

## **THE END GAME:**

### *How the NCAA Has Failed to Prepare Student-Athletes for Careers After Sports*

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#### **I. INTRODUCTION**

Unfortunately, society has gotten into “the habit of having athletes spend the first quarter or third of their lives making stories and the rest of their lives telling those stories.”<sup>1</sup> Two years ago, my brother, Sean, graduated from college with a bachelor’s degree in Business Management. He attended a small, private liberal arts college that was a member of Division I of the National Collegiate Athletic Association (NCAA). Sean and I were both fortunate to receive scholarships to play golf for this institution.

I always knew I was not going to play golf after graduation. Golf had always been a means to an end, a way to receive a quality education. This worked out well for me because, at our school, student-athletes were, first and foremost, students. Sean’s ambitions differed from my own; he was an exceptional player with aspirations of playing golf professionally. When he graduated in 2012, he started playing professional golf mini-tours. Although he was playing well and racking up multiple top-10 finishes, his medical condition made it impossible for him to practice. Medical specialists informed Sean that he had fractured a vertebrae and would have to cease practicing and playing golf immediately or risk becoming paralyzed. His condition

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\* Sandra Day O’Connor College of Law, Arizona State University (J.D, 2015).

1. Sam Riches, *How We Set Up Our Professional Athletes to Fail*, PAC. STANDARD, (Feb. 18, 2014), <http://www.psmag.com/navigation/business-economics/professional-athletes-set-fail-74247> (quoting Andy Billings, professor at the University of Alabama Sport’s Communication Program).

took more than a year and a half to heal. During that time, Sean was unable to practice.

Sean panicked, because his back took longer than expected to heal. It was the first time he was faced with the possibility that he would not play professional sports, and he did not have a backup plan. Sean had obtained a college degree, but his only non-academic experience was playing golf.

Sean's story does not suggest that all student-athletes are unprepared for non-sport-related careers after they graduate from college. On the contrary, many student-athletes are either in careers they prefer or are on their way to obtaining post-graduate degrees.<sup>2</sup> However, Sean's experience is not unique. More than 15 percent of student-athletes graduate without having thought of a career outside of sports.<sup>3</sup> The NCAA has even acknowledged that only 55 percent of student-athletes start planning for careers during college.<sup>4</sup>

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2. These professions include engineering, marketing, teaching, and physical therapy.

3. See Brandy Sue Leffler, PERCEPTIONS OF SPORT RETIREMENT BY CURRENT STUDENT-ATHLETES 109 (2012), *available at* <http://scholar.utc.edu/cgi/viewcontent.cgi?article=1044&context=theses&sei-redir=1&referer=http%3A%2F%2Fwww.google.com%2Fsearch%3Fclient%3Dsafari%26rls%3Den%26q%3D15%2525%2Bof%2Bstudent%2Bathletes%2Bno%2Bcareer%26ie%3DUTF-8%26oe%3DUTF-8#search=%2215%25%20student%20athletes%20no%20career%22>.

4. News Release, *College Athletes Optimistic About Financial Future, But Survey Shows Unrealistic Expectations*, NCAA (Oct. 24, 2005), <http://fs.ncaa.org/Docs/PressArchive/2005/Corporate%2BNews/College%2BAthletes%2BOptimistic%2BAbout%2BFinancial%2BFuture%2BBut%2BSurvey%2BShows%2BUnrealistic%2BExpectations.html>.

Less than two percent of student-athletes will play professional sports after graduating from college;<sup>5</sup> despite this low number, many collegiate student-athletes believe they will play professional sports.<sup>6</sup> Even those who do play professionally have very limited career spans. For instance, baseball is the sport with the highest percentage of student-athletes playing professionally, but the average length of a professional baseball player's career is only five and a half years.<sup>7</sup> Even grimmer, the average length of a professional football career is only three and a half years.<sup>8</sup> With so few student-athletes having a lasting professional career in sports, it is imperative they receive career guidance while in college.

The NCAA commits itself to ensuring the welfare of its student-athletes and states that "it is the responsibility of each member institution to establish and maintain an environment in which a student-athlete's activities are conducted as an integral part of the student-athlete's

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5. See *Estimated Probability of Competing in Athletics Beyond the High School Interscholastic Level*, NCAA RESEARCH (Sept. 24, 2013), [https://www.ncaa.org/sites/default/files/Probability-of-going-pro-methodology\\_Update2013.pdf](https://www.ncaa.org/sites/default/files/Probability-of-going-pro-methodology_Update2013.pdf) (baseball is an exception, as 9.4 percent of NCAA student-athletes playing baseball turn professional).

6. Scott D. Sandstedt et al., *Development of the Student-Athlete Career Situation Inventory (CACSI)*, 31 J. CAREER DEV. 79, 80 (2004); Shaun C. Tyrance et al., *Predicting Positive Career Planning Attitudes Among NCAA Division I College Student-Athletes*, 7 J. CLINICAL SPORT PSYCHOL. 22, 32 (2013).

7. See Richard T. Karcher, *Rethinking Damages to Lost Earning Capacity in a Professional Sports Career: How to Translate Today's Athletic Potential into Tomorrow's Dollars*, 14 CHAP. L. REV. 75, 128 (2010) (citing Sam Roberts, *Just How Long Does the Average Baseball Career Last?*, N.Y. TIMES (July 15, 2007), <http://www.nytimes.com/2007/07/15/sports/baseball/15careers.html>).

8. Nick Schwartz, *The Average Career Earnings of Athletes Across America's Major Sports Will Shock You*, USA TODAY (Oct. 24, 2013), <http://ftw.usatoday.com/2013/10/average-career-earnings-nfl-nba-mlb-nhl-mls>.

educational experience.”<sup>9</sup> However, student-athletes’ athletic activities can more often than not overshadow the career preparation part of their educational experience.<sup>10</sup> Although most schools have career development programs for the general student body, it is not sufficient to merely make them available for student-athletes. Career development is “the creation of realistic and mature career plans based on one’s interests, goals, aptitude, and awareness of vocational options and requirements.”<sup>11</sup> This article suggests that student-athletes encounter structural and institutional challenges unlike the challenges typical of the general student population.<sup>12</sup> These additional challenges make it less likely that student-athletes will independently seek out career services and participate in adequate career development.<sup>13</sup> Therefore, the NCAA must require its member institutions to provide career services and must also hold the institutions accountable for preparing their student-athletes for careers outside of sports.

## II. BACKGROUND

This section will explore the multiple factors that are a part of a student-athlete’s academic and career success. First, it will discuss how the NCAA is currently structured to ensure that student-athletes achieve academic success. Second, it will examine graduation rates as an indicator of

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9. NAT’L COLLEGIATE ATHLETIC ASS’N, 2014-15 NCAA DIVISION I MANUAL §§ 2.1, 2.2.1 (Aug. 1, 2014) [hereinafter NCAA DI MANUAL], *available at* <http://www.ncaapublications.com/productdownloads/D115.pdf>.

10. *See* Tyrance, *supra* note 6, at 23.

11. *Id.*

12. W. Matthew Shurts & Marie F. Shoffner, *Providing Career Counseling for Collegiate Student-Athletes: A Learning Theory Approach*, 31 J. CAREER DEV. 95, 95 (2004).

13. Sandstedt, *supra* note 6, at 80.



the NCAA's impact on student-athletes' academic performance.

This section will also discuss the NCAA's attempt to provide career assistance and the various institutional level efforts to provide career development assistance to student-athletes. This section will then explore post-college experiences of student-athletes in the workplace. Finally, it will survey the various ways that the NCAA and its institutions fund athletic departments.

### **A. The History of the NCAA**

The NCAA was founded in 1906 as a nonprofit, voluntary organization.<sup>14</sup> It is made up of member institutions, which include four-year post-high school colleges or universities and "two year upper level collegiate institutions."<sup>15</sup> Currently, more than 1,200 schools are members of the NCAA.<sup>16</sup> The member institutions are vested with the organization's decision-making power.<sup>17</sup> Member institutions are grouped and compete in three different divisions: Division I, Division II, and Division

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14. Diane Heckman, *Tracking Challenges to NCAA's Academic Eligibility Requirements Based on Race and Disability*, 222 WEST'S EDUC. L. REP. 1, 3 (2007).

15. *NCAA Membership*, NCAA, <http://www.ncaa.org/governance/membership> (last visited April 12, 2014).

16. *NCAA Membership*, NCAA, <http://www.ncaa.org/about/who-we-are/membership> (last visited Mar. 10, 2015).

17. See Josephine R. Potuto, *The NCAA Rules Adoption, Interpretation, Enforcement and Infractions Processes: The Laws that Regulate Them and the Nature of Court Review*, 12 VAND. J. ENT. & TECH. L. 257, 259 (2010).

III.<sup>18</sup> Division I is further subdivided for schools having football programs into two groups, namely Football Bowl Subdivision (FBS) and Football Championship Subdivision (FCS).<sup>19</sup> Institutions competing in bowl games are part of the FBS, and schools participating in championships run by the NCAA are part of the latter.<sup>20</sup> Because the majority of studies have examined the relationship between career development and student-athletes at the Division I level, exclusive of the other divisions, this article will focus mainly on Division I requirements.<sup>21</sup>

### **B. NCAA Structure for Ensuring Academic Success**

The NCAA's basic purpose 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 intercollegiate athletics and professional sports."<sup>22</sup> More than 460,000 student-athletes participate in the NCAA.<sup>23</sup> To guarantee institutions provide their student-

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18. See *id.* at 260; see also *Divisional Differences and the History of Multidivisional Classification*, NCAA, <http://www.ncaa.org/about/who-we-are/membership/divisional-differences-and-history-multidivision-classification> (last visited Mar. 5, 2015).

19. See *Divisional Differences and the History of Multidivisional Classification*, *supra* note 18.

20. *NCAA Division I*, NCAA, <http://www.ncaa.org/about?division=d1> (last visited Mar. 10, 2015).

21. That is not to say that student-athletes at Division II and III schools do not face some of the same challenges. Indeed, many of the same career development suggestions could be extrapolated to those institutions, as well.

22. NCAA DI MANUAL, *supra* note 9, at § 1.3.1.

23. See *Estimated Probability of Competing in Athletics Beyond the High School Interscholastic Level*, *supra* note 5.

athletes with quality educations, the NCAA sets eligibility standards for both the students and the teams.

To help student-athletes meet the eligibility requirements, NCAA Bylaw 16.3.1.1 mandates institutions provide student-athletes with academic counseling or tutoring.<sup>24</sup> Institutions have the option of providing the required academic counseling or tutoring through their athletic departments or through counseling available to their general student population.<sup>25</sup> The following sections detail the structure and effectiveness of the academic eligibility requirements.

### 1. Eligibility Standards

The NCAA's eligibility requirements are "designed to assure proper emphasis on educational objectives, to promote competitive equity among institutions and to prevent exploitation of student-athletes."<sup>26</sup> Initial eligibility and continuing eligibility provide the two sets of academic standards student-athletes must meet in order to compete.

#### *a. Initial Eligibility*

Before a student-athlete can participate in Division I athletics at an NCAA member institution, the student must satisfy the initial eligibility standards.<sup>27</sup> Currently, the initial eligibility standards require a student-athlete at the high school level to have completed 16 core course requirements while earning a minimum grade point average in those courses.<sup>28</sup> The student must have also earned a minimum

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24. NCAA DI MANUAL, *supra* note 9, at § 16.3.1.1.

25. *Id.*

26. *Id.* at § 2.12.

27. *Division I Initial Eligibility Toolkit*, NCAA, <http://www.ncaa.org/division-i-initial-eligibility-toolkit> (last visited Mar. 10, 2015).

28. NCAA DI MANUAL, *supra* note 9, at § 14.3.1.1.

SAT or ACT score, based on a sliding scale of grade point averages and standardized test scores.<sup>29</sup> Beginning with student-athletes enrolling in college in 2016, the students must meet a heightened grade point average, 2.3 instead of 2.0, and heightened standardized test scores to satisfy the initial eligibility standards.<sup>30</sup>

A recent survey of NCAA-mandated Faculty Athletic Representatives (FARs) found 38 percent of Division I schools surveyed admitted student-athletes who did not meet their schools' admission standards.<sup>31</sup> Even more alarming, schools with high-revenue sports have admitted student-athletes who are only at a fourth-grade reading level.<sup>32</sup> Some institutions defend the practice of admitting student-athletes who would not have otherwise been qualified to attend their university by arguing they devote more academic services to student-athletes who are less prepared, to help them succeed and graduate.<sup>33</sup> However, other college administrators have criticized this practice and claim that looking at graduation rates is not the best indicator of what student-athletes have learned while in college.<sup>34</sup> In fact, student-athletes who have entered college academically behind their peers and then left school without

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29. NCAA DI MANUAL, *supra* note 9, at § 14.3.1.1.2.

30. NCAA DI MANUAL, *supra* note 9, at § 14.3.1.2.1.

31. See Gary Brown, *NCAA Survey Shows Healthy Faculty Influence on Student-Athlete Academic Success*, NCAA (Mar. 4, 2013), <http://fs.ncaa.org/Docs/NCAANewsArchive/2013/march/ncaa%2Bsurvey%2Bshows%2Bhealthy%2Bfaculty%2Binfluence%2Bon%2Bstudent-athlete%2Bacademic%2Bsuccessdf30.html>.

32. Sarah Ganim, *CNN Analysis: Some College Athletes Play Like Adults, Read Like 5th Graders*, CNN (Jan. 8, 2014, 1:05 PM), <http://www.cnn.com/2014/01/07/us/ncaa-athletes-reading-scores/>.

33. *Id.*

34. *Id.*

adequate education have been unsuccessful in their attempts to hold the schools accountable.<sup>35</sup>

Student-athlete challenges to the initial eligibility standards generally fail.<sup>36</sup> Courts have given deference to the NCAA's eligibility standards, and, as one court stated when defending the standards, "[I]f the concept of a 'student athlete' is not to be an oxymoron, the NCAA's initial eligibility requirements must be more than an afterthought or an administrative inconvenience of students, teachers, coaches, and counselors."<sup>37</sup> The most common consequences of admitting student-athletes who do not meet the academic enrollment standards of their schools are allegations of academic fraud and dishonesty when athletic departments try to help those student-athletes meet the continuing eligibility standards.<sup>38</sup> The University of North Carolina has been embroiled in controversy recently for what has been called an "unprecedented academic fraud case."<sup>39</sup> For more than 18 years, the university provided sham classes to more than 1,500 student-athletes to help them maintain eligibility.<sup>40</sup> The university is now at the will

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35. *Ross v. Creighton Univ.*, 957 F.2d 410, 417 (7th Cir. 1992); Heckman, *supra* note 14, at 4.

36. Heckman, *supra* note 14, at 10.

37. *Id.* (citing *Hall v. Nat'l Collegiate Athletics Ass'n*, 985 F. Supp. 782, 802 (N.D. Ill. 1997)).

38. See M. Tae Phillips, *Un-Equal Protection, Preferential Admissions Treatment for Student-Athletes*, 60 ALA. L. REV. 751, 756 (2009), available at <http://www.law.ua.edu/pubs/lrarticles/Volume%2060/Issue%203/phillips.pdf>.

39. Jon Solomon, *UNC's Unprecedented Academic Fraud Case Will Test NCAA*, CBS SPORTS (Oct. 24, 2014), <http://www.cbssports.com/collegefootball/writer/jon-solomon/24765822/uncs-unprecedented-academic-fraud-case-will-test-ncaa>.

40. *Id.*

of the NCAA, and it could face punishments ranging from postseason bans to vacating wins.<sup>41</sup>

*b. Continuing Eligibility  
Standards*

To help student-athletes achieve ongoing academic success while in college, the NCAA has established continuing eligibility standards that students must meet.<sup>42</sup> The NCAA has also given member institutions the responsibility of monitoring eligibility to ensure that member institutions do not permit ineligible student-athletes to participate in competition.<sup>43</sup>

Student-athletes enrolled in Division I institutions must “complete 40 percent of the coursework required for a degree by the end of their second year . . . 60 percent by the end of their third year, and 80 percent by the end of their fourth year.”<sup>44</sup> The NCAA set these percentages based on statistics showing student-athletes who achieve the above benchmarks by the specified year are more likely to graduate.<sup>45</sup> A student-athlete must also be enrolled in at least six credit hours and meet a minimum grade point average each term to be eligible to play the next term.<sup>46</sup>

Continuing eligibility requirements are more demanding than the progress toward degree standards for

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41. *Id.*

42. *See Remaining Eligible: Academics*, NCAA, <http://www.ncaa.org/remaining-eligible-academics> (last visited Mar. 5, 2015).

43. *Id.*

44. *Id.*

45. *See id.*

46. *See id.*

non-athletes.<sup>47</sup> Despite these higher standards, student-athletes tend to finish in the bottom of their classes, with only nine percent finishing in the top third.<sup>48</sup> As expressed above, the stringent continuing eligibility requirements could also cause student-athletes and their athletic departments to cheat, thereby ensuring that underperforming student-athletes remain eligible.<sup>49</sup>

## 2. Academic Progress Rate

Another program the NCAA uses in its effort to ensure institutions are providing for the academic success of their student-athletes is the Academic Progress Rate (APR).<sup>50</sup> The NCAA initiated the APR in 2003 as part of a larger academic reform program.<sup>51</sup> The purpose of the reforms was “to ensure that the Division I membership was dedicated to providing student-athletes with exemplary education and intercollegiate-athletics experiences in an environment that recognizes . . . the primacy of the academic mission . . . while enhancing the ability of . . . student-athletes to earn a four[-]year degree.”<sup>52</sup> The APR was a reaction to scholarship student-athletes in certain sports either not graduating or graduating without any measurable academic success.<sup>53</sup>

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47. Josephine Potuto, William H. Lyons, & Kevin N. Rask, *What's in a Name? The Collegiate Mark, the Collegiate Model, and the Treatment of Student Athletes*, 92 OR. L. REV. 879, 892 n.46 (2014).

48. Phillips, *supra* note 38, at 765.

49. *See id.* at 756.

50. *See Academic Progress Rate (APR)*, NCAA, <http://www.ncaa.org/about/resources/research/academic-progress-rate-apr> (last visited Mar. 6, 2015).

51. *See Academic Progress Rate Q&A*, NCAA (Mar. 14, 2014, 12:25 PM), <http://www.ncaa.org/about/resources/media-center/news/academic-progress-rate-qa>.

52. NCAA DI MANUAL, *supra* note 9, at § 14.01.4.

53. *See Academic Progress Rate Q&A*, *supra* note 51.

a. *Reporting and Calculating the APR*

Member institutions are responsible for annually reporting to the NCAA the data necessary for calculating the APR; if the institutions fail to report, its teams may be ineligible for regular competitions or championships.<sup>54</sup> APR is calculated annually by giving each student-athlete one point per semester for retention if the student-athlete stays in school and one point for eligibility if he or she remains academically eligible.<sup>55</sup> Each team's point total is a combination of the points earned by its athletes divided by all points possible and multiplied by 1,000.<sup>56</sup> An APR of 1,000 is a perfect score and means every student-athlete on that team was eligible and remained at that school.<sup>57</sup> Starting in 2015, to remain eligible, a team must earn a minimum APR of 930 for four years.<sup>58</sup>

b. *Penalties for Failure to Meet the Minimum APR*

If a team does not achieve the minimum APR, the NCAA will penalize the team.<sup>59</sup> The team will first have to submit a plan to the NCAA, in which the team details how

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54. NCAA DI MANUAL, *supra* note 9, at §§ 3.2.4.4, 14.01.6.1, 18.4.2.2.2.

55. See, e.g., *Frequently Asked Questions About Academic Progress Rate (APR)*, NCAA, <http://www.ncaa.org/about/resources/research/frequently-asked-questions-about-academic-progress-rate-apr> (last visited Mar. 28, 2015); NCAA DI MANUAL, *supra* note 9, at § 14.02.1; Phillip C. Blackman, *The NCAA's Academic Performance Program: Academic Reform or Academic Racism*, 15 UCLA ENT. L. REV. 225, 238 (2008).

56. Blackman, *supra* note 55.

57. See *Academic Progress Rate Q&A*, *supra* note 51.

58. See *id.*; see also *Academic Progress Rate (APR)*, *supra* note 50.

59. *Frequently Asked Questions: About Academic Progress Rate (APR)*, *supra* note 55.



it will improve its APR.<sup>60</sup> In 2011, the NCAA overhauled the penalty structure for failure to reach the minimum APR.<sup>61</sup> The APR now has three levels of penalties.<sup>62</sup>

The first penalty level limits a team's possible practice time to five days and 16 hours a week.<sup>63</sup> The second level builds on the first level and reduces the number of competitions a team can participate in during the regular or postseason.<sup>64</sup> If a team reaches the third level, it could face "coaching suspensions, financial aid reductions and restricted NCAA membership."<sup>65</sup> The NCAA's Committee on Academic Performance oversees the program and has the discretion to impose penalties if a team fails to meet the minimum APR for three consecutive years.<sup>66</sup>

The NCAA provides carrots as well as sticks for meeting the minimum APR. For example, football teams can qualify for extra benefits if they meet the minimum APR.<sup>67</sup> Until 2016, if there are an insufficient number of teams in the FBS eligible for postseason bowl games, a team having one of the top five APRs in the FBS will be eligible to play in the postseason.<sup>68</sup>

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60. See *APR: Division I Academic Progress Rate*, NCAA (2014), [http://www.ncaa.org/sites/default/files/91852%20BTBD%20Academic%20Progress%20Rate%20WEB\\_0.pdf](http://www.ncaa.org/sites/default/files/91852%20BTBD%20Academic%20Progress%20Rate%20WEB_0.pdf).

61. *Frequently Asked Questions: About Academic Progress Rate (APR)*, *supra* note 55.

62. See *APR: Division I Academic Progress Rate*, *supra* note 60.

63. See *id.* This is a four-hour and one-day reduction in practice time.

64. See *id.*

65. *Frequently Asked Questions: About Academic Progress Rate (APR)*, *supra* note 55.

66. *Id.*

67. NCAA DI MANUAL, *supra* note 9, at § 18.7.2.1.4(e).

68. *Id.*

The NCAA also imposes penalties on individual student-athletes for failing to earn their APR points. For instance, a student-athlete who plays on a football team competing in the FBS or FCS and fails to earn his APR point during the fall term receives a four-game suspension at the beginning of the next season.<sup>69</sup>

Starting in 2009, the NCAA imposed postseason bans on teams for failing to meet the minimum APR. The NCAA first imposed such penalties on the University of Tennessee–Chattanooga and Jacksonville State University football teams.<sup>70</sup> In 2012, the NCAA penalized the University of Connecticut (UConn) men's basketball team for its low APR just two years after it won the National Championship.<sup>71</sup> The UConn penalty was one of the most publicized penalties for a team failing to meet the minimum APR.<sup>72</sup> UConn ultimately raised its APR high enough to be eligible to compete the season after the penalty was imposed.<sup>73</sup>

After the 2012-2013 season, the NCAA imposed postseason bans on 18 Division I teams whose APRs did not

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69. *Id.* at § 14.4.3.1.6.

70. See Matthew J. Mitten et al., *Targeted Reform of Commercialized Intercollegiate Athletics*, 47 SAN DIEGO L. REV. 779, 840 n.322 (2010).

71. See Timothy Davis & Christopher T. Harrison, *NCAA Deregulation and Reform: A Radical Shift of Governance Philosophy?*, 92 OR. L. REV. 77, 120-21 (2013); Adam Himmelsbach, *UConn is Among Those Barred from Postseason Basketball*, N.Y. TIMES (June 20, 2012), <http://www.nytimes.com/2012/06/21/sports/ncaabasketball/uconn-basketball-is-among-those-to-receive-postseason-ban.html>.

72. Davis & Harrison, *supra* note 71.

73. *N.C.A.A. Hands Out Postseason Bans for Academics, but UConn Is Back*, N.Y. TIMES (June 11, 2013), <http://www.nytimes.com/2013/06/12/sports/ncaabasketball/ncaa-hands-out-postseason-bans-for-academics-but-uconn-is-back.html>.

meet the minimum required standard.<sup>74</sup> The majority of the teams penalized were from limited resource institutions, and 11 were from historically black colleges and universities.<sup>75</sup> Limited resource institutions are defined as schools participating in Division I that are in the bottom 15 percent in funding.<sup>76</sup> For the 2014-2015 season, the NCAA imposed postseason bans on 36 teams; although this ban more than doubled the number of teams banned in the postseason the year before, the NCAA said the increase was expected, because it had raised the minimum required APR from 900 to 930.<sup>77</sup> Although the increase may suggest teams are unresponsive to the APR system, UConn's team serves as an example of how the system can change the behavior of teams to ensure an increase in academic attainment of student-athletes.<sup>78</sup> The threat of an APR penalty can also make national headlines and possibly change institutional behavior due to an institution's fear of bad press.<sup>79</sup>

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74. *Id.*

75. *Id.*

76. See NCAA RESEARCH, NATIONAL AND SPORT GROUP APR AVERAGES AND TRENDS 30 (2014), available at [http://www.ncaa.org/sites/default/files/CAP\\_may2014\\_public-release\\_FINAL.pdf](http://www.ncaa.org/sites/default/files/CAP_may2014_public-release_FINAL.pdf).

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

78. See *N.C.A.A. Hands Out Postseason Bans for Academics, but UConn Is Back*, N.Y. TIMES (June 11, 2013), <http://www.nytimes.com/2013/06/12/sports/ncaabasketball/ncaa-hands-out-postseason-bans-for-academics-but-uconn-is-back.html>.

79. See Jake Trotter, *Cowboys Given Full Weekly Practices*, ESPN (July 29, 2014), [http://espn.go.com/college-football/story/\\_/id/11280865/ncaa-lifts-oklahoma-state-cowboys-apr-penalty](http://espn.go.com/college-football/story/_/id/11280865/ncaa-lifts-oklahoma-state-cowboys-apr-penalty).

*c. Effects of the APR*

Generally, FARs have reported that the academic reforms of 2003 have significantly affected the academic success of student-athletes.<sup>80</sup> Since initiation of the APR in 2003, baseball, men's basketball, football, and women's basketball have all seen increases in APR, eligibility, and retention.<sup>81</sup> The average four-year APR for all Division I sports from 2009 to 2013 was 976.<sup>82</sup> In revenue-earning sports, which include football and men's basketball, the average four-year APRs for that same time were 951 and 957, respectively.<sup>83</sup> However, FCS football teams had the lowest average APR at 947.<sup>84</sup>

The NCAA commissioned a study of the APR trend at limited resource schools.<sup>85</sup> The study found that the average APR had increased over three years, from 947 to 962.<sup>86</sup> However, by the 2012-2013 season, significantly more teams at limited resource institutions than at other schools were still not achieving 930 APRs.<sup>87</sup>

Therefore, a discussion of the average APR of all Division I sports may not show the entire picture. Despite the APR system, certain categories of student-athletes continue to face challenges in the classroom.<sup>88</sup> This is

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80. Brown, *supra* note 31.

81. Hosick, *supra* note 77.

82. See *APR: Division I Academic Progress Rate*, *supra* note 60; see also NCAA RESEARCH, *supra* note 76.

83. See *APR: Division I Academic Progress Rate*, *supra* note 60.

84. See NCAA RESEARCH, *supra* note 76.

85. Hosick, *supra* note 77.

86. *Id.*

87. *Id.*

88. *Id.*

particularly true at schools competing in the Big-5 conferences and at limited resource institutions.<sup>89</sup>

### C. Student-Athlete Graduation Rates

The benefits of having a college degree are undeniable.<sup>90</sup> People who have college degrees make 98 percent more an hour than people without college degrees.<sup>91</sup> Starting with the 1995 entering class, the NCAA has tracked the graduation success rate (GSR) of student-athletes to monitor the academic success of its student-athletes.<sup>92</sup> The graduation success rate builds on the federal graduation rate (FGR).<sup>93</sup> The FGR “assesses only first-time full-time freshmen in a given cohort and only counts them as academic successes if they graduate from their institution of initial enrollment within a six-year period.”<sup>94</sup> GSR adds transfer students, mid-year enrollees, and non-scholarship students to the equation, and it subtracts the students who left the institution while in good academic standing.<sup>95</sup> The NCAA believes GSR is a more accurate measure of student-

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89. See Paul Steinbach, *Record NCAA Graduation Rates Don't Tell the Whole Story*, ATHLETIC BUS. (Dec. 2011), <http://www.athleticbusiness.com/Governing-Bodies/record-ncaa-graduation-rates-don-t-tell-the-whole-story.html>.

90. David Leonhardt, *Is College Worth It? Clearly, New Data Say*, N.Y. TIMES (May 27, 2014), [http://www.nytimes.com/2014/05/27/upshot/is-college-worth-it-clearly-new-data-say.html?\\_r=0&abt=0002&abg=1](http://www.nytimes.com/2014/05/27/upshot/is-college-worth-it-clearly-new-data-say.html?_r=0&abt=0002&abg=1).

91. *Id.*

92. Michelle Brutlag Hosick, *Division I Student-Athletes Show Progress in Graduation Success Rate*, NCAA (Oct. 24, 2013, 6:46 PM), <http://www.ncaa.com/news/ncaa/article/2013-10-24/division-i-student-athletes-show-progress-graduation-success-rate>.

93. *Id.*

94. NCAA RESEARCH STAFF, TRENDS IN GRADUATION-SUCCESS RATES AND FEDERAL GRADUATION RATES AT NCAA DIVISION I INSTITUTIONS, 2 (2014), *available at* <http://www.ncaa.org/sites/default/files/2014-d1-grad-rate-trends.pdf>.

95. *Id.*

athlete graduation rates, because the academic experience of student-athletes is often less conventional than that of other students.<sup>96</sup>

Because the graduation rate of the general student body is measured by the FGR, the FGR must be used to compare the graduation rates of student-athletes and the general student population. For the 2007 entering class, the overall FGR of student-athletes was 66 percent, one percentage point higher than that of the general student population.<sup>97</sup> When comparing subgroups of the student population, student-athletes had higher FGRs every year where data was analyzed.<sup>98</sup> Female student-athletes had a higher FGR than women in the general student population.<sup>99</sup> African-American male student-athletes had an FGR that was 11 percent higher than African-American males in the general student body.<sup>100</sup> However, at the six major conferences, the graduation rate of African-American male student-athletes was more than five percent lower than that of the African-American male student body as a whole.<sup>101</sup>

Since 1995, the overall GSR for student-athletes has increased by 10 percent, which equates to 13,805 more

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96. See Hosick, *supra* note 92 (average number of years student-athletes are in school differs from that of other students).

97. Michelle Brutlag Hosick, *Student-Athletes Earn Diplomas at Record Rate*, NCAA (Oct. 28, 2014, 11:36 AM), <http://www.ncaa.org/about/resources/media-center/news/student-athletes-earn-diplomas-record-rate>. The entering class of 2007 is the most recent year available with complete data. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. SHAUN R. HARPER, ET AL., UNIV. PA., CENTER FOR THE STUDY OF RACE & EQUITY IN EDUC., BLACK MALE STUDENT-ATHLETES AND RACIAL INEQUITIES IN NCAA DIVISION I COLLEGE SPORTS 7 (2013), *available at* [http://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper\\_Williams\\_and\\_Blackman\\_%282013%29.pdf](http://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper_Williams_and_Blackman_%282013%29.pdf).

students graduating.<sup>102</sup> The chair of the NCAA's Committee on Academic Performance, Walter Harrison, attributes the overall increases in the GSR to the academic reforms discussed above.<sup>103</sup>

Although the NCAA has made strides with the graduation rates of its student-athletes, some scholars are alarmed at the persistent gap between the GSR of Caucasian student-athletes and minority student-athletes.<sup>104</sup> In 2010, the GSR for African-American Division I football student-athletes was 60 percent.<sup>105</sup> That same year, the GSR for Caucasian football student athletes was 80 percent.<sup>106</sup> That put the gap in GSR between Caucasian and African-American football student-athletes at 20 percent.<sup>107</sup> Three years later, there was still a 19-percent disparity between GSRs of African-American football student-athletes and Caucasian football student-athletes.<sup>108</sup> The difference in the graduation rates between these two groups is even greater at

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102. Hosick, *supra* note 97.

103. *Id.*

104. See, e.g., Richard Lapchick, *Keeping Score When it Counts: Assessing the 2010-11 Bowl-Bound College Football Teams - Academic Performance Improves but Race Still Matters*, THE INST. FOR DIVERSITY & ETHICS IN SPORTS, 1 (2010), available at [http://www.tidesport.org/Grad%20Rates/2010-11\\_APR-GSR\\_BowlStudy.pdf](http://www.tidesport.org/Grad%20Rates/2010-11_APR-GSR_BowlStudy.pdf); Davis & Harrison, *supra* note 71, at 114-15.

105. Lapchick, *supra* note 104, at 1.

106. *Id.*

107. *Id.*

108. See Steve Reed, *Report: Black Players Left Behind in Graduation Rates of Bowl-Bound Teams*, DIVERSE (Dec. 9, 2013), <http://diverseeducation.com/article/58022/>.

schools with highly competitive football and basketball programs.<sup>109</sup>

#### **D. Student-Athletes Clustering in Majors**

Selecting a major is one step toward developing an interest in a career outside of sports. Some student-athletes during and after graduation have voiced concern that athletics influenced the process of choosing a major.<sup>110</sup> The result of this influence is reflected in the clustering phenomenon.<sup>111</sup> Clustering occurs when a disproportionate number of student-athletes enroll in certain majors.<sup>112</sup>

There are several possible rationales for clustering: The curriculum is easier in those majors, those majors best fit into the inflexible athletic schedule of student-athletes, and athletes are more comfortable in classes with other athletes.<sup>113</sup> Some student-athletes have accused academic advisors of steering them away from majors because they would be too difficult for them to complete while athletes.<sup>114</sup>

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109. Krystal K. Beamon, "Used Goods": *Former African American College Student-Athletes' Perception of Exploitation by Division I Universities*, 77 J. NEGRO EDUC. 352, 354 (2008) (this difference results in African-American student-athletes being used by their universities exclusively for their athletic skills and, consequently, the athletes not reaping the full benefits of having a college education).

110. Jodi Upton & Kristen Novak, *College Athletes Cluster Majors at Most Schools*, USA TODAY (Nov. 19, 2008, 11:20 PM) [http://usatoday30.usatoday.com/sports/college/2008-11-18-majors-graphic\\_N.htm](http://usatoday30.usatoday.com/sports/college/2008-11-18-majors-graphic_N.htm).

111. Ray G. Schneider, Sally R. Ross, & Morgan Fisher, *Academic Clustering and Major Selection of Intercollegiate Student-Athletes*, 44 C. STUDENT J. 64, 64 (2010).

112. *Id.* at 64-65.

113. *Id.* at 68.

114. Stephanie Stark, *College Athletes Suffer the Greatest Injustice from NCAA*, USA TODAY (Aug. 28, 2011, 4:01 PM), <http://college.usatoday.com/2011/08/28/college-athletes-suffer-the-greatest-injustice-from-ncaa/>.



The theme underlying this issue is the academic costs of a desire, by the student athlete and the athletic department, for the student-athlete to remain eligible to participate in athletic competition.<sup>115</sup>

Although the NCAA collects information on student-athletes' majors, it has yet to study the information. When asked about clustering, Walter Harrison stated that clustering could reflect positive trends.<sup>116</sup> As an example, Harrison pointed to clustering of softball student-athletes at one school in a notoriously difficult biology program.<sup>117</sup> The suggestion that clustering is a negative occurrence presupposes the notion that institutions' vetted academic programs do not provide the general student population with an equal academic experience.<sup>118</sup> However, there is no doubt the academic value of some academic courses has been questioned.<sup>119</sup> Others caution that the comparison between the numbers of athletes with those of the general student population in a specific major could be problematic. This is because there are so many more students in the general population spreading out across different majors.<sup>120</sup>

A *USA Today* study found that, out of 142 NCAA member institutions polled, 83 percent had some amount of

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115. See Jeffrey J. Fountain & Peter S. Finley, *Academic Clustering: A Longitudinal Analysis of a Division I Football Program*, 4 J. ISSUES IN INTERCOLLEGIATE ATHLETICS 24, 38 (2011), available at [http://www.csri-jiia.org/documents/puclications/research\\_articles/2011/JIIA\\_2011\\_4\\_2\\_24\\_41\\_Academic\\_Clustering.pdf](http://www.csri-jiia.org/documents/puclications/research_articles/2011/JIIA_2011_4_2_24_41_Academic_Clustering.pdf).

116. Upton & Novak, *supra* note 110.

117. *Id.*

118. Davis & Harrison, *supra* note 71, at 116.

119. See Amy Julia Harris & Ryan Mac, *Stanford Athletes Had Access to List of 'Easy' Classes*, CAL. WATCH (Mar. 9, 2011), <http://californiawatch.org/dailyreport/stanford-athletes-had-access-list-easy-classes-9098>.

120. See Upton & Novak, *supra* note 110.

clustering.<sup>121</sup> Football student-athletes in the Big 12 Conference cluster into majors not as popular with the general student population.<sup>122</sup> Schools with more successful football programs also have a higher percentage of football players clustering. This has led some to suggest that these teams are treated as merely a minor league for the NFL, where students are encouraged to take the easiest route to remain eligible for competition.<sup>123</sup> FARs have also reported that clustering occurs at most schools and even more often at FBS schools.<sup>124</sup>

Clustering is more prevalent among African-American student-athletes, male athletes, and athletes in high profile sports.<sup>125</sup> Superstar athletes, who are highly recruited out of high school and then drafted into the NFL, also exhibit a tendency to cluster.<sup>126</sup>

Clustering is a concern, because it causes student-athletes to enroll in certain majors for the sole purpose of maintaining eligibility to play sports.<sup>127</sup> Because a student's major prepares the student for a particular career, clustering could cause a student-athlete to prepare for a career he or she

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121. *Id.*

122. Schneider, Ross, & Fisher, *supra* note 111, at 68.

123. *See, e.g.,* Fountain & Finley, *supra* note 115, at 38.

124. *See* Brown, *supra* note 31.

125. *See, e.g.,* JAMES L. SHULMAN & WILLIAM G. BOWEN, GAME OF LIFE: COLLEGE SPORTS AND EDUCATIONAL VALUES, 79-80 (2011); James P. Sanders & Kasee Hildenbrand, *Major Concerns? A Longitudinal Analysis of Student-Athletes' Academic Majors in Comparative Perspective*, 3 J. INTERCOLLEGIATE SPORT 213, 229 (2010); Fountain & Finley, *supra* note 115.

126. *See* Fountain & Finley, *supra* note 115, at 35.

127. *Id.* at 28.

may have no interest in pursuing post-college.<sup>128</sup> Clustering can also affect student-athletes' incomes after graduation; because of clustering, student-athletes' projected incomes out of college are lower than non-student athletes' incomes.<sup>129</sup>

### **E. Salaries of Former Student-Athletes vs. Non Student-Athletes**

There has historically been a dearth of research on salaries of former student-athletes compared to their non-athlete counterparts, and the limited research has produced varying results. A 2005 study found athletes receive a mixed and often modest return on their participation in athletics after college.<sup>130</sup> Fifty percent of former student-athletes receive the same average salary in their respective careers as non-athlete college graduates.<sup>131</sup>

Because of the competitive nature instilled in student-athletes at a young age, male student-athletes are more likely to seek out business degrees and higher earnings.<sup>132</sup> When former student-athletes enter into business careers, especially careers in financial services, their entry-level salaries are one-and-a-half- to nine-percent

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128. Kristina M. Navarro, *Toward an Understanding of Career Construction in the 21st Century: A Phenomenological Study of the Life Experiences of Graduating Student-Athletes at a Large Highly-Selective Midwestern University*, ISSUES IN INTERCOLLEGIATE ATHLETICS WORKING PAPER SERIES, 1, 9 (2013) available at [http://sites.education.washington.edu/uwcla/sites/sites.education.washington.edu.uwcla/files/Navarro%202013\\_Full.pdf](http://sites.education.washington.edu/uwcla/sites/sites.education.washington.edu.uwcla/files/Navarro%202013_Full.pdf).

129. Sanders & Hildenbrand, *supra* note 125, at 230.

130. Daniel J. Henderson et al., Inst. for the Study of Labor, *Do Former College Athletes Earn More at Work? A Non-Parametric Assessment*, DISCUSSION PAPER SERIES 1, 14 (2005), available at <http://ftp.iza.org/dp1882.pdf>.

131. *Id.*

132. SHULMAN & BOWEN, *supra* note 125, at 263.

greater than non-athletes' salaries.<sup>133</sup> However, former student-athletes have a higher probability of becoming teachers, earning an average of eight-percent less than non-athletes in that career.<sup>134</sup>

That is not to say a student-athlete's experience as an athlete is not valuable.<sup>135</sup> In fact, top business schools in the country will consider a student's participation in college athletics when evaluating a student's application for a postgraduate program when that student-athlete's GPA and GMAT would not necessarily qualify them for admission.<sup>136</sup> Student-athletes may also earn more in the long term, because some employers are willing to pay a premium for the skills student-athletes develop while playing sports.<sup>137</sup>

College sports teams recognize a student-athlete's after-college experience is important to the athlete, especially to his or her career earnings.<sup>138</sup> Stanford's football program sent out letters to recruits containing the average salary of a Stanford graduate compared to graduates of other schools.<sup>139</sup> However, the letter did not specifically address earnings of student-athletes post graduation, which would have been a more honest reflection of the career experience of student-athletes.<sup>140</sup>

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133. *Id.* at 100; Henderson, *supra* note 130, at 14.

134. Henderson, *supra* note 130, at 14.

135. See SHULMAN & BOWEN, *supra* note 125, at 91.

136. *Id.* at 88-91.

137. *Id.* at 91.

138. See, e.g., Troy Machir, *Stanford's Recruiting Pitch: It's All About the Money*, SPORTING NEWS (Oct. 16, 2014, 4:10 PM), <http://www.sportingnews.com/ncaa-football/story/2014-10-16/stanford-recruiting-letter-money-annual-salary-advantage-college-football>.

139. *Id.*

140. *Id.*

## **F. Student-Athletes' Dual Roles of Student and Athlete**

Athletic identity is the identification of a student-athlete with his or her role as an athlete.<sup>141</sup> Student-athletes often identify more with their athletic role than with their student role.<sup>142</sup> This is true despite the NCAA limiting student-athletes in the amount of time they can participate in their sport per week and requiring student-athletes meet specific academic standards to remain eligible to participate in athletics.<sup>143</sup>

Certain subcategories of student-athletes are more susceptible to over-identifying with their athletic roles than other student-athletes. Female student-athletes have a higher athletic identity than male student-athletes.<sup>144</sup> Athletic identity serves as a barrier to integration within the entire university community for female student-athletes and hinders their development academically and socially.<sup>145</sup> However, studies have shown that a majority of women in C-suite positions are former college athletes.<sup>146</sup> Therefore, a pervasive athletic identity may not always have an adverse affect on a woman's experience in the workplace.

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141. See Tyrance, *supra* note 6, at 24.

142. Lacle McPherson, *Exploring the Relationship between Student-Athletes, Occupational Engagement, and Vocational Identity*, 1 GLOBAL SPORTS BUS. J. 38, 38-40 (2013).

143. *Id.* at 38.

144. Tyrance, *supra* note 6, at 33, 34.

145. *Id.*

146. *Female Executives Say Participation in Sport Helps Accelerate Leadership and Career Potential*, EY (Oct. 10, 2014), <http://www.ey.com/GL/en/Newsroom/News-releases/news-female-executives-say-participation-in-sport-helps-accelerate--leadership-and-career-potential>.

African-American student-athletes also tend to identify more with their athletic role.<sup>147</sup> Isiah Thomas, a former Indiana University basketball player, former college basketball coach, and NBA Hall of Famer, has dedicated his latest years to shedding light on this issue.<sup>148</sup> Thomas cites structural and institutional forces as the main reasons the graduation rates of African-American student-athletes continue to lag behind their Caucasian counterparts.<sup>149</sup> Whether it is because of academic stereotypes or financial pressures, African-American student-athletes overwhelmingly identify with their athletic identity.<sup>150</sup> Over-identification with their athletic role can cause student-athletes to leave college early without degrees to pursue professional sports.<sup>151</sup> Because professional sports careers are short-term, leaving school without a degree to pursue professional sports can leave a student-athlete without the tools necessary for finding adequate long-term employment.<sup>152</sup>

Over-identification with their athletic identity can directly affect student-athletes' career development. Student-athletes who identify more with their athletic identity than with their student identity tend to experience more anxiety associated with career development, and, as a result, the student-athletes are less likely to seek out career services.<sup>153</sup> They also have a more difficult time adjusting to

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147. Isiah Thomas & Na'llah Suad Nasir, *Black Males, Athletes, and Academic Achievement*, HUFF. POST (July 7, 2013, 5:12 AM), [http://www.huffingtonpost.com/isiah-thomas/black-males-athletes-and-\\_b\\_3232989.html](http://www.huffingtonpost.com/isiah-thomas/black-males-athletes-and-_b_3232989.html).

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. Sandstedt, *supra* note 6, at 81.

changes in their career paths, which are inevitable because so few student-athletes will play professional sports.<sup>154</sup>

### G. Funding for Institutionally Provided Services

Although many people think athletic departments make millions of dollars off of their athletics programs each year, only 23 of the 1,100 member institutions make more revenue from their athletics department than they spend.<sup>155</sup> This revenue comes from ticket sales, the NCAA, conferences, and state subsidies.

The NCAA earns nearly all of its revenue from “television and marketing rights fees,” most of which come from the annual Division I men’s basketball tournament.<sup>156</sup> The NCAA distributes about 60 percent of its revenue to Division I schools.<sup>157</sup> During the 2011-2012 season, this equated to about \$503 million in distribution revenue.<sup>158</sup> The Academic Enhancement Fund (Fund) is an example of one program that the NCAA uses to distribute money to its member institutions.<sup>159</sup> The Fund is used to support student-athlete academic services, such as tutoring and salaries for

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154. Tyrance, *supra* note 6, at 30; Krystal Beamon, “I’m a Baller”: Athletic Identity Foreclosure Among African-American Former Student-Athletes, 16 J. AFR. AM. STUD. 195, 195 (2012).

155. *Investing Where It Matters*, NCAA, <http://www.ncaa.org/about/resources/media-center/investing-where-it-matters> (last visited Mar. 10, 2015).

156. *The NCAA Budget: Where the Money Goes*, NCAA, <http://www.ncaa.org/health-and-safety/ncaa-budget-where-money-goes> (last visited Mar. 10, 2015).

157. *Distributions*, NCAA, <http://www.ncaa.org/about/resources/finances/distributions> (last visited Mar. 10, 2015).

158. *See id.*

159. *Id.*

academic staff at member institutions.<sup>160</sup> The Fund also allocates additional resources to limited resource institutions.<sup>161</sup> In 2010, the Fund distributed \$66,000 to each Division I institution.<sup>162</sup>

Institutions can also apply for grants from the NCAA for up to \$2,000 from the “Campus and Conference Services Grant Funding.”<sup>163</sup> The schools can use the money to pay for speakers.<sup>164</sup> Some schools have requested grant funding for workshops that focus on career development.<sup>165</sup>

Universities can also receive money from their state governments, which the universities might then apply to their athletics program.<sup>166</sup> For example, Arizona State University’s athletics department has received more than \$80 million from the institution’s budget since 2005.<sup>167</sup> In 2011, ASU’s athletic subsidy comprised 19 percent of its

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160. See Mark Schlabach, *NCAA: Where Does the Money Go?*, ESPN (July 12, 2011), [http://espn.go.com/college-sports/story/\\_/id/6756472/following-ncaa-money](http://espn.go.com/college-sports/story/_/id/6756472/following-ncaa-money).

161. *Distribution of the Money*, NCAA CHAMPION MAGAZINE, Spring 2010, available at <http://www.ncaachampionmagazine.org/Exclusives/WhereTheMoneyGoes.pdf>.

162. See Schlabach, *supra* note 160.

163. *NCAA Campus and Conference Services*, NCAA, <http://www.ncaa.org/about/resources/leadership-development-programs-and-resources/ncaa-campus-and-conference-services> (last visited Mar. 10, 2015).

164. *Id.*

165. *Id.*

166. See Steve Bercowitz, Jodi Upton, & Erik Brady, *Most NCAA Division I Athletic Departments Take Subsidies*, USA TODAY (July 1, 2013), <http://www.usatoday.com/story/sports/college/2013/05/07/ncaa-finances-subsidies/2142443/>; see also Ronald J. Hansen & Anne Ryman, *College Sports Subsidies Remain Integral Part of Game*, ARIZ. CENT. (Aug. 18, 2012, 11:27 PM), <http://www.azcentral.com/arizonarepublic/news/articles/2012/08/18/20120818college-sports-subsidies-integral.html>.

167. *Id.*



athletic budget.<sup>168</sup> In that same year, all but seven schools from the Big-5 conferences had to subsidize their athletics departments.<sup>169</sup>

Despite its subsidy, ASU has found an alternative way to raise money for its athletics department.<sup>170</sup> During the 2014-2015 school year, ASU imposed a \$150 athletics fee on every student enrolled in the university, creating an influx of \$10 million in funds for the athletic department.<sup>171</sup> It is unclear whether the university will continue to receive the state subsidy in addition to the fee.<sup>172</sup> Student reactions to the athletics fee have been mixed; some students who do not attend games think it is unfair that the school requires them to pay the fee, while other students do not mind helping to fund the athletics program.<sup>173</sup> The ASU athletics department is planning to use the money from the fee for stadium, facility, and equipment improvements.<sup>174</sup>

Institutions also receive money from their conferences.<sup>175</sup> Schools can receive much more from their conferences than from the NCAA if they are members of the Bowl Championship Series, which includes the Big-5

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168. *Id.*

169. *Id.*

170. Scott Coleman, *Arizona State's New \$150 Student Fee for Athletics: Will the Idea Spread to Tucson?*, ARIZ. SONORA NEWS SERV. (May 5, 2014), <http://arizonasonoranewsservice.com/arizona-states-new-150-student-fee-athletics-will-idea-spread-tucson/>.

171. *Id.*

172. See Anne Ryman, *Arizona Regents Approve Tuition, Fee Requests*, AZ CENTRAL (April 3, 2014, 8:56 PM), <http://www.azcentral.com/story/news/arizona/2014/04/03/arizona-regents-tuition-fees-universities/7261413/>.

173. See *id.*; see also Chris Cole, *ASU Student Leaders Propose Fee to Help Fund Athletic Programs*, CRONKITE NEWS (Oct. 10, 2013), <http://cronkitenewsonline.com/2013/10/asu-student-leaders-propose-fee-to-help-fund-athletic-programs/>.

174. Coleman, *supra* note 170

175. *Distribution of the Money*, *supra* note 161.

conferences: the SEC, ACC, Big 12, Pac 12, and Big Ten.<sup>176</sup> These conferences earn revenue from several sources, including television deals and bowl games.<sup>177</sup> The Big-5 conferences are made up of 65 member institutions; in 2013, these schools brought in more than 44 percent of all revenue earned in NCAA athletics.<sup>178</sup> In 2013, the SEC, Big 12, and Big Ten distributed more than \$20 million to each of their member schools.<sup>179</sup>

## H. Institutional Spending on Athletics

Many schools spend more money on support for their student-athletes than on support for their general student body.<sup>180</sup> This is especially true of schools participating in the larger conferences.<sup>181</sup> The highest disparity is in the Southeastern Conference, where spending per student-athlete is \$163,931, compared to only \$13,390 per non-athlete.<sup>182</sup>

Critics are most concerned about the disproportionate spending per student-athlete compared to

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176. *Id.*

177. Chris Smith, *How Massive Conference Payouts are Changing the Face of College Sports*, FORBES (Dec. 26, 2013), [http://www.forbes.com/sites/chris-smith/2013/12/26/how-massive-conference-payouts-are-changing-the-face-of-college-sports/?\\_suid=141437974442109264767486602068](http://www.forbes.com/sites/chris-smith/2013/12/26/how-massive-conference-payouts-are-changing-the-face-of-college-sports/?_suid=141437974442109264767486602068).

178. Paul M. Barrett, *The Insurgents Who Could Bring Down the NCAA*, BLOOMBERG (Aug. 21, 2014), <http://www.businessweek.com/articles/2014-08-21/paying-ncaa-college-athletes-inside-the-legal-battle>.

179. *See id.*

180. Barry Petchesky, *SEC Schools Spend \$163,931 Per Athlete, and Other Ways the NCAA is a Bonfire for Your Money*, DEADSPIN (Jan. 16, 2013), <http://deadspin.com/5976391/sec-schools-spend-163931-per-athlete-and-other-ways-the-ncaa-is-a-bonfire-for-your-money>.

181. *Id.*

182. *Id.*

non-athletes because of how athletic departments are using their funds.<sup>183</sup> About one-third of the money spent on athletics goes toward paying the salaries of the athletics department staff; this includes academic support staff, but a majority of the funding is devoted to the coaching staff.<sup>184</sup> Recently, athletic departments have been criticized for spending money on unnecessary, lavish facilities for student athletes.<sup>185</sup> For example, at the University of Nebraska, each football player has an iPad in his locker.<sup>186</sup> In 2013, the University of Alabama finished \$9 million improvements on its athletic facility, which now includes waterfalls, a theater equipped with video game systems, and stainless steel lockers.<sup>187</sup>

The University of Oregon has what is possibly the most extravagant athletics facility in the country. Phil Knight, founder of Nike, and his wife, were the sole funders of the \$68 million facility.<sup>188</sup> The amenities include a 500-pound rug handmade in Nepal, foosball tables from

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183. Potuto, *supra* note 47, at 897-98.

184. Petchesky, *supra* note 180; Donna M. Desrochers, *Academic Spending Versus Athletic Spending: Who Wins?*, DELTA COST PROJECT, Jan. 2013, at 8, *available at* [http://www.deltacostproject.org/sites/default/files/products/DeltaCostAIR\\_AthleticAcademic\\_Spending\\_IssueBrief.pdf](http://www.deltacostproject.org/sites/default/files/products/DeltaCostAIR_AthleticAcademic_Spending_IssueBrief.pdf) (last visited Mar. 10, 2015).

185. Potuto, *supra* note 47, at 897-98.

186. Brent Yarina, *What's in Your Locker? At Nebraska, There's an iPad*, BIG TEN NETWORK, <http://btn.com/2012/08/30/whats-in-your-locker-at-nebraska-theres-an-ipad/> (last visited Mar. 19, 2015).

187. Andrew Gribble, *More Than Just Eye Candy, Alabama's New Player Friendly Facility Thrives Off 'Functionality'*, AL.COM, [http://www.al.com/alabamafootball/index.ssf/2013/08/alabama\\_players\\_facility.html](http://www.al.com/alabamafootball/index.ssf/2013/08/alabama_players_facility.html) (last updated Aug. 2, 2013, 6:52 AM).

188. Mason Walker, *A Look Inside the \$68 Million Oregon Ducks Football Center*, PORTLAND BUS. J., <http://www.bizjournals.com/portland/blog/real-estate-daily/2013/08/a-look-inside-the-68m-oregon-ducks.html> (last updated Aug. 1, 2013, 3:14 PM).

Barcelona, a 40-yard electronic track, a coaches' locker room with a hydrotherapy pool and televisions embedded in the bathroom mirrors, chairs made out of Ferrari leather, and a ring room displaying past championship rings.<sup>189</sup>

People walking through the three buildings, which are all connected by skywalks, are continuously confronted with recruiting tactics. Outside the locker room, Oregon's mascot is displayed with a dollar sign on his top hat.<sup>190</sup> Finally, visiting recruits can wonder at an art installation of ceramic flying ducks representing the number of Oregon football players drafted by NFL teams.<sup>191</sup>

Schools on the cusp of being competitive in the major conferences have spent more on athletics in recent years than even the most competitive schools, in an effort to remain athletically relevant.<sup>192</sup> Schools justify spending on athletic departments by contending that the expenditures are used as a recruiting tool for both athletes and coaches, resulting in greater success on the field. Greater success leads to more benefits to the university, through greater donations, economic boosts in the community, and student interest.<sup>193</sup> However, winning athletics teams, not limited to those taking the pro-competitive route, generally only bring in modest, if any, returns from donors, student applications,

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189. Greg Bishop, *Oregon Embraces "University of Nike" Image*, N.Y. TIMES (Aug. 2, 2013), [http://www.nytimes.com/2013/08/03/sports/ncaafotball/oregon-football-complex-is-glittering-monument-to-ducks-ambitions.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/08/03/sports/ncaafotball/oregon-football-complex-is-glittering-monument-to-ducks-ambitions.html?pagewanted=all&_r=0).

190. *Id.*

191. *Id.*

192. See Desrochers, *supra* note 184, at 4, 11.

193. *Id.* at 2.

and local revenue.<sup>194</sup> This minimal return has led to calls for schools to curb their spending on athletic programs.<sup>195</sup>

**I. Current NCAA Framework for Student-Athlete Career Development: The CHAMPS-Life Skills Program**

The NCAA allows institutions to provide career development services for student-athletes.<sup>196</sup> NCAA Bylaw 16.3.1.1 states that the NCAA, individual conferences, or the institutions may “finance other academic support, career counseling or personal development services that support the success of student-athletes.”<sup>197</sup> However, the provision for career development is not mandatory.<sup>198</sup>

The NCAA also requires each institution to have a life skills program.<sup>199</sup> Since 1991, the NCAA has made efforts to ensure student-athletes are successful during and after college.<sup>200</sup> The NCAA Foundation and the Division 1A Directors’ Association established the CHAMPS (Challenging Athletes’ Minds for Personal Success)-Life Skills program (CHAMPS).<sup>201</sup> CHAMPS opened for enrollment to member institutions in 1994.<sup>202</sup> Member institutions and conferences are responsible for financially supporting the program.<sup>203</sup> However, the NCAA has awarded grants to its schools ranging from \$500 to \$2,000

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194. *Id.*

195. *Id.* at 11.

196. NCAA DI MANUAL, *supra* note 9, at § 16.3.1.1.

197. *Id.*

198. *Id.*

199. NCAA DI MANUAL, *supra* note 9, at § 16.3.1.2.

200. NCAA, NCAA CHAMPS/LIFE SKILLS PROGRAM BROCHURE 2008-09, at 3 (2008).

201. *Id.*

202. *Id.*

203. *Id.* at 17.

to help the institutions develop their programs.<sup>204</sup> As of 2008, 330 Division I, 155 Division II, and 141 Division III institutions were participating in the program.<sup>205</sup>

The CHAMPS program requires participating institutions to provide career services; however, it does not specify any standards for the delivery of career services or penalties for failure to provide such services.<sup>206</sup> Each member institution is in charge of creating a CHAMPS program, taking into consideration the needs of the institution's student-athletes.<sup>207</sup> However, the institution must structure its program to meet five specific commitments, and each institution has the freedom to decide which commitments its program should most emphasize.<sup>208</sup> The five commitments include: academics, career development, athletics, personal development, and community service.<sup>209</sup> The NCAA allows institutions to meet these commitments by requiring student-athletes to attend workshops or participate in community service activities.<sup>210</sup>

Implementation of the CHAMPS program is not purposed primarily for career development; schools may

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204. *NCAA Awards 57 Inaugural Champs/Life Skills Grants*, NCAA (Sept. 21, 2009), <http://fs.ncaa.org/Docs/PressArchive/2009/Announcements/20090921%2BChamps%2BLife%2BSkills%2BRIs.html>.

205. NCAA CHAMPS/LIFE SKILLS BROCHURE 2008-09, *supra* note 200, at 16.

206. Navarro, *supra* note 128, at 28-29.

207. NCAA CHAMPS/LIFE SKILLS BROCHURE 2008-09, *supra* note 200, at 5.

208. *Id.* at 6-7; *CHAMPS/Life Skills*, ALA. ATHLETICS, <http://www.rolltide.com/ot/champs-life-skills.html> (last visited Mar. 28, 2015).

209. NCAA CHAMPS/LIFE SKILLS BROCHURE 2008-09, *supra* note 200, at 6-7.

210. *Id.* at 6.

focus primarily on other prongs, such as community service.<sup>211</sup> Further, the programs are not tailored to any particular category of student-athletes, which can be problematic, because some student-athletes are at a higher risk of falling behind in career development.<sup>212</sup>

Wake Forest, a Division I institution, has a CHAMPS program.<sup>213</sup> Wake Forest recently published its *2013 CHAMPS Community Report*, highlighting the community service projects and hours its student-athletes had completed in the previous year.<sup>214</sup> The report also detailed the results of Wake Forest's CHAMPS Cup, a competition between the varsity teams at the school based on each team's completion of the CHAMPS commitments.<sup>215</sup>

Many schools have created a cup system.<sup>216</sup> In most cup systems, for teams to score points for career development, student-athletes have to show they attended

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211. See CHAMPS, WAKE FOREST STUDENT ATHLETE SERV., <http://www.wakeforestsports.com/sass/sass-champs.html> (last visited Mar. 27, 2015).

212. Tyrance, *supra* note 6, at 35.

213. See CHAMPS, *supra* note 211.

214. See WAKE FOREST, 2012-2013 WAKE FOREST ATHLETICS CHAMPS COMMUNITY REPORT (2013), *available at* [http://issuu.com/ruskosce/docs/2013\\_champs\\_community\\_report\\_pdf\\_75de57f4fd4a8b](http://issuu.com/ruskosce/docs/2013_champs_community_report_pdf_75de57f4fd4a8b).

215. See *id.*

216. TEX. A&M, TEXAS A&M UNIVERSITY ATHLETICS AND THE CHAMPS/LIFE SKILLS PROGRAM: IN PURSUIT OF THE AGGIE CUP . . . , *available at* [http://grfx.cstv.com/photos/schools/tam/genrel/auto\\_pdf/aggie-cup-brochure.pdf](http://grfx.cstv.com/photos/schools/tam/genrel/auto_pdf/aggie-cup-brochure.pdf); *Center for Student Success: CHAMPS Life Skills*, IND. STATE UNIV., <http://www.indstate.edu/cfss/programs/athletes/champslifeskills.htm> (last visited Mar. 27, 2015); *CHAMPS Cup and Team Awards*, UNIV. WASH. ATHLETICS, *available at* [http://www.uwathletics.com/academic\\_services/champs\\_7609.pdf](http://www.uwathletics.com/academic_services/champs_7609.pdf).

seminars or workshops on issues such as résumé writing, dressing for interviews, and using job search tools.<sup>217</sup> Wake Forest's report states that its Cup was created to incentivize its teams to complete more community services hours.<sup>218</sup> Although volunteering may provide student-athletes valuable skills to use once in their careers, it may not necessarily be the best way for student-athletes to explore career interests.<sup>219</sup> There exists a link for career development on the Wake Forest CHAMPS-Life Skills website.<sup>220</sup> The school "strongly encourages" student-athletes to visit career services during their time at school.<sup>221</sup> Career services specific to student-athletes are only available in the morning, once a week in the athletic department, and student-athletes may also visit the general career services whenever those times are available.<sup>222</sup>

The University of Alabama's athletics website has a page for its CHAMPS-Life Skills Program.<sup>223</sup> Under the heading of career development, the website provides student-athletes with the web address to the school's non-athletic career services department.<sup>224</sup> The University of Arizona (Arizona) has a more extensive career development

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217. TEX. A&M, *supra* note 216.

218. *See* WAKE FOREST, *supra* note 214.

219. *Serving the Community Can Help People in School and in Their Careers*, STRAYER UNIV. (Feb. 10, 2014) <http://www.strayer.edu/buzz/career-advancement/serving-the-community-can-help-people-in-school-and-in-their-careers/#sthash.ediFCHl6.dpbs>.

220. *See* CHAMPS, *supra* note 211.

221. *See id.*

222. *See id.*

223. *See* CHAMPS/Life Skills, ALA. ATHLETICS, <http://www.rolltide.com/ot/champs-life-skills.html> (last visited Mar. 27, 2015).

224. *See id.*



website for its C.A.T.S. Life Skills program.<sup>225</sup> Arizona gives student-athletes guidance regarding where they can find help with picking majors, securing internships, and finding jobs.<sup>226</sup> However, linking to the non-athletic career services or other external career sites provide most of the information on the site.<sup>227</sup>

Despite CHAMPS being the only career development program the NCAA endorses, the NCAA has yet to test the effectiveness of CHAMPS for student-athlete career development.<sup>228</sup> CHAMPS is now under the umbrella of the NCAA's Student-Athlete Affairs.<sup>229</sup> It is unclear whether the NCAA monitors its member institutions' implementation of career development under the auspices of the life skills program.

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225. See *C.A.T.S. Life Skills Program – Career Development*, UNIV. ARIZ. ATHLETICS, [http://www.arizonawildcats.com/ViewArticle.dbml?&DB\\_OEM\\_ID=30700&ATCLID=208236237](http://www.arizonawildcats.com/ViewArticle.dbml?&DB_OEM_ID=30700&ATCLID=208236237) (last visited Mar. 27, 2015).

226. See *id.*

227. See *id.*

228. Tyrance, *supra* note 6, at 36.

229. Navarro, *supra* note 128, at 10.

## **J. Model Institutional Student-Athlete Career Services**

### 1. University of Michigan

The University of Michigan has a model student-athlete career development program, called M-PACT, designed to help student-athletes “discover, prepare for, and transition to their lives after graduation.”<sup>230</sup> M-PACT has a career-shadowing program allowing student-athletes to gain experience in careers they are interested in by shadowing leaders in that career.<sup>231</sup> The program also offers career information sessions, where local employers speak to students about employment opportunities.<sup>232</sup> A unique facet of M-PACT is the 30 Minute Mentor Program, which allows a student-athlete to interact one-on-one with a mentor in the career of the athlete’s choice.<sup>233</sup>

### 2. Arizona State University

Arizona State University has also established a career development program for its student-athletes. It offers career services tailored to each year a student-athlete attends the university and includes a one-credit course for junior and senior student-athletes to help them prepare for careers.<sup>234</sup> The course teaches networking, interviewing, and financial

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230. *Michigan Professional and Career Transition (M-PACT) Program*, MGOBLUE.COM, <http://www.mgoblue.com/asp/m-pact.html> (last visited Mar. 27, 2015); *see also M-PACT Programs and Services*, MGOBLUE.COM, <http://www.mgoblue.com/asp/m-pact-programs.html> (last visited Mar. 27, 2015).

231. *See Michigan Professional and Career Transition (M-PACT) Program*, *supra* note 230.

232. *See id.*

233. *See id.*

234. Life Skills Programming: Outline of Offerings, Ariz. State Univ., 2012-2013 (on file with author).

planning; however, the course does not include an internship or externship component.<sup>235</sup>

Despite its good intentions, ASU's program does not appear to engage very many student-athletes.<sup>236</sup> Only 17 student-athletes participated in the career course during the 2012-2013 school year.<sup>237</sup> ASU also holds a career forum where student-athletes get the opportunity to meet one-on-one with employers; however, less than 30 percent of junior and senior student-athletes attended the event in 2013.<sup>238</sup> The most highly attended parts of the program are the Freshman Cohort events, which take place three times a year.<sup>239</sup> These events attempt to help student-athletes explore their identities and set goals.<sup>240</sup> Participation in career services declines significantly as student-athletes move up each year, notwithstanding the fact that the athletic department mandates junior and senior student-athletes attend career programming.<sup>241</sup> More than 50 percent of the entire student-body at ASU will participate in internships prior to graduation.<sup>242</sup> However, the school does not track student-athlete participation in internships.

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235. *Id.*

236. 2013-2014 OSAD Events Attendance Roster, Ariz. State Univ. (on file with author) [hereinafter OSAD Attendance].

237. Life Skills Programming: Outline of Offerings, *supra* note 234.

238. *See id.*; OSAD Attendance, *supra* note 236.

239. *Id.*

240. *Id.*

241. Email Correspondence between author and Natalie Thackrah, Assistant Dir. of the Office of Student-Athlete Development, Ariz. State Univ. (Nov. 3, 2014) (on file with author) (referencing OSAD Attendance, *supra* note 236).

242. *ASU Highlights*, ARIZ. STATE UNIV., <https://eoss.asu.edu/cs/asuhighlights> (last visited Mar. 28, 2015).

ASU's entire life skills program, including career development, costs less than \$5,000 per year.<sup>243</sup> Most of that cost is for catering at the various events.<sup>244</sup> The university does not track the employment rates of its student-athletes post graduation.<sup>245</sup> Although ASU offers a range of career services to its student-athletes, it is difficult to gauge the effectiveness of the program with so few student-athletes participating and so little follow up after their graduations.

### 3. University of Memphis

In 2014, the NCAA issued a \$10,000 NCAA Innovations in Research and Practice Grant to a group of researchers from the University of Memphis (Memphis) to find a "career readiness solution for student-athletes."<sup>246</sup> Out of 137 proposals, Memphis' proposal was one of six selected to receive the grant.<sup>247</sup> Memphis recognized that student-athletes face barriers to career development, including awareness, motivation, and time demands, putting them at a

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243. Correspondence with Natalie Thackrah, *supra* note 241.

244. *Id.*

245. *Id.*

246. J.T. Mullen, *U of M Research Team Given NCAA Grant*, DAILY HELMSMAN (Apr. 22, 2014), <http://www.dailyhelmsman.com/news/view.php/345589/U-of-M-research-team-given-NCAA-grant->. The grant program focuses on research and pilot programs that improve student-athlete wellbeing and mental health. See Michelle Brutlag Hosick, *NCAA Grants Will Fund Research That Benefits Student-Athletes*, NCAA (Apr. 10, 2014, 8:25 AM) <http://www.ncaa.org/about/resources/media-center/news/ncaa-grants-will-fund-research-benefits-student-athletes>.

247. *U of M Receives NCAA Grant to Help Prepare Student-Athletes for Careers*, UNIV. MEMPHIS (Apr. 18, 2014), <http://www.memphis.edu/mediaroom/releases/apr14/ncaagrants.php>.

disadvantage when they apply for jobs.<sup>248</sup> Memphis used the grant to develop a pilot program to test how student-athletes' participation in experiential learning enhances their career development.<sup>249</sup> Student-athletes participated in the pilot program in the summer of 2014. Memphis offered the class to junior and senior football and women's basketball student-athletes, because the researchers thought those groups were the least likely to participate in career development on their own.<sup>250</sup>

The program was part of the student-athletes' academic curriculum; the student-athletes who enrolled received seven credits for participating in group projects, presentations, and internships.<sup>251</sup> The first half of the class taught the students business concepts, while the second half focused on externships.<sup>252</sup>

The program placed almost all of the student-athletes with the same employer, Service-Master, for the externship portion; none of the externships were paid.<sup>253</sup> The instructor found that student-athletes who were less prepared academically did not finish the externship experience.<sup>254</sup> To measure the effectiveness of the program, the school tested the career development of student-athletes pre- and post-participation in the class;<sup>255</sup> however, the school does not

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248. See Louis Goggans, *U of M Receives \$10,000 NCAA Grant For Student-athlete Program*, MEMPHIS FLYER (Apr. 29, 2014, 1:31 PM), <http://www.memphisflyer.com/NewsBlog/archives/2014/04/29/u-of-m-receives-10000-ncaa-grant-for-student-athlete-program>; Telephone Interview with Dr. Tim Ryan, Associate Professor of Sport and Leisure Management, Univ. Memphis (Nov. 21, 2014).

249. See Mullen, *supra* note 246.

250. See Interview with Dr. Tim Ryan, *supra* note 248..

251. See Mullen, *supra* note 246.

252. See Interview with Dr. Tim Ryan, *supra* note 248.

253. See *id.*

254. See *id.*

255. See Goggans, *supra* note 248.

currently have plans to track the employment of the student-athletes after graduation.<sup>256</sup> Memphis also provides career development opportunities to its student-athletes through the CHAMPS program.<sup>257</sup>

#### **K. Direct NCAA Career Assistance to Student-Athletes**

The NCAA recognizes that student-athletes, regardless of their sport or their level of athletic skill, will likely need to find jobs outside of athletics after graduation, because most of them “will go pro in something other than sports.”<sup>258</sup> Student-athletes can seek out various NCAA services for help in finding jobs or scholarships after graduation.<sup>259</sup> One such service is the Career in Sports Forum, where each year the NCAA selects 200 student-athletes to travel to Indianapolis to explore careers in sports.<sup>260</sup> The member institutions must first nominate these student-athletes; the NCAA urges schools to consider gender and racial diversity when choosing which student-athletes to nominate.<sup>261</sup>

The NCAA also provides student-athletes with multiple opportunities to pursue post-graduate

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256. See Interview with Dr. Tim Ryan, *supra* note 248.

257. *Career Development*, UNIV. MEMPHIS, [http://www.memphis.edu/lifskills/career\\_development.php](http://www.memphis.edu/lifskills/career_development.php) (last visited Mar. 28, 2015).

258. *Investing Where It Matters*, NCAA, <http://www.ncaa.org/about/resources/media-center/investing-where-it-matters> (last visited Mar. 28, 2015).

259. *Career in Sports Forum*, NCAA, <http://www.ncaa.org/about/resources/leadership-development-programs-and-resources/career-sports-forum> (last visited Mar. 28, 2015).

260. *Id.*

261. *Id.*

scholarships.<sup>262</sup> The Walter Byers Post-Graduate Scholarship awards \$24,000 a year to one male and one female student for postgraduate schooling; the scholarship can be renewed upon evidence of the student's academic success at the post-graduate institution.<sup>263</sup>

However, the NCAA does not seem to prioritize preparing student-athletes for careers outside of sports. Preparation for life after sports is the only category on the NCAA's list of 10 values of playing college sports that mentions preparing students for careers outside of sports, and it is listed last.<sup>264</sup> Much of the list is dedicated to the idea that participating in college athletics will give student-athletes indirect career benefits like learning to work as a team and developing time management skills.<sup>265</sup>

#### **L. Career Development of Student-Athletes**

Reportedly, 15 percent of student-athletes have not planned for careers after college.<sup>266</sup> Even when student-athletes do start planning for non-sport careers during college, the planning usually does not occur until their college sports careers are over, often too late to pick the right majors and gain career experience.<sup>267</sup>

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262. See, e.g., *NCAA Postgraduate Scholarship Program*, NCAA, <http://www.ncaa.org/ncaa-postgraduate-scholarship-program> (last visited Mar. 20, 2015); *Walter Byers Postgraduate Scholarship Program*, NCAA, <http://www.ncaa.org/walter-byers-postgraduate-scholarship-program> (last visited Mar. 20, 2015).

263. *Walter Byers Postgraduate Scholarship Program*, *supra* note 262.

264. *The Value of College Sports*, NCAA, <http://www.ncaa.org/student-athletes/value-college-sports> (last visited Mar. 20, 2015).

265. *Id.*

266. See LEFFLER, *supra* note 3, at 109.

267. McPherson, *supra* note 142, at 43-44.

The time deficit that student-athletes face can also cause them to choose careers not right for them.<sup>268</sup> Student-athletes often forego participating in internships or externships, which prevents them from gauging their career interests and building their résumés.<sup>269</sup> As a solution, some scholars have suggested athletic departments could offer internships to student-athletes within their athletic departments.<sup>270</sup> Internships in sports would help student-athletes realize they can pursue careers in sports that do not involve playing.<sup>271</sup> Despite the fact that most student-athletes do not get the opportunity to participate in externships, they cite practical experience, usually obtained outside of the classroom, as the most beneficial influence in career preparation.<sup>272</sup>

Full scholarship student-athletes sometimes face career misalignment, which occurs when athletes are in majors that will not qualify them for their career aspirations.<sup>273</sup> Football student-athletes that cluster in majors exhibit the most career misalignment.<sup>274</sup>

Student-athletes believe career transition assistance should not come solely from the general career services but should also come from the athletics department and coaches.<sup>275</sup> Because student-athletes interact the most with their coaches, the student-athletes likely trust that the coaches have the students' best interests in mind and would be the best people to advise them on important life decisions

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268. Navarro, *supra* note 128, at 9.

269. See Stark, *supra* note 114; see also Rachell Buell, *How Jocks Rock the Job Hunt*, THE MUSE, [https://www.themuse.com/advice/how-jocks-rock-the-job-hunt?es\\_p=123345](https://www.themuse.com/advice/how-jocks-rock-the-job-hunt?es_p=123345) (last visited Mar. 24, 2015).

270. See, e.g., Tyrance, *supra* note 6, at 35.

271. *Id.*

272. *Id.*

273. NAVARRO, *supra* note 128, at 17.

274. See *id.* at 18.

275. See LEFFLER, *supra* note 3, at 98, 100.



like career choice.<sup>276</sup> However, student-athletes have complained their overreliance on athletics has taken away from their career search and has left them feeling less prepared for life after athletics, because they were not forced to seek out career assistance.<sup>277</sup>

### **M. Gender and Career Development**

Recent studies have shown female student-athletes are less knowledgeable about career planning than male student-athletes.<sup>278</sup> Women in the general student body also tend to perceive more issues with career development and academics than their male counterparts.<sup>279</sup> These findings contradict research from the early '90s suggesting that female student-athletes were better prepared for careers after sports.<sup>280</sup> Multiple factors could have affected this change.<sup>281</sup> One possible rationale for this variation is women's sports have changed in the past few decades, with more women participating in intercollegiate sports because of Title IX's equal funding mandate for male and female sports.<sup>282</sup> The level of competition within women's sports has also increased; women's teams are highly competitive, and they place a greater emphasis on winning than they did in the past.<sup>283</sup>

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276. *See id.*

277. NAVARRO, *supra* note 128, at 23.

278. Tyrance, *supra* note 6, at 30.

279. AMERICAN COLL. HEALTH ASS'N, AMERICAN COLLEGE HEALTH ASSOCIATION NATIONAL COLLEGE HEALTH ASSESSMENT, SPRING 2013 REFERENCE GROUP EXECUTIVE SUMMARY 15 (2013), available at [http://www.acha-ncha.org/docs/ACHA-NCHA-II\\_ReferenceGroup\\_ExecutiveSummary\\_Spring2013.pdf](http://www.acha-ncha.org/docs/ACHA-NCHA-II_ReferenceGroup_ExecutiveSummary_Spring2013.pdf).

280. Tyrance, *supra* note 6, at 31.

281. *Id.*

282. *Id.*

283. *Id.*

Female student-athletes are also less likely to feel confident in their career potential.<sup>284</sup> They often cite lack of involvement in campus life outside of their athletic activities as the reason they do not feel as prepared for careers.<sup>285</sup> Some have suggested that, because female student-athletes have been falling behind in career development, athletic departments should offer specialized career services to female student-athletes.<sup>286</sup> These programs should help female student-athletes integrate into the rest of the university so that they gain experience and develop interests outside of sports.<sup>287</sup>

#### **N. Is There a Need for a Separate Model of Career Services for Student-Athletes?**

Twenty-eight percent of the college student population as a whole visits career services at their school two to three times a semester.<sup>288</sup> Generally, student-athletes are slower than their non-athlete peers at developing career plans.<sup>289</sup> Some scholars have suggested that student-athletes who want to pursue career development may find that their athletic training and competition schedules make it very difficult to pursue the career services that are offered to the entire student body.<sup>290</sup>

During college, student-athletes face additional challenges to career choices unlike those of the general student population.<sup>291</sup> These challenges come from a

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284. *Id.*

285. *Id.*

286. *Id.* at 34.

287. *Id.*

288. *Student Survey: Use of Career Services Rises for Class of 2013*, NACE (Oct. 16, 2013), <http://www.nacweb.org/s10162013/use-of-career-services-student-survey-2013.aspx> (based on 2013 statistics).

289. See Shurts & Shoffner, *supra* note 12, at 98.

290. See Sandstedt, *supra* note 6, at 81.

291. See LEFFLER, *supra* note 3, at 1-2, 4.

student-athlete's voluntary or involuntary disengagement from sports.<sup>292</sup> Many student-athletes structure their entire life around their athletic identity, which in most instances is abruptly stripped from them upon graduation.<sup>293</sup> Once student-athletes lose their athletic identity, they must begin developing new identities for themselves.<sup>294</sup> Therefore, some argue student-athletes require a career services program specifically tailored to their specific needs.<sup>295</sup> However, others have argued the career services offered to the general student population should suffice, as long as the career services' staff collaborates with the athletic department in motivating student-athletes to participate in career development.<sup>296</sup>

### III. ANALYSIS

During college, student-athletes are pulled in many directions. They are responsible for performing well academically and athletically. For many student-athletes, the pressure to perform athletically takes over their entire college experience despite the fact that student-athletes usually do not participate in competitive athletics in the last three-fourths of their lives; there are approximately 460,000 student-athletes competing in the NCAA each year and only a small percentage of them will play professional athletics

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292. *See id.*

293. *See id.* at 3.

294. *See id.* at 10.

295. *See, e.g., id.* at 92; *see also* Interview with Dr. Tim Ryan, *supra* note 248; Matthew P. Martens & Felissa K. Lee, *Promoting Life-Career Development in the Student-Athlete: How Can Career Centers Help?*, 25 J. CAREER DEV. 123, 133 (1998).

296. *See* Martens, *supra* note 295.

after college.<sup>297</sup> Nevertheless, many student-athletes do not consider what career path they will take after sports end.<sup>298</sup>

Students who use career services are more likely to find jobs.<sup>299</sup> Student-athletes who begin planning for careers while they are in college will have easier transitions when their athletic career ends.<sup>300</sup> Therefore, career development should be mandatory for every student-athlete.

#### **A. Inadequacy of Current Career Services for Student-Athletes**

The NCAA has mandated for decades that student-athletes meet various academic standards to remain eligible to compete in athletics.<sup>301</sup> The NCAA has also conditioned its member institutions' eligibility to participate in competitions dependent on their students' academic eligibility and retention.<sup>302</sup> Despite all of these requirements, student-athletes continue to struggle with graduation rates and eligibility.<sup>303</sup>

Currently, the NCAA only suggests that schools offer career services to their student-athletes; the NCAA neither mandates the services nor sets any standards for the delivery of the services. This is true despite the fact that

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297. *Probability of Competing Beyond High School*, NCAA, <http://www.ncaa.org/about/resources/research/probability-competing-beyond-high-school> (last visited Mar. 20, 2015).

298. See *College Athletes Optimistic About Financial Future*, *supra* note 4.

299. Kerry Hannon, *Consider a School's Career Services Before Applying*, U.S. NEWS (Apr. 15, 2010, 12:00 AM), <http://www.usnews.com/education/articles/2010/04/15/consider-a-schools-career-services-before-applying>.

300. See LEFFLER, *supra* note 3, at 110.

301. NCAA DI MANUAL, *supra* note 9, at § 2.12.

302. Blackman, *supra* note 55.

303. Hosick, *supra* note 77.

student-athletes often lag behind their peers in career development. Unlike the NCAA's past response to low academic achievement and graduation rates, the NCAA has failed to adequately respond to student-athlete career development. This cannot continue; the NCAA must require that member institutions make career development an integral part of student-athletes' college experiences.

By not mandating participation in career services, the NCAA is assuming student-athletes will independently develop career plans like non-athletes, thus failing to recognize the connection between student-athletes' athletic experiences and academic and career development experiences. A student-athlete's athletic experience informs the rest of his or her life. Not only did CHAMPS not make career development a priority in the program, but it also did not provide any standards for the implementation of career development at member institutions, which could be the reason the NCAA has failed to measure its efficacy.

When left to their own devices, member institutions have not succeeded in motivating student-athletes to participate in career services.<sup>304</sup> This is not to say that schools do not provide any services; in fact, schools like the University of Michigan and ASU have implemented quite in-depth, innovative career services for their student-athletes. However, institutions currently have great discretion with career services, and there is no outside entity that holds them accountable for low student-athlete participation in career services.

Critics of this plan may argue that mandating that student-athletes participate in career services restricts the student-athletes' autonomy to make these life decisions on their own. However, that argument ignores the fact that the

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304. Correspondence with Natalie Thackrah, *supra* note 241.

NCAA and its member institutions already mandate student-athletes participate in academic programs. This program is not taking career decisions away from student-athletes; instead, it is helping them to better make those decisions. Others may argue that student-athletes lack the time to participate in these programs and that member institutions lack the resources to provide more extensive career services. However, the following few sections will provide solutions for those concerns.

It seems like the NCAA recognizes the gravity of this problem, awarding one of only six research grants available in 2014 to the University of Memphis to study the effects of a proposed career development program on student-athletes.<sup>305</sup> However, this grant came at a time when the NCAA had warned that career counseling could be one of the student-athlete services cut if student-athletes are allowed to unionize.<sup>306</sup>

This article's proposed solution will highlight three key areas of amateur athletics affecting both the NCAA and its member institutions: regulation, revenue, and reputation. The NCAA must adopt a bylaw mandating institutions require student-athletes to participate in at least a minimum set of career services. It will also need to develop penalties for an institution's failure to ensure its student-athletes participate in career development programs at the institution.

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305. See Hosick, *supra* note 246.

306. *NCAA Urges Schools to Discuss Pitfalls of Unions*, AP NEWS (Apr. 12, 2014, 5:54 PM) <http://bigstory.ap.org/article/ncaa-urges-schools-discuss-pitfalls-unions> (it is not clear whether the NCAA is referring to funding for academic support that it gives to the schools or if it is suggesting that member institutions will cut their own funding for such programs in order to afford paying players or defending lawsuits).

## **B. Proposed Career Development Program**

The NCAA must ensure student-athletes are active in their career development. This means it must go further than its CHAMPS program, which simply encouraged institutions to offer career services to student-athletes at the institutions' discretion. Therefore, the NCAA must mandate its member institutions require student-athletes to participate in career development. Implementing a career development program will not only ensure student-athletes prepare for their future careers, but it will also increase student-athlete success in the academic programs of the school.

The NCAA should require that all Division I schools meet the career development guidelines. The NCAA's recent grant of independence to the Big-5 conferences has caused many people to question how the NCAA can continue to provide a competitive balance when the Big-5 will have a greater ability to offer financial incentives to high school recruits to attend schools in those conferences.<sup>307</sup> This movement, however, could provide opportunities for student-athlete career development. For instance, the schools not able to provide the economic incentives that the Big-5 conference schools will offer to recruits can use the implementation of an effective career development program as a benefit. It would be a less expensive benefit for these schools to provide to student-athletes, compared to other recruiting ploys, such as upgraded athletics facilities. The University of Michigan has recognized that a well-developed career services department can be an effective recruiting tool, stating that its M-PACT program will

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307. Patrick Rishe, *Will Big-5 Autonomy Create Greater Competitive Imbalance in College Sports*, FORBES (Aug. 7, 2014, 6:24 PM), [http://www.forbes.com/sites/prishe/2014/08/07/will-big-5-autonomy-create-greater-competitive-imbalance-in-college-athletics/2/?&\\_suid=141582510581709413537704385817](http://www.forbes.com/sites/prishe/2014/08/07/will-big-5-autonomy-create-greater-competitive-imbalance-in-college-athletics/2/?&_suid=141582510581709413537704385817).

“greatly increase its attractiveness to the best and the brightest by servicing student-athletes’ number one priority aside from academic and athletic support[:] pursuing a career path after graduation.”<sup>308</sup>

The autonomy also allows the Big-5 conferences to set the amount of time student-athletes can devote to athletics each week.<sup>309</sup> Although some may argue competition will drive the conferences to increase allowable participation time, others predict the conferences will actually restrict participation time.<sup>310</sup> Restricting participation time in athletics could give student-athletes in the Big-5 conferences more time to devote to career development. Therefore, schools in large and small conferences could apply this program with different benefits to each.

### 1. Career Development Bylaw

The NCAA should adopt the following bylaw mandating student-athlete participation in career services:

**16.3.1.3 Career Development.** Institutions shall make career development programs available to student-athletes. The institutions shall mandate that student-athletes participate in the career development programs, which at the least shall consist of mandatory participation in career counseling and internships.

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308. See *Michigan Professional and Career Transition (M-PACT) Program*, *supra* note 230.

309. Mark Tracy, *Areas of Autonomy, What Do They Mean*, N.Y. TIMES (Aug. 6, 2014), [http://www.nytimes.com/interactive/2014/08/06/sports/ncaa-autonomy-translation.html?\\_r=0](http://www.nytimes.com/interactive/2014/08/06/sports/ncaa-autonomy-translation.html?_r=0).

310. *Id.*



The NCAA should set out best practices for its member institutions to use when creating career development programs. The following are various career development strategies, some based on systems already employed by member institutions, that the NCAA could allow its member institutions to implement in satisfaction of the career development mandate.

## 2. Career Counseling

Student-athletes face unique challenges that the rest of the student population does not face. By the time they graduate, student-athletes have spent around 18 years practicing and competing in their sports. The sport retirement process can be an emotional and difficult time for a student-athlete.<sup>311</sup> Sometimes the retirement process is a welcomed change, and other times it happens when an athlete least expects it to occur. To help student-athletes cope with the stress that comes with transitioning from competitive athletics to careers outside of sports, career counselors must know how to deal with these unique circumstances.

Many schools offer career counseling to their student-athletes, but they do not make it mandatory. At ASU, student-athletes are required to take an interest assessment after their first year of school,<sup>312</sup> but it is not clear to what extent, if any, the results are discussed with the student-athletes or if they are given help with tailoring their academic careers to their interests.<sup>313</sup>

Therefore, institutions should mandate that student-athletes meet with their career counselors each semester the

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311. Beamon, *supra* note 154, at 355.

312. Life Skills Programming: Outline of Offerings, *supra* note 234.

313. *Id.*

student-athletes are in school, to ensure the student-athletes develop and know how to pursue their interests. Institutions should not wait until student-athletes are finished participating in college athletics to start counseling student-athletes for their future careers. Instead, it is important for student-athletes to receive career-planning help during each year of college, because their athletic careers could end at any time, due to injury or eligibility issues.

The counseling process must involve genuine major counseling that helps student-athletes get and stay on track to earn degrees in majors that correspond with their career goals. To reduce the negative effects of clustering and career misalignment, the counselors must refrain from pressuring student-athletes into choosing majors that are easier for student-athletes to maintain athletic eligibility. If counselors pressure student-athletes into choosing majors the athletes are not interested in, the athletes will graduate with degrees they cannot apply to their career goals. To ensure counselors are not swayed by athletic concerns, the student-athletes should visit career counselors available to the general student population. Utilizing existing career counselors will also allow schools to cut down on the cost of implementing the career development program, because the schools will not have to hire new career counselors.

The program should also be tailored toward the subcategories of student-athletes who have shown the least amount of career development in the past, specifically female, African-American, and high-revenue student-athletes. These are the three categories of student-athletes that identify the most with their athletic roles, exhibit academic clustering, and have less developed career

plans.<sup>314</sup> African-American student-athletes are also greatly behind in graduation rates.<sup>315</sup> Therefore, engaging with African-American student-athletes about the importance of earning a degree and planning for life after sports is very important and could be a key to them staying in college even after involuntary sport retirement, such as due to injuries that may occur during college.<sup>316</sup>

To help these categories of student-athletes explore their other roles and create interests outside of sports, counselors should encourage them to participate in activities on campus not involving athletics, such as clubs and other on-campus organizations. Although some may argue that student-athletes will not take time to explore their interests, requiring the student-athletes to meet regularly with their career counselors may make them feel like they are being held accountable. By failing to foster an environment where student-athletes participate in the school holistically, institutions have been unsuccessful in realizing the NCAA's purpose, because they have not maintained "the athlete as an integral part of the student body."<sup>317</sup>

The costs of providing adequate career counseling to student-athletes will include training existing career counselors in the exceptional college experiences of student-athletes. Currently, the NCAA encourages member institutions to send employees who work in the area of student-athlete development to the NCAA's Life Skills

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314. Sanders & Hildenbrand, *supra* note 125; Beamon, *supra* note 109, at 352; Thomas & Nasir, *supra* note 147.

315. Beamon, *supra* note 109, at 352..

316. HANOVER RESEARCH, BEST PRACTICES IN CAREER SERVICES FOR GRADUATING STUDENTS 5-6 (2012), *available at* <http://www.hanoverresearch.com/wp-content/uploads/2012/04/Best-Practices-in-Career-Services-for-Graduating-Students-Membership.pdf>.

317. NCAA DI MANUAL, *supra* note 9, at § 2.5.

Symposium.<sup>318</sup> This workshop would be the best forum for informing career counselors of the needs of student-athletes and for training the counselors in how to best help student-athletes with their career development. At the symposium, most of the discussion involves how to engage both the academic and athletic departments in student-athlete development.<sup>319</sup> This is especially important when trying to keep the major counseling and other services above reproach.

The NCAA pays for hotel and meal costs of those who attend, and therefore, the institutions' costs of training the counselors would be minimal, likely limited to flights and other ancillary expenses.<sup>320</sup> Instead of simply encouraging career counselors to attend the symposium, the NCAA should mandate attendance each year, so that the counselors receive ongoing training. The symposium would also be the best setting for the NCAA to monitor and receive reports on issues such as clustering and career development participation.

### 3. Mentor Program

Many schools offer career fairs for their student-athletes, but the University of Michigan's M-PACT program took networking further with its 30-minute mentor program. The program allows student-athletes to have 30-minute, one-on-one interactions with professionals working in

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318. *Life Skills Symposium*, NCAA, <http://www.ncaa.org/about/resources/leadership-development-programs-and-resources/life-skills-symposium> (last visited Mar. 28, 2015).

319. NCAA, REPORT OF THE NCAA LIFE SKILLS SYMPOSIUM JUNE 19-21, 2013 MEETING 16 (2013), *available at* [https://www.ncaa.org/sites/default/files/2013\\_LifeSkillsSymposium\\_Report.pdf](https://www.ncaa.org/sites/default/files/2013_LifeSkillsSymposium_Report.pdf).

320. *Life Skills Symposium*, *supra* note 318.

careers in which the students are interested,<sup>321</sup> thereby allowing student-athletes the opportunity to network with professionals the student-athletes may not have otherwise had the opportunity to meet. The NCAA should suggest that its institutions' career development programs include similar mentoring programs. It is especially important to tailor the mentoring program to female and high-revenue student-athletes, because they are the student-athletes most likely to fall behind in career development. Therefore, the school could host a career fair or mentor day focusing on women in the workforce. The school could also survey the interests of high-revenue student-athletes and invite mentors from fields that correspond with those interests.

To reduce the costs that a mentoring program may incur, the institutions could reach out to former student-athletes who are willing to volunteer their time. Using former student-athletes as career mentors also has the benefit of showing student-athletes that athletes can lead successful and fulfilling lives outside of sports.

Some may have concerns that the mentor program will create an extra benefit to the student-athlete, which is expressly prohibited by the NCAA except under limited circumstances.<sup>322</sup> However, it is unlikely that the NCAA would consider a mentor program or any other career services program an extra benefit, because the NCAA allows the institutions to provide their student-athletes with career counseling and life skills programs.<sup>323</sup>

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321. See *M-PACT Programs and Services*, *supra* note 230.

322. NCAA DI MANUAL, *supra* note 9, at §§ 16.01.1, 16.02.3.

323. *Id.* at §§ 16.3.1.1, 16.3.1.2.

#### 4. Internship Program

Time constraints are one of the major problems student-athletes face while in college.<sup>324</sup> When student-athletes have to balance sports with the rest of their lives, and sports usually win.<sup>325</sup> This means the already limited amount of time student-athletes have to devote to the rest of their lives must be divided among academics, social life, and future preparation. Unfortunately, student-athletes allocate much less time to preparing for their futures, especially their future careers.

Because of their busy athletic and academic schedules, student-athletes do not find the available time to participate in externships or internships. Therefore, the program should mandate student-athletes participate in internships. However, the school must ensure the internship program complies with the Fair Labor Standards Act (FLSA). Under FLSA, unless specific criteria are met, employers must pay their interns.<sup>326</sup>

Internships are very important to both the career selection process and the job hunt. Without any experience during college, student-athletes will have a difficult time choosing careers that best suit them. Student-athletes will also fall behind their peers if they do not have any career experience, because employers often require or prefer that prospective employees have some experience in the

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324. Sarah Scott, *UP Close: Students or Athletes?*, YALE DAILY NEWS (Sept. 23, 2011), <http://yaledailynews.com/blog/2011/09/23/up-close-students-or-athletes/>.

325. *Id.*

326. U.S. DEP'T OF LABOR, WAGE & HOUR DIV., FACT SHEET #71: INTERNSHIP PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT (2010), *available at* <http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>.

employers' fields.<sup>327</sup> Students who have internship experience also fare better in the marketplace; the difference in the median starting salary between students who have internship experience and those who do not is about \$7,000.<sup>328</sup>

Some schools recognize the limited time that student-athletes have to devote to career preparation and have found ways to tailor internships to fit into the student-athletes' lives. For instance, Washington College offers its student-athletes career externship or shadowing experiences that only require the athletes take a day to complete.<sup>329</sup> However, shorter internships may not be that helpful to student-athletes. Granted, because student-athletes rarely engage in activities outside of athletics, a short program would be a good way to introduce them to outside experiences and help them test their interests. Shorter internships would also likely fall outside the qualifications of relevant labor law,<sup>330</sup> thus requiring no pay and making it

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327. See Christina Jedra, *Colleges Throwing Up Internship Roadblock*, USA TODAY (Sept. 9, 2013, 11:01 AM), <http://www.usatoday.com/story/news/nation/2013/09/09/internship-limits-colleges/2775411/>.

328. See HANOVER RESEARCH, *supra* note 316, at 7; *see also* NACE, *THE COLLEGE CLASS OF 2014* 6 (2014), *available at* <http://www.nacweb.org/uploadedFiles/Content/static-assets/downloads/executive-summary/2014-student-survey-executive-summary.pdf> (finding that students with paid internships commanded higher salaries than those with unpaid internships).

329. See *Scholar Athlete Career Development Program*, WASH. COLL., <http://www.washcoll.edu/offices/career-development/Students/scholar-athlete.php> (last visited Mar. 7, 2015).

330. Students participating in shorter internships would likely not be considered employees because 1) a student, not the employer, would be deriving the benefit of the internship, 2) the intern would probably not be used as a substitute for other employees but instead under the guidance of regular employees, and 3) the internship experience would be more like a classroom experience, to gain skills that could be used in many professions, than a focused training in the particular employment

easier for student-athletes to find internship opportunities. Therefore, the institutions should take into consideration the unique circumstances of their student-athletes when setting the length of their externship or internship requirements. The NCAA will consider an internship program designed exclusively for student-athletes a permissible benefit so long as student-athletes do not use their athletic abilities in their internships.<sup>331</sup>

### 5. Career Development Course

To satisfy the career development mandate, a university could also allow student-athletes to participate in a course similar to the course taught at the University of Memphis. As discussed previously, Memphis offers a seven-credit course on career development to student-athletes, which includes both an externship component and a classroom component.<sup>332</sup> Similar to the Memphis program, a career development program should include an externship component and regular classroom instruction.<sup>333</sup>

The in-class instruction should be similar to the class offered at ASU. It could include résumé building, interview tips, and general business skills that student-athletes may not receive in their other classes. Unlike ASU's course, which was offered for one credit and had very low participation, institutions should offer this course for enough credits that student-athletes would view it as worthwhile to participate. At Memphis, the first half of the term was spent in the

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at hand. U.S. DEP'T OF LABOR, FACT SHEET #71: INTERNSHIP PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT (2010), *available at* <http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>.

331. NCAA DI MANUAL, *supra* note 9, at § 16.11.1.10.

332. *See* Mullen, *supra* note 246.

333. In order for student-athletes to remain eligible to participate in athletics while completing internships for credit, the student-athletes must meet regularly with instructors. NCAA DI MANUAL, *supra* note 9, at § 14.2.2.6.



classroom, while the second half was spent at the externship.<sup>334</sup> However, some students did not finish the externship. Therefore, instead of having the classroom component distinct from the externship, the school should design the class to meet throughout the externship so that the instructor can oversee the student-athletes' progress. The Memphis externships were not paid; if an externship is included as part of a course given for credit, schools may be able to avoid having to find paid internships for their student-athletes, because the internships will fit into FLSA exceptions.

Some may argue that mandating career services is simply adding more to a student-athlete's already busy schedule. However, by making career development a required course, institutions could ensure student-athletes would be able to multi-task by completing academic courses and preparing for careers at the same time. Mandating student-athletes take the course would also ensure they spend at least the minimum amount of time necessary to think about their future career goals. The institutions could also track student-athlete participation in career development services by monitoring completion of the course, which would help to minimize the costs of commissioning outside surveys. Student-tuition fees should absorb the cost of providing a class and thus limit the need for outside funding for the course.

However, these courses could be highly scrutinized, due to the recent exposure of classes designed to pad student-athlete GPAs. For example, the University of North Carolina recently came under fire when the NCAA reopened an investigation into claims that student-athletes at the university had enrolled in sham classes designed by the university to help the athletes remain eligible for

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334. See Interview with Dr. Tim Ryan, *supra* note 248.

competition while requiring no class work.<sup>335</sup> Also, after reports criticized Stanford's athletic department for directing student-athletes toward a list of "easy" courses, including Social Dances of North America and Beginning Improvising, the list was discontinued.<sup>336</sup> Therefore, to avoid scrutiny and prevent potential abuses of the class model, the school should have an internal mechanism to review the quality of education that students are getting from the class and should provide reports to the NCAA after each term on participation levels, grades, and a testimonial as to the authenticity of the program. Also, as suggested by Dr. Ryan at the University of Memphis, grouping student-athletes into externships at specific employers would allow greater oversight of the program. The schools could also offer the class as pass-fail instead of for grades, to prevent student-athletes from using the course to artificially pad their GPAs.<sup>337</sup>

For the class model and any separate externship program, the NCAA could partner nationally with businesses that are willing to provide externships to student-athletes. This would ensure student-athletes receive the same level of experience from their externships as student-athletes at different universities. A national partner would also relieve some of the burdens that a career development program will have on individual schools by not requiring the schools to find internships for student-athletes.

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

336. Harris & Mac, *supra* note 119.

337. See M. Tyler Brown, *College Athletics Internships: The Case for Academic Credit in College Athletics*, 63 AM. U. L. REV. 1855, 1896 (2014).

### C. Enforcement of Proposed Plan

Although the NCAA currently allows institutions to provide career counseling services to student-athletes, and indeed many institutions do provide career counseling services, it is neither required nor are there any set standards detailing how institutions should deliver career services to their student-athletes. Without setting standards, the NCAA cannot hold the institutions accountable for their failure to provide adequate career development programs. When implementing a career development program, the NCAA should mirror its enforcement structure on the APR's enforcement and reporting structure.

First, to monitor the effectiveness of career development services at member institutions, the NCAA should require its institutions track their student-athletes' post-graduation experiences. The institutions should survey former student-athletes to find out how many are employed, how many are underemployed, and how many are pursuing further education. Underemployment may be one of the best indicators of a lack of student-athlete preparation for life after sport. Underemployed people may have jobs but may not be using their education or experience for those particular jobs.<sup>338</sup> Student-athlete underemployment could suggest athletes are not majoring in fields that interest them. It could also indicate that student-athletes are not receiving the requisite experience in their field during college. When paired with a degree, relevant experience would make student-athletes more desirable to employers.

The program should also require the institutions report employment statistics to the NCAA so that the NCAA can evaluate member institutions' student-athlete career services. The institutions should also share these reports

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338. Gerald P. Glyde, *Underemployment: Definition and Causes*, 11 J. ECON. ISSUES 245, 246 (1977).

with recruits, so that student-athletes can make informed choices about their future that are influenced less by lavish amenities and more by future career success. Failure to report employment statistics should lead to ineligibility, as is the case when reporting a team's APR and a school's GSR. The NCAA should then develop a standard to measure the performance of the university with respect to the proposed program. For example, the NCAA could penalize institutions if the unemployment rate of an institution's former college athletes is higher than the national unemployment rate for people with college degrees.

The NCAA must design the penalty system to ensure that current and future student-athletes at violating institutions do not face the same employment-related problems as the former student-athletes. The NCAA should establish a two-tier penalty structure. The first-tier should penalize teams whose student-athletes fail to participate in the mandated career services. The penalty should include a limit on practice time, similar to the limits the NCAA imposes when teams fail to meet the minimum APR. A penalty on practice time will allow student-athletes more time to devote to personal career development.

The second-tier penalty should impose a fine regarding postseason revenue on teams whose athletes failed to complete the career services program and that have high unemployment or underemployment rates. Because student-athletes in high revenue sports are most likely to exhibit low career development, the fine will likely be levied against teams who are in the greatest need of adequate career development. The fine should then be allocated to help fund or expand career services at that university. Part of the monetary penalty should also be used to create programs for job placement of former student-athletes who are unemployed or underemployed. The money could also be used to create scholarship funds for student-athletes who left

school before graduating and who now want to get their degree. The second-tier penalty is necessary because, if schools had emphasized the value of obtaining a degree to the student-athlete's, then the student-athlete may not have left school.

As expressed by ASU's student-athlete career services coordinator, one of the greatest issues that institutions face when providing career services to student-athletes is getting student-athletes to participate in the programs. By threatening teams with fines for the failure of their student-athletes to participate in career services, the hope is that the teams will do more to motivate student-athletes to participate in career development. The penalty system should directly reflect the values of the career development program. By limiting practice time and allocating funds to career development programs, institutions would be incentivized to provide adequate career assistance to their student-athletes, and, if they failed, would be required to create adequate career service programs.

#### **D. Funding the Proposed Career Development Plan**

Although this program will require universities to expend greater funds on career development of student-athletes than the schools were previously spending, the hope is that universities and the NCAA will realize the utility of student-athlete career development and will allocate the necessary funds to the program. ASU's current life skills program, including career development, costs less than \$5,000, and most of which is spent on food at the events.<sup>339</sup> Many schools already have career services for student athletes and career counselors. ASU's career services for the general student body had a \$45,000 operational budget and

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339. Correspondence with Natalie Thackrah, *supra* note 241.

a \$1.5 million budget for employee salaries and benefits for 2014.<sup>340</sup> Student-athletes' tuition fees should pay for the career development course, as is the case for any other course. The costs of the program should be limited to: training existing career counselors, tracking employment of student-athletes after graduation, and establishing internal support and reporting mechanisms for career development.

One way to fund the program would be to re-evaluate how the NCAA distributes its funds. All Division I schools will continue to benefit from revenue sharing despite the fact that the Big-5 conferences have gained greater autonomy.<sup>341</sup> Although the NCAA distributes its revenue to member institutions for academic support through the Academic Enhancement Fund, the fund distributes only five percent of the NCAA's total revenue.<sup>342</sup> Most of the NCAA's revenue is distributed to select member institutions through the Basketball Fund, based on performance in the annual Division I basketball tournament.<sup>343</sup> However, many of the institutions that receive money from the Basketball Fund have the lowest APRs and GSRs.<sup>344</sup> Therefore, one possible

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340. Telephone Interview with Elaine Stover, Dir. of Career Services, Ariz. State Univ. (Dec. 2, 2014).

341. Marc Tracy, *N.C.A.A. Votes to Give Richest Conferences More Autonomy*, N.Y. TIMES (Aug. 7, 2014), [http://www.nytimes.com/2014/08/08/sports/ncaafootball/ncaa-votes-to-give-greater-autonomy-to-richest-conferences.html?\\_r=0](http://www.nytimes.com/2014/08/08/sports/ncaafootball/ncaa-votes-to-give-greater-autonomy-to-richest-conferences.html?_r=0).

342. NCAA, 2013-2014 DIVISION I REVENUE DISTRIBUTION PLAN 3 (2013), available at <https://www.ncaa.org/sites/default/files/2013-14%20Revenue%20Distribution%20Plan.pdf>.

343. *Id.*

344. See Alicia Jessop, *Making the Grade: NCAA Revenue Distribution and Academic Excellence*, RULING SPORTS (Aug. 11, 2011, 12:20 AM), <http://rulingsports.com/2011/08/11/making-the-grade-ncaa-revenue-distribution-and-academic-excellence/>. This is further exemplified by the earlier UConn example. UConn won the Division I tournament, entitling it to a larger distribution, but then failed to meet the minimum APR a year later. See Himmelsbach, *supra* note 71.

way to fund this program would be to restructure the revenue distributions from the NCAA.<sup>345</sup> By earmarking greater funds for academic support services, including the career development program through the Academic Enhancement Fund, schools would have more money to fund the career development program and schools struggling with their academic progress would have greater accountability in how they spend their money.

Because most of the NCAA's revenue comes from the Division I basketball tournament and the current Basketball Fund distributes money based on performance in the tournament, it is likely schools will argue that restructuring the fund would be equivalent to taking money away from the schools that may have earned the funds through their participation in the tournament. The NCAA could then argue that shifting only four percent from the Basketball Fund to the Academic Enhancement Fund would result in more than \$50,000 more to each Division I school a year, which each team participating in the tournament would still be receiving. Therefore, it would only take a small restructuring of distribution to provide greater economic support for academic programs at all schools and to change the accountability of funds distributed to member schools.

The effects on recruiting at universities may also motivate universities to move funds to career development programs. For the last few decades, the NCAA's member institutions have been engaged in what has been called the athletics arms race, characterized by institutions escalating their spending on their athletic departments to remain athletically competitive with other schools.<sup>346</sup> It could be

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345. *See id.*

346. *Agnew v. Nat'l Collegiate Athletic Ass'n*, 683 F. 3d 328, 347 (7th Cir. 2012).

argued that this spending is not excessive or unnecessary, but instead it is made in lieu of direct payments to student-athletes.<sup>347</sup> However, this argument ignores the fact that student-athletes are only able to enjoy these expenditures temporarily, for up to four or five years at the most while attending a university. When student-athletes graduate or leave the university, they may only be left with the great memories of the time they spent in these facilities. Programs already cite recruitment as one of the main motivators to institutional spending on coaching staff and facilities, and students and their parents have increasingly factored in the benefits of career services offered by universities when choosing which university to attend.<sup>348</sup> As finding a job after college becomes more important to student-athletes, they will likely decide to attend schools that offer the best opportunity to secure jobs after graduation. Therefore, universities should adjust their spending patterns to devote more money to fund career development programs, to entice student-athletes to choose their schools.

The NCAA has spent millions of dollars in legal fees defending against pay-for-play cases brought by student-

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347. See Brian Goff, *NCAA "Arms Race" Metaphor Gets the Economics Backwards*, FORBES (July 30, 2014, 10:40 AM), [http://www.forbes.com/sites/briangoff/2014/07/30/ncaa-arms-race-metaphor-gets-the-economics-backwards/?&\\_suid=1414383654634018840761994943023](http://www.forbes.com/sites/briangoff/2014/07/30/ncaa-arms-race-metaphor-gets-the-economics-backwards/?&_suid=1414383654634018840761994943023).

348. See Kim Clark, *How to Judge a College by its Career Services Office*, TIME (July 14, 2014), <http://time.com/money/2982931/college-career-services-office-job-placement/>.



athletes.<sup>349</sup> Student-athletes have long argued that they are not being fairly compensated for their athletic services to the universities. Institutions could argue that providing the career services specified in this article is adequate compensation for student-athletes' participation in college sports. Therefore, if student-athletes see satisfactory career services as a fair return on their athletic investment, they may not bring pay-for-play lawsuits and institutions and the NCAA will save money by not having to defend against these lawsuits. The NCAA could then divert the millions of dollars that it currently allocates to these lawsuits to student-athlete career development.

Although the proposed career development program may appear costly, many schools already have some form of career services, which means schools are already using resources for career development. Therefore, many programs will be able to use the resources that schools already provide for career services by simply adopting more efficient career development processes. Also, as student-athletes realize the importance of career development services to their future employment, universities and the NCAA will adjust their funding structures to ensure that student-athletes are receiving the full benefits of career services while in college.

#### **E. Proposed Plan's Effect on Academic Reforms and Graduation Rates**

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349. See Barrett, *supra* note 178. The NCAA has asked the court in the *O'Bannon* antitrust case to reduce the amount of the plaintiffs' attorneys' fees and costs that the NCAA must pay from \$50 million to approximately \$10 million. See Steve Berkowitz, *NCAA Seeks Huge Reduction in O'Bannon Plaintiffs' Legal Fees*, USA TODAY (Feb. 6, 2015, 10:24 PM), <http://www.usatoday.com/story/sports/college/2015/02/06/ncaa-seeks-drastic-reduction-o-bannon-plaintiffs-legal-fees/23015217/>.

The career development program could also have indirect effects on the student-athletes' academic performance. It could improve student-athlete graduation rates, and it could help teams meet their minimum APR. The student-athletes tending to identify more with their athletic identities are the same student-athletes who tend to have lower graduation rates and exhibit clustering in majors.<sup>350</sup> These student-athletes tend to be high-revenue and African-American.<sup>351</sup> This plan will provide student-athletes with authentic guidance on how to choose a major, which will not simply involve choosing a major for the sole purpose of maintaining eligibility for competition. It will also ensure that student-athletes are given opportunities to explore their interests outside of sports.

By engaging student-athletes on this level, the hope is that student-athletes will realize the benefits of an education to future career goals. Therefore, the student-athletes will stay in school to earn degrees and take seriously their academic commitments, which will boost both the APRs of their teams and their schools' GSRs and, thus, improve the overall student-athlete well being. After implementation of this program, the NCAA should track the correlation between student-athlete participation in the program and student-athlete APR points and graduation rates. Improving graduation rates and APR is another incentive for institutions and the NCAA to devote funds to the career development program.

#### **F. Proposed Plan's Effects on the Reputation of the NCAA and Member Institutions**

The NCAA and its member institutions have been under attack over the past few years for the disproportionate

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350. Sanders & Hildenbrand, *supra* note 125; Beamon, *supra* note 109, at 354; Thomas & Nasir, *supra* note 147.

351. *Id.*

benefits they receive from college athletics, compared to the benefits the student-athletes receive.<sup>352</sup> The proposed career services plan should positively affect the reputation of both the NCAA and its member institutions. About 460,000 student-athletes participate in athletics at NCAA member institutions.<sup>353</sup> Although only a small percentage of those student-athletes will play professional sports, the majority will have to find employment after graduation. Through reporting on the positive career development of student-athletes, the NCAA could use implementation of the proposed plan as an example of the benefits student-athletes receive from playing college sports, especially if career development and employment of student-athletes ever passes the levels of employment of non-student-athletes. When student-athletes realize there are many obstacles to direct payment from universities for their play,<sup>354</sup> student-athletes will likely consider career development as a better alternative to direct payment.

To boost awareness of its career development program, the NCAA should run a media campaign supporting the benefits of student-athlete career services. The positive effects that career development programs will have on student-athletes will likely entice former student-athletes who are now leaders in their careers to come forward as mentors or to offer externship opportunities to student-athletes.

The career development program has the potential for negative effects on the reputation of both the NCAA and its member institutions. Career development of student-athletes is not necessarily one of the problems of college

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352. *Id.*

353. *Student-Athletes*, NCAA, <http://www.ncaa.org/student-athletes>, (last visited April 14, 2015).

354. See Mary Grace Miller, *The NCAA and the Student-Athlete: Reform is on the Horizon*, 46 U. RICH. L. REV. 1141, 1168-69 (2012).

athletics currently in the public eye. This program would change the current perspective. If results from the surveys of former student-athletes show athletes have a high unemployment or underemployment rate, member institutions will surely face some scrutiny over their career development services. Further, a negative response from the public could help propel schools to take accountability for student-athlete career development and better prepare their student-athletes for life after sport. The hundreds of thousands of student-athletes not playing professional sports will appreciate the NCAA and its member institutions looking out for their well being long after they graduate.

#### **IV. CONCLUSION**

The NCAA has demonstrated its commitment to assuring student-athletes achieve academic success at its member institutions. However, the NCAA has not shown the same commitment to student-athlete career development. Although only a small percentage of NCAA student-athletes will play professional athletics after college, many student-athletes believe they will play a professional sport. Even student-athletes who do not think they will play professionally face obstacles to career planning while in college. In the past, the NCAA has attempted to aid student-athletes in their career development by encouraging member institutions to offer career services through CHAMPS. However, the NCAA has stopped short of mandating student-athletes to participate in career services.

The NCAA's approach to career development has been ineffective at aiding student-athletes' career paths after sports. The NCAA has failed to recognize that student-athletes face challenges the general student population may not feel to the same degree, like time constraints and emotional attachment to various identities. Therefore, it is necessary that the NCAA mandate student-athlete

participation in career development.<sup>355</sup> To ensure institutions comply with the career development plan, the NCAA should set up a penalty system. Not only will a mandatory career development program directly affect student-athlete career preparation, but it will also have indirect effects on both graduation rates and the APR, by emphasizing the importance of graduating and genuine academic achievement to future career success. Although institutions will likely incur costs in administering this plan, if schools look at the costs as a further investment in the student-athletes' futures, versus the fleeting benefits the student-athletes receive from other athletic department expenditures, institutions should find room to fund at least the most basic services.

This plan also provides a great opportunity for the NCAA and its member institutions to demonstrate their interest in student-athlete success beyond the time that student-athletes are providing direct benefits to the school. Therefore, when weighing the costs and benefits of mandating student-athlete participation in career services, the NCAA and its member institutions would do well to realize that student-athletes are now, more than ever, looking to how their college experience can better prepare them for work after student athletics.

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355. Mandating career development for student-athletes is just one way that student-athletes can prepare for their futures. As Kristyne Schaaf-Olson points out in her note, following this article, student-athletes can also take advantage of their time as athletes by making connections with people working in sports. Hopefully, the proposed career development program outlined in this article will help student-athletes maximize their opportunities to network and intern in careers in sports while in college.