A LESSON IN ENGLISH AND GENDER: 
TITLE IX AND THE MALE 
STUDENT-ATHLETE 

SARAH E. GOHL 

INTRODUCTION 

A young boy sits in English class, staring out the window at the empty basketball court on the playground. He wonders why he has to learn that “ball” is a noun and that “round” is an adjective. He daydreams about the day when he is no longer forced to sit in class, the day when he is a college basketball player who calls his own shots and does not have to study because he is “going pro” someday. Why would he need to go to school when he will be making millions of dollars and having thousands of fans scream for him at every game? 

Next to the young boy sits a young girl. She, too, is gazing out of the window at the empty basketball court on the playground. She also dreams of being a college basketball player who is “going pro” someday. She does not wonder why she has to learn that “ball” is a noun and that “round” is an adjective, because she understands that her basketball skills will only take her to a certain level in her life. An education will enable her to go beyond the limits of the basketball court.

Years later, these two childhood classmates both attend college on basketball scholarships. They are student-athletes and are quite successful athletically, but they both find it difficult to balance the demands of athletics and academics. They discover that there are times when they feel like they are back in that English class, trying to determine which words are nouns and which are adjectives. The lesson is not as easy as “round ball” because the words they are examining are “student” and “athlete,” which are hyphenated to make “student-athlete.” Or is it “athlete-student?” Which one is the
noun and which one is the adjective? Are they both nouns? Are they both adjectives? Is the term “student-athlete” an oxymoron?¹

The young girl, who is now a young woman, recognizes that she is a student first and an athlete second. She is a student who possesses unique athletic abilities. She has capitalized on those athletic abilities in order to receive a “free” education. No matter how many professional offers she receives, she is committed to completing her education. She graduates with a respectable grade point average and with plans of either playing professional basketball for a few years or heading straight to medical school. She is thankful for Title IX, because she believes it has given her opportunities she otherwise would not have enjoyed.

In contrast, the young boy cannot distinguish between a noun and an adjective. He is consumed by his athletics, allowing his academic pursuits to fall by the wayside. He has exploited his athletic abilities in order to receive a “free” education. He considers leaving college early to pursue his professional aspirations, but he is permanently injured at the close of his junior season. He never graduates from college. In fact, it is determined that he is illiterate even though he maintained his National Collegiate Athletic Association (NCAA) academic eligibility for three complete seasons. Ironically, the NCAA has provisions in place to protect individuals like this young man from such a fate, but unfortunately the NCAA regulations fell short.²

The young man later sues his educational institution for its failure to educate him. His claim fails under an educational negligence cause of action. Should he be entitled to a remedy? Does he have a cause of action under another claim? His attorney decides to take a step back and to look at the situation from a different angle. His attorney learns that throughout the recruiting process, the young man’s coach promoted the “quality” education that the young man would receive. The coach also repeatedly scheduled practice times

---

¹ Many scholars interested in academic issues surrounding collegiate athletes are proponents of abolishing the term “student-athlete” because it does not treat athletes as normal students. E-mail from Jon Ericson, Ellis and Nelle Levitt Professor of Rhetoric and Communications Studies, Drake University, to Sarah E. Gohl (Dec. 19, 2000, 08:05 EST) (on file with the Duke Law Journal).

² The NCAA regulations place restrictions on the time spent engaging in athletics-related activities in an effort to provide student-athletes with more time to concentrate on academics. See infra notes 82-83 and accompanying text. This student-athlete may have needed more than just time to focus on academics; perhaps he needed more academic guidance.
during the young man’s tutoring sessions and then threatened to revoke his scholarship if he did not attend practice. The attorney discovers that the coach, with the support of the university, knowingly denied the young man the opportunity to obtain an education by engaging in such practices. The attorney also learns that the women’s basketball coach did not engage in similar practices. She only recruited female athletes who could survive academically at the university, and she scheduled practice times around the schedules of her athletes who were student teaching. Due in part to her strong commitment to academics, her players all graduated, and the team grade point average ranked in the top 5% among similar female teams across the nation. The attorney concludes that such a disparity in educational opportunities is a violation of Title IX. The young man may have a remedy.

This young man’s experience is not uncommon. As his experience suggests, the current state of male student athletics is a mess. The current system disregards the “student” element of the male student-athlete. In contrast, female student-athletes do not experience a system that consistently disregards academics. Male student-athletes need assistance in fixing this state of disarray. They have attempted to remedy their situations through judicial means. However, they have consistently failed to recover under an educational negligence cause of action. Although male student-athletes should continue pushing for recovery under an educational negligence theory, they also may have a judicial remedy under Title IX, because they are being denied equal access to educational opportunities.

Part I of this Note defines the problem this young man and other similarly situated male student-athletes face and highlights the differences between female and male student-athletes. Female student-athletes enter college and find an extensive academic support system to assist them. Such a support system includes more than just tutoring opportunities. A female support system encompasses academically focused coaches and academically minded teammates. It extends beyond maintaining eligibility and centers on taking advantage of academic opportunities in order to assist the female student-athlete in building a future beyond athletics. Conversely, while male student-athletes may find an academic support system in place, they often discover that such a system aims at just keeping students eligible rather than focusing on their futures. Additionally, the male student-athletes may not have the opportunity to utilize the
support system’s benefits, because they are singularly focused on their sport. This part presents examples of how female student-athletes succeed in their environment and how male student-athletes struggle.

Part II discusses the judicial remedies this young man and other male student-athletes may have under an educational negligence theory or under Title IX. This part concludes that a male student-athlete most likely will not recover under an educational negligence theory, because courts refuse to make determinations about the quality of education. Courts would rather leave such decisions up to the individual universities. However, this part argues that a male student-athlete may have a cause of action under Title IX on the grounds that he was denied equal access to educational opportunities. This part also discusses recovery under an “extrapolated sexual harassment” theory: he may have a remedy if the university knew about and had control over an environment in which he was deprived of access to school resources and educational opportunities.

I. THE PROBLEM

The emphasis coaches and institutions place on academics differs significantly for female and male student-athletes. Female student-athletes benefit from a strong support system that enables them to be both students and athletes. While they intensely pursue athletics, they also find time to study for their classes and to become involved in their local communities. Many graduate from college with memories of great athletic experiences and with substantive degrees with which to build a future outside of athletics.

By contrast, many male student-athletes encounter a weak or nonexistent support system that hinders their ability to balance both academics and athletics. When they intensely pursue athletics, they discover that they must sacrifice their academic goals. Many do not graduate from college; others graduate without substantive degrees or

3. This Note focuses on athletics at the Division I level. Many of the academic problems may occur at this level because Division I athletes receive athletic and not academic scholarships. Division II and Division III athletes may or may not receive athletic scholarships. Additionally, some Division III institutions are members of the NAIA, which has different rules regarding scholarships. Instead, many receive academic scholarships, so they must remain focused on academics. Additionally, the majority of academic problems occur with football and basketball because they are revenue-producing sports. As a result, this Note focuses on those two sports. Because the focus in the literature on Division I football and basketball forgets other sports and divisions, a possible future expansion of this Note will focus on those “forgotten” sports and divisions.
even the ability to read. Their memories of roaring crowds cheering for them are insufficient tools with which to build a future.

A. The Female Experience

In proper proportions, being an athlete and being a student can be synergistic . . . . this is more likely to be the case in women’s sports.

As a whole, female student-athletes are more well-rounded than male student-athletes, because when they enter college they are given the opportunities and the support systems that enable them to balance athletics, academics, and even community involvement. In 1990, Barbara Bedker Meyer conducted a study of female student-athletes’ feelings concerning their roles as student-athletes. She found that the female athletic subculture offered support for both academics and athletics. Female student-athletes pushed each other to maintain respectable grade point averages. Female student-athletes also did not experience “anti-academic” or “anti-intellectual” pressures from their peers.

This study suggests that these women go to college to be students first and to be athletes second. For most women, once their NCAA eligibility expires, their organized athletic careers are over. Coaches have recruited these female athletes by not only stressing the quality of the institutions’ athletic programs but also their academic strengths. Once women are on campus, they also provide a support system for each other—academically, athletically, and socially. For example, Meyer found that some women’s teams “were very concerned about academic performance, creating a contagious atmosphere wherein all the players tried to do their best in addition to helping their companions to achieve.” Such a support system enables female athletes to succeed on both academic and athletic levels.

6. Id. at 47.
7. Id. at 51.
8. Id.
9. Id. at 46-47.
10. See infra note 34 and accompanying text.
The 1985 Adler and Adler study examining the relationship between athletic participation and academic performance among male student-athletes found that male student-athletes also enter college optimistic about their academic prospects.\textsuperscript{12} “However, their athletic, social, and classroom experiences lead them to become progressively detached from academics.”\textsuperscript{13} For example, one male student-athlete was ridiculed for earning a “B” on a test; the rest of his teammates received “D’s” and “F’s”.\textsuperscript{14} Like their female team counterparts, during recruitment male team coaches stressed “the positive aspects of a college education and the importance of graduating.”\textsuperscript{15} However, once the veneer wore off, athletes found that their coaches subordinated academics to athletics.\textsuperscript{16}

Graduation-rate statistics support the findings of these two studies. Female student-athletes, as a whole, are more likely than their male counterparts to graduate from college. In 1999, the NCAA reported that 68\% of female student-athletes graduated compared with 52\% of male student-athletes.\textsuperscript{17} More specifically, 62\% of female basketball players graduated,\textsuperscript{18} while 41\% of male basketball players graduated.\textsuperscript{19} Even in less demanding sports like cross-country and track, female student-athletes still graduated at a rate 10\% higher than male student-athletes (63\% versus 53\%).\textsuperscript{20} Interestingly, the female student-athletes graduation rate was 12\% higher than the total student body graduation rate of 56\%, whereas the male student-athletes graduated at a rate 4\% lower than the total student body.\textsuperscript{21}

Three recent graduates of NCAA Division I member institutions are prime examples of female student-athletes who not only graduate but retain outside interests and lead well-balanced lives. First,

\begin{itemize}
  \item \textsuperscript{12} Peter Adler & Patricia A. Adler, \textit{From Idealism to Pragmatic Detachment: The Academic Performance of College Athletes}, 58 SOC. EDUC. 241, 242-43 (1985).
  \item \textsuperscript{13} Id. at 241.
  \item \textsuperscript{14} Id. at 246.
  \item \textsuperscript{15} Id. at 243.
  \item \textsuperscript{16} See id. at 245. It should be noted that there are male student-athletes who are focused on both academics and athletics. However, these male student-athletes tend to be the exception rather than the rule, and they generally do not play sports such as basketball and football. Conversely, it also should be noted that there are female student-athletes who are not focused on both academics and athletics. However, these female student-athletes are the exception.
  \item \textsuperscript{17} NCAA, 1999 NCAA DIVISION I GRADUATION-RATES REP. 636 [hereinafter 1999 DIV. I GRAD. REPORT].
  \item \textsuperscript{18} Id.
  \item \textsuperscript{19} Id.
  \item \textsuperscript{20} Id.
  \item \textsuperscript{21} Id.
\end{itemize}
Vanessa Webb was a triple major at Duke University and the 1998 NCAA singles champion in women’s tennis. Rather than turn professional after her junior year at Duke, Webb decided to complete her senior season:

The reason I came back to school was to get my degree. A three-year education isn’t going to get me anywhere. And if I didn’t come back I would have been letting the team down. The Tour would wait one more year; that was my last chance to be at Duke.

Second, Aliana Kipps was a co-captain of the University of Southern California’s (USC) women’s volleyball team who “graduated with a perfect grade point average in psychobiology.” While at USC, she found time to work with HIV-positive children. Her well-balanced approach to being a student-athlete paid off; she now is a medical student at Harvard University.

Third, Phylesha Whaley, a former basketball player for the University of Oklahoma and now a member of the Women’s National Basketball Association’s (WNBA) Minnesota Lynx, found time for more than athletics. Whaley was a two-time All–Big 12 academic team member, and she volunteered for Meals on Wheels, Sooner Big Sis, and the Special Olympics. As a student, an athlete, and an active member of the community, Whaley “learned how to balance all the demands, on and off the court, that a Division I athlete must face.”

Whaley recognized that she could not achieve such balance without a strong support system: “With the help of the coaching staff, my determination and support from my family, I became an educated woman who learned she has something to offer others and who learned the value of giving back to whatever community I belong to.”

As impressive as their achievements are, Webb, Kipps, and Whaley are not alone. Every year the NCAA “Woman of the Year

23. Id.
25. Id.
27. Id.
28. Id.
29. Id.
“Award” honors a female student-athlete in each state who has been successful at athletics and academics and who has been a leader in her community. These women recognize the importance of being physically fit, exercising their minds, and giving back to their communities. The NCAA does not have a comparable award for men. When questioned about why the NCAA does not have such an award, NCAA officials explained that male student-athletes generally do not lead such balanced lives.

Another example of the emphasis placed on women leading well-balanced lives is the current promotion of the WNBA. Advertisements for the league stress how these professional women basketball players are not only athletes but are also doctors, lawyers, and teachers. They are involved in community youth education and other service projects. They are able to balance this service and these careers with basketball, and they take time off to have children.

The concern now is that with the development of the WNBA and other professional women’s sports, more women will change their priorities and will adopt a one-dimensional mentality. There is evidence that such a shift is already occurring. At a panel discussion during the spring of 2000, women’s basketball coach Gail Goestenkors of Duke University discussed how, for the first time in her coaching career, she sat in a recruit’s home and could not sell Duke academics to a high school student-athlete. Rather, this student-athlete wanted to know what type of system Coach Goestenkors had in place to assist her players in becoming professional athletes in the WNBA.

While such female student-athletes are focusing more on professional leagues, they still need to be attuned to the educational aspect of their college careers, because they are not receiving

---

30. *Id.* at 1. During the awards banquet weekend, the NCAA also sponsors a “Women in Sports Day” in which selected female student-athletes speak with young girls in Indianapolis about the importance of academics, athletics, and community involvement. *Id.* at 15.

31. *Id.* For a more complete discussion of the male student-athlete and his experience as a student-athlete, see *infra* notes 44-119 and accompanying text.


35. *Id.*
financial rewards comparable to their male counterparts. For example, with the new collective bargaining agreement, WNBA player salaries averaged around $42,000 for the 1999 season. The average NBA player earned $2.2 million during the 1996-97 season. Additionally, in the Women's World Cup, each member of the victorious U.S. women's soccer team earned between $40,000 and $50,000 in bonuses. In contrast, each U.S. male player would have received a bonus of $400,000 in the 1998 World Cup. Such figures demonstrate the need for women to pursue careers outside of professional athletics.

Legislation such as Title IX has assisted women in closing the gap in salaries and opportunities between male and female athletes. Although Title IX has expanded the breadth of women's opportunities, individuals and organizations such as Donna Lopiano and the Women's Sports Foundation are still fighting for improvement and actual compliance. These individuals and organizations promote the uniqueness of women's "well-rounded" values and the need to maintain the integrity of women's athletics, because they recognize the importance of encouraging a multiplicity of values.

36. E-mail from Sonja Henning, former WNBA player, to Sarah E. Gohl (Nov. 6, 2000, 07:12 EST) (on file with the Duke Law Journal). I express my sincere gratitude to Sonja Henning for her input.
37. Id.
38. Id.
39. Id.
B. The Male Experience

People forget the true goal: You’re at college to get a degree.  

I never graduated from Iowa. I was only there for two terms—Truman’s and Eisenhower’s.

In contrast to the well-balanced women, men tend to be pushed in one direction, focusing on one sport, sacrificing their academic success for the dream of becoming a professional athlete. If they are talented or have potential, college coaches recruit them heavily and early. The courtship may start as early as junior high at summer camps and off-season tournaments. Sebastian Telfair just completed eighth grade and is being watched by college and even professional coaches. He is said to be the best eighth-grade player in the country. The coaches shower the athletes with attention, and the young men become so inebriated by the dream of playing college and professional sports that they forget about academics.

Increasingly, college athletes relinquish their academic eligibility prior to graduation in pursuit of professional athletic careers. In 1980, only seven college basketball players left early to enter the National Basketball Association (NBA) draft. In contrast, twenty-nine players left early in 2000. In the spring of 1999, three Duke men’s basketball players all sacrificed their NCAA eligibility and a chance to receive a degree from one of the nation’s finest universities to become professional athletes. (Duke had previously been unique among Division I schools in its ability to keep its male basketball

44. Liz Clarke, Players Call for Honesty, Change, CHARLOTTE OBSERVER, Apr. 1, 1994, at 1A.
47. The NCAA permits coaches to initiate written correspondence with student-athletes provided that it is during a permissible contact period. NCAA DIVISION I OPERATING BYLAWS art. 13.02.4 (1999).
players through graduation). At the time, only one player expressed an intent to complete his education.\textsuperscript{51}

When players leave college early, many academics and fans wonder why. Perhaps the players are pursuing a lifelong dream; perhaps the players are attracted to the financial rewards; or perhaps the players never belonged in college in the first place. They may have been admitted to an academic institution because of their athletic abilities even though their coaches (and possibly the athletes themselves) knew they did not meet the minimum academic standards and could not survive academically, with or without the demands of the sport. For example, James Brooks, former Cincinnati Bengal and All-Pro running back, was admitted to Auburn University even though his coaches were aware of his difficulties in reading and writing.\textsuperscript{52} Brooks’s coaches enrolled him in remedial classes.\textsuperscript{53} His progress in those classes went unchecked, and classmates allegedly took Brooks’s tests and completed his assignments.\textsuperscript{54} Brooks now works a $10 per hour construction job through his work release program—he is on probation for failure to pay child support.\textsuperscript{55} The Notre Dame admissions policy for its football team offers another example of these practices. In 1995, the average SAT score for a Notre Dame football player was 890;\textsuperscript{56} the average SAT score for the entire Notre Dame student body was 1260.\textsuperscript{57} Such students are fish out of water, and it is difficult to blame them for wanting to leave early.

When players leave without a degree, they challenge the integrity of the amateur system and may call into question the “student” element of the student-athlete.\textsuperscript{58} “The fact that good basketball players are not staying in college has a destabilizing effect on the

---

\textsuperscript{51} A. Sherrod Blakely, \textit{School Not the Norm in an NBA Summer}, NEWS & OBSERVER (Raleigh, N.C.), May 16, 1999, at C1 (recognizing Elton Brand’s determination to get his degree but emphasizing how rarely NBA entrants return to campus). Brand attended summer-school courses during the summer of 1999 in furtherance of that goal. My own casual conversations with members of the Duke community indicate that another player, after one year in the NBA, now may be considering enrolling in some courses.


\textsuperscript{53} Id.

\textsuperscript{54} Id.

\textsuperscript{55} Id.


\textsuperscript{57} Id.

\textsuperscript{58} It is possible that athletes view staying in school as a failure because “success” is measured solely in athletic terms.
team, of course, and also denigrates education and indicates there’s no reason to be serious about it.\textsuperscript{59} If coaches are going to recruit high school athletes by promoting education,\textsuperscript{60} and if the NCAA is going to maintain its commitment to both academics and athletics,\textsuperscript{61} schools need honestly to provide student-athletes with the opportunities, resources, and time to pursue academics. Let them be both athletes and students.

Unfortunately, the phenomenon of players disregarding the “student” element and leaving college early to become professional athletes has grown. Stephon Marbury, a former point guard at Georgia Tech, entered the NBA draft after his freshman year and candidly admitted that he only attended college to put himself in a better position to join the NBA.\textsuperscript{62} Additionally, Iowa State football coach Jim Walden noted that “[n]ot more than 20 percent of the football players go to college for an education.”\textsuperscript{63} Such a statistic is startling when of the 50,000 NCAA football players and 13,000 male NCAA basketball players, only about 310 per year make it to the NFL and about 50 per year make it to the NBA.\textsuperscript{64} This is 3.3\% and 1.9\%, respectively. Based on these numbers, more male college athletes should be concerned about the education they are receiving.

Some male student-athletes are focused on their education. However, such focus is not sufficient to ensure that they will receive a quality education if they are in an unsupportive environment that penalizes them for placing academics ahead of athletics. For example, in \textit{Taylor v. Wake Forest University},\textsuperscript{65} Gregg Taylor brought suit for wrongful termination of his athletic scholarship.\textsuperscript{66} In accepting his scholarship, Taylor agreed to maintain his eligibility both academically and scholastically.\textsuperscript{67} At the conclusion of his first

\begin{flushleft}
\textsuperscript{59} Selinsky, \textit{supra} note 32, at 22 (quoting John Weistart, a Duke Law Professor and an expert in sports law).

\textsuperscript{60} A study focusing on the academic performance of male student-athletes determined that during recruitment, coaches stressed the positive aspects of obtaining a college education and the importance of graduation. This emphasis was absent once the student-athletes arrived on campus. Adler & Adler, \textit{supra} note 12, at 243.


\textsuperscript{62} \textit{Zimbalist, supra} note 4, at 39.

\textsuperscript{63} \textit{Id}.

\textsuperscript{64} \textit{NCAA Subcommitte on Amateurism and Agents, A Career in Professional Athletics} (1998).


\textsuperscript{66} \textit{Id}. at 379.

\textsuperscript{67} Wake Forest required that student-athletes have a 1.35 grade point average after their
\end{flushleft}
A LESSON IN ENGLISH AND GENDER

In the spring semester at Wake Forest, Taylor had a 1.0 grade point average. Taylor informed his football coach that he would not participate in the spring practice season until his grades improved. By the end of the spring semester, Taylor had raised his grade point average to a 1.9, which was above the minimum required grade point average for Wake Forest. Recognizing that although he had made academic improvements, his grade point average was still extremely low, Taylor chose to continue to focus on academics and refrain from playing football during the fall of his sophomore year. The Wake Forest athletic department terminated his scholarship, and the North Carolina Court of Appeals upheld the termination.

Taylor argued that he should determine what constitutes “reasonable academic progress,” but the court disagreed. While Taylor did agree to participate in the athletic program at Wake Forest, to penalize a student because he wants to achieve some minimal academic goals runs contrary to the stated goals of the NCAA and the presumed goals of secondary educational institutions. Setting a student grade point average below a 2.0, even in the third year, is an insult to higher education. Perhaps the larger issue is the school’s decision to admit Taylor. If Wake Forest knew that Taylor was not qualified to attend the university and admitted him regardless, it should have provided Taylor with the support necessary for him to not only survive at the university but also to maintain a grade point average that would give him opportunities beyond athletics in the future.

In contrast to Taylor’s experience, Tom McMillen, a star basketball player at Maryland in the early 1970s, was supported for freshman year, a 1.65 grade point average after their sophomore year, and a 1.85 grade point average after their junior year. These averages are based on a 4.0 scale. Id. at 381.

---

68. Id.
69. Id.
70. Taylor raised his grade point average to a 2.4. Id.
71. Id. at 381-82. After his scholarship revocation, Taylor continued to attend Wake Forest and graduated within the usual four years. See id.
72. “Reasonable academic progress” is ill-defined in this case. Taylor argued that he should be allowed to determine what his reasonable academic progress was. However, the court recognized that the contract that Taylor signed did not include such a provision. The court determined that as long as Taylor’s grade point average was equal to or above Wake Forest’s requirements, he was maintaining his scholastic eligibility for athletics and, thus, was making reasonable academic progress. Id. at 382.
73. Id.
74. McMillen not only was an all-American basketball player at Maryland but a member of the 1972 Olympic basketball team. He attended Oxford University as a Rhodes Scholar, played eleven years in the NBA for the Washington Bullets, and served as a congressman from
being a student first and an athlete second. He was a chemistry major who had mandatory laboratories in the afternoon and, as a result, arrived late to practice. His coach never punished him for his tardiness. McMillen's experience may be evidence of how the emphasis on academics has shifted over time or it may be an anomaly in Division I athletics. In either case, McMillen's experience should be a model for coaches and universities who want to ensure the success of all their students.

One of the major obstacles to academic success for student-athletes, according to several studies, is the demand made by athletics on the students' time. The Knight Commission, an organization created to study problems in intercollegiate athletics, noted that “football and basketball players at Division I-A institutions spend approximately 30 hours a week on their sports in season, more time than they spend attending or preparing for class.” Other scholars report that student-athletes spend an average of thirty to fifty hours per week on sports, in contrast to the maximum twenty hours per week students receiving federal work-study aid may work. Additionally, 70% of Division I basketball players admit that the time requirements of their sport cause their grades to suffer. The NCAA has attempted to alleviate the time pressures on student-athletes by limiting the amount of time student-athletes may spend on athletic

Maryland. TOM McMILLEN & PAUL COGGINS, OUT OF BOUNDS 13 (1992). Tom McMillen's life parallels that of former presidential candidate Bill Bradley. These two individuals are exceptions to the pattern outlined in this Note, but perhaps they represent hope for the future as ideals of the male student-athlete.

75. Id. at 88.
76. Id.
77. Both former Princeton basketball player Bill Bradley and current Duke University basketball player Shane Battier also represent the ideal towards which male student-athletes should strive. For a discussion of Bill Bradley, see infra at 90. For a discussion of Shane Battier, see C. Jemal Horton, Duke to Play for Second Straight Title; Battier's a Role Model for Now, and the Future, CHARLOTTE OBSERVER, Mar. 12, 2000 (“[T]here are much better basketball players you could want to be like, but they all come up short next to Battier. He's one of the kindest, smartest, most well-respected people I've ever come across.”).

78. The Trustees of the Knight Foundation created the Knight Commission to create a reform agenda for collegiate athletics. KNIGHT FOUNDATION COMMISSION ON INTERCOLLEGIATE ATHLETICS, KEEPING FAITH WITH THE STUDENT-ATHLETE: A NEW MODEL FOR INTERCOLLEGIATE ATHLETICS (1991) [hereinafter KNIGHT]; see also infra notes 169-74 and accompanying text (describing in detail the Knight Foundation’s reform agenda).

79. KNIGHT, supra note 78, at 16.
activities to a maximum of four hours per day and twenty hours per week during the season. Schools also are required to give athletes one day off per week during the playing season. However, this requirement does not take into account travel time, nursing injuries, and mental preparation, nor the possibility of strongly encouraged “optional” workouts.

The amount of time a student-athlete spends focusing on academics may be the result of the coach’s priorities. North Carolina State University athletics director Les Robinson recently wrote an article emphasizing the influence coaches can have on young minds. Robinson cites Bill Bradley’s recollection of the words of a summer basketball camp coach. This coach told the teenage Bradley that while he wasted his time reading comic books and watching television, “somebody somewhere is working, and when you meet, he is going to beat you.” These words were a source of motivation for Bradley throughout his life, shaping his goals and his successes. If a few words from a summer camp coach can have a significant impact on a young athlete, imagine what a college coach or educational

82. NCAA DIVISION I OPERATING BYLAWS art. 17.1.6.1 (1999).
83. Id. art. 17.1.6.4. While these academically focused regulations are helpful, more academic support from the institution is necessary. Such academic support is more likely to be found at the Division III level, because most schools in Division III have the same academic standards for athletes and for other students. E-mail Interview with Paul Small, Professor of Biology and Faculty Athletics Representative at Eureka College (Nov. 15, 1999) (on file with the Duke Law Journal). I express my deepest gratitude to Paul Small for his helpful comments.
84. Such academic support is more likely to be found at the Division III level because more schools, but not all, in Division III have the same academic standards for athletes and for other students. E-mail Interview with Paul Small, Professor of Biology and Faculty Athletics Representative at Eureka College (Nov. 15, 1999) (on file with the Duke Law Journal).
85. A glaring example of a coach who was not focused on academics is former Boston College head basketball coach Jim O’Brien. He left Boston College after the admissions office refused to admit two student-athletes who did not meet the academic requirements of Boston College even though they met the NCAA minimum academic standards. By leaving, O’Brien clearly identified his priorities. Mark Blaudschun, Father Leahy Will Keep BC Policy; NCAA Qualifiers Won’t Gain Automatic Entry, BOSTON GLOBE, Apr. 11, 1997, at E11. Such a negative attitude towards academics may affect the players.
87. Bill Bradley epitomizes the ideal student-athlete: he was an honor student and all-American at Princeton University, a Rhodes Scholar, an NBA all-star, and a United States Senator. See id. Interestingly, when Bradley was a student-athlete, college basketball did not produce revenues close to current revenues. The focus was less on winning and more on being a student-athlete.
88. Id.
institution that places a high priority on academics can do for the academic success of the student-athlete. 89

Fortunately, examples of coaches and institutions that emphasize academics do exist. Drake University, for instance, has altered its policies so that its student-athletes are required to meet the same academic standards as the regular students. 90 Student-athletes now must achieve the higher Drake academic standards rather than NCAA standards, 91 and the university provides tutorial assistance to ensure that student-athletes can continue to meet these standards. 92 Additionally, if a coach tells a prospective student-athlete during the recruitment process that athletics are first and academics are second, that coach will immediately be released. 93

89. Tom McMillen stated the negative effects that not prioritizing academics can have on a potential student-athlete:

   Every time a college accepts an athlete with a seventh grade level of reading and comprehension, a message is hammered into the impressionable minds of scores of youngsters who are debating whether to spend an hour in the library or on the courts. The message is that the rules of academia do not apply to sports stars. Nor do the rules of admission. Nor the rules of class attendance and course requirements. Not even the rules governing test scores and grades.

McMILLEN & COGGINS, supra note 74, at 83-84.

As a high school basketball point guard, I was frustrated with my ability to score and once asked my teammate, a shooting guard, how she became so good at shooting the three-point shot. My shooting guard’s response was that when I went home to study for two hours after basketball practice, she went out in her driveway and shot. While I never achieved the same consistency with my shot that my teammate had accomplished, I was willing to make that tradeoff for my future. On another note, I had the great fortune of also being a student and an athlete in college. I played both varsity basketball and tennis at Eureka College, a Division III institution in central Illinois.

A prime example of an athlete who did not focus on academics is Sacramento Kings guard Jason Williams. He recently stated, “I wish I’d spent more time on my jump shot than learning to read and write.” They Said It, SPORTS ILLUSTRATED, Jan. 29, 2001, at 36. Williams is a college dropout.

90. Don Adams, Executive Assistant to the President of Drake University, stated that Drake’s academic standards for athletes did not always parallel those of the general student body. For a time, Drake used NCAA admission standards, which were lower than Drake admission standards, for their athletes. Drake discovered that those athletes could not compete academically with the general student body. Telephone Interview with Don Adams, Executive Assistant to the President of Drake University and Secretary of Drake University and Director of Government Affairs (Nov. 16, 1999) [hereinafter Adams Telephone Interview]. I express my gratitude for Don Adams’s time and assistance with this writing. Following the embarrassment of being caught in an academic scandal in which Drake University coaches were found writing term papers for their players, Drake made changes immediately, sending a clear message that it would no longer tolerate such practices. Id.

91. Id.
92. Id.
93. Id.
In addition, members of the Oregon State University (OSU) coaching staff wore t-shirts to their annual orientation meeting bearing the following words: “National Champions. Beavers. 1996.”

Curiously, the OSU football team had not won a game in years, the men’s basketball team won only four games in 1996, and the women’s basketball team did not have a winning season. The t-shirts did not refer to the university’s athletic success or failure. Rather, the t-shirts reflected academic success, referring to OSU’s 95% graduation rate.

Unfortunately, many coaches and universities do not place the same emphasis on academics. For example, Texas A&M basketball coach Shelby Metcalf is infamous for his comment to a player who received four “F”s and a “D” on his report card: “Son, it looks to me like you’re spending too much time on one subject.”

The priorities of the Duke University men’s basketball team are suggested by a sign in the locker room that instructs players: “Practice times are as follows . . . please schedule class accordingly.” Finally, despite the consensus among college coaches that Moses Malone was not prepared for college-level classes, he was avidly recruited.

Coaches and universities are sending a negative message to their student-athletes regarding academics. When a professor is fired for protesting the preferential treatment given to student-athletes, there is cause for alarm. In *Kemp v. Ervin*, English Professor Jan Kemp was fired for speaking out when nine student-athletes were “exited” from the developmental studies program at the University of Georgia even though each had received a “D” in English during their fourth quarter. The students were required to “achieve a minimum grade of ‘C’ in English during the fourth and final quarter of the program.” At the same time that these nine student-athletes were “exited,” a non-athlete student who received a “D” in English during

---

94. ZIMBALIST, supra note 4, at 36.
95. Id.
96. Id.
98. McMILLEN & COGGINS, supra note 74, at 84. Malone ultimately decided to bypass college and went straight to the professional leagues. Id.
100. Id. at 498. The Division of Developmental Studies was created to meet the needs of students who were not qualified to enter the regular college program. Once the students met the requirements of the Developmental Studies program, they were “exited” and admitted into the regular college program. If they did not satisfy the requirements of the Developmental Studies program, the students were dismissed from the university. Id. at 499.
101. Id.
the fourth quarter was dismissed from the university.\textsuperscript{102} Kemp eventually was awarded over $2.5 million in compensatory and punitive damages.\textsuperscript{103}

Practices similar to and worse than those Jan Kemp protested against are occurring at universities across the country. A recent scandal broke at the University of Minnesota.\textsuperscript{104} It was revealed that between 1993 and 1998, members of the men’s basketball academic support services routinely wrote papers and exams for at least eighteen men’s basketball student-athletes,\textsuperscript{105} they also negotiated grade changes for student-athletes.\textsuperscript{106} During that time, the men’s basketball team continuously competed with at least one student-athlete who, because he received improper academic assistance, was ineligible.\textsuperscript{107} Such practices were in violation of the Board of Regents’ policy providing that “maintenance of appropriate academic standards and student-athletes’ academic work must take precedence over athletic competition.”\textsuperscript{108} The policy also requires that the academic support services for student-athletes remain independent from the athletic department.\textsuperscript{109} Declaring that the university’s “most valuable and precious resource” is its academic integrity, University of Minnesota President Mark Yudof imposed sanctions on the men’s basketball program, including probation and a one-year ban on postseason play.\textsuperscript{110} These self-imposed sanctions are admirable, but they
may be too little, too late, as such unethical practices have become more widespread at Minnesota and nationally.

Texas Tech was involved in an academic scandal in the early 1990s, when an assistant football coach was caught completing a defensive lineman’s work for which the lineman received correspondence-course credit. The University of Tennessee also allegedly engaged in academic fraud when tutors wrote college papers for football players. As is evidenced by these current scandals, academic advisers will do whatever it takes to ensure that the star athlete attends an early-morning class or passes a test. The NCAA recognizes that these academic fraud problems exist; David Berst, the NCAA’s longtime chief investigator, estimates that every day at least ten member institutions are involved in a major infraction of NCAA rules. Past Chairman of the NCAA’s Committee on Infractions David Swank has observed that “[a]cademic fraud is one of the more serious violations because it really goes to the whole heart of the student-athlete and the athletic program.”

If academic fraud is “one of the more serious violations,” measures should be taken to prevent the further subordination of academic goals to athletic successes. The NCAA and its member institutions need to “cut out the cancer” of academic fraud that is spreading. Many reforms have been proposed, such as increased disclosure, improved hiring decisions that consider the academic


112. David Mayo, Cheating Scandal Cuts to the Core of Tennessee Athletics, GRAND RAPIDS PRESS, Sept. 30, 1999, at C5. The University of Southern California was reprimanded when former student-athlete academic services coordinator Christopher Cairney prepared a paper for football player Mike Bastianelli and when a female diver had several grades on her official high school transcript changed. USC Given Reprimand by PAC-10, PRESS-ENTERPRISE (Riverside, Cal.), June 9, 1998, at C2.

113. Hilborn, supra note 80, at 745. The fact that athletic departments employ most academic advisers breeds corruption, because the advisers are accountable to the coaches rather than the academic offices of the university. Id.


116. Adams Telephone Interview, supra note 90.

117. See Telephone Interview with Jon Ericson, Ellis and Nelle Levitt Professor of Rhetoric and Communications Studies at Drake University (Nov. 12, 1999) [hereinafter Ericson Telephone Interview]. I express my sincerest appreciation to Jon Ericson for his time and input in this writing.
focus of the coaches, and returned decisionmaking responsibility to the president of the university.

II. Remedies

Measures need to be taken to remedy this system that is working well for women but is failing for men. The NCAA has attempted to ameliorate the situation by enacting stricter entrance requirements and by publishing graduation reports, but such measures are not enough. As a result, male student-athletes have sought judicial remedies under an educational negligence theory, but these too have failed. It is too soon to give up hope for a judicial solution. Either the courts need to reevaluate the educational negligence cause of action, or these male student-athletes may have a solution under Title IX.

A. NCAA Eligibility Requirements

The NCAA strives to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body.

The NCAA has attempted to reverse the erosion of academics for student-athletes by requiring that “[t]he admission, academic standing and academic progress of student-athletes . . . be consistent with the policies and standards adopted by the institution for the student body in general.” The NCAA also has mandated that


119. Ericson Telephone Interview, supra note 117; see also Art Padilla, Educating the Athlete, 22 J.C. & U.L. 37, 46 (1995) (recommending placing university presidents in control of the NCAA so that they may make the decisions regarding athletic expenditures, gender equity, and academic excellence). Until the 1980s, the university president served as the faculty representative for athletics; the faculty representative made the majority of the decisions for NCAA member institutions. Gary T. Brown, Passing the Grade: Faculty Involvement in College Athletics Diminished as Business Focus Increased, NCAA NEWS, Nov. 22, 1999, at A2.

120. NCAA DIVISION I CONST. art. 1.3.1 (1999).

121. Id. art. 2.5. Interestingly, the NCAA was not originally created to promote the “student” in the student-athlete. Rather, the organization was the response to President Theodore Roosevelt’s demand that the fatal game of football in 1905 be reformed or be outlawed. Kay Hawes, Roosevelt’s Love of Sports Led to NCAA’s Birth: President Stepped In to Save Football and Save First Athletics Administration, NCAA NEWS, Nov. 8, 1999, at A2. The original organization was called the Intercollegiate Athletic Association of the United States (IAAUS) and was created in 1906. NCAA, THE NCAA 4 (1999) [hereinafter THE NCAA].
universities regulate the time required of student-athletes for participation in intercollegiate athletics to minimize interference with their education. Procedures are also in place for institutions to conduct their own self-studies at least once every ten years to evaluate services for student-athletes and to participate in peer reviews.

The NCAA has experimented with a series of eligibility measures to help maintain the academic integrity of collegiate athletics. In addition to mandating that member institutions establish minimum eligibility requirements that student-athletes must meet through their careers, the NCAA created initial eligibility requirements. In 1948, the NCAA created the Sanity Code, under which a student-athlete had both to demonstrate financial need and meet the institution’s normal admission requirements to receive a tuition and fees scholarship, not including room and board. Then, in 1964, the NCAA developed Rule 1.6, under which an entering freshman student-athlete had to predict a 1.6 grade point average before being eligible to participate in intercollegiate athletics. Additionally, until the 1960s, student-athletes were not allowed to compete as freshmen.

In response to the growing concern over the increased commercialization of collegiate athletics and the abandonment of...
academic standards in major athletic programs, the NCAA proposed Proposition 48 in 1983. Proposition 48 stipulated that a potential student-athlete had to achieve a 2.0 grade point average in eleven core courses and had to earn a 700 combined score on the math and English portions of the Scholastic Aptitude Test (SAT) or an American College Test (ACT) exam score of fifteen in order to participate as a freshman and receive athletically related financial aid. Proposition 48 also included a “partial qualifier” provision in which a student-athlete who met either the 2.0 grade point average standard (in all high school courses) or the 700 SAT requirement was eligible for financial aid but could not participate during the freshman year.

Unfortunately, the NCAA quickly realized that Proposition 48 did not effectively increase the academic standards of many student-athletes. These students simply enrolled in “gut courses” to meet the 2.0 grade point average cutoff and skipped taking the SAT or ACT. They did not mind sitting out one year because it gave them the opportunity to gain experience and become stronger. A student could avoid standardized tests entirely by enrolling in junior college for two years and maintaining a “C” average (by taking “easy” courses).

In response to these abuses of Proposition 48, the NCAA passed Proposition 42 in 1989. Proposition 42 attempted to ban full scholarships for partial qualifiers, but the overwhelming and immediate denunciation of this provision forced the NCAA to modify the proposition so that partial qualifiers could receive full financial aid.
scholarships as long as the funding source was not the athletics department.136

These propositions were reformed once again, in the form of the current Proposition 16.137 It requires that incoming Division I student-athletes have a minimum high school grade point average of 2.5 in thirteen core courses and an SAT score of 820 or sum ACT score of 68.138 Proposition 16’s sliding scale permits universities to offset a deficient grade point average with a higher standardized test score.139 This student will still qualify; he may compete as a freshman and receive full athletic aid.140 If a student-athlete does not meet the minimum standardized test requirement but has a grade point average higher than the minimum 2.5, the student-athlete is considered a partial qualifier.141 Partial qualifiers can still receive financial aid and can practice as freshmen, but they cannot compete unless they show academic progress.142

Although these eligibility requirements are commendable efforts by the NCAA to assist in maintaining the academic integrity of collegiate athletics, too many institutions have found methods of bypassing the requirements. Universities matriculate students who would not otherwise be qualified to attend the institution.143 Cheating is widespread at NCAA member institutions because they are driven by financial success and must attract the best athletes in order to maintain or increase revenues.144 “During the 1980s, the NCAA

136. Id.
137. All of these proposals have been challenged for being racially discriminatory. For examples of the negative impact these initial eligibility requirements have on African-American student-athletes, see Cureton v. NCAA, No. CIV. A. 97-131, 1999 WL 447313 (E.D. Pa. July 1, 1999); McIntosh, supra note 128, at 1 (claiming that Proposition 16, by raising “arbitrary” test scores instead of focusing on “genuine measures of capacity to do college work,” excludes capable African Americans).
138. See NCAA DIVISION I OPERATING BYLAWS art. 14.3.1.1 (1999) (describing the core requirements); id. art. 14.3.1.1.1 (1999) (providing GPA and test score indices). For clarification, the “sum ACT score of sixty-eight” refers to the sum of the minimum scores of seventeen that were required on each of four sections of the ACT in order to be eligible for college athletics.
139. Sack & Staurowsky, supra note 56, at 98.
140. Id.
141. Id. at 99.
142. Id. Academic progress is defined by the NCAA as “satisfactory progress,” and it “is to be interpreted at each member institution by the academic authorities who determine the meaning of such phrases for all students, subject to controlling legislation of the conference(s) or similar association of which the institution is a member.” NCAA DIVISION I OPERATING BYLAWS art. 14.4.1 (1999).
143. Hilborn, supra note 80, at 776; see also supra notes 56-57 and accompanying text (detailing the dramatically reduced admissions standards for Notre Dame football players).
144. Hilborn, supra note 80, at 776; see also supra notes 104-15 and accompanying text
censured, sanctioned, or put on probation 57% of 106 Division I-A football schools.\textsuperscript{145}

Not only do many universities admit student-athletes with low academic predictors, they also fail to provide adequate academic support services.\textsuperscript{146} Or institutions will “carry” student-athletes academically until they have exhausted their eligibility and then abandon the student-athletes without an education, a degree, or the financial resources to attain one.\textsuperscript{147} Such practices are appalling, and “[t]he admission by a university of a youngster solely to play ball without any hope, chance, or prayer that the athlete can perform college-level work represents a failure on the part of the college, the recruit, his family, his high school, junior high, and grade school.”\textsuperscript{148}

Recently, the focus has shifted from ineffective NCAA regulations to creating public pressure for change by exposing bad practices by university athletic departments. In 1990, Congress passed the Student Right to Know Act,\textsuperscript{149} which requires institutions to disclose the graduation rates of their general student bodies and their student-athletes.\textsuperscript{150} Proponents of this Act hoped that by making one aspect of the academic records of student-athletes public it would help return the academic integrity to college athletics. However, because a high graduation rate does not necessarily correlate with a quality education, this Act also has failed to regain the academic integrity for intercollegiate athletics\textsuperscript{151} Even though Division I student-athletes as a whole have higher graduation rates than the general student body (58% compared to 56%),\textsuperscript{152} such statistics do not demonstrate that these student-athletes are receiving a better quality education than the average student, because the student-athletes may

\begin{footnotes}
\footnotetext[145]{Hilborn, supra note 80, at 776. The number of Division I-A schools fluctuates yearly. Currently, there are approximately 115 schools. College Football Standings, at http://college.espn.go.com/ncf/standings (last visited Nov. 10, 2000) (listing Division I-A football schools) (on file with the Duke Law Journal).}
\footnotetext[146]{Timothy Davis, An Absence of Good Faith: Defining a University’s Educational Obligation to Student-Athletes, 28 HOUS. L. REV. 743, 756 (1991).}
\footnotetext[147]{Michael R. Lufrano, The NCAA’s Involvement in Setting Academic Standards: Legality and Desirability, 4 SETON HALL J. SPORT L. 97, 100 (1994) (describing how institutions tolerate poor academic performance when players achieve national prominence, leaving those who exhaust their eligibility without the prospect of a professional career feeling exploited).}
\footnotetext[148]{McMILLEN & COGGINS, supra note 74, at 83.}
\footnotetext[149]{20 U.S.C. § 1092 (1994).}
\footnotetext[150]{See McMILLEN, supra note 74, at 77.}
\footnotetext[151]{Id.}
\footnotetext[152]{1999 DIV. I GRAD. REPORT, supra note 17, at 636.}
\end{footnotes}
be enrolling in “easy majors” \(^\text{153}\) or “easy courses.” \(^\text{154}\) Graduation rate statistics do not speak to “the quality of education, the student-athletes’ field of study, the means by which the few passed their courses, or admission standards.” \(^\text{155}\) Additionally, the nature of the sport, the type of institution, the student-athlete’s gender, and the level at which the student-athlete competes affect graduation rates. \(^\text{156}\) For example, the typical student-athlete performs as well or better academically than other students; the majority of academic difficulties arise with male basketball and football players. \(^\text{157}\) The NCAA reported in 1999 that the graduation rate at the Division I level for male student-athletes in general was 52%. \(^\text{158}\) The graduation rates for male basketball and football players were lower, at 41% for basketball and 50% for football. \(^\text{159}\)

At least half of all male student-athletes in Division I do not graduate from college. To raise the graduation rates of male student-athletes, the NCAA established a degree-completion program for student-athletes who have exhausted their Division I eligibility for institutional athletic financial aid. \(^\text{160}\) Full-time students receive full-tuition grants if they are within thirty hours of their degree requirements. \(^\text{161}\) The National Consortium for Academics and Sports also requires institutions to fund any former scholarship athlete in a revenue sport who did not obtain a degree. \(^\text{162}\) In this program, former college athletes have ten years to complete their degrees, tuition-free,
in exchange for volunteer participation in outreach programs, such as lecturing at local schools regarding the importance of education.\textsuperscript{163}

In 1991, the NCAA also created the CHAMPS/Life Skills Program (Challenging Athletes Minds for Personal Success), which is a total development program for student-athletes.\textsuperscript{164} The program “[s]upport[s] efforts of every student-athlete toward intellectual development and graduation” and “[e]nable[s] student-athletes to make meaningful contributions to their communities” by “[p]romot[ing] ownership by the student-athletes of their academic, athletic, personal and social responsibilities.”\textsuperscript{165} However, the NCAA does not fund this program. Member institutions must identify a full-time staff member as the coordinator and must provide the financial resources needed to fund and implement the program.\textsuperscript{166}

The Student Right to Know Act and these NCAA programs partially reflect a commitment to college athletics reform. Some scholars insist that universities should take some legal and moral responsibility for educating student-athletes.\textsuperscript{167} These scholars argue that universities have a moral obligation to assist and to mentor student-athletes to ensure that they succeed as students, in part because they have lowered the academic standards in order to admit some of these students.\textsuperscript{168}

The Knight Commission, in its 1991 report, placed increased responsibility on university presidents to assist in reforming the current state of disarray in collegiate athletics and academics.\textsuperscript{169} It also charged faculty members with the duty to maintain academic standards and to protect the curriculum, and coaches with the responsibility to emphasize to their student-athletes the importance of a college degree.\textsuperscript{170} The Commission’s basic premise was that

\begin{itemize}
  \item \textsuperscript{163} Id.
  \item \textsuperscript{164} NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, CHAMPS/LIFE SKILLS PROGRAM 1 (1999).
  \item \textsuperscript{165} Id. at 2-3.
  \item \textsuperscript{166} Id. at 16.
  \item \textsuperscript{167} E.g., Hilborn, supra note 80, at 765 (calling for universities to take legal responsibility for the failure to educate student-athletes if the universities are going to benefit from saying that their primary goal is to educate the student-athletes).
  \item \textsuperscript{168} Padilla, supra note 119, at 40.
  \item \textsuperscript{169} E.g., KNIGHT, supra note 78, at vii (stating that “university presidents are the key to successful reform”).
  \item \textsuperscript{170} Id. at 26-27. The Knight Commission also requested that chairs of governing boards, athletic directors, alumni, secondary school officials, and the NCAA become more instrumental in changing the current state of college athletics. Id. at 25-30 (listing recommendations for improvement for each of those actors).
\end{itemize}
“athletes are students as well.” It also directed its message to student-athletes, reminding them that “when your athletics eligibility has expired your playing days are over” and that they must create a future for themselves “in the classroom, the library, and the laboratory.” Desiring to make the student-athlete indistinguishable from other undergraduates in the classroom, the Commission called for four “academic integrity” goals: (1) refusing to admit student-athletes who are unlikely to graduate; (2) requiring “no pass, no play” policies for academic progress; (3) basing eligibility on “continuous progress toward graduation within five years of enrollment”; and (4) ensuring that the graduation rates of student-athletes are similar to the graduation rates of other students. The Knight Commission wants to return the focus of collegiate athletics to the student-athletes as students by forcing the universities to fulfill their promise of educating its student-athletes.

While the Knight Commission reiterated that the primary purpose of the university is to educate, some scholars have been disappointed with the outcome of “reform” committee meetings such as the Knight Commission. In response to the Knight Commission’s report, Drake University Professor Jon Ericson published a booklet criticizing the report for telling the presidents and faculty to solve the problem when presidents and faculty have shown no interest in doing so and, in many cases, are complicit in the corruption. Ericson describes how athletes are treated differently, how members of the athletics department arrange the athletes’ schedules, and how the faculty succumbs to requests for favors with regard to athletes. He wants to “end the hypocrisy” by disclosing more than just

---

171. Id. at 14.
172. Id. at 28.
173. Id. at vii; see also supra notes 151-54 and accompanying text (suggesting that high graduation rates do not necessarily correspond to quality education for the student-athletes).
174. Knight, supra note 78, at 7-8. The Knight Commission’s proposal attempts to reform the practices behind the somewhat questionable graduation statistics. For example, it supports stronger initial eligibility requirements and requires that each semester, athletes demonstrate genuine progress toward graduation within five years. Id. at 16-18.
176. Id. at 2, 14-15. At Drake, the clustering major for black men’s basketball players was recreation. Following the recommendation of a program review committee including several liberal arts professors, Drake abolished its recreation major. The majority of its African-American basketball players began majoring in sociology in the College of Liberal Arts. Ericson Telephone Interview, supra note 117.
177. Ericson Telephone Interview, supra note 117. Ericson noted that the committees that review academic decisions made by or for athletes attract members who are “understanding” of
graduation rates; he wants to make public the “academic major, academic adviser, courses listed by academic major, general education requirements, and electives, course GPA and instructor” of student-athletes to reveal the corruption that is occurring behind closed doors.  

Programs such as the NCAA CHAMPS/Life Skills Program and elements of the Knight Commission Report are frustrating, because they do not encourage coaches and institutions to emphasize academics. Male student-athletes need coaches and universities to focus time and energy on academics. For example, a university could require its coaches to set aside time for mandatory study halls, or the coach could set team GPA goals. With more time to spend on academics and more support systems to make that time worthwhile, male student-athletes can succeed both academically and athletically. Unfortunately, these programs fail to provide male student-athletes with academic opportunities. Without such an emphasis on academics, male student-athletes will continue to leave college without substantive degrees or basic learning skills.

B. Legal Recourse

The NCAA and the Knight Commission programs are insufficient because they fail to provide male student-athletes with the opportunity to receive a quality education. As a result, some male student-athletes seek judicial remedies. In the past, male student-athletes have attempted to recover for the inadequate education they receive under an educational negligence theory. Unfortunately, they have yet to be successful under this theory because courts have refused to define what constitutes a quality education.

178. Jon Ericson, To Reform College Sports; For Athlete-Scholars’ Own Good, Share Some Academic Stats, MINNEAPOLIS STAR TRIB., Oct. 31, 1999, at A27. Ericson believes that disclosure of courses and professors taken by athletes is the only way to expose the “two Dukes, the two Michigans, and the two Drakes,” one that sets requirements and standards for regular students and one that makes exceptions for the athlete. He says that disclosure will at least end the hypocrisy and expose each institution for what it is. Only then will there be any change to end the academic corruption and preferential treatment for athletes. Ericson Telephone Interview, supra note 117. Ericson agrees with Andrew Zimbalist that “[t]he term student-athlete itself tells you they are not normal students.” ZIMBALIST, supra note 4, at 37. No other type of student is labeled with a hyphen like the student-athlete; there are no student-musicians, student-artists, student-engineers, student-Greeks, or student-editors. Id.; Ericson Telephone Interview, supra note 117.
student-athletes cannot recover under an educational negligence theory, they should consider arguing for a judicial remedy under Title IX.

1. Education Negligence.

Male student-athletes are not dumb; they are just forced to take easy classes.  

An education negligence claim accuses schools of failing to provide students with basic skills such as the ability to read and write. Many academics have written on the topic of educational negligence, debating whether the courts should interfere with the autonomy of educational institutions to make decisions regarding curriculum and requirements. According to the components of a negligence suit, a student must prove that the institution has a duty to educate and has failed at that duty. The student must also demonstrate that, as a result of the institution's failure to educate, the student was injured and experienced actual losses or damages. Much controversy exists regarding the institution's duty to educate, because "it would be difficult to prove that even with the best instruction available the students in question could not be educated.

179. Ericson Telephone Interview, supra note 117.
181. For a complete discussion on this topic, see McMillen & Coggins, supra note 74, at 13-228 (recounting the personal experiences of an athlete who endured a system of inconsistent standards); Davis, supra note 146, at 781-90 (describing the policy problems with a contract-based suit against an incompetent educational institution); and Tracy, supra note 180, at 585-97 (suggesting ways to satisfy the public policy concerns that must be considered before an academic negligence suit should be filed).
182. John Collins, Educational Malpractice: Liability of Educators, School Administrators, and School Officials 65 (1990) (reciting the elements that must be present to sustain a cause of action for negligence).
183. Id.
184. Id. at 370. Some scholars have inferred this standard of care from the NCAA bylaws. Michael N. Widener, Suits by Student-Athletes Against Colleges for Obstructing Educational Opportunity, 24 ARIZ. L. REV. 467, 479 (1982) ("[A] standard of care for academic counseling of student-athletes may be derived from the constitution and bylaws of the NCAA . . . ."). The bylaws require that to be eligible for participation in athletics competition, "a student-athlete shall maintain satisfactory progress toward a baccalaureate or equivalent degree at that institution as determined by the regulations of that institution." NCAA DIVISION I OPERATING BYLAWS art. 14.4.1 (1999).
Courts are hesitant to begin defining what constitutes a “quality” educational experience. This hesitancy misconstrues the central issue in an educational negligence claim. The student-athletes in the following cases did not ask the courts to determine whether Drake or Duke had a better biology program. Rather, they asked the courts to help them make their coaches and administrations responsible for ensuring that the student-athletes have freedom to explore the institution’s educational opportunities. Increased free time and academic support services may enable them to learn fundamental skills and to graduate with degrees that will help them build a future beyond athletics. Courts should start viewing the educational negligence cause of action as a means of making educational institutions and coaches accountable for failing to educate their student-athletes rather than as an infringement on the autonomy of educational institutions.

Courts traditionally defer to the individual educational institution's autonomy in establishing curriculum and academic standards. In Peter W. v. San Francisco Unified School District, a California court found that a high school graduate did not have a cause of action against public school system administrators for his inadequate education. The student alleged that the school system allowed him to advance grade levels and to eventually graduate even though he only had an eighth-grade reading level. The court held

---

185. Courts fear a flood of cases from every individual who unsuccessfully brings a claim against the educators who failed them. E.g., Ross v. Creighton Univ., 740 F. Supp. 1319, 1329 (N.D. Ill. 1990) (“[T]he real danger of an unrestrained multiplication of [educational negligence] lawsuits shows the distility of the proposed remedy.”). Additionally, a New York court noted that “[t]he courts have uniformly refused, based on public policy considerations, to enter the classroom to determine claims based upon educational malpractice.” Paladino v. Adelphi Univ., 454 N.Y.S.2d 868, 870 (App. Div. 1982) (citations omitted). The Paladino court also decided that “[t]he courts should not become engaged in determining the propriety of the course of instruction adopted by a private school.” Id. at 872 (stating frankly that “the courts should refrain from becoming overseers of the learning process”). Rather, the court placed the responsibility on professional educators to determine the learning method that was most efficacious to their students' educational experience. Id. at 873 (“These are determinations that are to be made by educators . . . .”).

186. Additionally, Congress has prohibited the federal government from controlling education. 20 U.S.C. § 1232a (1994) (“No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system . . . .”).


188. Id. at 862-63.

189. Id. at 856.
that teachers and school boards do not have a “‘duty of care’ in the process of [a student’s] academic education.”

While the plaintiff in Peter W. was not a student-athlete, a significant number of collegiate student-athletes have sued their schools for failure to educate. These students did not fare better than their non-athlete counterparts. In Ross v. Creighton University, a student-athlete accused Creighton of exploiting his basketball skills while failing to educate him as a student requiring “special attention.” Kevin Ross claimed that Creighton admitted him knowing that he was not academically prepared to attend the school. Ross argued that Creighton failed to provide him with “adequate and competent tutoring services,” require him “to attend tutoring sessions,” and “afford [him] a reasonable opportunity to take full advantage of tutoring services.” By the time his athletic eligibility expired, Ross had earned only 96 of the 128 credits required for graduation, and he had seventh-grade reading skills and fourth-grade overall language skills. Recognizing Ross’s academic deficiencies, Creighton arranged for him to attend Chicago’s Westside Preparatory School, an elementary and high school. The court determined that Ross could not recover under an educational malpractice theory because allowing such a cause of action would open the floodgates for any student upset with his or her grades.

190. Id. at 859.
192. Id. at 1328.
193. Id. at 1322. Ross scored nine points out of a possible thirty-six on the ACT. The average admitted Creighton student during that year, 1978, scored 23.2 points on the ACT. Id.
194. Id. at 1331 (quoting Amended Complaint ¶ 28, Ross v. Creighton Univ., 740 F. Supp. 1319 (N.D. Ill. 1990) (No. 89 C 6463)). Ross also alleged that Creighton kept him eligible by enrolling him in esoteric curriculum such as ceramics and theories of basketball. Id. at 1322. Additionally, the court did not discuss whether or not Ross had a right to tutoring because it recognized that Ross’s claim was not that Creighton failed to provide tutoring, but rather that the tutoring was subpar. Id. at 1331. However, Title IX provides access to tutoring for student-athletes. 34 C.F.R. § 106.41(c)(5) (1999) (describing “academic tutoring” as one factor to consider when determining if a school’s opportunities are equal for both sexes).
196. Id.
197. Id. at 1331-32 (holding that Creighton did not have an implied contractual duty to educate).
198. Id. at 1329 (“If every failed student could seek tort damages against any teacher, administrator and school he feels may have shortchanged him at some point in his education, the courts would be deluged . . . .”).
In *Jones v. Williams*, Curtis Jones alleged that both the Detroit Board of Education and an Idaho junior college “academically carried” him through the academic system just to keep him eligible for basketball. Jones could neither read nor write; moreover, the ridicule he received from his peers regarding his academic deficiencies caused him to have a nervous breakdown. Jones lost; the Michigan court held that, because it was serving a government function, the school board was immune from liability and the court lacked jurisdiction over the Idaho junior college.

In a third case, *Jackson v. Drake University*, Terrell Jackson was allegedly promised by recently hired head basketball coach Tom Abatemarco that he would be the star of the men’s basketball team and that he would receive a high quality education at Drake. Abatemarco likely realized that Jackson would probably struggle academically. While Jackson was given an academic tutor to assist him during basketball season, Coach Abatemarco scheduled basketball practices during his allotted study time and tutoring schedule. Jackson was threatened that he could lose his scholarship if he missed practice. The coaching staff also prepared term papers for Jackson and recommended that he enroll in certain “easy courses.” Jackson refused to accept the papers and would not enroll in the suggested courses. He eventually quit the team. The court did not provide any remedy for his situation.

As these cases demonstrate, an education negligence cause of action may also include claims that during recruitment, coaches misrepresent the education the athletes will receive. For example, students are told that they will be able to choose their own courses and majors. But coaches establish relationships of trust (or fear) with the student-athletes, and as a result, the student-athletes do not question the coach when directed to enroll in less challenging

---

200. *Id.* at 422.
201. *Id.*
202. *Id.* at 422-25.
204. *Id.* at 1490.
205. *Id.*
206. *Id.*
207. *Id.*
208. *Id.*
209. *Id.* at 1493-96 (granting summary judgment for Drake on all claims).
courses. For example, Anton Gunn, an offensive lineman at the University of South Carolina, was encouraged to major in criminal justice because professors who favored athletes taught the major. For similar reasons, at Drake University student-athletes are instructed to major in sociology.

Coaches may also abuse the relationships of trust they have developed with the student-athletes by not disclosing to the student-athletes the special knowledge they have as coaches regarding the academic rigor of the university. First, the coach is more knowledgeable about the academic demands placed upon the student-athlete by the university. Second, the coach is familiar with the university’s history of incorporating academics into a student-athlete’s athletic experience. Coaches promise prospective student-athletes that they will receive a quality education in addition to having an exciting athletic experience. These students eventually realize that the rigorous demands of athletics are not conducive to performing well academically. Universities and coaches compromise academic integrity by forcing student-athletes to be athletes first and students second. These coaches exploit student-athletes for their athletic prowess until their eligibility expires and then leave them to fend for themselves without an education—or perhaps even without reading skills. Courts refuse to challenge these practices in

210. E.g., McMillen & Coggins, supra note 74, at 75-76 (arguing that athletic departments fashion courses and run academic assistance programs to ensure athlete eligibility without regard to the quality of education); Adler & Adler, supra note 12, at 243 (commenting that coaches may reinforce unrealistic assumptions about college academic success); Widener, supra note 184, at 476-77 (arguing that a cause of action for deceit should be available for such misrepresentation).

211. Zimbalist, supra note 4, at 40. Gunn disregarded the athletic department’s advice and graduated in four years with a history degree. He encountered conflict when his thesis class overlapped with practice. His coach also threatened to revoke his scholarship if he chose to join a fraternity. Id.

212. Ericson Telephone Interview, supra note 117.

213. Widener, supra note 184, at 477.

214. Id.

215. Id.

216. Adler & Adler, supra note 12, at 243-44 (commenting that during recruitment, college coaches stress the importance of college education and graduation).

217. Id. (arguing that by the end of their freshman years, athletes begin to understand how difficult it is to keep up with their schoolwork).

218. Davis, supra note 146, at 753.

219. Widener, supra note 184, at 472. An estimated 25-35% of high school senior football and basketball players are functionally illiterate. Lapchick, supra note 118, at 401. Football great Dexter Manley was one of them. McMillen & Coggins, supra note 74, at 78.
educational malpractice cases, because they do not feel “qualified” or “competent” to handle such educational matters.\textsuperscript{220} 

Although the courts have historically held that a cause of action based on educational negligence does not exist for these students, the students still should be entitled to an education that will provide them with the tools and resources necessary to survive and perhaps to succeed beyond athletics. If courts continue to refuse to recognize the educational negligence cause of action, male student-athletes may need to shift their focus to Title IX.

2. \textit{Title IX}.\textsuperscript{221} Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”\textsuperscript{222} A program or activity is defined as “all of the operations of a college, university, or other postsecondary institution, or a public system of higher education.”\textsuperscript{223} Title IX has been traditionally viewed as a means for female student-athletes to achieve gender equity in athletic opportunities, even though it was intended to protect both genders.\textsuperscript{224} Enacted in 1972 as part of the Education Amendments to the 1964 Civil Rights Act,\textsuperscript{225} Title IX has helped to increase participation and funding for female sports,\textsuperscript{226} because “Title IX prohibits sex discrimination in \textit{any} education program or activity.”\textsuperscript{227} As such Title IX provisions have historically focused on

\begin{footnotes}
\item[220] C OLLIS, \textit{supra} note 182, at 399.
\item[221] While some Title IX advocates may argue that male student-athletes do not comprise an underrepresented gender and that Title IX was passed with the intent of increasing the opportunities for women and female student-athletes, this legislation should not be limited to females. The exploitation of male student-athletes in derogation of their education has continued for too long. Title IX is part of an education statute that protects against the denial of benefits of any educational program. Those educational programs involve men as well as women, and male student-athletes are being denied those benefits.
\item[223] \textit{Id.} § 1687(2)(A).
\item[224] Telephone Interview with Brian A. Snow, General Counsel, Colorado State University (Nov. 17, 1999) [hereinafter Snow Telephone Interview]. I express sincere gratitude to Brian Snow for his time and his guidance.
\item[225] NCAA, \textit{Achieving Gender Equity: A Basic Guide to Title IX and Gender Equity in Athletics for Colleges and Universities} I-1 (1994).
\item[226] Acosta & Carpenter, \textit{supra} note 41, at 1-4 (observing that the average number of varsity sports offered to women per NCAA institution jumped from 5.61 in 1977 to 8.14 in 2000). For a more complete discussion of Title IX and its history, see Jennifer L. Henderson, \textit{Gender Equity in Intercollegiate Athletics: A Commitment to Fairness}, 5 \textit{SETON HALL J. SPORT L.} 133 (1995).
\item[227] Teri Engler, \textit{Title IX and Sexual Equity in Sports}, \textit{PHYSICAL EDUC. & SPORTS L.Q.},
\end{footnotes}
women, this section suggests that men may also benefit from its provisions.

Interpretations of Title IX also specify three major areas of compliance: (1) equality of scholarships, (2) equivalence in other athletic benefits and opportunities, and (3) effective accommodation of the interests and abilities of student-athletes of both sexes. Under these three areas, “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance.” Additionally,

[a] recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors . . . [the] opportunity to receive coaching and academic tutoring . . . [and the] assignment and compensation of coaches and tutors.

a. The holistic approach. These areas of compliance under Title IX have been the subject of much discussion over the past two decades as institutions and individuals attempt to meet the demands of Title IX. Brian A. Snow, Colorado State University General Counsel, has advanced one such discussion. Snow argues that Title IX has dual paradigms, one regarding numerical parity and the other

June 6-10, 1983, at 111, 111.

228. Nondiscrimination on the Basis of Sex in Education Programs and Activities, 34 C.F.R. § 106.37(c) (2000).
229. Id. § 106.41(c)(2)-(10).
230. Id. § 106.41(c)(1); see also Diane Heckman, The Explosion of Title IX Legal Activity in Intercollegiate Athletics During 1992-93: Defining the “Equal Opportunity” Standard, 1994 DET. C.L. REV. 953, 986 (noting that the Tenth Circuit in Roberts v. Colorado State Board of Agriculture, 998 F.2d 824, 828 (10th Cir. 1993), held that “an institution may violate Title IX simply by failing to accommodate effectively the interests and abilities of student-athletes of both sexes”); Henderson, supra note 226, at 141 (describing how a federal district court in Cohen v. Brown University, 809 F. Supp. 978, 994 (D.R.I. 1991), aff’d, 991 F.2d 888 (1st Cir. 1993), enjoined Brown University from demoting two women’s sports teams from varsity to club-level status on the grounds that Brown failed “to accommodate the interests and abilities of female students in the selection and level of sports”).
231. 34 C.F.R. § 106.31(a).
232. Id. § 106.41(c)(5)-(6).
regarding nondiscrimination. In the numerical parity paradigm, each gender is proportionately represented in every educational program. In the nondiscrimination paradigm, individuals may not be treated differently simply because of their gender. This paradigm focuses on holistic criteria, ensuring that no overt or covert gender discrimination exists in either participation, opportunities, or treatment. It also focuses on the equality of experiences for men and women. Under this holistic standard, courts may be forced to consider the “entire environment surrounding intercollegiate athletics.” This “entire environment” may include the examination of male and female grades, graduation rates, and access to tutoring. If a court determines that men and women are treated differently in any aspect of the “environment,” the institution may be required to explain the disparities.

After considering the nondiscrimination paradigm, the obvious assumption is that women are being discriminated against based on their gender and that a female would bring a cause of action under this theory because Title IX historically has been viewed as providing gender equality for women. However, women are not the only individuals being discriminated against in college athletics because of their gender—male student-athletes are also being denied equal educational opportunities. Title IX does not care about the academic success of either gender of student-athletes. In fact, it does an insufficient job of providing academic opportunities for both genders. The only express academic provision in Title IX provides is the reference to access to tutoring. As is evidenced by the numerous cases of tutors writing papers for student-athletes and student-athletes graduating illiterate, if graduating at all, such tutoring is insufficient or hyper-sufficient.

234. Id. at 11-19.
235. Id. at 11.
236. Id. at 14. The numerical-parity paradigm was rejected in favor of the nondiscrimination paradigm in *Cook v. Colgate University*, 802 F. Supp. 737, 741-45 (N.D.N.Y. 1992).
238. Id. at 33.
239. Id.
240. Snow Telephone Interview, supra note 224.
241. Id.
242. Nondiscrimination on the Basis of Sex in Education Programs and Activities, 34 C.F.R. § 106.41(c)(5) (2000); see also supra note 232 and accompanying text (quoting regulation text).
243. See supra notes 104-15, 179-209 and accompanying text.
Interestingly, most of these cases and situations regarding academic violations and illiterate student-athletes have involved male student-athletes in revenue-producing sports. For example, the recent academic-fraud scandal at the University of Minnesota involved the men's basketball team. Kevin Ross, a male basketball player, brought suit against Creighton University for his illiteracy. However, the problems may extend beyond revenue-producing sports. In 1999, Division I male student-athletes, as a whole, graduated at a significantly lower rate than either the female student-athletes or the general student body. In 1995, the average high school grade point average for a male cross-country and track runner entering college was a 2.89 on a 4.0 scale. By comparison, the female cross-country and track runner grade point average was 3.16. Additionally, the average grade point average for male high school basketball players was 2.69, whereas the female high school basketball players' average was 3.14.

After examining this evidence, it may be inferred that perhaps female student-athletes do not need the same academic assistance that male student-athletes need. On a Title IX–neutral basis, women are performing better academically than men. The discrepancy in male and female academic performance may be linked to the increased demands on male student-athletes to help create winning teams that produce revenue for the institutions. The increased commercialism of male college athletics has taken the focus away from academics. Because female student-athletes, in general, do not face the same pressures, and are better able to balance their lives, male student-athletes should receive more academic aid to even the score.

244. See supra notes 104-15, 179-209 and accompanying text.
245. See supra notes 104-10 and accompanying text.
246. See supra notes 191-98 and accompanying text.
247. To recap, the NCAA reported in 1999 that Division I male student-athletes graduated at a rate of 52%. The general student body's graduation rate was 56%, and the graduation rate for female student-athletes was 68%. 1999 Div. I Grad. Report, supra note 17, at 636-37; supra notes 149-59 and accompanying text.
250. See supra notes 4-43 and accompanying text.
251. Snow Telephone Interview, supra note 224.
Consider *Ross v. Creighton University* again.\(^{252}\) If this case were brought today, would Kevin Ross make a Title IX argument rather than an educational negligence argument, and would he be successful? Ross’s case may have been more effective if he had claimed that he was entitled to tutoring under Title IX and that he did not receive an adequate *amount* of tutoring because of the demanding practice and game schedules of the men’s basketball team.\(^{253}\) Perhaps Ross’s mistake was that he challenged the quality of the tutoring he received rather than his access to it. Ross would have a strong argument that the female student-athletes had access to tutoring, if they needed it, because academic statistics, such as graduation rates, reveal a large discrepancy between male and female student-athletes’ academic performance at Creighton University. Female student-athletes at Creighton graduate at a rate 20% higher than male student-athletes.\(^{254}\) According to the 1999 NCAA graduation reports, all the players on the women’s basketball team graduated; not one player on the men’s basketball team graduated.\(^{255}\) While this evidence may indicate inadequate access, Ross would presumably have to have evidence of actual practices or policies. Additionally, Ross could strengthen his claim by showing that unlike his coach, the women’s basketball coach scheduled practice times around her players’ classes, student teaching, or tutoring sessions, as Coach Goestenkors at Duke University has.\(^{256}\)

Furthermore, Jackson, in *Jackson v. Drake University*,\(^{257}\) may have a cause of action under Title IX, because he was denied the benefits from his tutoring sessions when his coach scheduled them simultaneously with basketball practice.\(^{258}\) Similarly, Jackson could argue that female student-athletes do not experience the same conflicts with academics and athletics. Female student-athletes at Drake graduate at a rate of 81%, compared to 55% for male student-

\(^{252}\) *See supra* notes 191-98 and accompanying text.

\(^{253}\) *See* Nondiscrimination on the Basis of Sex in Education, 34 C.F.R. § 106.41(c)(5) (2000) (listing the “[o]pportunity to receive coaching and academic tutoring” as one of the factors to be weighed in evaluating whether equal athletic opportunities are available to members of both genders); Snow Telephone Interview, *supra* note 224.

\(^{254}\) *Id.* at 128.

\(^{255}\) *Id.* at 128.

\(^{256}\) *See infra* note 260 and accompany text.

\(^{257}\) *See supra* notes 203-09 and accompanying text.

\(^{258}\) 34 C.F.R. § 106.31(a) (prohibiting discrimination based on sex in educational programs).
Jackson also may be able to strengthen his claim by arguing that the women’s basketball coach scheduled practice around student teaching whereas the men’s basketball coach did not. Both Ross and Jackson may have arguments under Snow’s holistic approach because the inadequacy of the academic support services they received probably extend beyond their universities’ tutoring programs. As a study of male student-athletes revealed, male student-athletes quickly realize that coach- and peer-imposed pressures limit their ability to succeed academically. The female student-athletes, in contrast, enjoy a more academically supportive environment. As one study examining the academic performance of female student-athletes reported, female teammates positively influenced each other scholastically and their coaches did not place an unreasonable emphasis on athletics. The focus of these female student-athletes was not on performing well enough in class to remain eligible for athletics. Rather, it was on obtaining an education and a degree. This result, in some significant part, resulted from the support female student-athletes received from their coaches and the surrounding environment.

b. Sexual harassment. Male student-athletes also may pursue causes of action from a different angle under Title IX. In three recent sexual harassment cases, the Supreme Court has allowed students to recover under Title IX for an educational institution’s failure to remedy a sexually harassing situation. In *Davis v. Monroe County Board of Education*, the Court held that a fifth-grade student’s...
harassment of a classmate and the school’s deliberate indifference to the harassment, of which it had actual knowledge, effectively barred the victim’s access to an educational opportunity or benefit.\textsuperscript{267} The Court found that an educational institution that received federal funds is liable under Title IX where it exercises substantial control over both the harasser and the context in which the known harassment occurs.\textsuperscript{268} While the denial of educational benefits does not have to be an overt, physical deprivation of access to school resources, the Court concluded that such overt deprivation occurred in \textit{Davis}.\textsuperscript{269}

In \textit{Gebser v. Lago Vista Independent School District},\textsuperscript{270} the Supreme Court noted that Congress enacted Title IX ‘‘to avoid the use of federal resources to support discriminatory practices’ and ‘to provide individual citizens effective protection against those practices.’’\textsuperscript{271} The Court held that Gebser, a high school student who was sexually harassed by a teacher,\textsuperscript{272} was entitled to a damages remedy under Title IX if an official with the authority to address and correct the situation had actual knowledge of the harassment and failed to adequately respond.\textsuperscript{273} If an official is deliberately indifferent to the situation, the official has failed to adequately respond.\textsuperscript{274}

The preceding cases have all involved sexual harassment, but the language of Title IX is not so limiting. Title IX requires actual knowledge of discrimination and a failure to exercise available control.\textsuperscript{275} A student-athlete who is denied access to educational opportunities by the educational institution and the coach who exercises substantial control over the academic resources and priorities of the athletic program is in an analogous situation. The administrators and coaches of the educational institution hold a unique position in that they have almost absolute control over the lives of male student-athletes. They dictate which majors the male

\begin{thebibliography}{9}
\bibitem{267} \textit{Id.} at 653-54.
\bibitem{268} \textit{Id.} at 645.
\bibitem{269} \textit{Id.} at 650-51.
\bibitem{270} 524 U.S. 274 (1998).
\bibitem{271} \textit{Id.} at 286 (quoting \textit{Cannon v. Univ. of Chicago}, 441 U.S. 677, 704 (1979) (holding that a female applicant had the right under Title IX of the Education Amendments of 1972 to bring a private cause of action for sex discrimination against two private medical schools that denied her admission)).
\bibitem{272} \textit{Id.} at 278.
\bibitem{273} \textit{Id.} at 290.
\bibitem{274} \textit{Id.}
\bibitem{275} \textit{Id.} at 289.
\end{thebibliography}
student-athletes pursue and which courses they take. They also may control the amount of tutoring the male student-athletes receive and how much “assistance” the tutors give to the male student-athletes. For example, in Jackson v. Drake University, the coach, acting on behalf of the university, scheduled practice times during a male player’s previously scheduled tutoring sessions. Such an action may be classified as overt, physical deprivation of access to school resources. It also may constitute deliberate indifference to the male student-athlete’s academic situation and disregard for the male student-athlete’s education.

Such deliberate indifference barred Jackson from access to an educational opportunity, specifically access to tutoring. Additionally, academic fraud scandals, such as the recent scandal with the University of Minnesota men’s basketball team, may be violations of Title IX, because the university exercised substantial control over its academic environment and its coaches. The University of Minnesota investigation revealed that officials with the capacity to thwart the illegal practices had actual knowledge of them and failed to remedy them. In such a situation, male student-athletes are being denied equal opportunity to an education as school officials sit idly by, allowing it to happen.

\(276\) See supra notes 210-12 and accompanying text.

\(277\) In contrast, female student-athletes do not experience the same deliberate indifference from their coaches, nor are they similarly deprived of access to school resources. See supra notes 4-43 and accompanying text. As a result, they are not similarly experiencing discrimination.


\(279\) Id. at 1492; see also supra notes 203-09 and accompanying text (analyzing the troubles of Terrell Jackson at Drake University).

\(280\) Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 650-51 (1999) (explaining that a school official’s knowing refusal to take action where students are being physically prevented from using school facilities or resources constitutes “overt, physical deprivation of access to school resources,” which violates Title IX).

\(281\) Id. at 629; Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 290 (1998) (holding that an official who has authority to redress a student’s discrimination claims and fails to do so may be liable for deliberate indifference to discrimination, in violation of Title IX).

\(282\) In Jones v. Williams, 431 N.W.2d 419 (Mich. Ct. App. 1988), the plaintiff experienced a similar situation. See supra notes 199-202 and accompanying text (describing the resulting litigation).

\(283\) See supra notes 104-10 and accompanying text.

\(284\) In Taylor v. Wake Forest Univ., 191 S.E.2d 379 (N.C. Ct. App. 1972), Taylor’s coach and university officials knew of his low grade point average. Id. at 381. While the coach allowed Taylor to take a semester to focus on his studies, the coach and university did not adequately respond to Taylor’s desire to obtain an education. See supra notes 65-73 and accompanying text. Taylor likely recognized that the low academic priorities had not changed in the football program and that if he returned, his grades most likely would fall. Perhaps the university should...
While male student-athletes may have a cause of action under Title IX, it remains to be seen whether it will be enough to protect academic integrity in college athletics. The outlook does not seem positive, because the NCAA has failed with its eligibility requirements and graduation reports, and because courts continue to refuse to recognize an educational negligence remedy. If male student-athletes are given a judicial remedy, perhaps it will force coaches and educational institutions to reevaluate their current practices and to focus on academics, enabling former student-athletes to be positive contributors to society. Perhaps then male student-athletes will join their female counterparts and become students first and athletes second.

CONCLUSION

Years later, the young boy who once sat in English class has a son. His son also is blessed with superb athletic ability. The young son also sits in English class, staring out the window at the empty basketball court on the playground. His father has taught him the importance of understanding the difference between round and ball, nouns and adjectives, students and athletes.

The young girl also has a child, a daughter. She is also blessed with her mother’s athletic ability. She is sitting next to the young son in the English class. She too understands the importance of noun and adjective.

Together, the young son and the young daughter gaze at the empty basketball court on the playground and dream of the day when they can be proud to be students and athletes because they have no doubt about which is the adjective and which is the noun.

have pressured the coach to be more accommodating to male student-athletes who wish to obtain an education.