⁷⁷ The University of Alabama football team head coach, Nick Saban, praises the exception because "[s]ome people have the ability and they have work ethic [but] never get an opportunity [for admission into college]."¹⁷⁸

¹⁷² See Green, *supra* note 162.

¹⁷³ *Id.*

¹⁷⁴ See *id.*

¹⁷⁵ See *id.*

¹⁷⁶ NAT'L COLLEGIATE ATHLETIC ASS'N, ART. 14.1.7.1.1, 2010–11 NCAA DIVISION I MANUAL 149 (2010).

¹⁷⁷ See *Report: Exemptions Benefit Athletes*, ASSOCIATED PRESS (Dec. 30, 2009), <http://sports.espn.go.com/ncf/news/story?id=4781264> [hereinafter *Report: Exemptions Benefit Athletes*].

¹⁷⁸ *Id.*

Although the standards differ from institution to institution and are subject to the discretion of each respective admissions committee, the standards set for all applicants seeking to gain admittance under the special admissions process are considerably low.¹⁷⁹ For example, the special admissions exception at the University of Washington allows a limited number of applicants to be admitted to the school even if they do not qualify for admission under the university's regular admissions process, or are predicted to have less than an 80 percent chance of achieving at least a 2.0 GPA during their freshman year.¹⁸⁰ In this instance, an overwhelming number of students who are "special admits" are minorities from low socioeconomic backgrounds.¹⁸¹ While the flexible standards in special admissions assist some students in gaining admission, several states choose to prohibit colleges from admitting students who do not meet a certain minimum admissions standard because of the potential abuses in that system, which could lead to academic scandals.¹⁸²

Non-student-athlete applicants who do not meet the school's normal admissions requirements but are part of an underrepresented minority group or have artistic or musical talents also enjoy the same special admissions exception.¹⁸³ But few, if any, non-student-athletes benefit from this program.¹⁸⁴ Several reports reveal startling numbers and percentages of

¹⁷⁹ Many schools do not publicize the criteria that students must meet to be admitted under their special admissions programs. See, e.g., *Admissions of Special Category Students*, UNIV. OF ALA., <http://www.ua.edu/catalogs/catalog00/10740.html> (last visited Feb. 12, 2011).

¹⁸⁰ *Admission Policy for Student Athletes*, UNIV. OF WASH., http://www.washington.edu/faculty/committees/fcas/fcas_issues/fcas_admisspolicystudentathlete_102408.pdf.

¹⁸¹ Interview with Pam Robenolt, Assistant Director of Learning Resources, Univ. of Washington, in Seattle, WA (Sept. 2010) [hereinafter Robenolt Interview].

¹⁸² See Tom Farrey, *Seminoles Helped by "LD" Diagnoses*, ESPN.COM, (Dec. 18, 2009), <http://sports.espn.go.com/espn/otl/news/story?id=4737281>.

¹⁸³ See Report: *Exemptions Benefit Athletes*, supra note 177.

¹⁸⁴ Scott Jaschik, *Quick Takes: "Special Admits" for Football*, INSIDE HIGHER EDUC. (Sept. 8, 2008), <http://www.insidehighered.com/news/2008/09/08/qt>.

special admits solely for the sport of football.¹⁸⁵ For instance, thirty-five special admission places were allotted for football players at Florida State University, while there was only one special admit recruited for music and one special admit recruited for dance.¹⁸⁶ Of the 120 schools that participate in college football, most have created special admissions programs for student-athletes.¹⁸⁷ Approximately twenty-seven of those schools had ten times more student-athletes who benefitted from special admission than non-student-athletes.¹⁸⁸ Examples of the extent of the use of special admissions programs are depicted below in Table 7.

Table 7. Students Admitted under Special Admissions Programs¹⁸⁹

| School | Percentage of Special Admit Student-Athletes within the Entire Population of Student-Athletes | Percentage of Special Admit Non-Student-Athletes within the Entire Population of Non-Student-Athletes |
|------------------------|---|---|
| UC Berkeley | 95% | 2% |
| Texas A&M | 94% | 8% |
| University of Oklahoma | 81% | 2% |

Despite any admissions advantage student-athletes may enjoy over similarly situated or more qualified applicants, these student-athletes are the most prone to being academically exploited once they are admitted because those students are less prepared for college.¹⁹⁰ Not surprisingly, a majority of the beneficiaries of the special admissions exception are student-athletes

¹⁸⁵ Mark Alesia, "Special" Treatment for Elite Athletes Common, IND. STAR (July 11, 2009, 7:13 PM), <http://www.indystar.com/article/20100101/NEWS14/90711016/-Special-treatment-elite-athletes-common>.

¹⁸⁶ See Farrey, *supra* note 182.

¹⁸⁷ See Report: Exemptions Benefit Athletes, *supra* note 177.

¹⁸⁸ *Id.*

¹⁸⁹ Alesia, *supra* note 185.

¹⁹⁰ See Report: Exemptions Benefit Athletes, *supra* note 177.

of a racial minority.¹⁹¹ An athletic director at one academically selective school stated, “If it weren’t for our [current admissions] programs, you wouldn’t see a black face on campus.”¹⁹² The NCAA’s propagation of low eligibility and admissions standards, the member institutions’ willingness to accept these low standards, and the seemingly constant failure to institute measures to ensure the student-athlete’s educational advancement after enrollment are all at the core of student-athletes’ academic exploitation.

III. IS IT ENOUGH? THE NCAA ACADEMIC REFORM: COMBATING ACADEMIC PROBLEMS BY IMPROVING ACADEMIC PROGRESS AND GRADUATION RATES

A. Prevalence of Academic Problems in Intercollegiate Athletics

Given the great pressures to win, it is hardly surprising that it is in football and men’s basketball that we find the most widely publicized scandals and other forms of bad behavior: cheating, falsification of academic records, point shaving, gambling, violence, and other blatant abuses that attract the attention of the media.¹⁹³

—James L. Shulman and William G. Bowen,
The Andrew W. Mellon Foundation

The source of the academic problems faced by student-athletes in intercollegiate athletics is the college sport system itself. Schools tend to harbor the desire to win at all costs because of the consistent pressures to achieve this goal.¹⁹⁴ If the teams do not win, the school can face serious consequences.¹⁹⁵ First, the university gets criticized by its administration, donors, and alumni.¹⁹⁶ Second, it is likely to receive negative publicity from

¹⁹¹ See Farrey, *supra* note 182.

¹⁹² SHULMAN & BOWEN, *supra* note 18, at 53.

¹⁹³ *Id.* at 295.

¹⁹⁴ See *id.*

¹⁹⁵ See *id.*

¹⁹⁶ See Greg Couch, *Indiana State Football’s Sad State*, AOL NEWS (Sept. 24, 2009), <http://www.aolnews.com/2009/09/24/indiana-state-footballs-sad-state>.

members of the community.¹⁹⁷ Third, the institution may experience significant losses, such as decreases in the number of potential student-athletes, terminations of coaches, and loss of sponsorships and other revenue.¹⁹⁸ But when the institution engages in acts to promote its sports teams, it usually hinders the student-athlete's educational capacity by forcing the student-athlete to miss classes to travel for sports, or failing to punish coaches who see academics as unimportant.¹⁹⁹ These acts promote the academic exploitation of the student-athlete by impeding his ability to receive a quality undergraduate education.

As previously mentioned, academic exploitation begins when student-athletes are admitted to college despite not being adequately prepared to succeed academically.²⁰⁰ Inadequate academic preparation leads to academic underperformance, which results in a high probability of academic misconduct because of the need to ensure that student-athletes maintain eligibility to participate in their sports.

1. Academic Underperformance

Academic underperformance is exhibited when a student does "even less well in the classroom than one would expect them to do on the basis of their entering academic credentials."²⁰¹ Academic underperformance of student-athletes worsened with the increasing commercialization of college sports and the pressures of winning: "Although it was clearly possible at one point in time . . . to manage the enterprise in such a way that athletics and academics were complementary, in today's world academic underperformance may be part of the price that must be paid for recruiting and building *winning* teams."²⁰² Minority student-athletes have the highest

¹⁹⁷ See *id.*

¹⁹⁸ See SHULMAN & BOWEN, *supra* note 18, at 295.

¹⁹⁹ See Kalafa, *supra* note 164.

²⁰⁰ See BOWEN & LEVIN, *supra* note 15, at 145.

²⁰¹ *Id.*

²⁰² SHULMAN & BOWEN, *supra* note 18, at 86.

rates of underperformance.²⁰³ There are four reasons that explain why minority student-athletes are most vulnerable to underperformance.

First, underperformance is caused by a student-athlete's inadequate academic preparation for higher-level coursework.²⁰⁴ Although there is no steadfast method to prove academic preparedness for college, it is argued that a student-athlete's high school GPA is an accurate predictor of success.²⁰⁵ High school GPA is a good measure of academic preparedness because it is an assessment of academic performance over time and is less likely to be vulnerable to the pressures of performance, such as those experienced while taking standardized tests.²⁰⁶ As seen in Tables 8 and 9, PSAs who identified themselves as African American had the lowest grade point averages.²⁰⁷ When looking at such low GPAs, African American student-athletes appear to be the least prepared for college, which likely results in underperformance in academics even more than expected because of the higher level of knowledge expected of college students.

Table 8. Prospective Student-Athlete GPA by Ethnicity in 1997 High School Graduates

| 1997 PSA Ethnic Group | Mean | Standard Deviation | Percent ≥ 2.00 |
|-----------------------------|-------------|--------------------|-------------------|
| White (Non-Hispanic) | 3.33 | 0.58 | 98.9 |
| African-American | 2.83 | 0.57 | 95.2 |
| Hispanic | 3.20 | 0.59 | 98.2 |
| Other | 3.32 | 0.61 | 98.6 |
| Missing Ethnicity | 3.09 | 0.63 | 96.7 |
| Division I IRL Total | 3.23 | 0.61 | 98.1 |

²⁰³ WILLIAM G. BOWEN & DEREK BOK, THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS 336 n.17 (1998). However, studies indicate that all athletes regardless of race, socioeconomic background, and type of sport played received grades worse than their non-athlete peers. SHULMAN & BOWEN, *supra* note 18, at 82.

²⁰⁴ See White, *supra* note 91.

²⁰⁵ See Sellers, *supra* note 48, at 55.

²⁰⁶ See *id.*

²⁰⁷ See NCAA RESEARCH REPORT, *supra* note 116, at 23.

Table 9. Prospective Student-Athlete GPA by Ethnicity in 1998 High School Graduates

| 1998 PSA Ethnic Group | Mean | Standard Deviation | Percent ≥ 2.00 |
|-----------------------------|-------------|--------------------|-------------------|
| White (Non-Hispanic) | 3.38 | 0.58 | 99.2 |
| African-American | 2.88 | 0.58 | 95.7 |
| Hispanic | 3.26 | 0.60 | 98.9 |
| Other | 3.37 | 0.59 | 99.3 |
| Missing Ethnicity | 3.17 | 0.60 | 97.8 |
| Division I IRL Total | 3.28 | 0.61 | 98.5 |

An important factor to note, however, is that deficient academic preparation does not always cause academic underperformance if the student-athlete is motivated and puts forth the effort to do well in school.²⁰⁸ However, as will be described later, effort to do well academically may be lacking because student-athletes spend a significant amount of time devoted to athletics.²⁰⁹

Second, student-athlete underperformance can be explained by the stigma against student-athletes in educational settings and the “stereotype threats” experienced by minority student-athletes.²¹⁰ A stereotype threat means that an individual is at risk of embodying a negative stereotype about one’s group.²¹¹ Members of minority groups—African Americans in particular—are susceptible to underachievement in academic tasks because of the stereotype of their academic inferiority.²¹² Furthermore, stereotype threats affect individuals who come from low socioeconomic backgrounds.²¹³ Not surprisingly, student-athletes’ academic performance can also be affected

²⁰⁸ See *id.* at 54.

²⁰⁹ See Gayles & Hu, *supra* note 49, at 315–16.

²¹⁰ BOWEN & LEVIN, *supra* note 15, at 145.

²¹¹ *What is Stereotype Threat?*, REDUCINGSTEREOTYPETHREAT.ORG, <http://www.reducingstereotypethreat.org/definition.html> (last visited Jan. 12, 2011).

²¹² See SHULMAN & BOWEN, *supra* note 18, at 253.

²¹³ REDUCINGSTEREOTYPETHREAT.ORG, *supra* note 210.

by stereotype threats because of the notion of the “dumb jock.”²¹⁴ Thus, minority student-athletes may be faced with multiple stereotype threats that substantially affect their academic performances.

Third, compounding the two previous reasons with the fact that a minority student-athlete’s schedule is heavily occupied with athletics leads to the conclusion that minority student-athletes are more vulnerable to academic underperformance.²¹⁵ Many have argued that fulfilling all the responsibilities of being a student-athlete is akin to having two full-time jobs.²¹⁶ Especially while in season, a majority of the student-athletes’ time is spent on athletics, thereby hindering the student-athletes from taking full advantage of the educational resources available.²¹⁷ The amount of time student-athletes are allowed to spend participating in athletic activities, according to the NCAA, is limited to four hours per day and twenty hours per week.²¹⁸ Yet studies indicate that Division I football players easily spend over forty hours per week on athletic-related activities.²¹⁹

A typical football player’s day consists of participating in early morning practice, attending morning and early afternoon classes, returning to “voluntary” practice in the middle of the afternoon, and studying in the evenings.²²⁰ But, considering the amount of physical energy exerted during the day, it is not a wonder that many student-athletes lack the capacity to devote enough mental energy to completing schoolwork at night. Any supplementary time spent towards athletics obviously detracts from the amount of time a student-athlete can focus on academics; therefore, a

²¹⁴ See SHULMAN & BOWEN, *supra* note 18, at 253.

²¹⁵ See YOST, *supra* note 2, at 16.

²¹⁶ *See id.*

²¹⁷ *See id.*

²¹⁸ NATIONL COLLEGIATE ATHLETIC ASS’N, ART. 17.1.6.1, 2010–11 NCAA DIVISION I MANUAL 328 (2010).

²¹⁹ Gayles & Hu, *supra* note 49, at 315–16.

²²⁰ Richard E. Lapchick, *Student-Athletes’ Forum*, in NEW GAME PLAN FOR COLLEGE SPORT 277 (Richard Lapchick ed., 2006).

student-athlete's strict schedule plays an immense role in academic underperformance.²²¹

Finally, many minority student-athletes underperform because of a general lack of interest in education.²²² While any number of reasons can explain a minority student-athlete's general lack of interest in education, a notable sociologist posited that family influence and culture greatly impacts the lack of motivation; according to Harry Edwards, "Black families are four times more likely than White families to push their children toward sports-career aspirations."²²³ Viewing college just as a stepping-stone for a professional sports career can create extensive motivation problems, causing minority student athletes to underperform.²²⁴ Regardless of the reason, the potential of minority student-athlete academic underperformance has the capacity to beget academic misconduct because these student-athletes must pass their courses and earn certain grades to be eligible to play.

2. Academic Misconduct

With big bucks dangling before their eyes, many NCAA schools find the temptations of success too alluring to worry about the rules. . . . Schools cheat. They cheat by arranging to help their prospective athletes pass standardized tests. They cheat by providing illegal payments to their recruits. They cheat by setting up special rinky-dink curricula so their athletes can stay qualified.

²²¹ Gayles & Hu, *supra* note 49, at 315–16.

²²² See Gerry Dinardo, *Why Not Let 18-Year-Olds Head Straight for the Pros?*, N.Y. TIMES (Aug. 27, 2011), <http://www.nytimes.com/2011/08/28/sports/ncaafotball/why-not-let-18-year-olds-head-straight-for-the-pros.html>; Interview with Kim Durand, Associate Athletic Director for Student Development, Univ. of Wash., in Seattle, WA (Oct. 2010) [hereinafter Durand Interview].

²²³ Edwards, *supra* note 24, at 138.

²²⁴ Durand Interview, *supra* note 222.

And when one school cheats, others feel compelled to do the same.²²⁵

—Andrew Zimbalist, Robert A. Woods Professor of Economics
Smith College

Academic misconduct is so associated with intercollegiate athletics that it seems as though newly publicized academic misconduct allegations fail to surprise anyone—college sports fan or not.²²⁶ In 2010, the NCAA penalized four institutions for committing academic misconduct.²²⁷ At the time this article was written in 2011, there were at least three investigations being conducted by the NCAA regarding instances of academic fraud in well-regarded academic institutions.²²⁸ Examples of misconduct range from allegations that academic services advisors are writing essays for student-

²²⁵ ANDREW A. ZIMBALIST, UNPAID PROFESSIONALS: COMMERCIALISM AND CONFLICT IN BIG-TIME COLLEGE SPORTS 4 (Princeton Univ. Press, 1999).

²²⁶ See Benford, *supra* note 8, at 13–14.

²²⁷ 2010 News Release Archives, NAT'L COLLEGIATE ATHLETIC ASS'N, http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/NCAA/Media+and+Events/Press+Room/News+Release+Archive/2010/Infractions (last visited Nov. 24, 2010).

²²⁸ There are at least three academic scandal allegations receiving notoriety this year: (1) a University of Kentucky basketball player's eligibility through use of a forged high school transcript (see Frank Deford, *NCAA Deserves an F When it Comes to Monitoring Academic Fraud*, SPORTS ILLUSTRATED (Sept. 22, 2010), http://sportsillustrated.cnn.com/2010/writers/frank_deford/09/22/ncaa/index.html); (2) up to sixteen student athletes were suspended from the University of North Carolina football team before the first game of the season as a result of alleged academic misconduct involving players and an Academic Support Center tutor (*Football Probe Enters 5th Month*, UNC GEN. ALUMNI ASS'N (Oct. 11, 2010), <http://alumni.unc.edu/article.aspx?SID=7889>); and (3) Auburn University quarterback, Cam Newton, faces accusations of academic cheating during his freshman and sophomore years (see Pete Thamel & Ray Glier, *Newton Faced Suspension at Florida*, N.Y. TIMES, Nov. 9, 2010, at B16, available at http://www.nytimes.com/2010/11/10/sports/ncaafootball/10auburn.html?_r=2&src=un&feedurl=http://json8.nytimes.com/pages/sports/index.jsonp).

athletes²²⁹ to institutions punishing faculty members for not providing preferential treatment to student-athletes in the classroom.²³⁰

The NCAA requires its member institutions to engage in self-reporting any rule violations.²³¹ Theoretically, in addition to helping the administration of the NCAA be more efficient, self-reporting makes the institutions more accountable for their own acts. However, the self-reporting measure also likely assists in covering up academic misconduct.²³² Not surprisingly, because of such institutional oversight, many of the violations of academic misconduct are not reported to the NCAA.²³³

a) The Hits Just Keep on Coming for UNC

Just a week before the start of the 2010 football season, University of North Carolina at Chapel Hill's (UNC) chancellor, athletic director, and football head coach delivered bad news to UNC Tar Heels fans. Possible academic violations were uncovered during an investigation of non-academic rules violations.²³⁴ What started off as an investigative probe into rule violations involving the impermissible receipt of benefits by players turned into a disclosure of allegations of academic misconduct.²³⁵ The academic misconduct involved a tutor, previously employed by then-head

²²⁹ See Farrey, *supra* note 182.

²³⁰ See William Nack, *This Case was One for the Books*, SPORTS ILLUSTRATED (Feb. 24, 1986), <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1064531/index.htm>.

²³¹ NAT'L COLLEGIATE ATHLETIC ASS'N, ART. 2.8.1, 2010–11 NCAA DIVISION I MANUAL 4 (2010).

²³² Deford, *supra* note 227.

²³³ See *id.*

²³⁴ See Ken Tysiac, *UNC Probe Expands to Academic Misconduct*, NEWS OBSERVER (Aug. 27, 2010), <http://www.newsobserver.com/2010/08/27/649600/unc-probe-expands-to-academic.html>.

²³⁵ See Ken Tysiac, *UNC Shares Documents in NCAA Probe*, NEWS OBSERVER (Sept. 21, 2011), <http://www.newsobserver.com/2011/09/21/1505069/unc-shares-papers.html>.

coach, Butch Davis, who impermissibly provided academic assistance to several game-starting players on the team.²³⁶

In what is termed “one of the worst scandals at a school known for its history of athletic and academic integrity,”²³⁷ UNC’s team, the Tar Heels, were forced to play their first game of the 2010 season without thirteen of their starters;²³⁸ fourteen players were suspended from various games during the same season, and seven players were suspended that entire season.²³⁹ That, however, was just the start of the punishments imposed on the Tar Heels. In July of 2011, UNC Chancellor Holden Thorp fired Butch Davis due to the amount of damage that the school’s reputation suffered.²⁴⁰ In September of 2011, UNC placed sanctions on its own football program, including: imposing two years of probation on the team, terminating three potential student-athlete scholarships in the next three years, vacating all 2008 and 2009 season wins, and assessing a \$50,000 fine.²⁴¹ Additionally, the Tar Heels will be subject to further penalties because official punishments from the NCAA are not expected until after 2011 postseason games.²⁴²

To make matters worse for the academic integrity of UNC, during the summer of 2011, UNC’s Department of African and Afro-American Studies

²³⁶ See Andy Britt, *Investigation of Tar Heels’ Football Program Widens*, N.C. TAR HEELS EXAMINER (Aug. 27, 2010), <http://www.examiner.com/north-carolina-tar-heels-in-raleigh/ncaa-investigation-of-tar-heels-football-program-widens?cid=parsely#parsely>.

²³⁷ *Id.*

²³⁸ See Tim Gardner, *North Carolina Will Be Without 13 Players for Opener Against LSU*, USA TODAY (Sept. 4, 2010), <http://content.usatoday.com/communities/campusrivalry/post/2010/09/north-carolina-announces-12-players-that-will-miss-lsu-game/1>.

²³⁹ See Tysiac, *supra* note 234.

²⁴⁰ See Ken Tysiac, *Thorp: Football Still a Priority at UNC*, NEWS OBSERVER (Sept. 23, 2011), <http://www.newsobserver.com/2011/09/23/1510048/football-still-a-priority.html>; see Tysiac, *supra* note 234.

²⁴¹ See Tysiac, *supra* note 234.

²⁴² Caulton Tudor, *Tudor: Tar Heels Keep Focused on the Game*, NEWS OBSERVER (Sept. 21, 2011), <http://www.newsobserver.com/2011/09/21/1505054/tar-heels-turn-on-their-tunnel.html>.

came under scrutiny when the department chairman, Julius Nyang'oro, committed academic misconduct by allegedly failing to report plagiarism by one football player and hiring a sports agent to teach a summer class.²⁴³ Additionally, UNC's dean, Karen Gil, ordered an "in-depth review" of courses that are popular with athletes, such as independent study classes.²⁴⁴ This was spurred when UNC reported that football players made up more than 20 percent of the students enrolled in independent studies.

Because the academic integrity at UNC has been called into question since the beginning of the NCAA investigation, UNC is seeking to institute new academic standards and revamp the student-athlete academic advising program.²⁴⁵

b) Seminoles' Scandal

"Our university found this problem . . . it's not like I had anything to do with this."²⁴⁶

—Bobby Bowden, Former Football Head Coach
Florida State University

One of the most outrageous stories of academic misconduct occurred at Florida State University (FSU) under the then-head football coach of the Seminoles, Bobby Bowden. It was found that Bowden allowed academically ineligible players to play when they were supposed to be suspended because they had committed academic misconduct.²⁴⁷ During his tenure, Bowden was "recruiting students so academically deficient, they

²⁴³ See Dan Kane, *UNC Classes Under Review in Wake of NCAA Probe*, NEWS OBSERVER (Sept. 22, 2011), <http://www.newsobserver.com/2011/09/22/1507860/unc-classes-under-review.html>.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ Farrey, *supra* note 182.

²⁴⁷ See Farrey, *supra* note 182.

couldn't do college work on their own."²⁴⁸ The academic preparedness of some students was so poor that a few of them had IQs as low as sixty—verging on cognitive impairment.²⁴⁹ Furthermore, many of the recruits had an elementary school reading level.²⁵⁰ Compare this with the fact that non-student-athletes who were admitted to FSU had average high school GPAs between 3.5 and 4.1.²⁵¹

At the center of the debacle was Brenda Monk, a learning specialist with the FSU athletic department, who was accused of committing academic misconduct.²⁵² One of her responsibilities was spending “individual development time” with student-athletes who were diagnosed with learning disabilities, which included reading to illiterate students.²⁵³ Additionally, student-athletes who were labeled “academically at-risk,” or susceptible to academic underperformance, were referred by Monk to a private psychologist for testing for learning disabilities.²⁵⁴ FSU paid the psychologist \$800 per test, and the psychologist diagnosed student-athletes as having a learning disability 80 percent of the time using a controversial test that was immensely criticized.²⁵⁵ Many critics viewed the test as inaccurate because of the high probability of producing a positive diagnosis for a learning disability.²⁵⁶

Investigations into academic misconduct began after Monk allowed a basketball player to input answers on an online sports psychology test for

²⁴⁸ Interview by Tom Farrey with Brenda Monk, Learning Specialist, Fla. St. Univ. (date and location unknown), available at <http://sports.espn.go.com/espn/otl/news/story?id=4737281>.

²⁴⁹ *Id.*

²⁵⁰ *See id.*

²⁵¹ *Freshman Requirements*, FLA. ST. UNIV., FRESHMAN ADMISSIONS, <http://admissions.fsu.edu/freshman/admissions/requirements.cfm> (last visited Oct. 5, 2011).

²⁵² *See* Farrey, *supra* note 182.

²⁵³ *See id.*

²⁵⁴ *See id.*

²⁵⁵ *See id.*

²⁵⁶ *See id.*

another student-athlete; thereafter, Monk was accused of typing essays for various student-athletes.²⁵⁷ The NCAA additionally accused Monk of producing a study guide to an online exam for a music class.²⁵⁸ Moreover, FSU officials and the NCAA further discovered that a tutor gave approximately sixty student-athletes answers to that same exam.²⁵⁹ As a result, approximately thirty football players were suspended from participating in their 2007 bowl game—ironically, the Music City Bowl—and a few were suspended for a few games in the subsequent football season.²⁶⁰ Four years after the infractions occurred, all the penalties against FSU were announced. The penalties included “vacation-of-wins”²⁶¹ in football, basketball, baseball, and track and field; probation; public reprimand; and limits in amounts of scholarships awarded.²⁶²

B. NCAA Academic Reform: Degree Progress and the Academic Performance Program

1. Progress-Toward-Degree

Part of the NCAA’s renewed commitment to academic reform is the creation of the Progress-Toward-Degree standard, which mandates that student-athletes complete a percentage of their degree programs after each year of athletic participation.²⁶³ Specifically, student-athletes are required to complete at least twenty-four semester hours (or thirty-six quarter hours) of

²⁵⁷ See *id.*

²⁵⁸ See Brian Grummell, *Florida State gets Probation, Other Penalties for Academic Scandal*, NCAA FOOTBALL FANHOUSE, <http://ncaafootball.fanhouse.com/2009/03/06/ncaa-slaps-florida-state-with-probation> (last updated Mar. 6, 2009).

²⁵⁹ See Farrey, *supra* note 182.

²⁶⁰ See Grummell, *supra* note 258.

²⁶¹ When teams vacate their wins, they essentially forfeit the wins on record. Frank D. Nole, *FSU’s Academic Fraud Scandal Finally Comes to an End*, TOMAHAWK NATION (Feb. 7, 2010), <http://www.tomahawknation.com/2010/2/7/1299742/fsus-academic-fraud-scandal>.

²⁶² See Grummell, *supra* note 258.

²⁶³ See *Seamless Eligibility*, *supra* note 135.

credit by the end of each year.²⁶⁴ Because of the time crunch to complete the curriculum in their chosen majors, student-athletes are required to declare a major immediately after enrolling as a freshman.²⁶⁵

Unfortunately, requiring student-athletes to choose their majors immediately after enrolling means they are potentially unable to explore a field of study that suits them. In one instance, a former football player at Florida State University expressed interest in obtaining a college degree in a major other than social sciences.²⁶⁶ However, his academic advisors recommended that a social science major “suited him best.”²⁶⁷ Impressionable and young, student-athletes may resort to choosing courses that the student-athletes’ academic advisors and/or coaches suggest instead of pursuing their own academic goals. Exploitation concerns may arise as athletic departments take advantage of the student-athletes’ educational opportunities for the purpose of eligibility. Thus, as student-athletes are “less able to formulate mature educational and career plans than their non-athlete peers, the academic exploitation continues.”²⁶⁸

2. The Academic Performance Program

In 2004, the NCAA enacted the Academic Performance Program (APP) to combat incessant violations of academic misconduct and underperformance, and to prevent further academic exploitation of student-athletes by requiring teams to report that they are making academic progress to the effect of a graduation rate of, at minimum, 50 percent.²⁶⁹ The APP

²⁶⁴ DIVISION I MANUAL, *supra* note 11, at 169.

²⁶⁵ See Delaney Lovett, *NCAA Ought to Rethink Policies*, THE NORTH WIND (Nov. 4, 2010), <http://www.thenorthwindonline.com/?p=3858726>.

²⁶⁶ See Farrey, *supra* note 182.

²⁶⁷ See *id.*

²⁶⁸ Noël Harmon, *Overscheduled and Overcommitted: The Lives of Student Athletes*, ABOUT CAMPUS, Jan.–Feb. 2010, at 26–27.

²⁶⁹ See John V. Lombardi, *Preserving the Audience: The NCAA and the APR*, INSIDE HIGHER EDUC. (Mar. 14, 2005), <http://www.insidehighered.com/views/2005/03/14/lombardi4>.

uses the Academic Progress Rate (APR) to measure real-time academic progress for individual students and teams. The APP also uses the Graduation Success Rate (GSR) to measure graduation rates and to track student-athletes' "long-term academic success."²⁷⁰ The APP was developed with the good intention of "providing student-athletes with exemplary educational and intercollegiate-athletics experiences in an environment that recognizes and supports the primacy of the academic mission of its member institutions."²⁷¹ However, in practice, a member institution's adherence to the APR and GSR may actually increase the chances of student-athlete exploitation.

a) *The APR*

The APR was developed to measure every athletic team's academic performance each semester in order to assess the academic success or potential failures more rapidly than through an assessment of a team's graduation rates.²⁷² The NCAA grades individual teams on the performance of each student-athlete. The grade is based on a team's student-athletes' ability to (1) stay in school and graduate and (2) maintain academic eligibility to play their sport.²⁷³ Currently, teams that have an APR below the minimum score of 925—approximately a 50 percent graduation rate²⁷⁴—are sanctioned by the NCAA. Repeat offenders receive exponentially larger penalties for each offense.²⁷⁵

²⁷⁰ Blackman, *supra* note 91, at 227–228.

²⁷¹ DIVISION I MANUAL, *supra* note 11, at 377.

²⁷² Petr & Paskus, *supra* note 50, at 90.

²⁷³ Steve Wieberg, *NCAA Academic Ratings to be Attached to College Coaches*, USA TODAY (Aug. 3, 2010), http://www.usatoday.com/sports/college/2010-08-03-ncaa-academic-ratings-coaches_N.htm.

²⁷⁴ CHAMPION, JR., *supra* note 57.

²⁷⁵ DIVISION I MANUAL, *supra* note 11, at 378, 379. The progression of penalties is as follows: (1) public warning; (2) limitations on financial aid, playing, practice seasons, and recruiting; (3) postseason competition ineligibility; and (4) membership status restriction.

Despite the fact that the NCAA's academic reform measures are designed to prevent misconduct, the academic standards in the reform enable exploitative practices to persist. Because student-athletes who are inadequately prepared to succeed at a collegiate academic level continue to be admitted into college, academic misconduct seems unavoidable, which remains a grave concern for academic advisers nationwide.²⁷⁶ Institutions may find the APR's rigid standards at odds with the NCAA's flexible initial eligibility standards. The NCAA's minimum admissions requirements allow at-risk students to become eligible to participate in intercollegiate athletics.²⁷⁷ Subsequent to admitting the at-risk student, the institutions struggle to keep the student-athlete eligible and on track to graduate. One way of helping to ensure that a student-athlete graduates is by enrolling him in "Mickey Mouse" courses of study.²⁷⁸

Mickey Mouse courses are "less competitive 'jock courses' of dubious educational value and occupational relevance."²⁷⁹ Social science and business majors are often flooded with student-athletes because academic advisers suggest these courses are "easy to pass" or are "athlete-friendly."²⁸⁰ Academic advisers who suggest that student-athletes take Mickey Mouse courses do so because of the influence of the coaching staff, which is primarily interested in keeping student-athletes eligible to play.²⁸¹ Instances such as the major academic scandal at FSU combined with the fact that 75 percent of the African American student-athletes on the FSU football team major in social sciences leave many to question the influence of academic

²⁷⁶ See Wieberg, *supra* note 92.

²⁷⁷ See Gerald S. Gurney, *Toughen NCAA Standards for Freshmen*, INSIDE HIGHER EDUC. (Feb. 7, 2011), http://www.insidehighered.com/layout/set/popup/views/2011/02/07/gurney_toughen_nca_a_eligibility_standards_for_freshman_athletes.

²⁷⁸ In fact, over 50 percent of all male student-athletes major in social sciences and business. See SHULMAN & BOWEN, *supra* note 18, at 75–78.

²⁷⁹ Edwards, *supra* note 24, at 138.

²⁸⁰ Beamon, *supra* note 16 at 360; see BOWEN & LEVIN, *supra* note 15, at 118–120.

²⁸¹ See Benford, *supra* note 8.

advisers and coaching staff on course selection.²⁸² In one instance, an African American football player aspired to major in engineering, but ended up graduating with a degree in something else because it was easier to maintain eligibility for football:

My major was something I just kinda wind up getting, I started off wanting to be an engineer, but it's like the labs and stuff would conflict with practice. And cuz I was on scholarship, they figured, uh, my football stuff was more important than going to class or being what I truly wanted to be, so I kinda fell into my degree.²⁸³

The foregoing is not an isolated incident; many student-athletes across the country share the same feelings about their college majors.²⁸⁴ Systems that deprive student-athletes of their choice of academic study focus more on athletics than academics, and therefore perpetuate the academic exploitation of student-athletes.

b) The GSR

The GSR compiles the graduation rates of each member institution's athletic teams and compares those rates with the graduation rates of students in the general population, which is used to show the success rates of those institutions' student-athletes.²⁸⁵ Teams in each sport are required to meet a minimum 60 percent graduation rate,²⁸⁶ and are subject to punishments

²⁸² See Farrey, *supra* note 182.

²⁸³ Beamon, *supra* note 16 at 360.

²⁸⁴ See Lapchick, *supra* note 220, at 277.

²⁸⁵ *NCAA Reacts to Secretary of Education Arne Duncan's Comments*, NAT'L COLLEGIATE ATHLETIC ASS'N, http://ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/ncaa/ncaa+news/ncaa+news+online/2010/division+i/ncaa_statement_duncan_graduation_rates (last visited Nov. 7, 2010) [hereinafter *NCAA Reacts to Secretary of Education*].

²⁸⁶ Erik Brady, *Bans for Low Grad Rates Urged*, USA TODAY (Mar. 17, 2010), http://www.usatoday.com/SPORTS/usaedition/2010-03-17-hoops17_st_U.htm. Earlier this year, the US Department of Education Secretary Arne Duncan lamented over the NCAA allowing Division I men's basketball teams with graduation rates under 40 percent to participate in postseason competitions. The tournament schools with graduation rates of less than 40% were Arkansas-Pine Bluff (29%), Baylor (36%),

similar to those given for APR offenses.²⁸⁷ The newest GSR studies indicate that the overall GSR rose to 79 percent.²⁸⁸ Moreover, the GSR for male African American student athletes rose to 59 percent from 51 percent.²⁸⁹ An illustration of the graduation rates of minority football players is displayed in Table 10. NCAA President Mark Emmert reported that the academic success of minorities in revenue-generating sports was dramatically improving.²⁹⁰

Table 10. GSR of 2003 Entering Freshmen Football Players

| | Football FBS | | |
|--------------|---------------|---------|------|
| | Freshman Rate | | |
| | 2003 | 4-Class | GSR |
| Am. Ind./AN | 67-a | 52-e | 68-e |
| Asian | 61-e | 51-e | 54-e |
| Black | 49-e | 49-e | 59-e |
| Hispanic | 75-e | 58-e | 65-e |
| Nat. Haw./PI | 0-a | 0-a | 50-d |
| N-R Alien | 50-c | 54-e | 73-e |
| Two or More | 75-a | 73-c | 86-b |
| Unknown | 50-e | 56-e | 65-e |
| White | 67-e | 65-e | 79-e |
| Total | 56-e | 55-e | 67-e |

California (20%), Clemson (37%), Georgia Tech (38%), Kentucky (31%), Louisville (38%), Maryland (8%), Missouri (36%), New Mexico State (36%), Tennessee (30%) and Washington (29%).

²⁸⁷ *Grad Rates Hit High Marks*, NAT'L COLLEGIATE ATHLETIC ASS'N (Oct. 27, 2010), <http://www.ncaa.org/wps/wcm/connect/public/ncaa/resources/latest+news/2010+news+stories/october/grad+rates+hit+high+marks>. The Division I schools with the highest rates in graduating their athletes over 4-year time period were Colgate (100%) and Notre Dame (99%) while the worst schools were Utah Valley State (31%) and Chicago State (32%).

²⁸⁸ *Id.*

²⁸⁹ *See id.*

²⁹⁰ *See id.*

Upon further analysis, however, these statistics appear manipulated by the NCAA. Though the NCAA boasts that the graduation rates of its member institutions' student-athletes surpass those of students-at-large,²⁹¹ a recent study reveals that the graduation rates include part-time students in GSR calculations, which distorts the comparison because part-time students graduate after a longer period of time, and in some cases, at a lower rate than their full-time peers.²⁹² Student-athletes are required to be full-time students, so their graduation rates should be compared to other full-time students.²⁹³ Because of this discrepancy, the graduation rate of Division I minority student-athletes is probably is much lower than reported.²⁹⁴ This casts a doubtful shadow on the NCAA's statistics. The questionable techniques used to determine the GSR raises concerns as to whether the NCAA sincerely abides by its policy to "maintain [intercollegiate athletics programs] as a vital component of the educational program" of a university.²⁹⁵

C. 2011 NCAA Presidential Retreat to Spark Change

The integrity of collegiate athletics is seriously challenged today by rapidly growing pressures coming from many directions. . . . We have reached a point where incremental change is not sufficient to meet these challenges. I want us to act more aggressively and in a more comprehensive way than we have in the past. A few new tweaks of the rules won't get the job done.²⁹⁶

—Mark Emmert, NCAA President

²⁹¹ See *NCAA Reacts to Secretary of Education*, *supra* note 285.

²⁹² See E. Woodrow Eckard, *NCAA Athlete Graduation Rates: Less Than Meets the Eye*, 24 J. SPORT MGMT. 45, 45 (2010).

²⁹³ See *id.*

²⁹⁴ See *id.* at 46.

²⁹⁵ DIVISION I MANUAL, *supra* note 11, at 4.

²⁹⁶ *Emmert: Substantial Change Needed*, NAT'L COLLEGIATE ATHLETIC ASS'N (July 19, 2011), <http://www.ncaa.com/news/ncaa/2011-07-19/emmert-substantial-change-needed>.

In early August 2011, NCAA President Mark Emmert led a two-day retreat motivated by “fundamental concerns that commercialism is overwhelming amateurism; that some student-athletes’ and coaches’ behaviors are fundamentally at odds with the values of higher education; and . . . an even sharper focus on educating student-athletes through athletics.”²⁹⁷ The presidential retreat focused on critical issues facing Division I intercollegiate athletics, such as student-athlete academic performance and integrity and accountability in athletics.²⁹⁸ Approximately sixty participants, comprised of university presidents, various athletic administrators, and conference commissioners²⁹⁹ who were overwhelmingly “‘fed up’ with cheating and a lack of accountability’ in the collegiate model of athletics,” were resolute in their commitment to promulgate initiatives that would quickly take effect.³⁰⁰ Some of the major initiatives addressed included rewriting the NCAA rulebook, clarifying the NCAA penalty structure and increasing violations, concentrating on major infractions, toughening admissions requirements for new student-athletes by raising the required GPA from 2.0 to 2.5,³⁰¹ and improving individual student-athlete academic achievement as well as all-team academic performance.³⁰²

Responding to the promise to institute aggressive change in a timely manner, the NCAA Board of Directors voted to heighten Division I teams’

²⁹⁷ *See id.*

²⁹⁸ Emily Potter, *NCAA, School Leaders Talk Reform*, NAT’L COLLEGIATE ATHLETIC ASS’N (Aug. 9, 2011), <http://www.ncaa.com/news/ncaa/2011-08-09/ncaa-school-leaders-talk-reform>.

²⁹⁹ Dana O’Neil, *NCAA Retreat to Tackle Three Main Topics*, ESPN.COM (Aug. 9, 2011), http://espn.go.com/college-sports/story/_id/6846512/ncaa-presidential-retreat-begins-major-reform-docket.

³⁰⁰ Ronnie Ramos, *Talk of Change Continues at Summit*, NAT’L COLLEGIATE ATHLETIC ASS’N (Aug. 10, 2011), <http://www.ncaa.com/news/ncaa/2011-08-10/talk-change-continues-summit>.

³⁰¹ O’Neil, *supra* note 299.

³⁰² *See id.*

APR to 930 the day after the presidential retreat.³⁰³ Instituting a higher APR requires all teams to raise academic standards and focus on the education of their student-athletes.³⁰⁴ An APR of 930 measures an approximate graduation rate of 50 percent for the team's student-athletes.³⁰⁵ Prior to the retreat, the minimum APR score allowed by the NCAA was 925; teams with that score or below faced penalties, such as loss of scholarships.³⁰⁶ Moreover, if a team scored an APR of less than 900, the team was penalized with postseason bans, such as inability to compete in post-season games.³⁰⁷

The NCAA's recent actions in helping student-athletes achieve academic success show a stronger commitment to upholding the NCAA's core purpose of ensuring that the educational experience of the student-athlete is paramount. While the NCAA is making progress in the realm of academic reform, the question remains as to whether the decisions to raise academic standards will lead to positive changes overall or cause more problems for student-athletes—especially those who belong to racial minority groups.

IV. ERADICATING THE EXPLOITATION OF STUDENT-ATHLETES

As big-time, commercialized college athletics continue to generate revenue, the pursuit to win likely will result in student-athletes being encouraged to neglect their academic development for the sake of their athletic performance, which further increases the perception of exploitation.³⁰⁸

—*Krystal K. Beamon, Assistant Professor of Sociology*
University of Texas-Arlington

³⁰³ See Brian Bennett, *Panel Mulls Simplifying NCAA Rulebook*, ESPN.COM (Aug. 10, 2011), http://espn.go.com/college-sports/story/_/id/6850179/ncaa-member-presidents-discuss-simplifying-rulebook-tougher-penalties.

³⁰⁴ See Dana O'Neil, *Increase in Academic Cutline Approved*, ESPN.COM (Aug. 12, 2011), http://espn.go.com/college-sports/story/_/id/6853878/ncaa-committee-approves-increase-apr-cutline.

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ Beamon, *supra* note 16 at 362.

Many parties are to blame for the continuing academic exploitation of student-athletes. The NCAA is at fault because of its low admissions standards and the fact that it claims no responsibility for the academic performance—or lack thereof—of any student-athlete. Former NCAA President Myles Brand stated that “the issue was whether universities provide appropriate help for these students to succeed academically.”³⁰⁹ Consequently, member institutions are at fault because they allow the behavior to happen by letting their coaches recruit student-athletes who are not academically qualified. Throughout their experiences with student-athletes, coaches are made aware of the student-athletes’ academic proficiency. Additionally at fault are the football coaches who recruit players (likely African Americans)³¹⁰ despite knowledge that the student-athlete is likely academically underprepared.

Finally, society at large can be considered partially blameworthy. There are many college football fans (namely boosters) that know about exploitative practices and are apathetic to or encourage the situation.³¹¹ Richard Burton, a millionaire booster from the University of Connecticut, is an appalling example of a football fan with the ability to effect change in the exploitative practice of football. Instead, he caused a fuss over a trivial matter by demanding that his \$3 million in donations to the University be returned to him because he was not consulted adequately when Connecticut hired a new football coach to replace Randy Edsall.³¹² Burton stated in a letter addressed to the University that “the situation [was] ‘a slap in the face

³⁰⁹ Jaschik, *supra* note 184.

³¹⁰ See NCAA ETHNICITY REPORT, *supra* note 19, at 5 (compiling data of the various ethnicities of participating student-athletes).

³¹¹ See *Give Us Your Dollars, But Not Your Two Cents—Saga of the UConn Fat Cat*, BOBLEESAYS.COM (Jan. 29, 2011), <http://www.bobleesays.com/Blogs/BobLeeSays/January-2011/-Give-us-your-dollars-Not-your-two-cents-The-S.aspx> (documenting the prevalence of boosters who donate money to schools with the expectation that the athletic program will change as they desire).

³¹² *UConn Donor Unhappy with AD*, ESPN.COM (Jan. 26, 2011), <http://sports.espn.go.com/ncf/news/story?id=6057094>.

and embarrassment to my family,” further stating that “he planned ‘to let the correct people know that you did not listen to your number one football donor.’”³¹³ With all the wrongdoings in college football, this is merely one example showing that education and college sports are entirely separate entities.

Blame the media. Blame the stereotypical idea that if you are good at sports, you have a shot at playing that sport professionally. Blame everyone and everything until you are blue in the face—the issue remains: *What can be done to rectify this mess? How can we prevent any further exploitation of student-athletes from occurring?*

A. Solutions

Four approaches need to be advanced in order to instill academic accountability in college athletics, ensure that the “student first, athlete second” principle is respected, and further guarantee the success of academic reform. First, the NCAA and its member institutions should establish outreach programs to educate those in minority communities about economic exploitation and guarantee that students become well-informed of the requirements to attend college and participate in intercollegiate athletics.

Second, the NCAA must undergo a restructuring process. This should consist of improving the academic regulatory mechanisms already in place, such as the APR and GSR. With these actions, the NCAA would become more justified in placing the responsibility on the school to provide for a student-athlete’s well-being. Additionally, bringing in external regulatory organizations to help the NCAA and its member institutions focus on rebuilding and maintaining academic integrity would enable the Association to become more efficient in developing measures to prevent further instances of academic exploitation.

³¹³ *Id.*

Third, student-athlete academic services at each member institution must be upgraded with a specific focus on providing adequate academic services to special admissions student-athletes and implementing summer programs that allow student-athletes to engage in collegiate work prior to beginning their athletic training. Such a focus would emphasize the importance of being a student *before* an athlete.

Finally, league-owned “farm teams”—as described below—should be advanced by the NCAA and the other college athletics regulatory associations for students who are more interested in professional football than a college education.

1. Instituting Outreach Programs to Educate Minority Communities

It is of the utmost importance to educate everyone involved in college sports, especially those in minority communities, about the unfortunate effects of the academic exploitation of African American student-athletes. The NCAA should be tasked with the responsibility of creating regional committees to collaborate with the local member institutions to create different types of outreach programs to educate high school students about participating in intercollegiate athletics. Because working at the grassroots level is crucial to the success of such outreach programs, “the ultimate responsibility for the athletic program of each member institution is at the local level.”³¹⁴

There are many publicized accounts of former student-athletes in revenue-generating sports who graduated from top universities despite only reading at a middle school level.³¹⁵ These former student-athletes could act as outreach program facilitators by sharing their experiences and as role models to inspire others in getting the help they need. Furthermore, former student-athletes can help promote the importance of education by being

³¹⁴ DANIEL BOGGAN, JR., *The NCAA in 2010*, in NEW GAME PLAN FOR COLLEGE SPORT 289 (2006).

³¹⁵ See Farrey, *supra* note 182.

frank with students about the process they went through themselves. If the NCAA employed these students, the job would provide a minor remedy for their time spent being exploited by the system.

Measures to educate PSAs, such as attempting to get in contact with middle school students and underclassmen in high school, would help decrease the number of minority students whose dreams of playing college football could potentially be crushed because the information came too late.³¹⁶ For example, many student-athletes do not begin to contemplate attending college until they are being recruited by college coaching staff.³¹⁷ Some student-athletes may know that they want to attend college under an athletic scholarship; however, they may not know the proper steps to become eligible. There are many heart-wrenching stories about talented student-athletes who wanted to attend college but were ineligible because they did not know they had to complete the requisite high school courses.³¹⁸

There are various groups that have already facilitated outreach programs to educate students in minority communities about the college application process.³¹⁹ These programs bring in guest speakers from athletic departments of various colleges to share pertinent information and to inform students and parents “of the many opportunities available for financial assistance, steps necessary for applying to colleges, and what the family as a group needs to do in order to prepare for the quickly approaching college years.”³²⁰

³¹⁶ See YOST, *supra* note 2, at 180, 186 (referring to an eligibility seminar that is being instituted for inner-city kids).

³¹⁷ See Pound, *supra* note 109.

³¹⁸ See *id.*

³¹⁹ See Mike Baxter, *SATs and Beyond/Program Targets Student-Athletes Bound for College*, HOUSTON CHRON. (Apr. 18, 2001), <http://www.chron.com/news/article/Program-targets-student-athletes-bound-for-college-1998183.php>.

³²⁰ *Id.*

a) Criticisms and Challenges

Apathy may be a major problem in facilitating outreach programs targeting students who may be considered at-risk of academic exploitation.³²¹ Getting the information to the children is only one step to education. While students may make an effort to attend a seminar, parental support is crucial to the success of the outreach program because of the steps that PSAs are required to complete to qualify for eligibility.³²² Parents must understand the requirements for helping their children become academically eligible, not only athletically capable, to participate in college sport.

More often than not, the outreach programs will be designed with inner-city students in mind because of the strong connection with minorities, especially African American male children, and sports.³²³ Outreach programs that target inner-city students would likely have the greatest impact on students who aspire to play professional sports. By recruiting former student-athletes to assist in the education of inner-city PSAs, the former student-athletes would influence the students on a level that a white academic adviser never could.³²⁴

2. Restructuring the NCAA to Improve Athletic Scholarship

[T]he NCAA system of college athletics is broken. It is financially and academically corrupt, and morally bankrupt. . . . It affects our economy, our youth, and our society at large. Worst of all, it earns its profits off the free labor of kids, many of whom don't know how to read, write, or do basic math. Not only will they never graduate from college, 97 percent of them will never sign a professional sports contract.³²⁵

—Mark Yost, *Author of Varsity Green*

³²¹ Robenolt Interview, *supra* note 180.

³²² See YOST, *supra* note 2, at 186.

³²³ See Johnson & Migliaccio, *supra* note 25, at 98.

³²⁴ Durand Interview, *supra* note 221.

³²⁵ YOST, *supra* note 2, at 195.

There is no disputing that one readily apparent—and frequently deplored—issue involving college athletics is the economic exploitation of student-athletes.³²⁶ The NCAA is often referred to as a “cartel” because it “engages in price-fixing for colleges and universities. The prices [it fixes] are the wages of student athletes, which is accomplished through regulations that prohibit the athlete from receiving any income other than in-kind scholarship payments.”³²⁷ In fact, the “cartel” has been a party to claims of antitrust law violations costing over \$85 million in legal fees.³²⁸

Despite the fact that the NCAA is supposed to protect student-athletes from exploitation, it does very little aside from creating additional rules and issuing violations to offenders.³²⁹ While the effects of the APR and GSR on underperformance have yet to be determined, the impact of previous punishment schemes has been minimal.³³⁰ Despite having rules in place, the percentage of violations, particularly academic violations, has increased substantially between the 1950s and the 1990s (as evidenced by Table 11).³³¹ One may infer that penalties imposed during this time period have not had the desired deterrent effect on college teams.³³² The NCAA should focus on prevention instead of deterrence. Establishing more regulatory bodies would help to effectively control occurrences of academic exploitation.³³³

³²⁶ See Warren Meyer, *The Final Frontier in Worker Exploitation—The NCAA*, FORBES (Mar. 17, 2011), <http://blogs.forbes.com/warrenmeyer/2011/03/17/the-final-frontier-in-worker-exploitation-the-ncaa/>.

³²⁷ Steiber, *supra* note 52, at 445.

³²⁸ See Mark Alesia, *3 Lawsuits May Change How the NCAA Operates*, USA TODAY (July 26, 2009), http://www.usatoday.com/sports/college/2009-07-26-ncaa-lawsuits_N.htm.

³²⁹ See *The NCAA Has Run Its Course*, BEYONDUSPORTS.COM (Aug. 21, 2011), <http://www.beyondusports.com/ncaa-run>.

³³⁰ See Mahony et al., *supra* note 150, at 452.

³³¹ *Id.* at 449, 452.

³³² *Id.*

³³³ See Kline, *supra* note 17.

Table 11. Average Percentages of Violations and Penalties Given by the NCAA by Decade

| MEANS FOR MEN'S PROGRAMS THAT VIOLATED NCAA REGULATIONS BY DECADE | | | | | | |
|---|-------|-------|-------|-------|-------|-------|
| | 1950s | 1960s | 1970s | 1980s | 1990s | Total |
| Division I | 86% | 85% | 78% | 87% | 83% | 81% |
| Revenue sports | 100% | 93% | 82% | 82% | 58% | 79% |
| <i>Violations</i> | | | | | | |
| Academic | 2% | 0% | 14% | 13% | 34% | 15% |
| Recruiting | 72% | 70% | 60% | 77% | 60% | 67% |
| Benefits | 72% | 77% | 75% | 88% | 84% | 81% |
| Eligibility | 7% | 7% | 47% | 32% | 57% | 36% |
| Illegal participation | 12% | 30% | 29% | 15% | 9% | 19% |
| Unethical conduct | 2% | 7% | 28% | 42% | 48% | 30% |
| Institutional control | 0% | 3% | 19% | 24% | 78% | 32% |
| <i>Penalties</i> | | | | | | |
| Probation (years) | 1.20 | 1.12 | 1.35 | 1.39 | 2.56 | 1.63 |
| Postseason (years) | 0.79 | 0.85 | 0.94 | 0.55 | 0.62 | 0.72 |
| TV ban (years) | 0.48 | 0.38 | 0.77 | 0.28 | 0.16 | 0.40 |
| Scholarships | 0% | 0% | 14% | 35% | 60% | 28% |
| Forfeit contests | 0% | 0% | 1% | 13% | 40% | 14% |
| Penalize coach | 0% | 1% | 14% | 24% | 36% | 20% |
| Reduced comp | 2% | 4% | 2% | 4% | 9% | 5% |
| Recruiting restrictions | 0% | 3% | 6% | 22% | 41% | 18% |
| Reduce association | 20% | 0% | 12% | 26% | 18% | 15% |
| Public reprimand | 23% | 26% | 18% | 21% | 22% | 21% |
| Programs per year | 7.1 | 7.3 | 13.9 | 16.4 | 18.5 | 12.6 |

According to the NCAA mission statement, the purpose of student participation in athletics is to enrich the student-athlete's educational experience.³³⁴ To achieve this goal, however, the NCAA and its member institutions must commit to prioritizing the academic interests of student-athletes³³⁵ over financial gain. Improving student-athletes' academic

³³⁴ See *Core Values*, *supra* note 3.

³³⁵ John N. Singer, *African American Football Athletes' Perspectives on Institutional Integrity in College Sport*, 80 RES. Q. FOR EXERCISE & SPORT 102, March 1, 2009, available at 2009 WLNR 5868756.

performance requires adding an additional regulatory committee, which creates more efficient policies and eliminates certain problematic policies, while fostering working relationships within the Association at the national and local levels.

First, the NCAA should be restructured to include additional regulatory committees focused on academic excellence. Such committees could help to increase academic accountability in member institutions by pursuing policies that address current issues and promote meaningful resolutions to the problems of academic preparedness and successful academic progress. For instance, an Academic Integrity Regulation Committee (AIRC) would join representatives from four *ad hoc* groups that already strive to improve education for student-athletes nationwide: the Knight Commission on Intercollegiate Athletics, the National Association of Academic Advisors for Athletics, the Drake Group, and the Coalition on Intercollegiate Athletics. Individually, these groups have minimal impact; however, combining them would form what would essentially be a third-party/outside oversight committee. This focus would have the increased organization to take on and eradicate the exploitative practices in college sports.

The first organization is the Knight Commission on Intercollegiate Athletics (Knight Commission). Established in 1989, the Knight Commission recommends measures that intercollegiate athletic programs can take in order to ensure that they “operate within the educational mission of their colleges and universities.”³³⁶ The Knight Commission seeks to promote change within the member institutions themselves rather than

³³⁶ *Mission & Statement of Principles*, KNIGHT COMMISSION ON INTERCOLLEGIATE ATHLETICS, http://www.knightcommission.org/index.php?option=com_content&view=article&id=15&Itemid=17 (last visited Nov. 12, 2010).

merely relying on the NCAA's policies and regulations to effect systematic reform.³³⁷

The National Association of Academic Advisors for Athletics (N4A) "cultivates and improves the opportunities for academic success for student-athletes by providing informed, competent, and holistic advising [to student-athletes] while enhancing communication between the academic and athletics communities."³³⁸ Since the N4A is comprised of academic advisors who work daily with student-athletes, striving for student-athlete-focused academic success at this level is critical.³³⁹

The Drake Group (TDG) consists of faculty and staff nationwide who lobby Congress for proposals that ensure quality education for college athletes, supports faculty whose job security is threatened for defending academic standards, and disseminates information on current issues and controversies in sports and higher education.³⁴⁰ Faculty bodies are the best sources of power to bring about academic reform because they work closely with student-athletes through their regular interactions and are thus the most aware of their academic needs.³⁴¹

Finally, the Coalition on Intercollegiate Athletics (COIA) is made up of member institution faculty senates³⁴² whose "mission is to provide a national faculty voice on intercollegiate sports issues, such as academic

³³⁷ *Institutional Accountability*, KNIGHT COMMISSION ON INTERCOLLEGIATE ATHLETICS, http://www.knightcommission.org/index.php?option=com_content&view=article&id=3&Itemid=79 (last visited Feb. 20, 2011).

³³⁸ Sandra K. Meyer, *NCAA Academic Reforms: Maintaining the Balance Between Academics and Athletics*, 85 PHI KAPPA PHI F. 18 (2005)..

³³⁹ *Id.*

³⁴⁰ *Home*, THE DRAKE GROUP, <http://www.thedrakegroup.org> (last visited Nov. 10, 2010).

³⁴¹ Benford, *supra* note 8, at 21.

³⁴² A faculty senate is a legislative body comprised of faculty members of a university that creates policies regarding all educational matters and interests of the university. *See, e.g., University Faculty Senate*, PENN. ST. UNIV., <http://www.senate.psu.edu/> (last visited Nov. 8, 2011).

integrity and quality.”³⁴³ Out of the 115 universities that are members of the Football Bowl Subdivision (FBS) of Division I, which is the “varsity” designation in NCAA college football, fifty-eight have faculty senates that are members of COIA. COIA has previously worked with the NCAA to produce recommendations for reform.³⁴⁴ COIA’s recommendations included the following areas of concern: quality and honor in academics, the welfare of the student-athlete, institutional governance of athletics, and financial responsibility.³⁴⁵

Each of these watchdog groups fights for academic integrity and the well-being of student-athletes.³⁴⁶ Despite their accomplishments, ranging from compiling reports used by the NCAA to recommending strategies for the reform of college athletics, their individual work and accomplishments do not seem to be enough. Together, representatives of each group would use their strengths to supplement what the other groups lacked when working separately. With the four groups functioning as one regulatory committee, a larger power would be established that could match the influence the NCAA enforces over its member institutions.

Under this proposal, the N4A would continue with its duties directly at the local level, between student-athletes and the university. The N4A’s responsibilities would include ensuring that student-athletes receive adequate academic services and that academics do not become an afterthought to athletics. Additionally, the N4A would serve to mediate between student-athletes and their professors when problems resulting from

³⁴³ *Home*, COALITION ON INTERCOLLEGIATE ATHLETICS, <http://wfu.me/cms/coia/index.php/Home> (last visited Nov. 13, 2010) [hereinafter *Home*, COALITION ON INTERCOLLEGIATE ATHLETICS]. The FBS schools are in Division I of the NCAA and are comprised of the “popular” football teams, such as Alabama, Oregon, Penn State, and University of Florida, etc.

³⁴⁴ *Id.*

³⁴⁵ *Framing the Future: Reforming Intercollegiate Athletics*, COALITION ON INTERCOLLEGIATE ATHLETICS (June 15, 2007), <http://blogs.comm.psu.edu/thecoa/wp-content/uploads/FTF-White-Paper2.pdf>.

³⁴⁶ *Home*, COALITION ON INTERCOLLEGIATE ATHLETICS, *supra* note 344.

the student-athlete's busy athletic schedule have formed. However, the N4A must take steps to avoid coddling student-athletes because the ultimate goal of the organization is to empower the student-athletes academically. Because there is at least one member of the N4A in every state, the addition of the three other groups would drive more academic advisors to be licensed with the N4A to form a stronger organization individually and as part of the AIRC. With the increased membership, the N4A could have the ability to effectuate a change in academic reform through their constant contact with student-athletes, athletic staff, and faculty.³⁴⁷

The Knight Commission would have the main responsibility of corresponding between university presidents and the NCAA. The Knight Commission plays a very prominent figure in college athletics reform that is well-respected by the NCAA and the presidents of its member institutions because of its years of advocacy for academic excellence in college athletics.³⁴⁸ Recently, NCAA President Mark Emmert met with representatives of the Knight Commission to discuss potential changes to NCAA policies and other issues for the reform of college athletics.³⁴⁹ Thus, the NCAA would likely be very receptive to academic policies proposed by the Commission.

³⁴⁷ Robenolt Interview, *supra* note 180. Ms. Robenolt is an active member of the N4A.

³⁴⁸ See *NCAA's Mark Emmert Supports Knight Commission Efforts for Tougher Academic Standards in Athletics*, KNIGHT COMMISSION ON INTERCOLLEGIATE ATHLETICS (Oct. 25, 2011), http://www.knightcommission.org/index.php?option=com_content&view=article&id=655:october-25-2011-ncaas-mark-emmert-supports-knight-commission-efforts-for-tougher-academic-standards-in-athletics&catid=1:content&Itemid=11. The Commission's first report, *Keeping Faith with the Student-Athlete*, influenced the NCAA's change of governance by giving more power to the university presidents and reducing power held by athletic directors. See *Commission Report*, KNIGHT COMMISSION ON INTERCOLLEGIATE ATHLETICS, http://knightcommission.org/index.php?option=com_content&view=article&id=64:commission-reports&catid=10:resources&Itemid=9 (last visited Jan. 2, 2012).

³⁴⁹ See *Knight Commission to Meet with NCAA President on Oct. 24 in Washington, D.C.*, KNIGHT COMMISSION ON INTERCOLLEGIATE ATHLETICS (Oct. 10, 2011), http://www.knightcommission.org/index.php?option=com_content&task=view&id=647.

To make an institutional-level presence at the national level, the faculty senates that comprise the COIA would also collaborate in conjunction with the Knight Commission to bring recommendations to the NCAA that promote academic excellence and well-being of student-athletes.³⁵⁰ Because most of the publicized instances of academic exploitation involve Division I schools,³⁵¹ the role of COIA, which are faculty members from Division I schools, plays an integral part in requiring the NCAA to eradicate academic exploitation. The collaboration between the Knight Commission and the COIA creates another oversight mechanism to ensure that institutions constantly promote and adhere to policies that further their academic integrity. This additional layer of accountability would support the mission to provide student-athletes with a good education.

The Drake Group would continue its aggressive public interest strategies at the governmental level because the almost nonexistent support for higher academic standards in college sports is absurd considering the attention garnered from Congress regarding the structure of post-season football games.³⁵² This group of faculty members would focus on its current goal of promoting change in the public perception of intercollegiate athletics through lobbying Congress and pursuing court cases on behalf of whistleblowers who speak out against the exploitative actions of member institutions.³⁵³ Because of TDG's distrust in the NCAA and its member

³⁵⁰ The COIA is supportive of the university presidents, which is crucial because this group would fill the missing gap of trust that TDG harbors with the NCAA and university presidents. See COALITION ON INTERCOLLEGIATE ATHLETICS, *supra* note 346; THE DRAKE GROUP, *supra* note 341.

³⁵¹ There has been at least one instance of academic misconduct that is publicized as of late. Because of the fact that Division I sports are so popular, these schools are usually scrutinized in the media once violations are reported. See *e.g.*, LaMonte, *supra* note 166; Vigdor, *supra* note 169; Alesia, *supra* note 185.

³⁵² See *e.g.*, Patrick Gavin, *Congress Ponders Football's BCS System*, POLITICO (July 7, 2009, 5:29 PM), <http://www.politico.com/news/stories/0709/24655.html>.

³⁵³ THE DRAKE GROUP, *supra* note 341. One of the most notable whistleblowing cases involved Jan Kemp, an English instructor at the University of Georgia, who fought against the preferential treatment given to student-athletes that were academically

institutions' presidents' ability to achieve successful reform, TDG's role in the AIRC would safeguard against any disguised reform that the NCAA may put forth and bring another level of accountability.

Overall, the Academic Integrity Regulation Committee would act as a bridge in solving Association-wide problems while maintaining the ability to help with localized institution problems. The formation of the AIRC would foster an open, collaborative working relationship between the key actors of the NCAA at the national and local levels. This additional measure of accountability would help prevent the academic exploitation of student-athletes at all costs.

a) Criticisms and Challenges

There is now so much money involved (especially television dollars controlled by the NCAA and the major conferences and Division IA programs) that economic motivations are bound to loom large in the thinking of both the institutions that have invested so heavily in athletics and the thousands of coaches and administrators whose careers depend on the continuation of these programs in much their present form.³⁵⁴

Despite the added accountability that would result from restructuring the NCAA, such a task will be incredibly difficult to implement because of the lack of manpower to truly provide adequate oversight. Additionally, the primary obstacle against restructuring the NCAA is the organization's resistance against change due to its misguided belief that adequate safeguards are already in place.³⁵⁵

First, administrative organization problems would likely hinder the formulation of the AIRC. Drawing some members from each of the four

underprepared. Richard Goldstein, *Jan Kemp Dies at 59; Exposed Fraud in Grades of Players*, N.Y. TIMES, Dec. 11, 2008, <http://www.nytimes.com/2008/12/12/education/12kemp.html>.

³⁵⁴ SHULMAN & BOWEN, *supra* note 18, at 296–297.

³⁵⁵ See Jason Cole & Charles Robinson, *USC Probe Centers of Control*, YAHOO! SPORTS (May 12, 2009, 8:04pm), <http://sports.yahoo.com/top/news?slug=ys-uscprobe051209>.

groups to form the AIRC may detract from each group's ability to continue carrying out their individual missions. Additionally, funding the AIRC could pose a potential problem. While NCAA member institutions could donate money to formulate the AIRC, few schools may be willing to do so. Furthermore, the NCAA may not be able to require its member institutions to donate without first introducing that policy through the NCAA legislative process, which can be a lengthy and difficult.³⁵⁶ Finally, since the AIRC is meant to be an independent oversight organization, receiving funds from the NCAA may create conflicts with the AIRC's duties.

Second, the NCAA may erroneously believe that placing a compliance officer at each institution is an adequate safeguard. But because there are only one or two compliance officers at every university, it is difficult for officers to ensure compliance with NCAA rules for the entire university.³⁵⁷ Requiring so few people to police such a large system would be ineffective.

3. Upgrading Member Institution Academic Services for Student-Athletes

The best method of instilling in minority student-athletes the drive to do well in academics is to provide them with a mandatory summer bridge program in which they arrive on campus the summer prior to enrollment and take courses to acclimate them to the collegiate atmosphere.³⁵⁸ To support student-athletes who may have difficulty with college-level coursework, NCAA Bylaw 16.3.1.1 requires that member institutions provide academic counseling and tutoring services to all student-athletes.³⁵⁹

³⁵⁶ See NAT'L COLLEGIATE ATHLETIC ASS'N, ART. 5.02, 2010–11 NCAA DIVISION I MANUAL 31 (2010).

³⁵⁷ See Seth Wickersham, *Internal Affairs: NCAA Compliance Officer May be the Toughest Job in College Sports*, ESPN INSIDER (Aug. 17, 2010), <http://insider.espn.go.com/insider/insider/news/story?id=5455740>.

³⁵⁸ *Summer Learn + Experience + Achieve Program, Summer LEAP*, UNIV. OF WASH., <http://depts.washington.edu/uwleap/> (last visited November 7, 2010) [hereinafter LEAP].

³⁵⁹ NAT'L COLLEGIATE ATHLETIC ASS'N, ART. 16.3.1.1, 2010–11 NCAA DIVISION I MANUAL 223 (2010).

The NCAA reasoned that mandating academic services for student-athletes would give underprepared students, specifically minority student-athletes, the opportunity to learn and not focus solely on athletics.³⁶⁰

The types of academic services provided to student-athletes are similar to those provided to students in the general population. Services include academic monitoring, scheduling assistance, life-skills instruction, career counseling, psychological counseling, and tutorial help.³⁶¹ However, the difference between the academic services available to student-athletes and non-athletes is that student-athletes get more one-on-one attention because of the strict limits on academic study time that student-athletes face.³⁶² Many universities mandate that their student-athletes have supervised study time with a staff study partner, small-group tutorial aides who set a rigid study schedule, and frequent progress report meetings with an academic advisor between classes.³⁶³

Incoming freshmen at select universities, such as the University of Notre Dame, attend athletic minicamps in the summer and take a few courses to prepare them for the upcoming fall semester.³⁶⁴ Developing summer bridge programs, like the summer program at the University of Washington's Learn + Experience + Achieve Program (LEAP),³⁶⁵ would allow student-athletes extra time to work on their studies before the pressure of athletic practices begins. This is imperative because these students may not have the skills required to be successful once traditional classes begin, as detailed above.

The University of Washington's LEAP is a month-long program that prepares freshman student-athletes for the rigors of an undergraduate

³⁶⁰ See Meyer, *supra* note 338.

³⁶¹ Josephine R. Potuto, *Academic Misconduct, Athletics Academic Support Services, and the NCAA*, 95 KY. L.J. 447, 456 (2006–2007).

³⁶² Robenolt Interview, *supra* note 180.

³⁶³ See YOST, *supra* note 2, at 14–15, 17.

³⁶⁴ See *id.* at 16, 24.

³⁶⁵ LEAP, *supra* note 359.

education by requiring each student to attend research, writing, and college preparation courses.³⁶⁶ In addition to getting used to the type of work expected in the collegiate environment, student-athletes are taught to become self-sufficient individuals by exploring Seattle and writing about their experiences as part of the course.³⁶⁷ The program is taught by full-time staff members and tutors.³⁶⁸

a) Criticisms and Challenges

A major criticism of instituting summer programs is whether one summer of preparation is enough to make a substantial impact on a student-athlete who is not prepared for college-level courses. But this program helps to give student-athletes the tools they need to focus on achieving academic success without the added pressures of performing well in athletics, at least temporarily. Because student-athletes can focus solely on the immense workload that they are given during the summer, they are less likely be overwhelmed with their schoolwork and athletic responsibilities once regular school year is in session (recall that many student athletes spend more than forty hours a week on athletic activities).³⁶⁹ During the summer program, the students are able to practice managing their time, addressing the time-management problem most student-athletes face by helping them develop methods to better allocate their attention between athletics and academics.³⁷⁰

Another criticism of developing summer programs is that institutions are providing student-athletes with opportunities for an education, and it should

³⁶⁶ *See id.*

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ Gayles & Hu, *supra* note 49, at 316.

³⁷⁰ *See generally id.* (arguing that spending over forty hours on athletics detracts from student-athletes' ability to learn off the field).

be up to the student-athletes to make the most of such opportunities.³⁷¹ Additionally, some people argue that developing programs overly nurture the student-athletes and only contribute to their “learned helplessness.”³⁷² Arguably, once students reach college age, they are adults and should learn to be responsible for themselves. But student-athletes need extra assistance from their institutions because of the amount of time and physical energy that each of them devotes to being both a student and an athlete.³⁷³

Another criticism is that the institution should not have to bear the burden of making up for a student-athlete’s inadequate educational preparation. However, the institution becomes responsible for the academic success of its student-athletes when it chooses to admit student-athletes who do not have the potential to succeed academically.

The cost of initiating summer programs, such as the University of Washington’s LEAP, is also a challenge. The cost could potentially be more than the funding allotted to athletic departments for academic services.³⁷⁴ Contrary to popular belief, athletic departments barely have enough money in their budgets to stay out of the red.³⁷⁵ “Only a handful of college athletics departments turn a profit. The rest either break even or rely on student activity fees, alumni donations, and other money to operate.”³⁷⁶ However, costs may be lowered if athletic departments collaborate with summer programs sponsored by other departments within the member institution. Indeed, mixing the student-athletes with the general population of students during a summer session may offer a better learning environment for all involved.

³⁷¹ Phil Taylor & Shelley Smith, *Exploitation or Opportunity?*, SPORTS ILLUSTRATED, Aug. 12, 1991, at 46, available at <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1139923/index.htm>.

³⁷² Benford, *supra* note 8, at 3.

³⁷³ See Gayles & Hu, *supra* note 49, at 316.

³⁷⁴ Robenolt Interview, *supra* note 180.

³⁷⁵ See YOST, *supra* note 2.

³⁷⁶ *Id.*

Further, the NCAA could authorize use of the member institutions' share of the NCAA Opportunity Fund as a means of funding a summer bridge program. The Opportunity Fund is predicted to contain \$57 million by 2013.³⁷⁷ 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.³⁷⁸ Moreover, institutions could use funds gained in postseason play to pay for a summer program.

Ultimately, institutions must allocate money to these programs to promote minority student-athletes' academic achievement. It is unfair to exploit student-athletes for four or five years and then ignore the fact that while they may have graduated, they may only be capable of being hired for a job that merely requires a high school diploma.³⁷⁹

4. League-Owned Farm Teams

Athletes who want to play in the National Football League (NFL) without the hassle of attending college should be able to try out for a league-owned "farm team." Farm teams are recruitment tools for professional sports teams; players can try out for a minor league team, where they can develop their athletic talents in the hopes of potentially moving up to play for a major league team.³⁸⁰ For the athlete who decides to forego the college route and opts to try out for a farm team, that athlete would play against other farm teams and would get paid a salary, as would any other player for the professional team. Additionally, if a college player feels that his talents are being overlooked, he could go to a farm team. Moreover, football

³⁷⁷ Steve Wieberg, *NCAA's Extra Funding Benefits Athletes*, USA TODAY (Dec. 23, 2003, 12:09 AM), http://www.usatoday.com/sports/college/2003-12-23-ncaa-athlete18.2-welfare_x.htm.

³⁷⁸ *Id.*

³⁷⁹ See Farrey, *supra* note 182.

³⁸⁰ See Josh McCain, *Why the NFL Needs a Farm System*, BLEACHER REPORT (July 21, 2009), <http://bleacherreport.com/articles/221446-why-the-nfl-needs-a-farm-system>; *Does the NFL Need a Minor League System Like the MLB?*, THE INQUISITR (Feb. 15, 2010), <http://www.inquisitr.com/61753/does-the-nfl-need-a-minor-league-system-like-the-mlb>.

players in the smaller Division I conferences would be noticed more by the NFL team scouts. Currently, the NFL does not use farm teams,³⁸¹ and most (if not all) of the scouting of college-athletes who may potentially play at professional level occurs at the college football level.³⁸²

Instead of institutions wasting resources in recruiting high school students who would rather use college as a stepping-stone to the NFL, the NCAA and NFL should create league-owned farm teams. The farm teams would be owned by individual professional football teams or in collaboration with teams by region. For example, the Seattle Seahawks and the New York Giants could each own a farm team. Alternatively, geographically close teams, such as the Seattle Seahawks, Arizona Cardinals, Denver Broncos, San Francisco 49ers, and the San Diego Chargers could decide to come together and own one farm team with players that they each could access.

Thus, the creation of farm teams for professional sports would likely result in a decrease of instances of academic exploitation because student-athletes with a lack of motivation to attend college need not do so. Furthermore, a recent report indicated that ten years ago the Knight Commission gave its support to the founding of a farm league as another option for high school athletes uninterested in a college education.³⁸³

a) Criticisms and Challenges

One of the main drawbacks to establishing NFL-owned farm teams is funding. There may not be enough funding or interest to start up an entire farm team league. For example, the NFL shut down its NFL Europa

³⁸¹ See generally *Does the NFL Need a Minor League System Like the MLB?*, *supra* note 377.

³⁸² See National Football League, *Fifty-Three Players Granted Special Eligibility for 2010 NFL Draft*, NFL.COM (Jan. 19, 2010), <http://www.nfl.com/draft/story/09000d5d815d4503/article/fiftythree-players-granted-special-eligibility-for-2010-nfl-draft>.

³⁸³ See Dinardo, *supra* note 222.

operations because it was losing about \$30 million a year.³⁸⁴ Additionally, the NFL already technically has the effective equivalent of farm teams in the NCAA because NFL teams draft their players out of the college level. Currently, drafting student-athletes out of college does not cost the NFL or its individual teams any money, given the fact that student-athletes in the NCAA are not allowed to receive any compensation from professional teams.³⁸⁵ Furthermore, the NFL may not be interested in creating farm teams because they may not attract a large enough fan base, and thus not enough revenue, because NCAA college football has such a wide following.

Another challenge to creating a farm team for professional football is the potential for injuries due to the roughness involved in playing football.³⁸⁶ The more football games that farm team players play, the more training and recognition to help them move up to the NFL. However, more playing time means being more potential for injury, and if a player is injured trying to get to the professional level, his chances of moving up are greatly decreased. Professional football teams have backup players just sitting on the sidelines waiting for their turn to play for this precise reason.³⁸⁷

With farm teams, institutions would not have to use their resources on students who are not motivated to earn a college degree. Thus, institutions would have higher academic performance rates from their populations of student-athletes. They would also have the ability to admit more athletes that want to earn a college degree or even additional qualified non-athletes. Finally, if athletes who attend college for the sole purpose of gaining NFL eligibility choose to join a farm team instead of going to college, accounts

³⁸⁴ *NFL Folds Europe League, To Focus on Regular-Season Games Abroad*, ESPN.COM (June 29, 2007), <http://sports.espn.go.com/nfl/news/story?id=2920738>.

³⁸⁵ For a student-athlete to be considered an amateur, they: (1) cannot sign a contract, play, or practice with a professional team; (2) cannot receive a salary or any compensation for playing athletics; (3) cannot receive benefits from or be represented by an agent; and (4) must agree to participate in organized-competition only. *NCAA Amateurism Certification*, *supra* note 139.

³⁸⁶ *See* McCain, *supra* note 381.

³⁸⁷ *See id.*

of student-athlete exploitation would presumably decrease dramatically because “if someone isn’t interested in undergraduate study, then he should not be in college.”³⁸⁸

If the NFL farm teams became popular with fans, the students who are motivated to go to college primarily to obtain a college education would do so and then choose to play college football as an extracurricular activity. Playing football, then, would be less of a priority and the NCAA and its member institutions would be better able to eradicate academic exploitation and focus on building academic excellence. A gain in popularity for NFL farm teams might also decrease the popularity of college football, which could possibly reduce revenues produced by college football programs. If such a situation were likely to occur, the NCAA would not likely agree to help the NFL create a farm system. Minor league/farm teams exist to provide prospective players for the major league team.³⁸⁹ Even if the NCAA would potentially lose revenues from a loss in fan base, this is minor when the broad scheme weeds out the athletes that are uninterested in attending school. Thus, universities are able to regain its meaningful purpose of providing students with a higher education, which *should be* more important to the school..

V. CONCLUSION

Somewhere along the line, the notion of the “student-athlete,” of being a student first and athlete second, was lost. Intercollegiate athletics have become an “edutainment” industry in which academic institutions are more involved with promoting their athletic departments because of their potential to generate money and notoriety that, unfortunately, many institutions have undermined their educational integrity.³⁹⁰ Schools and

³⁸⁸ Dinardo, *supra* note 222.

³⁸⁹ See Scott McKinney, *Do Good Minor League Systems Lead to Major League Success? Part I*, SB NATION (Apr. 28, 2011), <http://www.beyondtheboxscore.com/2011/4/28/2138698/minor-league-success-rates>.

³⁹⁰ Benford, *supra* note 8, at 12.

their athletic departments subsequently have become less focused on the educational experience of a well-rounded student-athlete and more focused on the business of sports.

The NCAA and its member institutions have a history of exploiting their athletes.³⁹¹ Therefore, to change the system of academic exploitation and rebuild academic integrity in college sports, outreach programs should be instituted to educate minority communities, the NCAA should be restructured to achieve accountability, student-athlete academic services should be updated, and, for football, a professional farm team system should be created.

The primary motivation for attending college should be the same for student-athletes and non-student-athletes: to get an education. As consumers and non-consumers of college football alike, we should not forget the academic and economic exploitation that occurs behind the scenes of one of America's favorite pastimes. The next time you watch your favorite college football team, ask yourself whether the running back or wide receiver is doing well in his classes. Ask yourself whether he was advised to take Mickey Mouse classes and is probably wondering what could have happened if he just had the time to attend those engineering labs. While college football is merely your entertainment for a Saturday afternoon, the hidden implications last for the rest of the student-athlete's life.

³⁹¹ See Lapchick, *supra* note 220, at 275.