

## NCAA TIME CLOCK TICKING IN STUDENT-ATHLETES' FAVOR: NEW TIME COMMITMENT LEGISLATION FOR DIVISION I STUDENT-ATHLETES

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Is the new time clock legislation of the National Collegiate Athletic Association<sup>1</sup> a step toward offering student-athletes broader education opportunities during their undergraduate experience, or is it an empty gesture engineered to publicly show support for academic importance without any follow through? While facially a positive move, the new legislation packs only as much punch as coaches, athletic administrators, and student-athletes allow.

On January 18, 2017, the Division I Council of the NCAA passed highly beneficial legislation that impacts the education of Division I student-athletes.<sup>2</sup> Effective August 1, 2017, student-athletes participating in Division I athletics will have the opportunity to pursue internships or study-abroad programs without being negatively impacted by NCAA eligibility rules. Student-athletes generally have five years of eligibility at the collegiate level. Previously, student-athletes were allotted five calendar years within which four seasons of athletic competition must take place.<sup>3</sup> Prior to the passage of this new legislation, Division I student-athletes received no special exemptions from the strict five-year time clock rule.<sup>4</sup>

Now, student-athletes may now pursue a wider variety of academic opportunities that might previously have adversely affected their playing time. Regarding the new legislation, Division

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<sup>1</sup> Hereinafter referred to as NCAA

<sup>2</sup> NCAA Division I Adopted Legislation, Proposals 2016-114 and 2016-115.

<sup>3</sup> NCAA Bylaws, art. 12.8 and 12.8.1.

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

I Council Chair James J. Phillips, the vice president for athletics and recreation at Northwestern University, stated the following:

We as a division are working together to support our student-athletes and help them take advantage of the many opportunities available to them through our great colleges and universities[.] This legislation, together with the changes proposed by the autonomy conferences<sup>5</sup> and available to the entire division if adopted, will help students better balance their commitments to athletics with the other things college has to offer them.<sup>6</sup>

The recently passed eligibility legislation allows a time extension on the completion of four years of eligibility for student-athletes that pursue an internship or study-abroad program applicable to their degree during the regular academic school year.<sup>7</sup> The new rule will not count time spent in an internship or study-abroad program against a student-athlete's five-year time limit.

#### I. PRACTICAL APPLICATION OF THE NEW LEGISLATION

The successful implementation of the time clock legislation hinges on whether student-athletes will *actually* take advantage of this new opportunity and if coaches or athletic administrators will uphold the regulation. Coaches already have a questionable history with following certain NCAA rules, particularly those concerning time allowed for athletics and "voluntary" events. Student-athletes may not take advantage of the new legislation for fear of being kicked off the team or moved down on the depth chart because of the athletic activities missed during their internship or study-abroad program.<sup>8</sup> While the time clock legislation represents a

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<sup>5</sup> The autonomy conferences are the Atlantic Coast Conference (ACC), the Southeastern Conference (SEC), the Pacific 12 (Pac-12), the Big Ten, and the Big-12. Timothy Davis, *Expanding Student-Athlete Benefits: Are There Costs?*, 5 Miss. Sports L. Rev. 43 (2015).

<sup>6</sup> Michelle Brutlag Hosick, *DI Council approves time commitment legislation, Changes made to football recruiting proposal regarding signing period, official visits*, NCAA.org (January 18, 2017), <http://www.ncaa.com/news/football/article/2017-01-18/di-council-approves-time-commitment-legislation>.

<sup>7</sup> *Id.*

<sup>8</sup> Student-athletes have reported their coaches threatening to throw them off the team for missing voluntary athletic activities, and other student-athletes feel they may lose their place on the team or moving down on the depth charts for missing voluntary

positive move towards placing more importance on student-athlete academics, it is pointless from a practical standpoint unless student-athletes feel comfortable utilizing the new rules and coaches allow them to do so without fear of repercussion.

Under the previous rule, a student-athlete's eligibility clock began ticking when a student enrolled as a full-time student at any college or university. If the student dropped down to part-time status, decided to redshirt, had to spend an academic year in residence due to transferring, or took a year off from school, the five-year time limit continued to run.<sup>9</sup> If a student-athlete played for a college for a year, transferred, and sat out for an academic year, that student then had three more years to complete a total of four seasons of competition. However, if that same student was to then complete a study-abroad program and an internship that took place during their sport's season of competition, he or she would be deprived of two more seasons of play, effectively "punishing" the student-athlete for pursuing academics instead of athletics. While this specific scenario is unlikely to occur, student-athletes regularly transfer from one educational institute to another, and student-athletes, while on a smaller scale, do participate in internship programs or spend semesters studying abroad.<sup>10</sup> The new legislation allows for greater flexibility for the Division I student-athletes who desire to more fully utilize their degree program options without cutting away their ability to have four seasons of athletic competition.

This new legislation benefits more than just the student; colleges and universities benefit as well. If, for example, an elite athlete sat out for a season under any of the original rules'

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activities. Allen Sack and Gerald Gurney, *Excessive and Exploitative Demands*, Inside Higher Ed (March 22, 2016), <https://www.insidehighered.com/views/2016/03/22/college-athletes-must-spend-unreasonable-amount-time-their-sports-essay>.

<sup>9</sup> *Transfer terms*, NCAA.org (accessed on January 21, 2017) <http://www.ncaa.org/student-athletes/current/transfer-terms>.

<sup>10</sup> In Division I athletics, up to 10% of male student-athletes and 13% of female student-athletes completed or planned to complete a study-abroad program during 2015. Close to 33% of Division I male student-athletes and 38% of female student-athletes stated that they desired to participate in a study-abroad program, but athletics prevented them from doing so. NCAA Convention, *Results from the 2015 GOALS Study of the Student-Athlete Experience*, (January 2016) [https://www.ncaa.org/sites/default/files/GOALS\\_convention\\_slidebank\\_jan2016\\_public.pdf](https://www.ncaa.org/sites/default/files/GOALS_convention_slidebank_jan2016_public.pdf).

restrictions<sup>11</sup> and then decided to complete an internship or study-abroad program, then the institution would miss their star athlete for another season of competition. Now that the NCAA has passed the new time clock legislation for Division I, if a student-athlete takes advantage of the new rules to pursue an internship or study abroad program, the clock effectively pauses, and the university gets that season “back.”<sup>12</sup> The university would no longer be forced to count this would-be bench season against the student-athlete’s five-year clock.

## II. THE REVENUE OF COLLEGIATE ATHLETICS AND WORKLOAD OF STUDENT-ATHLETES MORE THAN JUSTIFIES THE NEW LEGISLATION

Over the years, college athletics have shifted from being mere extrinsic activities for athletically-inclined students to a major point of focus for institutions of higher education due to their economic productivity and role as sources of national prestige, recognition, and accolade. According to the NCAA’s 2014-2015 Financial Report, during the 2014-2015 academic year alone, twenty-four colleges raked in over \$100,000 in total revenue with Texas A&M coming in first place at a whopping \$192,608,876.<sup>13 14</sup> For the 2013-2014 academic year, the NCAA’s revenue was \$989 million, most of which came from television and marketing rights

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<sup>11</sup> Spending an academic year in residence due to transferring; deciding to red shirt, deciding to not attend school, or going part-time during a student’s college career.

<sup>12</sup> Hosick, *supra*.

<sup>13</sup> Texas, Ohio State, Michigan, Alabama, Florida, LSU, Oklahoma, Tennessee, Penn State, Auburn, Wisconsin, Florida State, Kentucky, Georgia, Arkansas, South Carolina, Minnesota, Michigan State, Iowa, Oregon, Louisville, Washington, and Nebraska make up the twenty-four states that exceeded \$100,000 in revenue for 2014-2015. Steve Berkowitz, et al, NCAA Finances, *2014-2015 Finances*, USA Today (2016) <http://sports.usatoday.com/ncaa/finances>.

<sup>14</sup> The NCAA determines total revenue on all sources of operating revenue. Revenue categories looked at by the NCAA are: ticket sales (face value plus shipping and handling, if applicable), contributions, rights/licensing, student fees, school funds, and any other sources of revenue. USA Today Sports, *Methodology for NCAA athletic department revenue database* (April 14, 2016) <http://sports.usatoday.com/2016/04/14/methodology-for-ncaa-athletic-department-revenue-database/>.

fees stemming from the agreement with Turner/CBS Sports.<sup>15</sup> <sup>16</sup> Unsurprisingly, the pressures placed on student-athletes increased with this shift. With the volume of emphasis placed on athletics and the amount of money that college sports generates annually, it is more than reasonable for the NCAA to create legislation that provides student-athletes with an exemption from the five-year rule to pursue academically enriching activities.

It could be argued that student-athletes should simply do their best to coordinate internships or study-abroad programs with their off-season in order to not interfere with the competitive season.<sup>17</sup> However, surveys report that a large portion of student-athletes spend as much time, if not more, on athletics in the off-season as they spend during the competition season.<sup>18</sup> Student-athletes are meant to be students first and athletes second,<sup>19</sup> but the time spent on athletics often far outweighs the amount of time spent on academics. Student-athletes often feel the pressure to work just as hard in the off-season, if not harder. “Voluntary” workouts are often implied, both by coaching staff and other athletes, to be mandatory.<sup>20</sup> The 2010 Division I NCAA GOALS Study on the

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<sup>15</sup> Steve Berkowitz, *NCAA nearly topped \$1 billion in revenue in 2014*, USA Today (March 11, 2015), <http://www.usatoday.com/story/sports/college/2015/03/11/ncaa-financial-statement-2014-1-billion-revenue/70161386/>.

<sup>16</sup> The NCAA reports that around 96% is given directly to Division I schools for membership, to support championships, or provide beneficial programs to student-athletes. NCAA Revenue, *Revenue*, accessed on January 22, 2017, <http://www.ncaa.org/about/resources/finances/revenue>.

<sup>17</sup> From a financial standpoint, a university or college encouraging student-athletes to follow academic pursuits in the off-season serves to protect the school’s investment. The Academic Support Program for Student Athletes (ASPSA) of the University of North Carolina at Chapel Hill lists “plan[ning] ahead regarding eligibility requirements, [and] scheduling around athletic requirements” as part of the ASPSA’s Athletic Academic Counseling. (Accessed on June 5, 2017), <http://aspsa.unc.edu/aspsa-services/>.

<sup>18</sup> NCAA, *NCAA Goals Study of the Student-Athlete Experience Initial Summary of Findings* (January 2016) 2, [http://www.ncaa.org/sites/default/files/GOALS\\_2015\\_summary\\_jan2016\\_final\\_20160627.pdf](http://www.ncaa.org/sites/default/files/GOALS_2015_summary_jan2016_final_20160627.pdf).

<sup>19</sup> NCAA, *Amateurism*, (accessed on March 19, 2017), <http://www.ncaa.org/amateurism>.

<sup>20</sup> Penn Schoen Berland, *Student Athlete Time Demands* (April 2015) 3, <http://www.cbssports.com/images/Pac-12-Student-Athlete-Time-Demands-Obtained-by-CBS-Sports.pdf>.

Student-Athlete Experience<sup>21</sup> surveyed student-athletes, and the following Division I athlete groups reported spending “as much or more time on athletic activities” during their sports off-season as they do during the regular season:

1. 77% of baseball players;
2. 69% of men’s basketball players;
3. 70% of football players;
4. 61% of all other men’s sports;
5. 46% of women’s basketball players; and
6. 57% of all other women’s sports.<sup>22</sup>

Though the NCAA limits how many hours a student-athlete is allowed to spend on athletics throughout each week, it has long been common practice for both athletes and coaches alike to find ways around this regulation. The “voluntary” workouts mentioned above are one of the most commonly used loopholes to the rule. Though the NCAA regulations state that no athlete may spend more than 20 hours per week on athletics during the competitive season and 8 hours per week during the off-season, the 2010 above-referenced survey reported that no sport in any division had less than a 28-hour average, with Division I football, men’s and women’s basketball, and baseball spending around 40 hours per week on athletic activities, respectively.<sup>23</sup> Whether looking at these numbers during the competitive season or the off-season, student-athletes are clearly devoting much more of their time to athletics than regulations allow. In the PAC-12 conference, 62% of student-

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<sup>21</sup> The GOALS study was designed to provide data to NCAA committees, policymakers and member institutions on a range of issues important to today’s student-athletes.

<sup>22</sup> FARA Annual Meeting and Symposium, *Division I Results from the NCAA GOALS Study on the Student-Athlete Experience*, (November 8, 2011) 21, [https://www.ncaa.org/sites/default/files/DI\\_GOALS\\_FARA\\_final\\_1.pdf](https://www.ncaa.org/sites/default/files/DI_GOALS_FARA_final_1.pdf).

<sup>23</sup> Jake New, *What Off Season?* (May 8, 2015) <https://www.insidehighered.com/news/2015/05/08/college-athletes-say-they-devote-too-much-time-sports-year-round>.

athletes wish for “voluntary” activities to actually *be* voluntary, with no fear of repercussion.<sup>24</sup>

If student-athletes are spending, at minimum, as much time on athletics during the off-season as they are during the competitive season and fear repercussions for missing workouts, practices, and other athletic activities – even if the activities are deemed to be voluntary – it is highly plausible that these students might also turn down an internship or study-abroad opportunity for fear that it might negatively impact their ability to either remain on the team or play during the upcoming season. Though many student-athletes have dreams of competing professionally after college, as of 2015, student-athletes have a slightly higher graduation rate than that of their general student-body peers.<sup>25</sup> Missing out on valuable opportunities like internships or study-abroad programs because of time commitments to an artificial eligibility clock disadvantages these students from participating in an educational experience that might lead to a future career opportunity. The new legislation alleviates some of the fear and stress that student-athletes may have from feeling like there is no chance for them to participate in time-consuming educational activities by affirming that their allowed seasons of competition will remain intact, should they choose to pursue those activities.

### III. POSSIBLE ADVERSE EFFECT OF THE NEW LEGISLATION

Regretfully, coaches oftentimes have a knack for finding loopholes in rules and regulations, as illustrated above with the “voluntary” athletic activities. Until this new legislation is implemented on August 1, 2017, it is difficult to predict how these rules will affect athletic departments, and most importantly, the student-athletes they serve. Coaches and their staff may attempt to enforce or implement rules that would prevent any athlete from competing that was not present for off-season athletic activities,

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<sup>24</sup> Penn Schoen Berland, *Id.*

<sup>25</sup> As of 2015, the graduation rate for Division I student-athletes is at 67% and the general student body graduation rate is at 65%. Michelle Brutlag Hosick, *Graduation Success Rate continues to climb: More student-athletes than ever are earning degrees*, NCAA.org (March 19, 2017), <http://www.ncaa.org/about/resources/media-center/news/graduation-success-rate-continues-climb>.

like practices or workouts, even if the athlete missed the activities for an internship or study-abroad program. While punishing student-athletes in this manner encourages them to forego those educational opportunities, it is unfair to ban them from competition because the student was pursuing an activity that would place academics first and athletics second. However, it can also be argued that a student-athlete that spent an entire semester or year at an internship or study-abroad program without practicing or conditioning for their sport puts themselves and their teammates at risk of injury for not being in top physical condition.

#### IV. CONCLUSION

No matter the possible outcome and treatment of the new legislation, it is clear that the NCAA is publicly shifting its focus to place a stronger emphasis on the importance of student-athletes' academic pursuits, effectively making a move that is in the best interest of the students. Overall, the time commitment legislation is a positive step for student-athletes and their right to maximize their educational experience and degree program. It is now up to the student-athletes take advantage of this opportunity and the coaches let them do so. Student-athletes now have a legislated, regulated means of pursuing academic success – hopefully – without fear of repercussion.