

## EXPANDING STUDENT-ATHLETE BENEFITS: ARE THERE COSTS?

*Timothy Davis*

At the January 2015 National Collegiate Athletic Association (“NCAA”) Convention, universities that comprise what are characterized as the “autonomy schools”—consisting of institutions that are members of the Atlantic Coast Conference (“ACC”), Southeastern Conference (“SEC”), Pacific 12 (“Pac-12”), Big Ten and Big-12—adopted legislation that expands the benefits available to student-athletes. College presidents, NCAA administrators, and others have described this legislation as a genuine attempt by the organization, athletic conferences, and their respective member institutions to improve student-athlete welfare. Critics argue that these and other student-athlete welfare initiatives represent efforts to get ahead of recent litigation<sup>1</sup> in order to change much of the negative narrative regarding college sports. Much of the narrative surrounding the alleged inequitable treatment of college athletes has emerged as a consequence of the litigation. Whatever the true motivations, the reform initiatives may reflect that the consequences of *O’Bannon v. NCAA* and other cases extend beyond the rules of law articulated by courts. This article will briefly address the implications of recent initiatives targeting the enhancement of student-athlete welfare. It will begin with a description of some of these measures.

The centerpiece of NCAA legislation, passed by the aforementioned autonomy schools in January 2015 with an effective date of August 1, 2015, is the redefinition of permissible financial aid. Prior to this legislation, a student-athlete could receive a combination of certain sources of financial aid totaled up

---

· Executive Associate Dean for Academic Affairs and the John W. & Ruth H. Turnage Professor of Law, School of Law, Wake Forest University.

<sup>1</sup> See, e.g., *O’Bannon v. Nat’l Collegiate Athletic Ass’n*, 7 F. Supp. 3d 955 (N.D. Cal. 2014); see also *Jenkins v. Nat’l Collegiate Athletic Ass’n*, No. 3:14-cv-01678 (D.N.J. filed Mar. 17, 2014).

to the cost of attendance. Thus, a student-athlete could receive athletically related financial aid limited to tuition and fees, room and board, and required course-related books. Under this new legislation, an athletic scholarship is now redefined to encompass not only tuition, room, board, books, and fees, but also the incidental costs of attending college, such as transportation and miscellaneous personal expenses.

This legislation provides in part: “A student-athlete may receive institutional financial aid based on athletics ability . . . and any other financial aid up to the value of his or her cost of attendance.”<sup>2</sup> For reference, the NCAA defines “cost of attendance” as “an amount calculated by an institutional financial aid office, using federal regulations, that includes the total cost of tuition and fees, room and board, books and supplies, transportation, and other expenses related to attendance at the institution.”<sup>3</sup> The legislation provides the following guidance on the calculation of cost of attendance:

An institution must calculate costs of attendance for student-athletes in accordance with the cost-of-attendance policies and procedures that are used for students in general. Accordingly, if an institution’s policy allows for students’ direct and indirect costs (e.g., tuition, fees, room and board, books, supplies, transportation, child care, cost related to a disability and miscellaneous personal expenses) to be adjusted on an individual basis from the institution’s standard cost figure, it is permissible to make the same adjustments for student-athletes . . . .<sup>4</sup>

The gap between how the NCAA has traditionally defined an athletic scholarship and the true cost of attendance has been estimated as ranging between \$2,000 to \$5,000 per student-athlete annually, depending on the college the student-athlete attends. It has also been estimated that awarding the full cost of attendance would increase the annual costs to colleges and

---

<sup>2</sup> THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2015–16 NCAA DIVISION I MANUAL Article 15.1 (2015), available at <http://www.ncaapublications.com/productdownloads/D116.pdf> [hereinafter *NCAA MANUAL*].

<sup>3</sup> *Id.* at 15.02.2.

<sup>4</sup> *Id.* at 15.02.2.1.

universities in amounts ranging between approximately \$500,000 to \$2 million per institution.<sup>5</sup>

The cost of attendance legislation is mandatory for autonomy schools but permissive for non-autonomy schools. Due to competitive pressures, certain non-autonomy schools have announced that they will also offer full-cost financial aid. These include non-autonomy schools within Conference USA, as well as the Mountain West and Mid-American Conferences.

During the 2015 NCAA Convention, autonomy schools also adopted legislation tied to a bylaw adopted in 2012 that permitted schools to award multi-year scholarships. Following the 2012 legislation, schools including, but not limited to, Ohio State, Florida, Arizona State, South Carolina, UCLA, Oklahoma State, Kentucky, Clemson, Virginia, and Oregon announced they would offer multi-year scholarships. In October 2014, the Big Ten announced that its institutions would offer multi-year scholarships in all sports. Thereafter, the Pac-12 and Big-12 adopted policies to award multi-year scholarships in all sports. Consistent with these policy shifts, autonomy schools adopted legislation at the NCAA's 2015 Convention seeking to protect the integrity of multi-year scholarships. The legislation provides in pertinent part:

If a student-athlete receives athletically related financial aid in the academic year of his or her initial full-time enrollment at the certifying institution, the following factors shall not be considered in the reduction or nonrenewal of such aid for the following academic year or years of the student-athlete's five-year period of eligibility:

(a) A student-athlete's athletics ability, performance or contribution to a team's success (e.g., financial aid contingent upon specified performance or playing a specific position);

---

<sup>5</sup> Steve Berkowitz and Andrew Kreighbaum, *College Athletes Cashing in With Millions in New Benefits*, USA Today (August 19, 2015), <http://www.usatoday.com/story/sports/college/2015/08/18/ncaa-cost—attendance-meals-2015/31904839/>; Jon Solomon, *Cost of Attendance Results: The Chase to Pay Players*, USA Today (August 20, 2015), <http://www.cbssports.com/collegefootball/writer/jon-solomon/25275500/cost-of-attendance-results-the-chase-to-legally-pay-college-players>.

- (b) An injury, illness, or physical or mental medical condition;  
or
- (c) Any other athletics reason.<sup>6</sup>

In short, the legislation prevents schools and coaches from reducing a student-athlete's multi-year scholarship for athletic reasons, injury, or illness.

The autonomy schools adopted other measures to protect student-athlete welfare in January 2015. First, the autonomy schools initiated a loss-of-value insurance measure that permits a student-athlete to borrow against future earnings to purchase so-called-loss of value insurance—helping student-athletes if an injury, while playing college sports, results in a student-athlete getting less money from a professional contract.<sup>7</sup> Second, a measure that strengthens the NCAA's concussion management protocol was also adopted, a key component of which requires that a concussed student-athlete receive medical clearance by a physician before returning to athletics activity.<sup>8</sup>

Prior to its 2015 annual conference, the NCAA granted a waiver that permitted the College Football Playoff to cover travel expenses to facilitate players' families to attend the national championship game between Ohio State and Oregon. The waiver permitted the College Football Playoff to reimburse families up to \$2,500 per athlete for travel, hotel, and meals expenses for a maximum of two parents or legal guardians. Expenses were capped at \$1,250 per parent or guardian.<sup>9</sup> The NCAA also established a pilot program, which it subsequently extended, that allows the organization to cover the expenses of the families of players who participate in the men's and women's basketball semifinals and championship games. The NCAA will cover up to \$3,000 in expenses for travel, hotel, and meals for the families of each player who advances to the semifinals and up to \$4,000 for

---

<sup>6</sup> *Id.* at 15.3.5.3.

<sup>7</sup> *See id.* at 12.1.2.4.4.

<sup>8</sup> *See id.* at 3.2.4.17.

<sup>9</sup> *See* Marc Tracy, *N.C.A.A. to Allow Family Travel Aid for Top Title Games*, N.Y. TIMES (Jan. 6, 2015), [http://www.nytimes.com/2015/01/07/sports/ncaafotball/college-football-playoff-to-help-pay-for-parents-expenses-to-title-game.html?\\_r=0](http://www.nytimes.com/2015/01/07/sports/ncaafotball/college-football-playoff-to-help-pay-for-parents-expenses-to-title-game.html?_r=0).

the families of each player who advances to the championship game.<sup>10</sup>

The forgoing legislative and policy measures expand the rights and benefits available to Division I intercollegiate athletes and can be properly viewed as enhancing the welfare of the student-athlete. Several salient questions emerge, however, regarding the collateral impact of these initiatives. Will the enhancement of student-athlete benefits exacerbate the imbalance that currently exists between their athletic and academic endeavors? Whether consciously or subconsciously, will coaches and other athletic administrators increasingly perceive athletes as employees and demand that student-athletes devote even more time to athletics? Moreover, will greater pressure be placed on academic advisors to take steps to protect institutions' investment in their athletes?

In what could be perceived as an indirect acknowledgment of these concerns, in January 2015, the autonomy schools passed Resolution R-2014-1,<sup>11</sup> which provides in part that within two years the autonomy conferences will consider substantive legislation that will seek to “[r]egulate time demands to ensure an appropriate balance between athletics participation and the academic obligations and opportunities presented to students generally. . . .”<sup>12</sup>

Resolution R-2014-1 also highlights that recent reform and policy measures fail to address fundamental aspects of the student-athletes' overall well being, including the control that athletic departments exercise over their lives. Athletic department control frequently manifests in the way in which it contributes to the imbalance between athletics and academic development that many student-athletes experience. This imbalance, in turn, often precludes student-athletes from the opportunity to fully realize what should lie at the heart of their relationships with their

---

<sup>10</sup> *See id.*

<sup>11</sup> Resolution R-2014-1, entitled “RESOLUTION: MODERNIZING THE COLLEGIATE MODEL IN ACCORDANCE WITH THE VISION SET FORTH BY THE ATLANTIC COAST CONFERENCE, BIG TEN CONFERENCE, BIG 12 CONFERENCE, PAC-12 CONFERENCE AND SOUTHEASTERN CONFERENCE” can be found in its entirety at the NCAA’s legislative database by entering the proposal number “R-2014-1” at <https://web1.ncaa.org/LSDBi/exec/propSearch>.

<sup>12</sup> *Id.*

respective colleges and universities—the exchange of athletic abilities for meaningful educational opportunity.

Although educational opportunity is never clearly defined by the NCAA in their regulations or by the colleges and universities in the contractual documents between student-athletes and their institutions, the concept of educational opportunity has at least two components, both of which the current regime of athletics tends to undermine. These are:

(1) A realistic opportunity for student-athletes to participate in the non-athletic extra-curricular and academic experiences (e.g., joining non-athletic student organizations and participating in academically oriented internships). Athletically related demands on student-athletes' time, as well as the athletic culture at many schools, discourages their participation in such activities, which severely limits the student-athletes' ability to partake in these opportunities for growth and learning that are available to most non-athlete students.

(2) A realistic opportunity for student-athletes to develop, largely from their classroom experiences, the analytical and life skills that will be of value to them after college.

As it relates to the classroom educational experience, the NCAA and institutions often point to the increase, over time, in graduation and Academic Progress Rates (“APR”), particularly in regard to African-American football and men’s basketball players. This is not insignificant, but graduation rates and APR cannot fully measure the quality of student-athletes’ educational experiences. Currently, that experience may consist of far too many classes clustered in majors that fail to provide athletes a real opportunity to develop analytical reasoning and life skills that will effectively serve them once they leave college.

Given this, another question that arises is whether efforts should be undertaken to move towards a model of intercollegiate athletics that acknowledges the present-day realities of the relationship between Division I student-athletes and their institutions and, as such, redefines the role of athletes within the institutions. Outside of the athletic context, the delivery of education is being reimagined at all levels. As it relates to

intercollegiate athletics, it might be time to reimage what a meaningful educational opportunity should look like for student-athletes. Although it is difficult to specify the characteristics of that model, unless there is a fundamental shift in the balance of power in the relationship between student-athletes and their institutions, the model should, at a minimum, acknowledge the present-day realities of this relationship.

One educator suggests redefining the relationship between academics and athletics by permitting student-athletes the option to enroll in majors, such as sports performance, that would not only legitimize why many are attending school, but would integrate athletics into their academic program.<sup>13</sup> Another educator proposes a sports performance curriculum that follows two years of basic core courses (including anatomy and physiology, education psychology, kinesiology, public speaking, nutrition, and business law). These core courses would be complemented by courses that emphasize the skills athletes learn from participating in their sports as a way to better prepare them for professional and life success following college.<sup>14</sup>

The purpose of this article is not to advocate either of these models. Yet, they demonstrate the type of reimagining of educational opportunity that colleges and universities, as well as college athletics' governing bodies, must engage in to develop academic models that will best serve the academic and personal development of student-athletes.

---

<sup>13</sup> See Ben Strauss, *Football Major, Basketball Minor?*, N.Y. TIMES (Feb. 1, 2015), [http://www.nytimes.com/2015/02/08/education/edlife/football-major-basketball-minor.html?\\_r=0](http://www.nytimes.com/2015/02/08/education/edlife/football-major-basketball-minor.html?_r=0).

<sup>14</sup> See *id.*