

**ACADEMIC PROGRESS OR ACADEMIC
FAILURE?: REFORM OF THE NCAA
ACADEMIC PERFORMANCE PROGRAM**

Macy McCarty *

Introduction	303
I. The Inaccurate Measure of Academic Success	307
A. The Model in Principle	307
1. The Purpose of Academic Reform	307
2. Academic Progress Rate Calculation.....	309
B. The Reality	313
1. Environment of Fraud.....	313
2. Disciplinary Consequences	317
3. Survival of the Wealthiest.....	318
II. What is Education?.....	320
A. Purpose of Education	321
III. The Proposal.....	324
A. New Academic Performance Program	324
1. Calculation.....	324
2. Rewards	326
B. Institutional Changes	327
1. Change the Full-Time Requirement.....	327
2. Award Six-Year Scholarships	328
IV. Justifications	329
A. Retention	329

* J.D. Candidate 2016, University of Mississippi School of Law; B.A. 2013, University of Mississippi. Macy would her family for their incredible support. Macy would specially like to thank Professor William Berry for all his help and guidance throughout the writing process. Finally, Macy would like to thank the Mississippi Sports Law Review Staff and Executive Editors for all their work.

B. Eligibility 331
 C. Graduation Rates 331
 D. Academic Honors..... 332
 E. Community Service 332
 Conclusion 333

INTRODUCTION

“Football Saturdays are great here and so are winter basketball nights. In our Admissions Office literature, we’ve stopped saying that we provide a good education-our lawyers warned us that we could get sued for misrepresentation-but we sure promote our college sports teams.” –An administrator at a Sunbelt university¹

Highly recruited fullback Devon Ramsay² went to the University of North Carolina at Chapel Hill (“UNC”) with a bright future ahead of him both academically and athletically.³ Unfortunately, his future was decided for him. During his junior season, UNC officials brought Ramsay in for questioning.⁴ The surprise interrogation was over e-mails between him and a university athletic tutor two years prior.⁵ The e-mails revealed

¹ Murray Sperber, *Beer and Circus: How Big-Time College Sports is Crippling Undergraduate Education* xii (2000).

² Devon Ramsay, along with former UNC women’s basketball player Rashanda McCants, filed a lawsuit in North Carolina on Jan. 22, 2015. Michael McCann & Jon Wertheim, *Rashanda McCants, Devon Ramsay File Suit Against UNC, NCAA*, SPORTS ILLUSTRATED (Jan. 23, 2015), <http://www.si.com/college-basketball/2015/01/06/rashanda-mccants-unc-paper-classes-lawsuit>. The two former athletes are claiming that the University negligently breached its basic duties to its student-athletes. *Id.* “In their complaint, McCants and Ramsay contend that a ‘shadow curriculum’ at UNC steered student-athletes ‘toward programs and courses that lacked rigor so as to free up as much time as possible for athletic commitments ensuring continued academic eligibility under NCAA rules (through inflated grades).” *Id.* The plaintiffs have added the NCAA as a co-defendant in addition to seeking a class certification to represent other former UNC athletes. *Id.*

³ Joe Nocera, *N.C.A.A.’s ‘Justice’ System*, N.Y. TIMES (Jan. 6, 2012), http://www.nytimes.com/2012/01/07/opinion/nocera-ncaas-justice-system.html?_r=0.

⁴ *Id.*

⁵ *Id.* See also *Devon Ramsay Overcomes NCAA Obstacles With Help From Family, Friends*, DAILY RECORD.COM (Apr. 20, 2013, 6:43 PM),

that a tutor had made minor suggestions to improve Ramsay's three-page sociology paper.⁶ The improvements were so minor that the university's honor council declined to hear a case against Ramsay.⁷ The National Collegiate Athletic Association ("NCAA"), however, decided to pursue a different course of action. After reviewing the e-mail "evidence,"⁸ it informed the school that Ramsay was guilty of academic fraud.⁹ In fear of punishment, the university declared Ramsay ineligible, and when university officials asked the NCAA to restore Ramsay's eligibility, the NCAA refused.¹⁰ Ramsay's reputation was damaged, and his college career appeared to be over.¹¹ Ramsay sat out an entire season before the NCAA restored his eligibility and cleared him of all charges.¹² Unfortunately, Ramsay's story did not end there.¹³ In the first game of his senior season, he suffered a terrible knee injury.¹⁴ Even after the NCAA granted him an additional year of eligibility, he suffered a shoulder injury, which forced him to give up the game he loved.¹⁵

Even after all the turmoil of his college career, Ramsay told senators at a hearing of the Senate Committee on Commerce, Science, and Transportation that the "key regret" of his college

<http://archive.dailyrecord.com/article/20130420/NJSPORTS02/304200020/Devon%20Ramsay%20Stephen%20Edelson>.

⁶ Nocera, *supra* note 3.

⁷ *Id.*

⁸ The paper in controversy was never found or reviewed. *Devon Ramsay Overcomes NCAA Obstacles with Help from Family, Friends, supra* note 5. The only e-mail evidence sent from the tutor ends with her telling Ramsay, "[H]ere are my suggested revisions, use what you want." *Id.* Ramsay's lawyer, former North Carolina Supreme Court Justice Robert Orr, stated, "I teach a research and writing course at the law school at UNC . . . and even if you took the changes she made I wouldn't have considered them unreasonable." *Id.*

⁹ Nocera, *supra* note 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Nocera, *supra* note 3. "On the first play of the second half in the 2011 opener, a defender fell on Ramsay's left leg from behind as he was blocking." *Devon Ramsay Overcomes NCAA Obstacles With Help From Family, Friends, supra* note 5. Even with the extra year of eligibility, he was not cleared to play until the fifth game of the 2012 season, and he did not get on the field until the final game due to a new offensive scheme that did not use a fullback. *Id.*

¹⁵ Aaron Beard, *Tar Heels FB Devon Ramsay Still Fighting Adversity*, ESPN (July 7, 2012, 4:22 AM), <http://sports.espn.go.com/espn/wire?section=ncf&id=8138026>.

career was the inability to participate in an internship program.¹⁶ He told the committee, “At a competitive football school, completing an internship is almost impossible.”¹⁷ The committee agreed with Ramsay’s perception of the time constraints on student-athletes, noting “[a]thletes are physically and socially isolated from the institution.”¹⁸

An inherent tension exists in the system of intercollegiate athletics.¹⁹ Student-athletes are promoted as high profile entertainment, but they are expected to act like average college students on campus.²⁰ However, student-athletes are not comparable to the everyday student on campus. Student-athletes spend, on average, forty to fifty hours a week on athletic-related activities.²¹ They must attend meetings, practices, and workouts, as well as travel and compete, all while maintaining a full course load.²² On average, athletic activities require student-athletes to miss one to three classes per week, depending on their sport.²³ Student-athletes must also accomplish demanding progress-toward-degree requirements.²⁴ These requirements take away student-athletes’ freedom to change majors during their college careers,²⁵ a luxury every non-student-athlete has on campus.

¹⁶ *UNC’s Ramsay: NCAA Doesn’t Protect Student-Athletes*, WRALSPORTSFAN (July 10, 2014), <http://www.wralportsfan.com/unc-s-ramsay-ncaa-doesn-t-protect-student-athletes/13796863/>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Doug Lederman, *The Admissions Gap for Big-Time Athletes*, INSIDE HIGHER ED (Dec. 29, 2008), <https://www.insidehighered.com/news/2008/12/29/admit>.

²⁰ *Id.*

²¹ David Moltz, *How Athletes Spend Their Time*, INSIDE HIGHER ED (Feb. 14, 2011), https://www.insidehighered.com/news/2011/02/14/ncaa_survey_details_athletes_missed_class_time.

²² NCAA, DIVISION I MANUAL art. 14.2.2 (2014-15), <http://www.ncaapublications.com/productdownloads/D115OCT.pdf>.

²³ Moltz, *supra* note 21.

²⁴ DIVISION I MANUAL, *supra* note 22, at art. 14.4.3.2 (“A student-athlete who is entering his or her third year of collegiate enrollment shall have completed successfully at least 40 percent of the course requirements in the student’s specific degree program. A student-athlete who is entering his or her fourth year of collegiate enrollment shall have completed successfully at least 60 percent of the course requirements in the student’s specific degree program. A student-athlete who is entering his or her fifth year of collegiate enrollment shall have completed successfully at least 80 percent of the course requirements in the student’s specific degree program.”).

²⁵ *Id.* at 14.4.3.1.7(c) (“A student-athlete who changes his or her designated degree program may comply with the progress-toward degree requirements if: (1) The change

As one commentator stated, “Not only do college athletes have few of the procedural rights available to residents in the criminal justice system, they also are the only group of producers in big-time college sports who do not enjoy the fruits of commercial success.”²⁶ “Studies have shown that draft-quality student-athletes generate far more in revenues than the cost of a scholarship.”²⁷ With the current system, universities give student-athletes mediocre degrees in return for millions of dollars²⁸ in revenue generated for the institution.²⁹ If the idea of amateurism is going to survive, student-athletes must be given a quality education with the potential for quality employment in their chosen field.

This article contends that the NCAA’s Academic Performance Program (“APP”) has created an environment conducive to academic fraud and insufficiency by the university administrators and coaches. In particular, this paper suggests replacing the current program with incentives to educate athletes that will create an environment where a meaningful education is a priority.

Specifically, this paper suggests creating a new academic performance program that consists of five categories and the potential for teams to obtain nine total points at the end of the

in programs is documented appropriately by the institution’s academic authorities; (2) The credits earned prior to the change are acceptable toward the degree previously sought; and (3) The credits earned from the time of the change are acceptable toward the new desired degree.”). Although the Bylaws allow a change in major, it is rarely used because of the strict compliance with percentage-of-degree-completed requirements discussed above.

²⁶ Charles T. Clotfelter, *5 Problems to Tackle in Big-College Sports*, ATLANTA J. CONST. (July 2, 2012, 9:03 AM), <http://www.ajc.com/news/news/opinion/5-problems-to-tackle-in-big-college-sports/nQWxW/>.

²⁷ *Id.*

²⁸ “The NCAA has a fourteen-year, \$11 billion television deal with CBS for the NCAA Tournament, and ESPN will pay approximately \$470 million a year for the college football playoff.” Chris Smith, *The Most Valuable Conferences In College Sports 2014*, FORBES (Apr. 15, 2014, 2:49 PM), <http://www.forbes.com/sites/chris-smith/2014/04/15/the-most-valuable-conferences-in-college-sports-2014/>. A portion of the money is funneled into collegiate athletic departments. *Id.* The ACC, Big Ten, Big 12, Pac-12, and SEC will collect a total of \$311 million from bowl games and NCAA Tournament payouts in 2014-15. *Id.* The Big Ten received \$70 million-\$46 million from bowl games and \$24 million from NCAA Tournament play. *Id.* On average, the power five conferences collect \$1.1 billion from their network partners. *Id.*

²⁹ *Id.*

each academic term. The five categories include retention, eligibility, graduation, academic honors, and community service. Each category has an allotted threshold and point equivalent. At the end of the regular academic year, the top three teams in each conference will be rewarded with athletic-based incentives such as additional scholarships, additional official recruiting visits, and additional pre-season practices. The new program also consists of institutional changes. Institutions must alter the definition of full-time enrollment to either three or six credit hours during the championship segment. Additionally, institutions must award six-year athletic-based financial aid scholarships.

Part I of this Article describes the problem with the current program. In Part II, the Article discusses the theoretical framework for what it means to receive an education. Part III advances the specific proposal for revising the current model. Part IV demonstrates how the proposal can promote academic and athletic success without hidden negative consequences.³⁰

I. THE INACCURATE MEASURE OF ACADEMIC SUCCESS

A. *The Model in Principle*

1. The Purpose of Academic Reform

For decades, the NCAA has been relentless in defending the ideal of amateurism in intercollegiate athletics.³¹ As a way to defend its ideal of amateurism, the NCAA created an academic reform package.³²

³⁰ Many scholars have written about the NCAA's APR system and its discrimination of student athletes. See Phillip C. Blackman, *The NCAA's Academic Performance Program: Academic Reform or Academic Racism?*, 15 UCLA ENT. L. REV. 225 (2008) (discussing the discriminatory results of the APP and APR system); Yuri Nicholas Walker, *Playing the Game of Academic Integrity vs. Athlete Success: The Americans with Disabilities Act (ADA) and Intercollegiate Student-Athletes with Learning Disabilities*, 15 MARQ. SPORTS L. REV. 601 (2005).

³¹ See Ramogi Huma & Ellen J. Staurowsky, *The \$6 Billion Heist: Robbing College Athletes Under the Guise of Amateurism*, NAT'L COLL. PLAYERS ASS'N (2012), http://www.ncpanow.org/news/articles/body/6-Billion-Heist-Study_Full.pdf.

³² See Todd A. Petr & John J. McArdle, *Academic Research and Reform: A History of the Empirical Basis for NCAA Academic Policy*, J. OF INTERCOLLEGIATE SPORT 27-40 (2012),

The central purpose of the academic performance program is to ensure that the Division I membership is dedicated to 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, while enhancing the ability of male and female student-athletes to earn a four-year degree.³³

The NCAA academic reform of 2003 was developed under the Myles Brand administration.³⁴ Brand, known for his dismissal of the iconic basketball coach Bobby Knight, mobilized access to higher education for more minority athletes and punished institutions, teams, and coaches who underperformed academically.³⁵ According to Brand, it was “the first time the NCAA [held] teams and institutions accountable for the academic progress and success of their student-athletes.”³⁶ Brand’s successor and current NCAA president, Mark Emmert, has continued the trend and “described the collegiate model of athletics as ‘providing athletes with world-class educations and world-class opportunities.’”³⁷ While it is apparent that “some athletes clearly have enjoyed educational and professional opportunities from their experiences in college sport, it is difficult to reconcile the noble goals of these two NCAA presidents with the consequences that academic reform programs have imposed on American higher education.”³⁸

Ten years after the commencement of academic reform by former NCAA president Myles Brand, the NCAA continues to acclaim the APR system.³⁹ Current NCAA president Mark

https://www.ncaa.org/sites/default/files/Academic_Research_Reform_History_of_Empirical_Basis_for_NCAA_Academic_Policy_Petr.pdf.

³³ DIVISION I MANUAL, *supra* note 22, at art. 14.01.4.

³⁴ Gerald Gurney & Richard M. Southall, *NCAA Reform Gone Wrong*, INSIDE HIGHER ED (Feb. 14, 2013), <https://www.insidehighered.com/views/2013/02/14/ncaa-academic-reform-has-hurt-higher-eds-integrity-essay>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Michelle Brutlag Hosick, *Student-Athletes Continue to Achieve Academically*, NCAA, (May 14, 2014, 8:36 AM), <http://www.ncaa.org/about/resources/media-center/news/student-athletes-continue-achieve-academically>.

Emmert has “noted that the APR is accomplishing the goals of its creators . . . [through] encourag[ing] student-athletes to stay in school and earn goods grades.”⁴⁰ He went on to say that “[t]he significant academic standards adopted by [the] membership help [the NCAA] support success in the classroom to the same degree that [the NCAA] supports success [in athletics].”⁴¹ The NCAA continues to publicize the increased APR scores of revenue generating sports like football and men’s basketball.⁴² It also has emphasized the number of student-athletes returning to their institutions to obtain their degree.⁴³ Since the creation of the APR, the NCAA claims that nearly 13,000 student-athletes have returned to earn their degrees.⁴⁴ Of these 13,000 student-athletes, about half competed in the high profile sports of baseball, men’s and women’s basketball, and football.⁴⁵

Under the umbrella of the Academic Performance Program are the graduation success rate (“GSR”)⁴⁶ and the Academic Progress Rate (“APR”). The GSR has been less controversial and is not the focus of this paper. The proposal below only concentrates on reforming the APR calculation.

2. Academic Progress Rate Calculation

The APR “is a term-by-term measure of eligibility, retention, and graduation for student-athletes who have received institutional financial aid based on any degree on athletics ability

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Hosick, *supra* note 39.

⁴⁵ *Id.*

⁴⁶ “The GSR is based primarily on the Integrated Postsecondary-Education Data System (IPEDS), which is defined as a six-year proportion of those student-athletes who graduated versus those who entered the institution.” NCAA, NCAA DIVISION I ACADEMIC PERFORMANCE PROGRAM MANUAL 24 (2014), <http://www.ncaa.org/sites/default/files/2014-15%20APP%20Manual%20with%20Appendices%2011-17-14.pdf> [hereinafter APP MANUAL]. It is calculated for each team at an NCAA member institution. *See id.* The GSR is more specific than the Federal Graduation Rate since it includes transfers into an institution and mid-year enrollees. It also removes “student-athletes who withdraw from the institution and would have been academically eligible to compete the next term had they returned.” *Id.*

during the academic term in question.”⁴⁷ For member institutions that do not offer athletically related financial aid, the rate is calculated on a subset of recruited student-athletes.⁴⁸

The APR cohort is comprised of student-athletes who received athletic financial aid and are enrolled full-time as of the institutions fifth week of classes or official census date for that institution, whichever is earlier, or have satisfied a legislated exception.⁴⁹ “Each student-athlete in the APR cohort has the ability to earn two points for each regular academic term of full-time enrollment.”⁵⁰ “One point is awarded if the student-athlete is academically eligible to compete the following regular academic term.”⁵¹ The second point “is awarded if the student-athlete is retained by the institution in the next academic term.”⁵² Being retained means the student-athlete “returns to school as a full-time student as of the fifth week of classes or the official census date of the institution, whichever is earlier.”⁵³ For the student-athletes who graduate, both eligibility and retention points will be awarded.⁵⁴ Student-athletes “who leave after five years of enrollment without graduating will not earn any points for their last term of enrollment in that fifth year.”⁵⁵

“At the start of each academic year, each Division I team’s APR will be calculated by adding all points earned by student-athletes . . . and dividing that number by the total possible points that could have been earned.”⁵⁶ “The raw APR is multiplied by 1,000 to achieve the final APR.”⁵⁷ Since the beginning of 2007, the APR has been “based on four years of data for most teams . . .

⁴⁷ *Id.* at 15.

⁴⁸ *Id.* at 15-16.

⁴⁹ *Id.* at 35 (“Legislated exception/allowable exclusions include student-athletes who have spent time in the armed services; have participated in official religious missions; have served with recognized foreign aid services of the U.S. Government; meet the requirements for an NCAA pregnancy exception at time of departure; meet the requirements for an athletics activities waiver (not international competition waiver); or are deceased or permanently disabled.”).

⁵⁰ *Id.*

⁵¹ *Id.* at 16.

⁵² *Id.*

⁵³ *Id.* at 22.

⁵⁴ *Id.* at 16.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

[and] [e]very year thereafter, the most current year's data will be added and the oldest year of data will be removed, creating a four-year rolling rate."⁵⁸

For the 2014-15 championships, teams must earn a 930 four-year APR or a 940 average over the most recent two years to participate.⁵⁹ In 2015-16 and beyond, teams must earn a four-year APR of 930 to compete in championships. The NCAA has chosen a 930 APR because it predicts a 50% graduation rate.⁶⁰

There are three levels of penalties if the minimum thresholds are not met.⁶¹ "The APP penalty structure is progressive and cumulative."⁶² Each time a team presents a multi-year APR below the penalty threshold, it will move to the next penalty level, while also being subject to the previous penalty.⁶³

The first level limits teams to sixteen hours of practice per week over five days.⁶⁴ This represents a reduction of four hours and one day per week of practice time.⁶⁵ Teams must use the four hours for academic activities such as study hall.⁶⁶

Level two penalties consist of level one penalties during the season as well as additional restrictions out-of-season.⁶⁷ These out-of-season playing restrictions consist of a reduction from eight to four hours per week for athletics activities.⁶⁸ The additional four hours must be replaced with academically focused activities.⁶⁹ Furthermore, of the four remaining hours of athletics activities, no more than two hours per week may be spent on skill-related workouts.⁷⁰ In a sport with a non-championship segment of the

⁵⁸ *Id.*

⁵⁹ *Academic Progress Rate Q&A: Q&A Explaining the Basics of the APR*, NCAA (May 14, 2014, 12:25 PM), <http://www.ncaa.org/about/resources/media-center/news/academic-progress-rate-qa>.

⁶⁰ *Id.*

⁶¹ See APP MANUAL, *supra* note 46, at 97.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ APR: Division I Academic Progress Rate, NCAA (2014), http://www.ncaa.org/sites/default/files/91852%20BTBD%20Academic%20Progress%20Rate%20WEB_0.pdf.

⁶⁵ *Id.*

⁶⁶ APP MANUAL, *supra* note 46, at 97.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

playing and practice season, penalized teams will not be permitted to participate in that segment.⁷¹ In sports that do not have non-championship segment distinction, teams will face a ten percent reduction in the playing and practice season as well as competition.⁷² Football will face the elimination of spring practice and the spring game.⁷³

In addition to the level one and level two penalties, a team is subject to a variety of options under the level three penalties.⁷⁴ An institution has the opportunity to self-impose penalties that can be accepted, rejected, or amended by the staff.⁷⁵ If the self-imposed penalty is not accepted or if the institution assents that the team should not be penalized, the case is forwarded to the Committee on Academic Performance for a hearing.⁷⁶ The penalty options include the following: financial aid penalties of any type and in any amount, additional practice penalties, additional contest reductions up to the entire season, restricted or corresponding membership, coach-specific penalties including game and recruiting restrictions, restricted access to practice for incoming student-athletes that fall below academic standards, and multiyear postseason competition ban.⁷⁷

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* “Thirty-six NCAA teams in Division I will be ineligible for the 2014-15 postseason competition after falling short of their multi-year APR standards.” Nicole Auerbach, *Oklahoma State Football Narrowly Avoids Postseason Ban for APR*, USA TODAY (May 14, 2014, 5:21 PM), <http://www.usatoday.com/story/sports/college/2014/05/14/ncaa-academic-progress-rate-postseason-bans/9082853/>. Nine of the thirty-six are football teams, most notably UNLV and Idaho. *Id.* Eight are men’s basketball teams banned from the NCAA tournament: Alabama State, Florida A&M, Houston Baptist, Lamar, San Jose State, Central Arkansas, and Wisconsin-Milwaukee. *Id.* Fourteen teams face level two penalties and the New Orleans men’s basketball team faces level three penalties. *Id.*

B. The Reality

1. Environment of Fraud

For a program that was intended to increase access to higher education and make education the primary goal in the world of intercollegiate athletics, it has instead morphed into a smokescreen to defend amateurism.⁷⁸ “The academic reform program has led to an increased number of woefully underprepared athletes entering our universities and being kept eligible on academic life support without the chance of a world-class education or a meaningful college degree.”⁷⁹ The program is conducive to academic fraud from all aspects of intercollegiate athletics. College presidents are under pressure from influential and wealthy sports-enamored board members, and athletic directors are under pressure from presidents and athletic boosters to win, all of which trickles down to the coaching and support staff.⁸⁰ Thus, everyone involved has a stake in the success of the athletic program, not in the success of the student-athletes’ academic progress.

The landscape of the NCAA’s program is scorched with scandals surrounding admissions, academic fraud, and major clustering.⁸¹ The scandals began immediately after the instatement of the academic reform program.⁸² During the 2003 season, Georgia suspended its men’s basketball coach, Jim Harrick, and withdrew the team for the SEC tournament “after an internal investigation showed that three players had received fraudulent grades in a class taught by [the head coach’s] son.”⁸³ “All 31 students in the class received A’s, 10 of them were athletes.”⁸⁴

⁷⁸ Gurney & Southall, *supra* note 34.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Incomplete Passes: College-Athlete Academic Scandals, BLOOMBERG (Feb. 27, 2014), <http://www.businessweek.com/articles/2014-02-27/incomplete-passes-college-athlete-academic-scandals>.

⁸³ *Id.*

⁸⁴ *Id.*

Then in 2005, Pete Thamel of *The New York Times* exposed a quick fix \$399 high school diploma mill for elite athletes to obtain whatever grades were necessary to establish NCAA eligibility at University High in Miami.⁸⁵ In his investigation, Thamel found that University High consisted of two small rooms on the third floor of an office building.⁸⁶ The rooms contained three desks, three employees, and two pictures on the wall.⁸⁷ The school advertised that a diploma could be earned in four to six weeks with open book exams, no classes, and no timed tests.⁸⁸ “Lorenzo Ferguson, a second-year defensive back at Auburn, said he left Miami Southridge High School for University High, where after one month he had raised his average from 2.0 to a 2.6.”⁸⁹

In 2006, Auburn football players were given high grades for no class time.⁹⁰ Sociology professor, Thomas Petee, offered directed-reading classes that helped athletes in several sports improve their grade-point averages and preserve their eligibility.⁹¹ “A number of athletes took more than one class with Professor Petee over their careers: one athlete took seven such courses, three athletes took six, five took five, and eight took four” according to the records.⁹² More than a quarter of the students in the directed reading courses were student-athletes.⁹³

The year of 2008 was not a good year for the academic world; three scandals broke out that season. First, Cam Newton left Florida after facing potential expulsion for cheating.⁹⁴ The report stated that Newton had a cheating issue his freshman year, and

⁸⁵ Incomplete Passes: College-Athlete Academic Scandals, *supra* note 82.

⁸⁶ Pete Thamel & Duff Wilson, *Poor Grades Aside, Athletes Get into College on a \$399 Diploma*, N.Y. TIMES (Nov. 27, 2005), http://www.nytimes.com/2005/11/27/sports/ncaafootball/27school.html?pagewanted=all&_r=0.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Pete Thamel, *Top Grades and No Class Time for Auburn Players*, N.Y. TIMES (July 14, 2006), http://www.nytimes.com/2006/07/14/sports/ncaafootball/14auburn.html?adxnnl=1&adxnnlx=1416161138-xgMFQJOil4RKd9d+ol8p/g&_r=0. See also *Incomplete Passes: College-Athlete Academic Scandals*, *supra* note 82.

⁹¹ Top Grades and No Class Time for Auburn Players, *supra* note 91.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Incomplete Passes: College-Athlete Academic Scandals, *supra* note 82.

then two more issues his sophomore year. “As a sophomore, he was caught putting his name on another student’s paper and buying a replacement paper on the Internet.”⁹⁵ Next, the NCAA stripped Memphis’s basketball team of its run to the finals after Derrick Rose’s SAT scores were ruled invalid.⁹⁶

Finally, Michigan athletes were encouraged to take classes from veteran psychology professor John Hagen.⁹⁷ Hagen taught at least 294 independent studies from the fall of 2004 to the fall of 2007, and eighty-five percent of those courses were with athletes.⁹⁸ Some athletes earned three or four credits for meeting with Hagen for only fifteen minutes every two weeks.⁹⁹ The transcripts of twenty-nine athletes were analyzed; twenty-one of the athletes took thirty-two graded courses from Hagen.¹⁰⁰ They averaged a grade point average of 3.62 in the professor’s courses, compared to an overall grade point average of 2.57 in other classes.¹⁰¹

In 2009, Florida State was found guilty of widespread academic fraud. The scandal involved sixty-one student-athletes.¹⁰² A significant portion of the academic fraud violations involved cheating on tests for online courses.¹⁰³ Additionally, an academic learning specialist provided impermissible assistance by typing portions of the student-athletes’ papers.¹⁰⁴ “She also provided answers to an online psychology course for a student-athlete by instructing a second student-athlete to complete the quiz on behalf of the student-athlete enrolled in the course.”¹⁰⁵

⁹⁵ Pete Thamel & Ray Glier, *Newton Faced Suspension at Florida*, N.Y. TIMES (Nov. 9, 2010), <http://www.nytimes.com/2010/11/10/sports/ncaafootball/10auburn.html>.

⁹⁶ Incomplete Passes: College-Athlete Academic Scandals, *supra* note 82.

⁹⁷ Justin Rogers, *University of Michigan Athletes Steered to Professor*, MLIVE.COM (Mar. 19, 2008, 5:39 AM), http://www.mlive.com/wolverines/academics/stories/index.ssf/2008/03/athletes_steered_to_prof.html.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Lynn Ziner, *NCAA Penalizes Florida State for Academic Fraud*, N.Y. TIMES (Mar. 6, 2009), <http://www.nytimes.com/2009/03/07/sports/ncaafootball/07ncaa.html>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

The biggest scandal to hit the academic world was at the University of North Carolina at Chapel Hill.¹⁰⁶ “The depth and the breadth of the scheme-involving counselors, coaches, academic administrators, etc. – eclipses any previous case.”¹⁰⁷ The UNC scandal cuts to the core of college athletics and to the foundation of the NCAA’s claim that athletes are students first. For almost two decades, two employees in the university’s African and Afro-American studies department presided over a fake curriculum, most of which were created and graded solely by an administrator, Deborah Crowder.¹⁰⁸ There were two forms of classes the over 3,100 students enrolled in. The first form was independent study courses in which the students never met the professor.¹⁰⁹ The second form was lecture courses in which the classes never met at the specified times and places.¹¹⁰ In both forms, Ms. Crowder only required students to turn in a single paper.¹¹¹ Many papers¹¹² were unrelated to the topic of the class, plagiarized, or padded with “fluff.”¹¹³ “In the case of 329 students, the grade they received in a paper class provided the G.P.A. boost that either kept or pushed their G.P.A. above the 2.0 level for a semester.¹¹⁴ Of those students, 169 were athletes: 123 football players, fifteen

¹⁰⁶ Sarah Lyall, *U.N.C. Investigation Reveals Athletes Took Fake Classes*, N.Y. TIMES (Oct. 22, 2014) http://www.nytimes.com/2014/10/23/sports/university-of-north-carolina-investigation-reveals-shadow-curriculum-to-help-athletes.html?_r=1.

¹⁰⁷ Sara Ganim, *Academic Fraud or Not, UNC Students Likely Will Keep Degrees*, CNN, <http://www.cnn.com/2014/10/25/us/unc-report-academic-fraud/> (last updated Oct. 26, 2014, 7:50 AM).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² An excerpt from an A minus student’s paper on Rosa Parks: “Her and the bus driver began to talk and the conversation went like this. ‘Let me have those front seats’ said the driver. She didn’t get up and told the driver that she was tired of giving her seat to white people. ‘I’m going to have you arrested,’ said the driver. ‘You may do that,’ Rosa Parks responded.” Tony Manfred & Peter Jacobs, *A UNC Athlete got an A-Minus in a Fake ‘Paper Class’ with this Ridiculous One-Paragraph Final Essay*, BUSINESS INSIDER (Oct. 22, 2014, 3:07 PM), <http://www.businessinsider.com/unc-athlete-essay-a-minus-2014-10>.

¹¹³ Lyall, *supra* note 107.

¹¹⁴ *Id.*

men's basketball players,¹¹⁵ eight women's basketball players, and twenty-six athletes from other sports."¹¹⁶

2. Disciplinary Consequences

Academic fraud is not the only consequence that the APP creates. The calculation of the APR and the penalties that come with not meeting its threshold create an environment that lacks discipline in athletic programs. In the 2014-15 APP Manual, it states that a student-athlete that has departed an institution because of disciplinary actions taken at the institution (e.g., crime, academic fraud, dismissed from team, positive drug test) does not warrant an adjustment of the retention point.¹¹⁷ Therefore, teams that are barely satisfying the minimum APR threshold have an incentive to discipline an athlete less harshly or wait to discipline him or her so that it does not adversely affect their season in the immediate future.

It was alleged that the University of Oregon delayed the expulsion of three men's basketball players in order to maintain the team's APR and avoid NCAA sanctions and ensure that bonuses be paid to university officials.¹¹⁸ Although the university has stated that the allegations are false, there is at least evidence that the APR was a significant factor in the disciplinary actions taken against the three players.¹¹⁹ Damyean Dotson, Dominic Artis, and Brandon Austin were accused of sexual assault of a University of Oregon freshman on March 9, 2014, just hours after the Ducks ended their regular season by beating No. 3 Arizona at

¹¹⁵ During the 2005 NCAA championship season, UNC's basketball players accounted for thirty-five enrollments in the independent study or non-meeting lecture classes, nine of which came during the fall semester of 2004, when eligibility for the spring was determined. Five members of the championship team, including four-star players had fifty-two enrollments during their time at UNC. Dan Kane, *2005 UNC Basketball Champs: 2 Semesters, 35 Bogus "Paper" Classes*, THE NEWS & OBSERVER, (Nov. 9, 2014), <http://www.newsobserver.com/news/local/education/unc-scandal/article10122626.html>.

¹¹⁶ Lyall, *supra* note 107.

¹¹⁷ APP MANUAL, *supra* note 46, at Appendix G p. 11.

¹¹⁸ Mike DeCourcy, *Oregon Case Another Reminder APR Failing College Athletics*, SPORTINGNEWS (Sept. 10, 2014, 4:09 PM), <http://www.sportingnews.com/ncaa-basketball/story/2014-09-10/oregon-apr-college-athletics-ncaa-academic-fraud-dotson-artis-altman>.

¹¹⁹ *Id.*

home.¹²⁰ Artis and Dotson continued to play for the Ducks throughout the NCAA Tournament.¹²¹ The only reason Brandon Austin did not play was that he was ineligible due to his transfer from Providence.¹²² Artis and Dotson were considered “retained” for the spring term on April 28, thus receiving their APR points.¹²³ The players were not dismissed from the team until May 5 and were then expelled on June 23.¹²⁴ John Infante, a nationally recognized APR expert, commented on the situation and stated that the university benefitted from keeping the players in school and on the team.¹²⁵ In his review of the situation, the “dates where this occurred line up with significant APR dates and with avoiding worst-case scenarios.”¹²⁶

3. Survival of the Wealthiest

Schools that have money and adequate resources have effective strategies to bolster their APR score and avoid penalties.¹²⁷ Major programs have staff members whose primary duties involve writing admissions waivers and exceptions, as well as monitoring athletes’ satisfactory progress toward degree.¹²⁸ For example, “at one Big 12 institution, a typical year’s waiver writing assignments for a compliance attorney included one initial eligibility waiver and up to seven reduced hour or other progress toward degree waivers and exceptions.”¹²⁹

Member institutions use two exceptions to manipulate APR scores: the medical exception¹³⁰ and the missed term¹³¹

¹²⁰ Tyson Alger, *Report: Oregon Officials Waited to Expel Basketball Players Accused of Sexual Assault in Order to Bolster Academic Numbers*, OREGONLIVE.COM (Sept. 9, 2014, 12:21 PM), http://www.oregonlive.com/ducks/index.ssf/2014/09/report_oregon_officials_waited.html

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Alger, *supra* note 121.

¹²⁷ Gerald S. Gurney & Richard M. Southall, *College Sports’ Bait and Switch*, ESPN (Aug. 9, 2012), http://espn.go.com/college-sports/story/_id/8248046/college-sports-programs-find-multitude-ways-game-ncaa-apr.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *See* DIVISION I MANUAL, *supra* note 22, at art. 14.4.3.7(a).

exception.¹³² “Athletes or members of their families who become ill with incapacitating injuries or illnesses may escape eligibility penalties through being granted an exception.”¹³³ “The missed term exception permits an athlete to miss one or more semesters one time during their career if they leave eligible.”¹³⁴ Successful exceptions require substantial time and effort from athletic department staff members who draft and submit the necessary paperwork to the NCAA and/or conference offices.¹³⁵

Another costly tactic is the ability to obtain delayed graduation points.¹³⁶ The APP Manual states: “An institution will be awarded an APR point (i.e., 1/0) for a former student-athlete who departed an institution without graduating and returns to the institution and graduates. . . . This point will be awarded to the team’s APR in the academic year the former student-athlete graduates. . . .”¹³⁷ It is expensive to pay for a returning athlete to finish their degree but can be worthwhile for programs in fear of penalties.¹³⁸

Major clustering¹³⁹ and creative advising has become a common practice amongst universities.¹⁴⁰ Athletes are often directed to majors that lead to sports success for the university rather than educational development of the individual.¹⁴¹ The now

¹³¹ The missed term exception states as follows, “One time during a student-athletes entire period of collegiate enrollment, the provisions of Bylaw 14.4.3.1(b) may be prorated at nine hours per term of actual attendance if the student-athlete misses a complete term or consecutive terms during an academic year. *Id.* at 14.4.3.6(a). *See also id.* at art. 14.4.3.1(b).

¹³² Gurney & Southall, *supra* note 128.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ APP MANUAL, *supra* note 46, at 31.

¹³⁸ Gurney & Southall, *supra* note 128.

¹³⁹ Clustering is a term used to describe situations in which twenty-five percent or more of an athletic team are in the same program of study. *See*, Mark Dent, Michael Sanserino & Sam Werner, *Do Colleges Drop the Ball with Student-Athletes?*, PITTSBURGH POST GAZETTE (May 31, 2014, 10:58 PM), <http://www.post-gazette.com/sports/college/2014/06/01/Do-colleges-drop-the-ball-with-student-athletes/stories/201406010120>.

¹⁴⁰ *Id.*

¹⁴¹ Ben Strauss, *Northwestern Quarterback Makes His Case for Players’ Union*, N.Y. TIMES (Feb. 18, 2014),

famous, former Northwestern quarterback, Kain Colter revealed to the National Labor Relations Board, that he once had dreams of being an orthopedic surgeon.¹⁴² The summer before his freshman year however, he was steered toward less strenuous options such as sociology and African history.¹⁴³ He ultimately ended up in psychology.¹⁴⁴ Colter is not alone in the major clustering phenomena.

An article in the *Pittsburgh Post-Gazette* reviewed the declared majors for players on the Top 25 football and men's basketball teams, as ranked by The Associated Press, during the 2013-14 academic year.¹⁴⁵ Their researched showed that 13 of the 22 top-ranked football teams that disclose majors and 16 of the 20 basketball teams that disclose majors, have athletes clustered in areas of study.¹⁴⁶ For example, the Baylor football team has 36 of its 79 players with declared majors (45.6 percent) enrolled in a general studies major program.¹⁴⁷ On the University of Cincinnati basketball team, seven of its eight players with declared majors were enrolled in a criminal justice major.¹⁴⁸ Major clustering is not necessarily a problem; however, it is evidence that many student-athletes are choosing majors with less rigorous degree requirements in order to stay eligible for their sport. Major clustering is becoming a way for athletes to survive the rigors of NCAA performance standards.¹⁴⁹

II. WHAT IS EDUCATION?

It is obvious that most student-athletes are not leaving their institution with a meaningful education. Although they are receiving experiences of a lifetime on the field, they are not receiving a world-class education. The NCAA claims that the opportunity to receive an education is an adequate exchange for

<http://www.nytimes.com/2014/02/19/sports/ncaafotball/northwestern-quarterback-makes-his-case-for-players-union.html>.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Dent, Sanserino & Werner, *supra* note 140.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

billions of dollars.¹⁵⁰ If the NCAA is going to continue to hang their hat on the idea that athletes are students first, they need to give student-athletes a meaningful education.

The current system relies on eligibility, retention, and graduation rates to measure student-athletes' education.¹⁵¹ Most major programs have the resources to efficiently and effectively push athletes through the necessary hoops to remain eligible and graduate on time. The NCAA is only requiring numbers not education.

A. Purpose of Education

The problem is that most students, especially student-athletes, are leaving their higher education institutions with degrees in mediocrity.¹⁵² This problem begins with what William Deresiewicz's Yale student described as "The Suckage Factor".¹⁵³ The "suckage factor" is a measure of how badly you suck at everything because you are trying to do too much. As his former student explains in his essay, the figure is calculated by dividing the number of hours in a day by the amount of time an individual spends on academics and activities.¹⁵⁴ He explains:

Looking back on my first year, I can perform this calculation retroactively: as it turns out, I was allotting myself six minutes to read Homer's *Odyssey* and five minutes to scale Harkness tower for carillon practice, provided I slept two hours a night and ate lunch every second day. . . . Before long I was pulling regular all-nighters at the library, but paradoxically, not finishing my homework; I was running madly from meeting to rehearsal, but was never on time; I was thrashing about like a banshee in a whirlpool, and I was barely scraping by.¹⁵⁵

This is a common occurrence for student-athletes, and it is even more of a problem for the underprepared student-athlete.

¹⁵⁰ Huma & Staurowsky, *supra* note 31.

¹⁵¹ DIVISION I MANUAL, *supra* note 22, at art. 14.

¹⁵² William Deresiewicz, *Excellent Sheep: The Miseducation of the American Elite and the Way to a Meaningful Life* 66 (Free Press 2014).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

There are serious flaws with their current educational standards. Due to the blunt measures provided by the NCAA, student-athletes are showing up to class but are not engaged. The student-athletes are memorizing the “correct” answers, forgetting them the moment the test is over, and walking blindly in the direction that academic support staff members and coaches are pushing them, all so they can remain on the field. For the vast majority of student-athletes, life at college is a frolic through late adolescence, coupled with a launching point for professional athletic success.¹⁵⁶

This leads to the fundamental question: What is the purpose of a college education? According to Deresiewicz, no one seems to ask what return college is supposed to give to students.¹⁵⁷ “Is it just about earning more money? Is the only purpose to get a job?”¹⁵⁸

Of course, money matters: jobs matter, financial security matters, national prosperity matters. The question is, are they the only things that matter? Life is more than a job; jobs are more than a paycheck; and a country is more than its wealth. Education is more than the acquisition of marketable skills.¹⁵⁹

First and foremost, higher education’s purpose is to teach students how to think.¹⁶⁰ That does not mean testing to see how much the student retained, making sure they meet all the “standards” of production.¹⁶¹ It also does not mean developing the mental skills particular to individual disciplines—how to solve an equation, construct a study, or analyze a text.¹⁶² It does mean, however, developing the “habit of skepticism and the capacity to put it into practice.”¹⁶³ It is being able to bring something different

¹⁵⁶ RICHARD H. HERSH, *Afterword: What Difference Does a College Make?*, in *DECLINING BY DEGREES: HIGHER EDUCATION AT RISK* 231 (Richard H. Hersh & John Merrow eds., 2005).

¹⁵⁷ DERESIEWICZ, *supra* note 153.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* at 66.

to the table and that unique creative thinking is valued.”¹⁶⁴ College is an opportunity to stand between the orthodoxy of family and the exigencies of a career, and it allows a student to contemplate things from a distance.¹⁶⁵ College also offers professors, who play an important role in the realm of college life.¹⁶⁶ Professors, in theory, should assist students and encourage them to think precisely, patiently, reasonably, remorselessly, and about exhilarating new insights.¹⁶⁷

“Excellence in higher education has the power to enrich and deepen the life experience, to open new vistas for consideration, and to develop critical thinking as a habit of mind.”¹⁶⁸ It should facilitate students in developing “ethical and moral principles by which to live, engendering compassion, open mindedness, and igniting the ability to see connections between diverse issues and ideas.”¹⁶⁹ Institutions must turn adolescents into adults and prepare them to deal with the challenges posed by “cultural conflict, globalization, technological innovation, and environmental change.”¹⁷⁰

Currently, not all students are getting excellence out of their higher education. Student-athletes, however, are in a worse position due to the additional requirements and expectations put on their college careers. Student-athletes are not challenged to think; they are challenged to achieve arbitrary standards.

¹⁶⁴ Kim Jones, *What Is The Purpose of Education?*, FORBES (Aug. 15, 2012, 10:52 AM), <http://www.forbes.com/sites/sap/2012/08/15/what-is-the-purpose-of-education/>. See also DANIEL H. PINK, *A WHOLE NEW MIND* (Penguin Group 2005). Pink argues that society has changed from a knowledge age to a conceptual age where problems are no longer solved with a single verifiable answer. *Id.* He claims that success in the knowledge age was mainly determined by tests throughout the education system that required logic and analysis to identify a single correct answer, which does not meet the needs of the conceptual age. *Id.* He asserts that education is focused towards the needs of the information age. *Id.*

¹⁶⁵ DERESIEWICZ, *supra* note 153, at 66.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ JULIE JOHNSON KIDD, *It Is Only a Port of Call: Reflections on the State of Higher Education*, in *DECLINING BY DEGREES: HIGHER EDUCATION AT RISK* 197 (Richard H. Hersh & John Merrow eds., 2005).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

III. THE PROPOSAL

The measurement of academic success should be a rewards-based program that motivates and rewards universities, athletic departments, and student-athletes. The following proposal is a complete reform to the current NCAA model. It potentially removes the drive to cheat the system and puts the education of student-athletes first in a hierarchy of priorities. For the proposed academic performance program to work, institutions must change the course load of its student-athletes and extend scholarships to six years.

A. *New Academic Performance Program*

1. Calculation

The new “Academic Performance Program” (“APP”) consists of five categories and the potential to obtain up to nine total points. The five categories are as follows: (1) retention, (2) eligibility, (3) graduation, (4) academic honors, and (5) community service.

The student-athlete will be considered retained if he or she returns to the member institution for the next academic term and is enrolled as a full-time student-athlete as of the fifth week of classes.¹⁷¹ Retention does not require a student-athlete to return to the athletics team; rather, it requires the student-athlete to return to a federally registered member institution. If seventy percent of student-athletes are retained for the next regular academic term, the team will receive one point toward the total points allotted in the academic performance program.

Eligibility will be defined as a student-athlete that meets all applicable eligibility requirements (i.e. institutional good standing). A team will be awarded one point if eighty-five percent of the team is considered academically eligible to compete in the following regular academic term. Any change to a student-athlete’s eligibility status must occur no later than the sixth week of the subsequent regular academic term.¹⁷²

¹⁷¹ See APP MANUAL, *supra* note 46, at 22.

¹⁷² *Id.*

The graduation category will give teams the potential to earn up to three points. A team will receive one point in this category if fifty percent of the student-athlete cohort¹⁷³ graduates. Teams can earn two points if they have sixty percent of the cohort graduates. They will receive the maximum three points if seventy percent or more of the cohort graduates. The fifty percent graduation rate minimum is a standard that the NCAA already tries to enforce, but with this model, teams will be rewarded more points for greater graduation rates.

The academic honors category also presents an opportunity for teams to earn up to three points. One point will be awarded if a team has thirty percent of its scholarship athletes receive a university academic recognition (e.g., honor roll, dean's list, chancellor's list, etc.). A team will be awarded two points if fifty percent of its scholarship athletes receive academic honors and three points if sixty-five percent receive academic honors.

Community service is the last category of the proposed program. It is important that student-athletes are well-rounded individuals and have enriching experiences outside of the classroom and off the field. Community service must be done as a team, not as a requirement by the athletic department. One point will be awarded to teams that complete thirty hours of community service in-season and fifty hours of community service in the off-season.

There are also opportunities for teams to lose points and/or be disqualified from the program. Teams will lose one point if the team grade point average falls below a 2.30. They will lose two points if the team grade point average falls below a 2.00, and they will lose three points if it falls below 1.95. Member institutions will be disqualified from participating in the program if any academic fraud is committed. In order to be reinstated into the program, the institution must submit a comprehensive academic improvement plan to fix the problem. The Division I Committee on Academic Performance must approve the plan.

¹⁷³ A cohort is comprised of student-athletes who: received "financial aid based in any degree on athletics ability and are enrolled full-time as of the institution's fifth week of classes" APP MANUAL, *supra* note 46, at 25.

2. Rewards

Teams within their respective conferences will be ranked according to their total APP points. The top three teams in each conference will be rewarded for their academic success.

The first place team will be awarded an additional scholarship position for the following academic year, two official visits per recruit, additional preseason practice days according to particular sport bylaws, and additional recruiting days based on the particular sport. The second place team in conference will be awarded two official visits during recruiting season, additional preseason practice days, and additional recruiting days. The third place team will receive additional preseason practice days and one additional day of recruiting.

For institutions with the most athletic teams within the top three of their conference, the athletic department will receive a larger distribution of conference money. Additionally, for institutions that have student-athlete employment rates of sixty-five percent in their field of study within one year of graduation, the NCAA will donate \$250,000 to the institution. This is an important reward because students go to college in hopes of someday being employed. Most student-athletes will not be able play professionally after their college careers. Therefore, it is important that student-athletes leave the institution qualified to obtain employment after graduation.

Over time, these rewards will give the prospective teams an athletic advantage in the conference. Athletic departments and, more directly, coaches will not want to be left behind, especially in conference play. It is a way to reward academically focused institutions by giving them an advantage in athletics.

The key to the success of this program is ensuring that the rewards are motivating enough for institutions to participate in the program. Punishing institutions for their academic failures is not and has not been the answer. It is time that the NCAA makes academics a positive aspect of intercollegiate athletics instead of a nightmare for all the parties involved.

B. Institutional Changes

For student-athletes to be successful in the classroom, two requirements must be changed. First, the academic course load required during the championship segment must be reduced. Second, scholarships must be extended to six years. These changes are necessary for the success of student-athletes and for the proposed Academic Performance Program to work effectively.

1. Change the Full-Time Requirement

It is no secret that student-athletes, especially football players, are dedicating forty to fifty hours a week to athletics.¹⁷⁴ A key element to the success of student-athletes is limiting their academic course load during the championship segment. When athletes are in-season, they should be limited to a maximum of six credit hours, with three credit hours being the preferable course load. If the sport competes more than once a week (i.e. basketball or baseball), student-athletes should be limited to three credit hours. Basketball is unique because it begins at the end of the fall semester, usually early November, and continues through the spring. The championship segment for basketball, in relation to the academic performance program, will be the spring semester. It would be beneficial if basketball season shifted entirely to the spring semester; however, the success of the program is not contingent on such a shift. If a shift is not possible, athletic departments should try to limit tournament play until after the examination period.¹⁷⁵

Currently under the NCAA Bylaws, student-athletes must be enrolled in a minimum of twelve semester or quarter hours to be eligible for competition.¹⁷⁶ Limiting the academic course load of student-athletes is imperative to their success in the classroom. Student-athletes would have the opportunity to effectively

¹⁷⁴ Moltz, *supra* note 21.

¹⁷⁵ Dan Wolken, *NCAA Should Shift Basketball Season*, FOXSPORTS.COM, <http://www.foxsports.com/collegebasketball/story/ncaa-basketball-should-step-out-of-nfl-super-bowl-shadow-012912> (last updated June 2, 2014). For other non-revenue sports that also compete over multiple semesters, the greater scheduled semester will be considered the championship segment for the academic program. In general, most non-revenue generating sports have been more successful academically.

¹⁷⁶ DIVISION I MANUAL, *supra* note 22, at art. 14.2.2(c).

manage their educational and athletic activities. Athletes would be able to put in the proper academic effort while also participating in meetings, practices, workouts, and team travel. One study demonstrates that football players had higher levels of academic motivation within their non-championship segment semester.¹⁷⁷ Such results are likely due to a more manageable schedule and less missed class time. Additionally, student-athletes would be able to select a major of their choice instead of choosing one that is the most feasible with their athletic schedule.

The increase in academic motivation will ultimately allow athletes to perform at a higher level. It will also help decrease the incentive to cheat and cut corners in the academic realm of their college experience.

2. Award Six-Year Scholarships

Six-year scholarships are necessary to accommodate the reduced academic course load during championship segments. Additionally, the NCAA already calculates graduation rates on a six-year basis. Historically, the NCAA only allowed one-year renewable athletic scholarships.¹⁷⁸ Then, in 2012, the NCAA and its member institutions provided universities the option of offering multiple year scholarships.¹⁷⁹ “The arrangement was nearly scrapped when 62.12 percent of the 330 schools voting opposed the legislation—just shy of the 62.5 percent needed to overturn the new rule. Twenty-five schools abstained and fourteen changed their votes for the rule to survive.”¹⁸⁰ The six-year scholarships would give the athletes comfort in knowing that they will be able to leave the institution with a degree in an area of their choice.

¹⁷⁷ Ian R. Potter, *Investigating Academic Motivation Among NCAA Division I Football Players Within Their Competition and Non-Competition Semesters (Fall 2013)* (unpublished Ph.D dissertation, Georgia Southern University), available at <http://digitalcommons.georgiasouthern.edu/cgi/viewcontent.cgi?article=1872&context=etd>.

¹⁷⁸ Jon Solomon, *Schools Can Give Out 4-Year Athletic Scholarships, but Many Don't*, CBS SPORTS (Sept. 16, 2014, 10:15 AM), <http://www.cbssports.com/collegefootball/writer/jon-solomon/24711067/schools-can-give-out-4-year-scholarships-to-athletes-but-many-don't>.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

The six-year scholarships would not be an excessive expense for two reasons. First, most institutions determine tuition based on credit hours. With the reduced credit hours during championship segments, institutions would be paying less each semester but over a longer period of time. Essentially, institutions would not be adding much to their expenses. Second, student-athletes are not required to take six years; therefore, a majority of the athletes would still be able to graduate in four or five years. Most student-athletes already spend five years at their institution due to redshirting, sometimes six years due to the combination of redshirts and medical redshirts.

IV. JUSTIFICATIONS

There is no perfect measure of academic success, but a fifty percent graduation rate alone is not enough to measure the overall success of student-athletes. This proposal addresses some of the unacceptable consequences of the current APR model and makes academics a priority. The new Academic Performance Program takes the unsuccessful individual measures and uses them collectively to form a better measure of academic success.

A. Retention

The “ultimate goal of a retention effort is improved educational experiences for students, rather than retention per se.”¹⁸¹ Encouraging all students to stay in school and eventually obtain a degree is extremely important economically for both the student and the institution.

The seventy-percent retention rate is important because it measures the retention of the team as a whole. The current system is overly complicated because each individual student-athlete’s retention point has a significant impact on the APR calculation. Due to the significance of the point, the NCAA has had to develop exceptions to bring some fairness to the strict

¹⁸¹ Lydia Voigt & Jim Hundrieser, *Student Success, Retention, and Graduation: Definitions, Theories, Practices, Patterns, and Trends*, NOEL-LEVITZ RETENTION CODIFICATIONS 9 (Nov. 2008), available at <http://www.stetson.edu/law/conferences/highered/archive/media/Student%20Success,%20Retention,%20and%20Graduation%20Definitions,%20Theories,%20Practices,%20Patterns,%20and%20Trends.pdf>.

definition of retention. As a result, there are endless hoops to jump through for institutions to receive such exceptions. For schools with fewer resources, this can be extremely difficult and time consuming. This proposal levels the disparities between the high and low resource institutions.

The lower percentage and modified definition of retention should allow room for foreseen and unforeseen circumstances that athletic teams face on a day-to-day basis with their athletes. Athletic departments would no longer have to spend the time and energy it currently requires to provide documentation for retention calculation exceptions. Currently, teams may receive an adjustment to retention points if very specific conditions are met. Some examples include incapacitating injury or illness, a natural disaster, Olympic or international competition, degree program discontinuation, and extreme financial difficulties as a result of a specific event.¹⁸²

In the current system, there are seven circumstances that do not warrant an adjustment of a retention point.¹⁸³ All seven have inappropriate consequences. Institutions, athletic teams, and coaches should not be punished for the decisions made by student-athletes that are out of their control. The modified definition and seventy-percent threshold remove the consequences entirely. The proposed model would allow the student-athlete to be considered retained as long as they enroll at another institution immediately. Even if the student-athlete does not enroll at another institution, the overall team percentage rate is a buffer for such actions.

The most important result of the new model is the ability to discipline athletes without the fear of damaging team APR. As mentioned above, within the current system, there is an incentive for institutions to keep rule-breaking athletes on the roster to avoid APR penalties.

¹⁸² APP MANUAL, *supra* note 46, at Appendix G.

¹⁸³ *Id.* "(1) student-athlete transferred to another institution for any reason not included in the section above; (2) student-athlete departed due to lack of playing time, or desire to play for a different coach; departed due to coaching change; academic suspension; (3) disciplinary actions; institution sanctions; athletic aid removed or reduced." *Id.*

B. Eligibility

All students enrolled in an institution of higher education must meet minimum standards to remain eligible to continue their educational journey. As long as the student-athlete remains in good academic standing within their institution, they should be considered eligible to compete athletically.

Eighty-five percent is an attainable threshold for sports teams of all calibers and resource availability. Wealthy programs should not have the opportunity to avoid the requirements because of their resources. The current model gives wealthy institutions the incentive to take on underprepared athletes because they have the time to write waivers and assign academic support help. The new measurement levels the playing field for under-resourced institutions.

For this measure to be appropriate, it is imperative that student-athletes have a lighter academic course load during championship segment. Education will never be a priority if student-athletes are forced to maintain a twelve-hour course load on top of a fifty-hour athletic schedule. The ability to devote the necessary time to the one or two required classes during the championship segment would not only increase eligibility but also promote class engagement. Instead of sliding through a class with minimum effort and padding schedules with G.P.A. boosters, student-athletes can put their full attention and effort into succeeding in the classroom. It also allows the student-athletes to take more rigorous classes with less risk to their eligibility.

C. Graduation Rates

Graduation rates alone do not accurately represent the academic success of student-athletes; however, it is an important component to the overall concept. “For individuals, the occupational, monetary, and other societal rewards of higher education are in large part conditional on earning a college degree.”¹⁸⁴ Modern society expects that individuals who have attained undergraduate and graduate degrees will experience significantly higher lifetime earnings.¹⁸⁵ The NCAA uses this

¹⁸⁴ Voigt & Hundrieser, *supra* note 182.

¹⁸⁵ *Id.*

societal expectation as a way to justify an education in return for participation in intercollegiate athletics under the amateurism standard.

The proposed program promotes the NCAA's desired fifty-percent graduation standard but through an incentive process. The graduation category gives enough weight in the points system to encourage institutions to graduate their student-athletes, but it does not allow it to be the driving standard of academic success.

D. Academic Honors

The academic honors category is a way to reward athletic teams that have student-athletes who are excelling in the classroom. While it is important that student-athletes meet the eligibility requirements of the institution, it is more important that student-athletes are doing more than the minimum. Similar to the graduation category, the academic honors category has substantial weight in the total point calculation. The theory is that there should be more rewards for exceeding the minimum threshold of eligibility.

Every institution has some type of academic honors recognition. Generally, students that meet certain grade point average standards are recognized by making the honor roll, dean's list, or chancellor's list after each academic term. Including the academic honors category is a way to improve the measurement of student-athletes' success. It is one more way to measure educational performance and is a necessary piece to the puzzle.

E. Community Service

It is important that student-athletes are well-rounded individuals and have experiences outside of the classroom and athletic field. Including community service as a measurement encourages athletic teams to go beyond what is learned in the classroom.

Numerous research studies affirm that related educational benefits accrue to students from involvement in community service. "According to these studies, the participating students persist to graduation at higher rates and show greater improvement in their critical thinking and communication skills;

their tolerance for, acceptance of, and comfort with difference; and their competency to work collaboratively with others as members of focused teams.”¹⁸⁶ Additionally, students become more articulate of their ethical values and their sense of responsibility to improve the quality of life in their communities. It has also been established that there is a relationship between students’ level of engagement in community service and their self-reported feelings of academic motivation. Community activities may help students see themselves as having greater professional and academic potential.¹⁸⁷

Educating student-athletes does not end in the classroom. Institutions should encourage and promote the value of community service.

CONCLUSION

The academic and athletic demands of student-athletes have dramatically increased over the past eleven years since the NCAA launched its academic reform package. The only component of intercollegiate athletics that has remained the same is the quality of the education that student-athletes are receiving from their institutions. If the idea of amateurism and the student-athlete are to survive amongst the billion-dollar college athletics industry, the NCAA and its member institutions should reevaluate their academic policies.

This Article offers a proposal to redefine the measurements of academic success within the student-athlete context. It proposes a new academic performance program with five categories and nine potential points that can be earned. Additionally, it proposes reducing the required academic hours during the championship segment and offering six-year scholarships. It is an incentive-based program that rewards institutions for prioritizing

¹⁸⁶ George M. Dennison, *Higher Education, Community Service, and Service Learning*, SOLUTIONSFOROURFUTURE.ORG (Mar. 27, 2008), http://www.solutionsforourfuture.org/guest_GeorgeMDennison.htm.

¹⁸⁷ Maya M. Khanna, *Community Service Engagement: How Our Students Benefit From This Service and How to Encourage Them to Pursue Community Service*, in PROMOTING STUDENT ENGAGEMENT 41-45 (Richard L. Miller & Robert F. Rycek, eds., 2011).

education. This is a more realistic approach to maximizing the educational success of student-athletes.