THE COLLEGE ATHLETE AND THE INSTITUTION

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INTRODUCTION

Who is the student-athlete? Where did he come from? How did he get to the first practice? These questions provide an index to the relationship between the athlete and his institution. In its simplest form, the athletic relationship between the student and his school begins when he first joins the squad in practice; or, perhaps, when a notice is posted inviting students to sign up for practice. However, in many instances the identity of those who will join in the first practice has been predetermined by a series of definite steps that lead to the establishment of the athletic relationship. The “walk-on,” one who entered his school because he alone concluded that this was the institution he wished to attend and accepted on his own motion the invitation to turn out, begins his athletic relationship in the simplest form and is not directly affected by earlier relationships between his institution and others. On some campuses, most—perhaps all—student-athletes are in the walk-on category.Probably on all campuses at least some student-athletes are walk-ons; the percentages vary from sport to sport depending upon such things as the availability of funds, the extent of opportunity for competition, and the school’s aspirations for that particular sport.

Many teams include students who were recruited before their matriculation. For these players, when does the athletic relationship begin? If, for example, a student is urged to apply for admission because of his interest in the school of journalism or music, there usually is as yet no athletic relationship. If the prospective student is encouraged to apply for admission because of his previous record including athletic team membership, academic performance, and interest in a particular field, the answer is not clear; but for the purposes of most of this discussion it can be assumed that there is not yet an athletic relationship. If, however, the prospective student is urged to apply for admission on the assumption that his academic record is adequate and in the expectation of his ultimate participation in varsity intercollegiate athletics, the athletic relationship has begun and warrants attention at this point.

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NCAA Official Interpretation 100 defines student-athlete as follows:

A “student-athlete” is a student whose matriculation was solicited by a member of the athletic staff or other representative of athletic interests with a view toward the student's ultimate participation in the varsity intercollegiate athletic program. Any other student becomes a “student-athlete” only when he reports for a freshman or varsity squad which is under the jurisdiction of the department of intercollegiate athletics. A student is not deemed a “student-athlete” solely because of his prior participation in high school athletics.

(a) A prospective student becomes a prospective “student-athlete” (i.e., matriculation is con-
Although admission and matriculation obviously precede participation in the institution's intercollegiate athletic program, the composition of the group which seeks admission and the group which is granted admission may be affected by athletic factors. Admission in accordance with regularly established procedures and standards is a requirement for athletic eligibility under the rules of the two principal collegiate associations which adopt rules for athletic competition, the National Collegiate Athletic Association (NCAA) and the National Association of Intercollegiate Athletics (NAIA). If an institution had a single admission standard and unlimited capacity there would be no occasion to discriminate between prospective students generally and prospective student-athletes, but there probably is no such institution. If there is selective admission, either because of capacity limitations or academic or career potential criteria, athletic factors may be significant.

Even such relatively simple criteria may not exhaust the selection variables. In public, state-supported institutions it is not uncommon to find a "floor" for acceptable previous academic performance. Any applicant whose record is above the floor is tentatively qualified for admission, but top priority is given to residents of the state. Non-residents are placed in a lower priority by adoption of a higher academic "floor" for them (usually to avoid extreme criticism by the public that

...considered to have been solicited) if a member of the athletic staff or other representative of athletic interests: (1) provides transportation to the prospective student to visit its campus; (2) entertains the prospective student in any way on the campus except the institution may make available to the prospect a complimentary admission to an athletic contest; (3) initiates or arranges a telephone contact with the prospective student or member of his family (or guardian) for the purpose of recruitment; (4) visits or entertains a prospective student or member of his family (or guardian) for the purpose of recruitment; or (5) entertains members of the family (or guardian) of a prospective student on its campus.

(b) Matriculation is considered not to have been solicited if a member of the athletic staff or other representative of athletic interests: (1) comes in normal contact (without prearrangement) with a prospective student or members of his family (or guardian) and exhibits normal civility excluding any attempts to recruit the prospect or (2) requests via mail a prospective student or a member of his family (or guardian) to complete and return a questionnaire relative to his high school, preparatory school or junior college record.

1973-74 MANUAl Ofl THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION 31 [hereinafter cited as NCAA MANUAL].

Article 3-3 of the NCAA Constitution provides that "[a] student-athlete shall not represent his institution in intercollegiate athletic competition unless . . . he has been admitted in accordance with the regularly published entrance requirements of that institution. . . ." NCAA MANUAL 12.

According to article I, section II, of the NAIA Bylaw, "[a]thletes and non-athletes shall be admitted to the institution under the same admission standards. All shall be enrolled through the regular procedure established by the institution." NAIA OFFICIAL HANDBOOK 14 (4th ed. 1971) [hereinafter cited as NAIA HANDBOOK].

The NAIA listed 558 four-year degree-granting institutions and 42 affiliated conferences on its 1970-71 membership roll. Id. at 6. As of February 1, 1973, the NCAA claimed 769 members, of which 664 were active members (degree-granting institutions), 45 allied conferences, 30 associate institutions, and 30 affiliated organizations. NCAA MANUAL 123. Only the first two classifications comprise the voting membership. Some institutions belong to both associations.
local funds are diverted from meeting local needs), with the exception that a child of a non-resident alumnus is assigned resident priority.\(^4\) A policy question arises immediately; is the non-resident prospective student-athlete to be placed in the same priority as the resident prospective student-athlete or is he to be placed with non-resident prospective students generally?

Suppose that the principal criteria for admission to a given college are high previous academic performance and high academic potential (as indicated by previous grades, rank in class, and test scores). If applicants with equal strength under the principal criteria differ in their background as to extra-curricular activities, what choice will be made between the athlete, musician, debater, and student body officer?\(^5\) Or suppose the general standards of the institution, however defined, are supplemented by an admission quota for persons not meeting the general standards but determined on other bases to have high promise of success. Does the percentage of prospective student-athletes so admitted vary significantly from the percentage of those admitted under the general standards?\(^6\)

A. Recruiting

If the applicant's previous athletic experience is merely one factor considered in granting admission, the only problem confronted is the relatively routine one of evaluating that factor in the light of the institution's overall aspirations as reflected in its admission criteria. However, if the application for admission has been solicited because of the applicant's previous athletic experience—if the prospective student has been recruited for athletic reasons—there are further complications, such as the potentially greater conflict between the athletic and other programs, and the possibility of expectations in the applicant of special attention and consideration (per-

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\(^4\) This classification has long been used for admission purposes at the University of Washington.

\(^5\) See, e.g., Herbold, Who Killed Yale Athletics?, YALE ALUMNI MAGAZINE, Feb., 1972, at 18, where, discussing the school's admissions policies, the author reiterated the belief of some that the "bottleneck" to success in athletic recruiting was the admissions office. For example, in one year 540 football players applied for admission, 140 were accepted, 60 actually came, and 50 showed up for the first practice. Some alumni and coaches apparently believe that the admissions officer was unsympathetic to athletes to the detriment of Yale's competitive position vis-à-vis other Ivy League schools. In addition, the article states, "[s]ome colleges, like Dartmouth and Pennsylvania, operate on an early admissions plan that allows them to promise places to athletes whom Yale may not notify until spring. 'Dartmouth,' says Mr. Cozza, 'has the nucleus of its next year's freshman football team before Christmas, while we're still recruiting.'"

The article prompted some letters, one of which criticized an apparent attitude which recognized playing the flute or ballet dancing, but not athletic ability, as a criterion for admission. The writer countered the suggestion that there might not be much concern on the campus about the success of the varsity teams with the observation, "[o]bviously, if you fill up the campus with people admitted under criteria that recognize social thinkers, flutists and ballet dancers but not football players, you will wind up with a community that doesn't care whether you win or lose in athletic competition." YALE ALUMNI MAGAZINE, May, 1972, at 3.

\(^6\) California's master education plan illustrates this situation. Admission to the University (at any one of the several campuses) is basically restricted to the very top academic performers in high school—approximately the top eighth. Admission to the State Colleges (again at any one of the several campuses) is limited to strong performers—approximately the top half of the class. Other high school graduates must initially resort to the junior college route. Flexible criteria are limited to about four per cent of the entering class in the University.
haps in both the athletic and other programs). Thus, the admission process can be affected by athletic factors and in turn can affect the relationship between the student-athlete and the institution which he attends.

Most colleges and universities engage in recruiting in the broad sense of trying to persuade prospective students to apply for admission. This is accomplished through the efforts of admissions officers or other employees, or through the efforts of alumni and other supporters who are either organized, encouraged, or tolerated by the institution.

The reasons for recruiting range from promotion of particular programs of the institution (including athletics) to acquisition of a student body of great potential in general. Even the mundane goal of enrollment for income purposes of the institution may prompt recruiting. From an institutional standpoint there should be no major criticism of the recruiter who seeks to promote a particular program unless his efforts distort the recruit's perception of the institution. Recruitment for the athletic program may be more likely to cause such distortion.

The athletic recruit may mistakenly assess the importance of the academic responsibilities he will have as a student, and he may acquire an exaggerated appraisal of his promise which can subsequently be burdensome or even frustrating. Consequently, he unwisely may choose an institution in which he will not realize adequate progress toward his educational or career goals or in which he will be otherwise discontent.

There is also the possibility that there will be interference with present responsibilities in his secondary school.

The farther the recruiting process goes beyond mere gentle persuasion, the greater the likelihood that it will affect the subsequent relationship between the recruit and his institution. Recruitment can go beyond persuasion and shade into inducement; it, unfortunately, sometimes involves coercion. The rules of both the NCAA and the NAIA seek to reflect the view that the athletic program is properly an integral part of the total educational program of a member institution, and recognize that the recruiting process should not dislocate that part from the whole.

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7 See generally E. SHEA & E. Wieman, Administrative Policies for Intercollegiate Athletics 102 ff. (1967) [hereinafter cited as SHEA & Wieman], and note 5 supra.

8 Athletic recruitment may pose a greater danger because of the extent of its program. Comparable recruiting effort for any one program could also distort. If all high school editors in a particular region were invited to the campus to observe the journalism program there could be significant interference with the visitors' high school responsibilities, a skewed appraisal of the significance of the program on the campus, and an emphasis which others on the campus would disapprove of.

9 See SHEA & Wieman 117.

10 Article 2-2-(a) of the NCAA Constitution provides that:

The competitive athletic programs of the colleges are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between college athletics and professional sports.

NCAA Manual 5.

The NAIA defines its aim as promoting the development of athletics as a sound part of the educational offerings of its member institutions. Among its objectives are the following:

To assist member institutions in the development of . . . (d) Intercollegiate athletics which are an integral part of the total physical educational offering of a college . . . (c) The department
The pressure to produce winning teams increases efforts to recruit for athletic purposes. Recruiting is the name of the game" is the cliche reflecting the necessity to have a team of superior athletic ability to win. The important variable is likely to be the ability of team members rather than the quality of the coaching or the desire to win. The coach’s desire to excel, to do a superior job in training, to have players who achieve distinction, all can incline him to recruit. Yet, the primary pressure is usually external, from the institution or its alumni or supporters, in a “job-is-on-the-line” manner. Hence, recruiting is not likely to disappear, but from the standpoint of the relationship of the student-athlete to his institution, acceptable standards of recruiting must be observed to avoid the sorts of dangers previously indicated.

The NAIA rules on recruiting are relatively simple and principally provide that campus visitation and recruitment of prospective student-athletes shall not interfere with normal academic progress in the prospect’s institution and shall not involve loss of school time except as a part of a total visitation program. Travel expense is not to be paid unless it would be similarly paid in procurement of students generally, and no individual or group tryout of athletic ability is to be held. Financial aid must be awarded on a basis that will not discriminate for or against presumed or recognized athletic ability, through the regularly constituted committee on student loans and scholarships, and not in excess of the expense of attending the institution as stated in the official institutional catalog.

In general, the NCAA rules relate to the same activities. They specify permissible financial aid, restrictions on visitation of a prospective student-athlete at his institution, requirements that recruiting funds must be institutionally controlled, prohibition of tryouts, limitations on expense-paid visits to the campus and extent of entertainment during the visit, and prohibition of expenditures for any other sort of entertainment of the prospective student-athlete or others. The limit on permissible financial aid to the student-athlete in an NCAA member institution is

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of physical education, which should have a place in the institutional structure comparable to any other department...

NAIA HandBook at 7-8.

A. Christenson, The Verdict of the scoreboard (1958). The theme of this book is that the pressure to win stems from the coach’s job insecurity, that it leads to excessive and misdirected recruitment, and that it distorts the values of sports competition. The author believes recruitment should be prevented and financial aid for athletic reasons prohibited. Similarly, it has been suggested that if competition in athletics could begin after the students matriculate most problems would disappear. It is believed, however, that one institution would probably not be able to act effectively alone. See Shea & Wierman 105.

NAIA Bylaw art. I, §§ III & IV, NAIA HandBook 14, 35. The relative simplicity of the NAIA rules may be related to the competitive level of contemplated intercollegiate athletics. The Comment to article I, section III, notes that “[T]he statement is made to protect the NAIA from the overly-ambitious program.” Id. at 48. Article VI, section III-4, requires that to be eligible for the NAIA events program, a member institution must schedule seventy-five per cent of the season’s program in football and basketball with institutions below the major level of competition as shown by the National Collegiate Sports Service listings. Id. at 39.

NCAA Bylaw art. I, NCAA Manual 31-40. Rather detailed specifications set out in both the Bylaw and Official Interpretations cover this and related recruiting rules.
"commonly accepted educational expenses" defined as tuition and mandatory fees, room and board at campus rates, books and course-related supplies, plus fifteen dollars per month for incidental expenses.\(^{14}\)

For students who have already started their collegiate programs, both associations have rules to inhibit interference by other institutions. These are embodied in limitations on eligibility of transfer students,\(^{15}\) and restrictions on recruitment of a student in another four-year institution.\(^{16}\) Modified transfer rules apply to a junior college student.\(^{17}\) The case law upholds—or at least does not strike down—eligibility restrictions on transfer students, in part through the determination not to interfere in the internal operation of a voluntary association.\(^{18}\)

An additional procedure, which seeks to inhibit interference with the athlete's decision to initiate an athletic relationship with a particular institution, involves conference and voluntary inter-conference letter of intent programs. Simply stated, these programs require that when a prospective student-athlete indicates his intention to enroll in a particular institution by signing a letter of intent, other participating institutions are to refrain from further activities designed to recruit him. Under some procedures the invitation to participate in a school's intercollegiate athletic program must be mailed to the recruit and a quiet period exists during which recruiting must be suspended so that the recruit may reach his conclusion without current pressure.\(^{19}\)

The recruiting rules further support the position of the student-athlete as a regular member of the student body and minimize fostering of unrealizable expectations. Some NCAA rules restricting recruiting practices serve the additional purposes of reducing expenses and abuses in recruiting, both by institutions and prospective student-athletes and their families. The curtailment of abuses increases

\(^{14}\) NCAA Const. arts. 3-1-(f) & 3-4-(b), and related Official Interpretations, NCAA Manual 7, 13.

\(^{15}\) Article V, section V, of the NAIA Bylaw postpones the transfer student's eligibility for competition until he has resided at the second institution for eighteen calendar weeks, exclusive of summer weeks. NAIA Handbook 30. Article 4-1-(d) of the NCAA Bylaw basically requires completion of a full academic year in the second institution and delay of a calendar year after initial registration at the second institution. NCAA Manual 50.

\(^{16}\) Article I, section V, of the NAIA Bylaw requires notification to the student's present institution if he initiates contact with the athletic director or coach of another institution, and penalizes contact of an athlete who has matriculated in another member institution. NAIA Handbook 15, 16. Article 1-7 of the NCAA Bylaw prohibits contact to recruit a student-athlete in another four-year institution without the permission of that institution's athletic director. NCAA Manual, 49.

\(^{17}\) A junior college graduate usually will be, but is not always, immediately eligible to compete for the four-year institution to which he transfers. NAIA Bylaw art. V, § VI, NAIA Handbook 30, 31; NCAA Bylaw arts. 4-1-(d) & 4-2-(d)(1), NCAA Manual 50. A junior college student who transfers before his graduation may be immediately eligible under either NAIA or NCAA rules, but the latter usually require junior college attendance of at least one academic year before a student may become eligible immediately upon transfer. Both sets of rules contain further refinements which need not be set out here.


\(^{19}\) A proposal to establish such a procedure was made to the 1973 NCAA Convention.
the likelihood of a more realistic appraisal by the prospective student-athlete of his overall situation, if he enrolls in the institution. Despite the headway made by the current rules, there is more that can be done.

B. Eligibility Restrictions

The active athletic relationship begins when the student shows up for practice—unless at that time he does not qualify for participation because of an institutional eligibility rule or some external rule which the institution has agreed to apply. The external rule may relate to the circumstances of his enrollment, such as the transfer rules mentioned previously, or to amateur status, academic standards, previous competition or financial support. The primary external sources will be the conference to which the institution belongs and, for both conference members and independent institutions, the national association. While external rules usually affect continuance of the athletic relationship, some affect initiation of the active athletic relationship. In both aspects there is a constant stress resulting from a pervasive desire for institutional autonomy—just as there is friction between institutionally established rules and the individual student’s desire for untrammeled personal freedom of conduct. But neither the individual student who seeks to participate in some sort of organized or group activity nor the institution which seeks to compete with other institutions is free to make choices which unduly complicate the relationship with others.

Under applicable rules the enrolled student may not automatically have intercollegiate athletic participation available to him, nor may he have full freedom to continue that participation. Restrictive rules can no longer, if they ever could, be supported on the basis that a “privilege” does not have to be made available to a particular student. Now there is at least a right to try to make the team unless the barrier of ineligibility to be a candidate has some identifiable, reasonable basis related to the purposes of the institution and its programs.\(^{20}\) It is generally assumed

\(^{20}\) In athletic eligibility cases, participation is frequently called a privilege despite the conclusion that interscholastic athletics is an integral part of the educational program. See cases cited in note 18 supra. The cases, however, are concerned with whether the eligibility rules were met, whether the court will substitute its judgment on the reasonableness of the rules, and whether the petitioner has had equal treatment; none support mere arbitrary refusal to permit exercise of a “privilege.” Although many of the cases and much of the discussion involve high school athletes, the propositions developed are probably applicable to colleges as well, with the exception that institutional control of the college student is probably more restricted. See Wright, The Constitution on the Campus, 22 VAND. L. REV. 1027, 1052 (1969). Education involves more than classroom instruction, and participation in extra-curricular activities, whether labeled a right or a privilege, is an integral part of education—at least in public schools. See Goldstein, The Scope and Sources of School Board Authority to Regulate Student Conduct and Status: A Nonconstitutional Analysis, 117 U. PA. L. REV. 373, 389, 397 (1969). Because of their similarity, the characterization is also appropriately applied to colleges and universities. When the controversy involves a constitutional question, the dichotomy is also supplanted by consideration of the “substantial” interest to be protected. See Van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law, 81 HARV. L. REV. 1439 (1968).

Whether eligibility to compete for the team can properly be restricted to male students is being more frequently questioned. This writer believes that the general propositions already developed indicate that total restriction cannot be maintained. However, the details are not explored here.
that programs consuming time which otherwise would be available for studying can be denied to a student whose academic performance is below an acceptable minimum.21

When controversies arise concerning an athlete's eligibility to participate in the program at a particular school, the dispute is often fueled by pressure from several different sources. The athlete himself expresses the frustration of not being able to utilize his athletic talents and asserts that he has a "right to participate." The institution involved may also question the right of an outside organization to dictate its academic policies. But the strongest countervailing pressures in eligibility controversies are likely to come from other institutions. If a school's admissions practices had no impact beyond its campus, the notion of institutional autonomy might compel tolerance of individual perversions of admission criteria. But, of course, in intercollegiate athletics there is an outside impact, both indirect (in the "bad-apple-in-the-barrel" sense) and direct as it complicates achieving reasonable competition. The alternative of curtailing competition with the suspect institution is not always available to a school which is offended by the particular admission practice.22 The complication has its most widespread impact in national, post-season championship competition. A few years ago the NCAA took steps to deal with this problem of disparities in national competition and indirectly affected in-season competition by the adoption of its 1.600 rules.23 These rules required that an institution which intended to compete in any NCAA national championship limit initial eligibility to students who upon entrance were predicted to make at least 1.600 on a 4.000 grade scale during their first year in attendance. This determination was to be made by application of tables based on the combined effect of high school records (grade point average or rank in class) and national test scores (SAT or ACT).

Recently, at the January, 1973, NCAA convention, the complex 1.600 formula was replaced with the requirement that eligibility be limited to students who achieved a grade point average of 2.000 on a 4.000 grade scale in high school.24 The

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21 For an opinion expressing approval of such a policy, see Shea & Wieman 158. At least one writer has concluded that the restriction is probably permissible, on the premise that the policy prevents the student's consumption of time which would otherwise be available for study. Goldstein, supra note 20, at 416-18. There is some indication that such rules may not be necessary, even though permissible. See, e.g., Shea & Wieman 179.

Some institutions objected to the continuing performance standard embodied in the NCAA 1.600 rules, contending that the determination of such eligibility requirements should be an institutional prerogative. For these schools, the present 2.000 rules may evoke the same objection, although with less force. On balance, however, a minimal external standard probably promotes the primary graduation goal, as do academic requirements, without unduly interfering with institutional freedom. In addition, such rules offer protection for other institutions which seek to use bona fide students in athletic competition.

22 Schedules established years in advance are not the only barrier. Conference affiliation and long-standing patterns of competition cannot be disrupted without serious collateral consequences. See A. Christenson, supra note 11, at 80-81, discussing the peculiar interdependence of athletics.


2.000 rules relax the requirements for eligibility, are simpler to administer, and yet retain the purpose of assuring to all competing institutions that each team member is at least minimally academically representative of the quality of his institution. The direct effect is to control the eligibility of a student-athlete for national championship; the indirect effect is to restrict in-season, non-championship eligibility in that most institutions require this standard for all student-athletes. The control is not universal in that a member institution not intending to engage in national championship competition need not apply the rules.25

The NCAA 1.600 rules had the effect of reducing "athletic" admissions. An unanticipated change in admission policies and arguments for institutional autonomy created much of the pressure which culminated in the recent revision of the 1.600 rules.26 Widespread adoption of special education programs for disadvantaged students has led to special admission standards and procedures. Frequently admission is based on reasonable hope for the applicant's success determined by measures other than the orthodox high school academic record and test scores. A student admitted in this manner often lacked a record which met the measuring standards of the NCAA 1.600 rules and, therefore, was ineligible at least during his first year. The 2.000 rules eliminate any influence of the national standardized test scores and allow more of the students in these special programs to be eligible their first year.

Additional rules promote recognition of the academic facet of the student-athlete concept. Both associations require that the student-athlete be in good academic standing as determined by his institution and be making satisfactory progress toward graduation, measured by standards applicable to students generally.27 Institutional integrity is fostered by these requirements even when no particular external standard is imposed, as in the NCAA.28 Furthermore, in the area of financial aid to the

25 There was formerly an NCAA restriction on freshman eligibility for varsity competition, with an exception limited to College Division institutions with not more than 750 male students. After a subsequent change to permit such competition if there were not more than 1250 male students, the restriction was finally removed altogether. The earlier exceptions were probably based on the necessity of having a reasonable number of candidates for positions on the squad. The primary argument made for removal of the restriction for larger schools was an economic one. Unfortunately, if there is significant saving it probably means some reduction in opportunities for individual participation, contrary to a fundamental philosophy of the value of athletics. To some extent the rule on ineligibility of freshmen was adopted to facilitate the acclimation of the student to the new environment in which academic, social and athletic pressures (and freedoms) are probably greater than those formerly experienced. Elimination of the restriction may be interpreted by some as an appropriate recognition of the advanced social and emotional development of present-day youth.

26 A rather ironic reversal of criticism of intercollegiate athletics developed. Previously the programs were charged with total disregard for the academic welfare of the student-athlete beyond minimum academic eligibility requirements. Adoption of the 1.600 rules, however, led to charges that a student whose academic ability might be doubtful was improperly prevented from engaging in intercollegiate athletics, a view which assumed that the academic welfare of the student-athlete was not a proper concern of the athletic department personnel.

27 NAIA Const. art. III, § II-3(a); NAIA Bylaw art. V, § III-i. NCAA Const. art. 3-3.

28 The NAIA and many conferences have a stated quantitative academic progress requirement. The NAIA requires that the student must accumulate a total of 24 credit hours in the two terms of attendance immediately preceding the term of participation. NAIA Bylaw art. V, § III-3. The Pacific-8 Conference, for example, requires completion of 24 semester hours (36 quarter hours) between
student-athlete both associations require that procedures for awarding such assistance be those applicable to students generally and that the ultimate control of the process not rest within the athletic department. It would be fatuous to assert that the athletic department, or more particularly the coach, does not have substantial control over the awarding of financial aid through the preliminary step of making recommendations to the financial aids committee. The extent of that direct control depends upon the operating structure and conduct of the awards committee, which in its worst forms may do no more than rubber-stamp the recommendation. However, in an important way continuation of financial aid for a student-athlete under NCAA rules does involve the committee. The NCAA proscribes cancellation or change in the amount of aid for any athletic reason and requires both that any permissible modification be made only by committee action and that the student-athlete have an opportunity for a hearing.

There are other external controls limiting the institution's discretion in defining its relationship with the student-athlete. The controls are intended to serve such purposes as promoting diversity of athletic experiences, minimizing interference with academic performance requirements and distortion of judgment concerning academic and career goals, protecting the institution from unwarranted interference in operating its programs, and encouraging reasonable competition against others.

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29 NAIA Bylaw art. I, § III; NCAA Const. arts. 3-4-(a) & 3-4-(c); Official Interpretation 15.

28 Article 3-1-(g)-(2) of the NCAA Constitution provides in part that: "Graduation or cancellation of institutional aid during the period of its award on the basis of (i) a student-athlete's ability or his contribution to a team's success; (ii) because of an injury which prevents the recipient from participating in athletics; or (iii) for any other athletic reason . . ." is considered to make the financial aid "pay," impairing amateur status, and is expressly prohibited. NCAA Manual 8. Renewal of financial aid shall be made prior to July 1 for the next academic year, and each eligible student-athlete shall be promptly notified whether his award has been renewed or terminated. NCAA Const. art. 3-4-(d). An amendment which became effective in August, 1973, provides for a hearing at the request of the student if his award is not renewed.

23 Article 3 of the NCAA Bylaw limits playing and practice seasons in football and basketball by rather detailed rules and interpretations. NCAA Manual 45-49. Principally, these rules fix the earliest permissible practice in football at 15 days before the first game (or either of two alternate dates having about the same effect in controlling the number of early season practices), permit only 11 regular season games, allow one post-season game if NCAA standards of operation and purpose are met, and limit spring practice to 20 sessions in 36 calendar days. Pre-season basketball practice is not permitted before October 15; the first game cannot be earlier than the last Friday in November; there may be no more than 25 regular season contests; no contests may be played after the NCAA National Collegiate Basketball Championships, usually about the third week in March; and no out-of-season practice is permitted.

The NAIA rule, article I, section IX, of the Bylaw, is not so detailed but applies to all sports. It says:

The number and frequency of intercollegiate contests shall be carefully controlled and periodically reviewed by the institution and District Committee for any trend of over-emphasis.
Both associations limit the duration of eligibility. Under the NCAA rule, the student-athlete's eligibility expires five years after his first enrollment in a collegiate institution. In the NAIA, eligibility extends through ten semesters, twelve trimesters, or fifteen quarters of attendance. In addition, the NCAA permits only three years of varsity competition after the freshman year, but freshmen can participate in varsity competition. The NAIA rule allows four years of competition during any four of the five years of attendance, one of which could be consumed by competition as a freshman but would not need to be. Thus, the duration of eligibility may expire or the total available seasons of competition may be exhausted while the student is still in the institution. Graduate students are not eligible under the NAIA rule but in limited circumstances could be under the NCAA rule.

A student’s eligibility may be affected by participation on an organized team other than that of his institution or at a time outside of the recognized sports season of his institution. This restriction is justified on consideration of reasonableness of competition and loyalty to the institution’s program or even intercollegiate athletics in general. Both associations limit eligibility to amateurs, as that term is defined

**Colleges and universities shall strive to compete with schools having similar educational and athletic policies.**

**Individual member institutions and affiliated conferences are urged to adopt policies of scheduling which will eliminate the danger of disruption of the school program and the academic standards of athletes within their programs.**

NAIA HANDBOOK 17.

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32 NCAA Const. art. 3-9-(a); NAIA Bylaw art. V, §§ IV-1 & IV-2. The “five-year” rules do permit a practice, frequently condemned, called “red-shirting,” by which a squad member is purposely held out of competition for a season to preserve a season of eligibility to be used later—in his fifth year of attendance. If the practice delays the student’s graduation it probably amounts to a distortion of goals. The delay may be occasioned by the need for some greater maturity, by an injury which deprives the student of any likelihood of participation, or by some other consideration which has some advantage to the student without necessarily distorting goals.

A study at the University of Washington indicated that more than half of the students did not complete the work for a bachelor’s degree in four academic years. The predominant reasons are not always clear, but may include factors such as financial problems, change of major course of study, enrollment in programs which are intended to take more than four academic years, and so on. Nevertheless, “red-shirting”—pure and simple—is, in this writer’s opinion inappropriate in intercollegiate athletics. The availability of a fifth year to complete missed seasons of competition, however, is not in itself inappropriate, if its use results from non-athletic reasons, or if the athletic reason is persuasive to the student rather than to the coach.

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33 An NCAA rule includes in its eligibility limitation time spent by an alien student-athlete in athletic competition in a foreign country prior to matriculation at a member institution. NCAA Bylaw art. 4-1-(f)-(a).

34 NAIA Const. art. V, § IV-3 (approved ruling), NAIA HANDBOOK 54. Article 3-3-(c) of the NCAA Constitution permits a graduate student during his fourth year of college attendance to participate for the institution in which he was an undergraduate, and by the terms of article 4-1-(g) of the NCAA Bylaw, a graduate may compete in national championships within 60 days of his graduation.

35 In Brown v. Wells, 228 Minn. 468, 188 N.W.2d 708 (1970), the court permitted enforcement of eligibility rules for hockey which prohibited membership on an independent hockey team, post-season play, and attendance at a hockey camp not sanctioned by the high school league’s board. Reasons advanced for the rules included promotion of equality of competition between high schools, avoidance of over-emphasis on one sport, reduction of competitive advantages based solely on economic resources, and control of participation to avoid exploitation by outside interests motivated by economic
under their respective rules. Each permits limited financial aid, though some critics assert that this should preclude the recipient from amateur classification. That assertion merely raises the question of the desirability of the elitist conception of an amateur. Certainly the receipt of financial aid in an amount minimally necessary to secure a college education, even if it also fosters pursuit of athletics in college, does not necessitate classifying the student-athlete as a professional.

II

THE ATHLETE'S STATUS WITHIN THE STUDENT BODY

The posture of the intercollegiate athletic program within the institution can have an effect on the experience of the student-athlete. The farther the department is removed from a position comparable to other departments in the institution, the greater the likelihood that the athlete will be in a position dissimilar to that of other students. The policies and rules of both associations assume that there will be profits from sports programs. The court held that there was a duty to uphold regulations adopted by the administrative authority unless they were clearly arbitrary and unreasonable. As there was no showing that the policy was clearly wrong, the court would not substitute its judgment for that of the league authorities. For a view supporting limitations on sport seasons and practices in order to assure that sufficient time is available for other tasks and activities, see SHEA & WIEZMAN 178.

The NCAA restricts participation of student-athletes and of institutions in non-collegiate sponsored events, in out-of-season individual and team competition, and in all-star contests. NCAA Const. art. 3-9; NCAA Bylaw arts. 2 & 3. The requirements may be aimed at protecting against poorly managed events without medical supervision, as well as restricting interferences with time required for other tasks of the participants. See, e.g., NCAA Bylaw art. 2-5-(c), dealing with gymnastics. The limitations also avoid exploitation of student-athletes for private financial gain. Thus, under article 2-3-(b) of the Bylaw, college all-star football and basketball net income "shall accrue to the benefit of non-profit educational or charitable institutions."

The restriction on individual participation in out-of-season organized basketball was also motivated by a desire to reduce opportunities for gambling interferences with the student-athlete, which had caused turmoil and difficulty in upstate New York summer leagues when they were permitted.

The principal rules of the two associations are similar, although the NCAA rules and Official Interpretations are much more detailed.

A concept of amateur status which divorced competition from economic gain in any respect would tend to limit sports competition to the wealthy, a result which can surely be questioned. The problem which institutions face in trying to insure the amateur status of their athletes is complicated by the diversity of rules of amateur sports organizations pertaining to awards and eligibility. A special committee of the Board of Directors of the United States Olympic Committee proposed substantial changes in its rules on March 6, 1972. That special committee included Professor Mark Plant, former NCAA president, as chairman; Al O. Duer, executive secretary-treasurer of the NAIA; John B. Kelly, Jr., president of the AAU; and others. Among other things, the committee proposed that the rules permit a person to be a professional in one sport while retaining amateur status in another. A special committee of the NCAA, of which this writer is chairman, has also had its amateur rules under study. It has concluded that the primary focus of the NCAA amateur rules should be on the effect they might have on the athletic opportunities and other responsibilities of students in member institutions. It has similarly endorsed the idea that an athlete might be a professional in one sport without thereby becoming a professional in all sports, a result mandated by the present rules. On the other hand, the possible over-emphasis on the economic advantages of competition led to a proposal that the rules on permissible awards not be changed, except that out-of-the-school-year or out-of-institution program awards could be controlled by rules of the recognized amateur organization as long as the NCAA rules on the maximum permissible value of awards were not violated.
institutional control of the athletic program,\textsuperscript{38} but external factors can endanger adequate protection of the student's non-athletic role. If substantial portions of the expense of the program must be self-generated or secured from outside of the institution, there is pressure for income-producing "spectator" sports. This may cause difficulty in maintaining institutional control sufficient to keep the program effectively contributing to the broad educational purposes of the institution. There is a concomitant danger of considering the participant as an employee rather than as a student and even a danger of substituting the outsider's standards for those of the institution in the relationship.

A. Athletes as Employees

Rules governing the administration of financial aid, as well as the academic eligibility requirements, support institutional control of the relationship. Thus, both associations require that financial aid be awarded by the regular institutional agency and provide that funds available for that financial aid be under the control of the institution.\textsuperscript{39} The limitations on the amount of financial aid, mentioned previously,\textsuperscript{40}

\textsuperscript{38} According to article 2-1-(b) of the NCAA Constitution, one of the purposes of the association is "[t]o uphold the principle of institutional control of, and responsibility for, all intercollegiate sports in conformity with the Constitution and Bylaws of this Association." Article 3-2 provides that the "control and responsibility for the conduct of intercollegiate athletics shall be exercised by the institution itself and by the conference, if any, of which it is a member." Official Interpretation 12 provides that "[a]dministrative control or faculty control or a combination of the two, shall constitute institutional control. Administration and/or faculty staff members must constitute at least a majority of the board in control." NCAA Manual 5, 11.

In addition to policy statements in article III, section III, of the NAIA Constitution, there is the following provision in article I, section I, of the Bylaw: "The control of athletics shall be the responsibility of the school administration. No member institution shall participate in any athletic contest which is not under the direct control and supervision of the college administration." NAIA Handbook 14.

\textsuperscript{39} Article 3-4-(a) of the NCAA Constitution, as amended in January, 1973, (by adding paragraph 3), states that:

Any student who receives financial assistance other than that administered by his institution shall not be eligible for intercollegiate competition, except where:

(1) Assistance is received from anyone upon whom the student-athlete is naturally or legally dependent, or

(2) Assistance is awarded solely on bases having no relationship to athletic ability, or

(3) Assistance is awarded through an established and continuing program to aid students and the award is made on the basis of the recipient's past performance and overall record as measured by established criteria of which athletic participation shall not be the major criterion; disbursement of the assistance must be through the member institution for the educational expenses of the recipient in attending that institution which the recipient has selected, and the recipient's choice of institutions shall not be restricted by the donor of the assistance.

Official Interpretation 15 says that:

Financial assistance is "administered by" an institution if the institution, through is regular committee or other agency for the awarding of financial aid to students generally, has the final determination of the student-athlete who is to receive the award and its value. This prohibits a donor from contributing funds to an institution to finance a scholarship or grant-in-aid for a particular student-athlete. A donor may contribute funds for a particular sport, but the decision as to how such funds are to be allocated in the sport must rest exclusively with the institution.


Article III, section 2-3-(b), of the NAIA Constitution provides that "[a]ll financial aid to any
assist the institution in focusing the recipient's attention on his position as a member of the student body, thereby promoting conduct within the institution's broad educational policies. Similarly, the restrictions on sources of financial aid which can be awarded to student-athletes help control external interference with the program and, hence, with the student-athlete.41

Many students must provide part or all of the financial resources necessary to attend school. They manage through direct employment within or outside the institution, scholastic prizes, loans, and grants. Campus extra-curricular activity is sometimes accompanied by stipends. In many instances, some particular activity is a prerequisite to receipt of the financial support and often a question can be raised whether the recipient is more employee than anything else. Athletically-related financial aid is viewed by some as mere "pay" and the recipient, therefore, as an employee.42

When the athletic program depends largely upon self-generated income (gate receipts or contributions from outside the institution) the business aspects of running the program—the cost factors—become even more crucial, and there is greater likelihood that any personnel expense will be looked upon as an employee wage expense. A contributor will sometimes assert, "If he [the student] will not play [obey the rules, orders, and so on], cut off his grant." It is no small part of the task of the coach or the athletic director to make contributors understand that the athletic program, despite its business aspects, is part of the total educational program of the institution and that the student participants are not, and should not be treated as, employees.43

Even when the institution takes steps to insure that its academic interest in its student-athletes is not perverted, critics will raise the issue of whether the athlete

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41 The relevant rules are cited in notes 12 and 14 supra.

42 The NCAA prohibits acceptance of contributions by professional sports organizations for financial aid to student-athletes or in support of the athletic department, as violative of its amateur rules under article 3-1-(b) of the NCAA Constitution. See Case No. 11, NCAA Manual 179. The restriction is also consistent with the policy of article 2-2-(a) of the NCAA Constitution to "retain a clear line of demarcation between college athletics and professional sports." Id. at 5.

43 Institutional financial aid in excess of the permitted minimum is considered "pay" under the NCAA amateur rules. NCAA Const. art. 3-1-(g).

44 The pressure to push the program outside the institutionally established framework is not unique to intercollegiate athletics, but perhaps is more apparent in this area. There is a frequently expressed concern in academic departments about the dangers of external grants interfering with departmental control.
is not more appropriately regarded as an employee of the school. It should be
apparent, however, that the typical relationship between a student-athlete and his in-
sitution is not one of employment. Even if the funds used to supply athletic
financial aid are generated by the program, through gate receipts or contributions,
the basic academic relationship is not necessarily changed. Financial aid in some
other academic programs shares the basic characteristics of aid to student-athletes.
Money made available to aid students in music or drama, for example, would not be
regarded as rendering the recipient an employee, even if the source were receipts
from a public concert or play. It is true, of course, that the necessity for producing
income through the sports program makes it more difficult to keep the program
within a proper perspective in the institution. But as long as the institution takes
steps to insure that the athlete's status as a student is predominant, the fact that
income is generated by his participation does not create the type of inherent con-
tradiction which critics would like to find.

There may, however, be particular situations in which the student-athlete's status
is that of an employee. Two workmen's compensation cases each involved such a
situation. They do not establish a general proposition, however, because in each, as
contrasted with a third case, participation in the sport was found by the court to be
a condition precedent to the awarding of the financial aid.44 The recruited student-

44In University of Denver v. Nemeth, 127 Colo. 385, 257 P.2d 423 (1953), a student-athlete
was employed in tennis court maintenance with his duties suspended during football practice. His
continued employment depended on the quality of his performance in football. Following an injury in
spring football practice, the industrial commission entered an award, based on a finding that the injury
occurred while the student was performing services arising out of and in the course of his employment.
The state supreme court affirmed the trial court's order sustaining the award and concluded that, as
the assistance was not provided merely for obtaining an education, the injury arose out of employment
even if perhaps not in the course of employment.

App. 1963), the widow of a football player killed in a plane crash on a team trip sought death benefits.
The court overruled an earlier denial of the benefits. The court had told the player that if he
would resume playing football, he would receive $50 each quarter plus rent money during the football
season. The $50 payment was approved by the scholarship committee and the rent money came from
a contributors' fund handled by the coach. The court concluded that even though the coach could not
overrule the committee or cancel the scholarship before the term expired, there was a sufficient rela-
tionship between the receipt of the aid and athletic prowess or participation to find a contract of em-
ployment.

In a third case the court reversed the award of death benefits to the widow of a player whose
football game injury resulted in his death. State Compensation Ins. Fund v. Industrial Comm'n, 135
Colo. 570, 314 P.2d 288 (1957). The coach at Ft. Lewis A & M College asked a student employed in
a service station whether the student would play football if the coach could get him a job at different
hours. When the student consented, the coach arranged for a campus job with work hours which per-
mitted the student to participate. The student was also awarded a grant-in-aid in the form of a tuition
waiver. The court found no contract to play, holding that participation was not an incident of the
job on campus, nor was the job dependent upon playing. Since the student was already enrolled there
was no inducement in connection with football either for the job or for enrollment.

A summary analysis of these cases concludes, in part, that:

... the schools must eliminate any contractual relationship which provides for the rewarding
or renewal of scholarship aid only so long as the student plays on the team. ... Should in-
stitutions of higher education persist in retaining a contractual employment relationship with
their scholarship athletes, whereby financial aid is only dispensed as long as the student is a
athlete who has signed a letter of intent acquires characteristics which might be thought to resemble those associated with employment status. Yet, while the process of granting aid may assure him of support on the institution's expectation that he will participate in intercollegiate athletics (and probably in a particular sport), it does not condition the receipt of aid on participation. The proscription on cancellation of financial aid because the recipient no longer participates,\textsuperscript{45} the determination of availability of aid by the general awards committee,\textsuperscript{46} the fundamental proposition that intercollegiate athletics are a proper part of the educational program of the institution, all warrant the conclusion that the recipient of athletically-related aid should not be classified as an employee but rather as a member of the student body who participates in a particular extra-curricular activity.\textsuperscript{47}

B. Controls on the Conduct of Student-Athletes

When a student becomes a member of an athletic squad, how and to what extent is his position as a member of the student body changed? His chance of receiving participating team member, it is only just that the student is protected and receive the benefits under Workmen's Compensation for any injuries sustained while employed by his school. Steinbach, \textit{Workmen's Compensation and the Scholarship Athlete}, 19 CLEV. ST. L. REV. 521, 527 (1970).

\textsuperscript{45} A 1972 change in NCAA rules permits cancellation of financial aid if the student "voluntarily withdraws from a sport for his own personal reasons," but not before the end of the academic year in which he withdraws. NCAA Const. art. 3-x-(f)-(s)(vii). The change from flat denial of freedom to cancel for such a reason was triggered by a number of students on financial aid under four-year grants who ceased to contribute to the programs at all.

Article 3-4-(b), as amended in January, 1973, requires all future athletic awards to be limited to a period not in excess of one academic year. Thus, member institutions are free to refuse renewal, but are not free to cancel if the student ceases to participate in the sport. Some conferences and institutions have long had such a limitation. The protection for the recipient of the annual award lies in the policy of the institution to renew if continued participation is expected, and the practical recruiting disadvantage if there is not such a policy and practice. In addition, at the same convention article 3-4-(d) was amended to require the institution to inform the student-athlete "that if he believes the grant has not been renewed for questionable reasons, he may request, and shall have the opportunity for, a hearing before the institutional agency making the financial award." The institution must have reasonable procedures for prompt hearing of the request. The two changes attempt to reduce the risk of abuse of the student-athlete concept by either the student or the institution. Success of the attempt may depend upon the integrity of the scholarship committee.

Thus, in practice, the institution often takes the risk that the student will make only a limited contribution. On the other hand, it should not be required to bear the risk of a student's unwillingness to contribute what he can to the program. Neither idea compels the conclusion that a contract of employment exists, although the annual award is a factor which will likely appear with increasing frequency in workmen's compensation litigation.

\textsuperscript{46} In the \textit{Van Horn} case, discussed in note 44, the court indicated that the coach's lack of authority to overrule the awards committee or cancel the aid did not preclude a finding of an employee relationship. \textit{Van Horn v. Industrial Accident Comm'n}, 219 Cal. App. 2d, 33 Cal. Rptr. 169 (Dist. Ct. App. 1963).

\textsuperscript{47} Removal of control of financial aid from the coach to the financial aid committee does not, in itself, establish the absence of an employment relationship. \textit{See Van Horn v. Industrial Accident Comm'n}, 219 Cal. App. 2d 457, 33 Cal. Rptr. 169 (Dist. Ct. App. 1963). Yet, since the financial aid committee is not normally selecting "employees" for grants, as distinguished from work aid, the location of control in the committee helps to support the non-employee classification. And if the amount of financial aid is determined on the basis of the need of the recipient, as is the case in many institutions, there is even less reason to conclude that he is an employee.
financial aid may be greater, but this may reveal an inadequacy in the availability of financial aid for students generally, rather than any impropriety in provision of that aid for the student-athlete. The standards for the awarding of financial aid may well be different. While this poses questions of the desirability of the standards, it does not establish that the athletic standards are wrong. There may be, for example, tutoring assistance provided in a manner not available to the rest of the student body. To the extent that such assistance helps the student-athlete to achieve his academic goal of graduation, it is to be commended, rather than condemned as merely serving to maintain his eligibility.

As a competitor in his sport the student-athlete is subject to controls not applicable to the general student body. The coach has the responsibility of educating his players in the playing rules and the attendant penalties. Both the coach and the player have a duty of ethical conduct within the standards of the sport and an implied responsibility to promote the welfare of the sport in an honorable way. The coach is responsible for instilling in the player a desire to win and for training and improving the player in the techniques of the sport. The player, as a participant in a group enterprise and as a representative of his institution, is obliged to strive for excellence and to contribute as effectively as he can to the success of the team.

Rules reasonably designed to contribute to the meeting of these responsibilities should be permissible. Training rules obviously promote effective contribution, and safety restrictions concerning the physical welfare of the competitor can properly override the individual's wishes. They may also impose duties on the institution and its personnel. Requirements as to the nature of the uniforms have sufficiently direct relation to the conduct of the contest, for example, in facilitating identification of the competitors, to be permissible. Standards of dress and personal conduct on team trips where representation of the institution is involved fall within the

\(^{48}\) See NAIA Const. art. III, §§ II-2-(a) & II-2-(b); NCAA Const. art. 3-6-(a). The teaching responsibility of the coach should not be limited to the technical aspects of the sport but should include instruction in the ethical values of good sportsmanship as well. To do so serves the educational purposes of intercollegiate athletics. There is the risk that the pressure from the "verdict of the scoreboard" restricts the coach's practical opportunities to undertake the broader aspect of his teaching function. It has been asserted that dictatorial demands by coaches are partly the result of this same pressure and also preclude any meaningful "teaching." See Murdock, The Dissident Varsity, 210 The Nation 305 (1970).

\(^{49}\) The possibility of tort liability also prompts controls. The general problems are discussed in A. Grieve, The Legal Aspects of Athletics (1969), and are briefly noted in Hammond, The Student Athlete and the Law, 9 NASPA Journal 302, 307-08 (1972).

\(^{50}\) Are modifications of or additions to the uniform permissible? Probably not unless there is some independent, protected purpose for the personal variations. The "arm band" problem illustrates a supportable variation. The only reported cases involved the dismissal of black football players who wore black arm bands to protest racial discrimination. The protected purpose here was free speech, and unless its exercise would likely cause disruption, it should not be proscribed. In Williams v. Eaton, 310 F. Supp. 1342 (D. Wyo. 1970), the court held that there was no cause of action for the football players who were dismissed. The decision is criticized in Note, 19 Kan. L. Rev. 316 (1971), on the basis that a contrary result appears required by Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969). This criticism would appear sound.
parameters of justifiable institutional rules sufficiently related to the conduct of the program.

At some point, however, control of the personal conduct of the student-athlete cannot be justified on the traditional basis of its reasonable relation to requirements of the sport. This point is reached when the student-athlete's relationship to his institution ceases to be unique as compared with students generally. Conduct of the player out of season is not within the proper area of the coach's or the sport's rules, and any control will necessarily depend upon proper institutional rules applicable to the student body in general. If particular conduct during the season may similarly be unrelated to conduct of the sport.

The erosion of the doctrine of *in loco parentis* as a basis for institutional rules on conduct has necessitated reappraisal of the disciplinary power of institutions. If the college student is not to be a child in relation to the institution, it can hardly be asserted that the coach should be regarded as a parent with respect to the student-athlete. Consequently, conduct rules for athletes cannot be supported under the *in loco parentis* doctrine. Rather, they must be supported on the basis of their adequate relationship to the institution's purposes and programs.

There is the additional complication of a potential conflict between sports rules and the individual rights and freedoms protected by the federal Constitution. The hair-length cases reflect these considerations. Does a personal grooming code

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81 See Comment, The Authority of a College Coach: A Legal Analysis, 49 Ore. L. Rev. 442 (1970), Cf. Williams v. Eaton, 310 F. Supp. 1342 (D. Wyo. 1970). In addition to the problem of determining which controls are sufficiently related to the sport to be permissible, there is disagreement as to whether a standard as general as one requiring "proper conduct" or prohibiting "misconduct" can be used. *Compare* Esteban v. Central Missouri State College, 415 F.2d 1077 (8th Cir. 1969) (not too vague), with Soglin v. Kauffman, 418 F.2d 163 (7th Cir. 1969) (too vague).

82 Goldstein, *supra* note 20, at 385-84, points out that even in the secondary school area the doctrine of *in loco parentis* has been considerably narrowed in recent years. The doctrine has even less legitimacy in university discipline. *See* Goldberg v. Regents of Univ. of Cal., 248 Cal. App. 2d 869, 57 Cal. Rptr. 453 (Ct. App. 1967). The increased maturity and independence of college students may well eliminate the doctrine as an appropriate basis for control of their conduct. *See* Wright, *supra* note 20, at 1029-30, 1032. *See also* remarks by Van Alstyne in INSTITUTE OF CONTINUING LEGAL EDUCATION, UNIV. OF MICH., STUDENT PROTEST AND THE LAW 207 (E. Holmes ed. 1969) (panel discussion). The shift away from the doctrine is noted in Sherry, *Governance of the University: Rules, Rights and Responsibilities*, 54 Calif. L. Rev. 23 (1966); and in Linde, *Campus Law: Berkeley Viewed from Eugene*, 54 Calif. L. Rev. 40 (1966).

Ironically, the student-athlete, who may feel closer to his coach than to any other older person, frequently seeks a parental sort of assistance from him. For example, if the student runs afoul of some part of the criminal law he may turn to the coach for assistance in getting a bail bond and other relief. Since such assistance is not ordinarily available to students generally, that help may violate NCAA rules. *See* NCAA Const. art. 3-I-(g)-(6). Wright, *supra* note 20, at 1085, notes that limiting institutional controls only to "legitimate" university concerns may well be harder on the students than old parental procedures and controls.

83 There is disagreement among the federal courts of appeal as to whether there is a constitutional right to be protected from enforcement of grooming and dress codes. A variety of considerations appear, including whether there is a substantial federal question, whether freedom of speech is in fact involved, and whether there is some other less well-defined constitutional right involved. Courts have denied relief in Karr v. Schmidt, 460 F.2d 609 (5th Cir. 1972); Freeman v. Flake, 448 F.2d 258 (10th Cir. 1971); Olif v. East Side Union High School Dist., 445 F.2d 932 (9th Cir. 1971), cert. denied, 404 U.S. 1042 (1972); Jackson v. Dorrier, 424 F.2d 213 (6th Cir. 1970). Hair regulations were
advance the sport's performance? Perhaps so if, for example, the length of hair would impede the helmet's effectiveness as a safeguard or if the hair interfered with the player's vision and reduced the safety or effectiveness of his playing. There is also a general argument that the utility of promoting an esprit de corps (even when a team competes in individual events such as track and field) may justify control over the conduct of the student-athlete which is greater than that which could be exercised over a non-participating student. But interference with the individual's freedom when he is not in any way participating in his sport tends to negate the legitimacy of restrictive rules.84

III
Disqualification

Disqualification from further participation in athletics formerly rested largely in the discretion of the coach. To the extent that there are necessary limits on the size of the squad, such discretion continues and should be seen as an exercise of a professional judgment in measuring the ability and contribution of the par-

84 Goldstein, supra note 20, at 401, shows a distinction between a dress restriction, which can operate during school attendance and yet not interfere with conduct after school since the clothing can be changed, and a hair length restriction which necessarily extends its control beyond school time. The latter may be beyond permissible limits, but not necessarily the former. This reasoning was persuasive to the court in Pendly v. Mingus Union High School Dist., 17 Ariz. App. 512, 498 P.2d 586 (1972), which concluded that there was no sufficient showing that the regulation was required to preserve discipline in the school.


Although the courts appear to have some reluctance to interfere in the internal affairs of a voluntary association, they have reviewed athletic eligibility rules for possible arbitrary applications of those rules or inequality in treatment. In most cases, no arbitrariness was found. See Scott v. Kilpatrick, 286 Ala. 129, 237 So. 2d 652 (1970); Robinson v. Illinois High School Ass'n, 45 Ill. App. 2d 277, 195 N.E.2d 38 (1963); State ex rel. Indiana High School Athletic Ass'n v. Lawrence Circuit Court, 240 Ind. 114, 162 N.E.2d 38 (1957); David v. Louisiana High School Athletic Ass'n, 244 So. 2d 292 (La. App. 1971); Marino v. Waters, 220 So. 2d 802 (La. App. 1969). Dismissal followed the court's conclusion that there was no federal question in Mitchell v. Louisiana High School Athletic Ass'n, 430 F.2d 1155 (5th Cir. 1970), and Pascal v. Ferdue, 320 F. Supp. 1274 (S.D. Fla. 1970). In other cases, courts have refused to interfere as a matter of judicial policy. See State ex rel. Ohio High School Athletic Ass'n v. Judges of Court of Common Pleas, 173 Ohio St. 239, 181 N.E.2d 261 (1962), and Tennessee Secondary School Athletic Ass'n v. Cox, 221 Tenn. 164, 425 S.W.2d 597 (1968).

It is probable, however, that the courts are now more willing to intervene to assess the propriety of the rule than previously has been the case. Cf. Soglin v. Kauffman, 295 F. Supp. 978 (W.D. Wis. 1968) (Doyle, J.). While continuing reluctance to substitute a judicial judgment for that of the administrator, courts have undertaken to apply judicial controls to institutional rules in some non-athletic campus situations. See Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969); Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966); Dickey v. Alabama State Bd. of Educ., 272 F. Supp. 513 (M.D. Ala. 1967); Goldberg v. Regents of Univ. of Cal., 248 Cal. App. 2d, 57 Cal. Rptr. 463 (Ct. App. 1967); Brown v. Wells, 228 Minn. 468, 181 N.W.2d 768 (1970); Starkey v. Board of Educ. of Davis County School Dist., 14 Utah 2d 227, 381 P.2d 718 (1963).
participant. This assumes the honest exercise of that judgment, and strangely enough, the pressure to win probably sufficiently protects the candidate from his unwarranted elimination from the squad. If the disqualification is in the form of suspension or expulsion for violation of permissible rules, including those requiring ethical conduct, there may be potential issues of due process and the necessity for a hearing preceding imposition of the penalty. Having acquired a place on the squad, whether as a privilege or a right, the student-athlete clearly has a right not to be arbitrarily deprived of that status. He may want that status for reasons entirely within the educational context of the intercollegiate athletic programs, or he may desire it primarily for economic reasons relating to a later career.

Yet, a sense of perspective must be maintained in approaching these issues. Any insistence that the intercollegiate athletic program be operated for the purpose of promoting professional sports opportunities would seriously distort the fundamental principles of those programs as regards promotion of the educational values of sports and preclude delineation of "a clear line of demarcation between college athletics and professional sports." A moment's reflection about the small number of college athletes who engaged in professional sports and the even smaller number who have extended professional careers, not to mention the many college sports in which there are no significant professional sports opportunities, makes it clear that college athletics should not have a "farm team" purpose even if, as a collateral matter, amateur sports serve that purpose at times. This, of course, does not mean that a student-athlete may not have professional sports aspirations. Such aspirations are not to be condemned so long as they do not seriously impede pursuit of the principal academic goals his institution has for him.

CONCLUSION

Intercollegiate athletics must, in order to assume their true place in education, be given consideration in terms of their educational contributions to the individual participant. This consideration involves more than the obligations of enforcing

66 See Behagen v. Intercollegiate Conference of Faculty Representatives, 346 F. Supp. 602 (D. Minn. 1972); Kelley v. Metropolitan County Bd. of Educ. of Nashville, 293 F. Supp. 485 (M.D. Tenn. 1968). Permissible procedural standards are indicated in Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir. 1961), and do not have to involve a full dress judicial hearing with a right of cross examination. See also Wright, supra note 20, at 1086; St. Antoine's discussion in INSTITUTE ON CONTINUING LEGAL EDUCATION, UNIV. OF MICH., LAW AND DISCIPLINE ON CAMPUS 63 (E. Holmes ed. 1971).

67 Petitioner's professional career potential was treated as a significant factor by Judge Larson in the Behagen case, which involved a brawl near the end of a basketball game at the University of Minnesota. Behagen v. Intercollegiate Conference of Faculty Representatives, 346 F. Supp. 602 (D. Minn. 1972). An Eastern Michigan University player who sought an injunction requiring his re-admission to the squad also asserted possible harm to his professional career. The player was disciplined, according to the reports, for leaving the site of a championship tournament after another player was sent home following a fight during the game. The trial court denied a preliminary injunction. See Ann Arbor News, Oct. 21, 1972, at 3; Id., Oct. 26, 1972, at 3.

68 NCAA Const. art. 2-2-(a).
the principles of the NCAA, the NAIA, and the various regional conferences. These principles must have their foundation in educational fact, and they must be expressed in terms of educational purposes compatible with the purposes of higher education. If intercollegiate athletics are to be recognized as a part of the educational program—which indeed they must or they have no justification for existing in the college program—they must receive their direction from educational purpose.  

Continued balancing of purposes, opportunities, and responsibilities will, rather than undermining the essence of intercollegiate athletics, serve to make college sports programs more supportive of educational goals. The present atmosphere of reexamination should be encouraged.

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SHEA & Wieman 23.
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