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Abstract

This paper reviews legal issues related to NCAA intercollegiate athletics. More specifically, the paper will discuss Title IX, discrimination against student athletes with disabilities, drug testing, and other of today's highly publicized legal issues. Legal issues of smaller athletic associations such as the National Association of Intercollegiate Athletics (NAIA) are not addressed in this paper. Rather, the focus is on NCAA institutions, particularly large member institutions at which legal issues have surfaced.

LEGAL ISSUES IN NCAA INTERCOLLEGIATE ATHLETICS

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Introduction

At all levels of athletics, whether interscholastic, intercollegiate, or professional, the wrongful and illegal actions of individual athletes, or of individuals responsible for administering athletic programs, have stigmatized the athletic community as a whole. Athletes not only represent themselves, but also their teammates, coaches, athletic program, and the institution for which they compete. As an example, consider an intercollegiate football program that harbors a football player who is charged with domestic violence or physical abuse during the year. It is likely that the team as a whole is stigmatized and is labeled negatively, and the community suffers as a result. In like manner, sometimes those in positions of responsibility for athletic programs act in ways that also stigmatize or that result in the need for legal action.

Athletes and their administrative counterparts are highly publicized by the media and when illegal actions take place, the community knows about it. Intercollegiate athletics have taken the most heat when it comes to violating not only the law, but their own guidelines established by the National Collegiate Athletic Association (NCAA). Intercollegiate athletics has come under fire on numerous issues ranging from illegal recruiting of athletes to falsifying of academic records. The NCAA has created legislation and regulations to prevent such actions from occurring. The driving force behind the NCAA in creating these regulations is to maintain the integrity of intercollegiate athletics as a whole (Kaplin & Lee, 1997). This paper reviews legal issues related to NCAA intercollegiate athletics. More specifically, the paper will discuss Title IX, discrimination against student athletes with disabilities, drug testing, and other of today's highly publicized legal issues. Legal issues of smaller athletic associations such

as the National Association of Intercollegiate Athletics (NAIA) are not addressed in this paper. Rather, the focus is on NCAA institutions, particularly large member institutions at which legal issues have surfaced.

Legal Issues

Title IX

Title IX of the Education Amendments of 1972 is a Federal statute that was developed to provide gender equity by prohibiting sex discrimination in educational programs that receive Federal funds (Title IX Facts, 2002). Title IX states that, “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” (Ruiz, 1999, p. 119). Title IX regulations were made effective in 1975 for NCAA intercollegiate athletics (Kaplin & Lee, 1997).

To be in compliance with Title IX regulations, institutions can examine the list of factors in Section 106.41 (c) as a measure (Kaplin & Lee, 1997, p. 439):

- 1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes.
- 2) The provision of equipment and supplies.
- 3) Scheduling of games and practice time.
- 4) Travel and per diem allowance.
- 5) Opportunity to receive coaching and academic tutoring.
- 6) Assignment and compensation of coaches and tutors.
- 7) Provision of locker rooms, practice and competitive facilities.

- 8) Provision of medical and training facilities and services.
- 9) Provision of housing and dining facilities and services.
- 10) Publicity.

The legal case that brought a great deal of definition Title IX was *Cohen v. Brown University*, 991 F. 2d 888 (1st Cir. 1993, as cited in Kaplin & Lee, 1997). In 1991, Brown University had to cut their budgets due to an anticipated deficit. The athletic department responded to the cuts by withdrawing funding from the men's golf and water polo programs and the women's volleyball and gymnastics programs. Even though funding was eliminated, the programs were not, and the programs relied on self-funding. Not pleased with the cuts, members of the two women's programs filed a lawsuit based on sexual discrimination and the violation of Title IX. The debate was that the removal of the two programs "disproportionately reduced the budgeted funds for women, but they did not significantly change the ratio of athletic opportunities" (Kaplin & Lee, 1997, p. 441). After not finding the institution in violation of Title IX because of a "statistical disparity" between men and women competing, the court then examined the previously-mentioned ten factors. Upon review, the court noted the first factor listed (which is predominantly examined in other Title IX suits). The other nine factors in the list were not examined in this suit, and are rarely found in the literature. Title IX contains three tests and the institution in question must pass only one of the three to comply with the first factor (Kaplin & Lee, 1997, pp. 441):

- 1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or

3) Where the members of one sex have been and are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program [44 Fed. Reg. at 71418].

Brown did not pass any of the three tests. To be in compliance with Title IX regulations to pass the tests listed above, the court ordered Brown to elevate “four women’s teams to full varsity status” (Kaplin & Lee, 1997, pp. 443). Brown did not agree with the order and appealed. After many debates on how to comply with Title IX, Brown provided full-funding for women’s water polo, skiing, fencing, and restored the two women’s teams whose funds were cut: gymnastics and volleyball. Brown was also “ordered by the courts to achieve parity in varsity sports opportunities for men and women” (Brown University History website, 2002). Today, Brown University has 19 women’s and 16 men’s athletic programs.

The recognition of this case has caused several institutions to scramble for answers on how to comply with Title IX. The issue of concern for institutions is to be in compliance with the first test listed above, also called the “proportionality prong” of Title IX. Unfortunately for men’s programs, institutions are finding it easier to cut men’s programs, especially non-revenue-producing programs, in order to comply with Title IX.

It is an easier answer because athletic programs are costing more and more, while budgets are being cut (Suggs, 2001). Cutting men's, and sometimes women's, programs is not necessarily the answer. Most recently, wrestling coaches have challenged the proportionality prong of Title IX. The National Wrestling Coaches Association (NWCA) filed a lawsuit against the U.S. Department of Education claiming that the proportionality rule is "prompting colleges and universities to discriminate against men's teams" (NCAA News, February 4, 2002). To support their lawsuit, the NWCA contends that "because no U.S. president or attorney general signed off on the Department's Title IX regulations, those regulations have no force and are illegal." The NWCA specifically made it clear in their accusations that they are not against Title IX itself, but that they are against the manner in which administrators have interpreted it. Some institutions have also made the claim that Title IX has put pressures on athletic funding and athletic budgets. However, John Thelin found that a "review of historical data does not support claims of colleges and universities that compliance with Title IX (1972) has led to financial strains in operation of intercollegiate athletic programs or that self-regulation makes federal guidelines an unreasonable and unnecessary intrusion into institutional autonomy" (Thelin, 2000). Title IX is currently being reviewed by the NCAA and clarification is expected on the proportionality prong.

The debate over Title IX and how compliance with it is interpreted by administrators is a popular one. In the 1980's and 1990's the debate was not over which athletics programs to drop but which women's athletics programs to add. Title IX continues to accomplish its original intended mission to provide equal opportunities for

women, however, today it's at the expense of eliminating other opportunities for student athletes to compete.

Disability and College Student Athletes

College students and student-athletes who have disabilities are protected from discrimination on the basis of disability under both Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. This section will review the former. The key aspect of Section 504 of the Rehabilitation Act of 1973 is that "institutions must afford disabled students an equal opportunity to participate in physical education and in athletic and recreational programs" (Kaplin & Lee, 1997, p. 444). A disability need not be a physical disability, but can also be a learning disability or a mental health disability. To comply with the Act, the Department of Education requires the following:

- 1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to whom this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.
- 2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements...[that the programs and activities be operated in "the most integrated setting appropriate"] and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that

are not separate or different [34 C.F.R. 104.47(a), as cited in Kaplin & Lee, 1997, p. 444].

One case that has served as a precedent in discrimination on the basis of disability is *Pahulu v. University of Kansas*, 897 F. Supp. 138 (D. Kan. 1995, as cited in Kaplin & Lee, 1997). Pahulu, an athlete of the Kansas University (KU) football team, received a hit to his head during a football scrimmage, which shook him up. After the hit, Pahulu experienced numbness and tingling in his arms and legs. The team physician and a neurosurgeon examined him and recommended Pahulu be removed from playing his senior year. Pahulu did not agree, and was examined by three other physicians. All three “concluded that Pahulu could play intercollegiate football with no more risk of permanent injury than any other player” (Church & Neumeister, 1998, pp. 128-129). The team physician and neurosurgeon would not clear Pahulu to play, so Pahulu sued, and claimed KU violated Section 504. To win the decision, Pahulu had to prove that, under the Rehabilitation Act, he was “an individual with a disability,” that football was a major life activity of learning, and that KU did not allow him to play was considered a “substantial limitation” on his major life activity of learning (Church & Neumeister, 1998). The court did not consider Pahulu as an “individual with a disability,” but that his congenitally narrow cervical canal was a “physical impairment.” Next, the court found that competing in athletics is a part of the major life activity of learning. However, the court also found that KU did not substantially limit Pahulu’s major life activity of learning, and that the team physician and neurosurgeon made a “reasonable” decision (Church & Neumeister, 1998). Therefore, the court did not rule in Pahulu’s favor.

Drug Testing

Another legal issue that has been highly publicized in NCAA intercollegiate athletics is drug testing. The NCAA formed its Drug Education Committee in 1973. At the time, its focus was on sponsoring programs in intercollegiate athletics on drug prevention and drug education (Schaller, 1991). It was not until 1986 and 1990 that legislative authority was given to the NCAA to test student athletes for use of performance-enhancing drugs. Drug legislation in general became of utmost importance in 1986 when Len Bias died from a drug overdose of cocaine (Schaller, 1991). Bias was a first round NBA draft pick to the Boston Celtics in 1986 who was famous for his basketball talents, had tremendous promise, and was even talked about as being one of the all-time greats like Larry Bird, Michael Jordan, and Wilt Chamberlain. He died a few days after he was drafted. At that time, it was voluntary for institutions to participate in the NCAA's drug-testing program, and drug testing was only enforced during championship tournaments and football bowl games. The program was created "so that no one participant might have an artificially-induced advantage, so that no one participant might be pressured to use chemical substances in order to remain competitive, and to safeguard the health and safety of participants" (NCAA Drug Testing Program Introduction, 2002).

Today, drug testing is employed randomly throughout the pre-season, in-season, and post-season of intercollegiate athletics and at all NCAA championships and football bowl games. The drug test is a urine collection examined for steroids, stimulants, and other drugs. This current year, random drug testing is for Division I and II football and Division I track and field. All students must sign a consent form to compete. If a student

athlete tests positive for drug use, that student athlete will be ineligible for competition for one year. Also, coaches, student athletes, and officials are prohibited from the use of tobacco products during practice and competition (Guide for the College Bound Student-Athlete, 2002).

The legal issues that have stemmed from drug testing involve the search-and-seizure clause and due process rights of student athletes (Kaplin & Lee, 1997). The search- and-seizure, or drug test, must comply with the Constitution's Fourth Amendment and with the Fourteenth Amendment for due process rights. Decisions in the courts have gone both ways. Institutions' drug-testing programs can violate both Federal and State constitutional rights, which, respectively, can differ from state to state. For example, in the *Derdeyn v. University of Colorado*, 832 P.2d 1031 (Colo. Ct. App. 1991, as cited in Kaplin & Lee, 1997), the Supreme Court of Colorado found the university's drug-testing program in violation of the Fourth Amendment and a state provision. The Federal government has not yet established a precedent upon which cases can be decided (Kaplin & Lee, 1997). Institutions can find themselves stuck between a rock and a hard place when it comes to drug testing. For example, in the *Hill v. NCAA*, 273 Cal. Rptr. 402 (Cal. Ct. App. 1990, as cited in Kaplin & Lee, 1997) case, the California Supreme Court said Stanford University's drug-testing program was reasonable. Stanford was stuck between their student athletes' challenges of the program and potential lawsuits against them, and NCAA sanctions if they refused to participate in the program.

Other Legal Issues Pertaining to College Student Athletes

The previously mentioned legal issues are some of the major issues higher education institutions face; however, there are other issues that serve as an important reminder to institutions to maintain the integrity of their intercollegiate athletic programs.

“Team Mascots, Names, and Images”

One issue that has been noted in the past few years is whether the use of Native American images, team names, and mascots violates anti-discrimination laws. The United States Commission on Civil Rights made a statement requesting the end of using “Native American images and team names by non-Native schools”, which “are disrespectful and offensive to American Indians and others who are offended by such stereotyping” (Statement of the U.S. Commission on Civil Rights, 2001).

Civil Rights

Another recent legal issue the NCAA has taken action on is the display of the Confederate battle flag over the South Carolina state capitol. The NCAA Executive Committee stated it would “cancel all future NCAA championships and meetings in the state” if the state of South Carolina refuses to remove the Confederate flag from its state capitol because it harbors oppression (NCAA News, 2000).

Eligibility, Race and Graduation Rates

Other cases have involved student athletes who are unable to meet NCAA initial eligibility requirements due to standardized entrance test scores, claiming discrimination and violating Title VI of the Civil Rights Act (NCAA News, 2001). Initial eligibility requirements have been heavily debated and criticized because of the dependence on standardized test scores and GPA in determining students’ athletic eligibility. In an

interview, former Georgetown University basketball coach and legend, John Thompson, supported the argument of several other coaches and athletic personnel that standardized tests and the NCAA's enforcement of initial eligibility requirements are racially discriminatory (Matthews & St. John, 1999). Initially, these requirements were aimed at improving student-athlete graduation rates. This idea goes back to the original mission of NCAA legislation and enforcement which is to maintain intercollegiate athletic integrity. Thompson, when asked about NCAA regulations directed at bettering graduation rates, was quoted as saying:

First of all, when you talk about improving graduation rates, you know and I know that you can play with statistics any way you want to and show people that kids are graduating or that kids are not graduating based on the present and existing system...So then they took the statistics and said that more Black kids are graduating, but they didn't say that even more are being prevented from coming in as a result of the [NCAA] rules (Matthews & St. John, 1999, p. 26).

In 1999, a federal judge's decision ended NCAA freshmen eligibility standards (Collison, 1999).

Gambling

Finally, a major legal issue addressed by the NCAA is gambling and wagering on intercollegiate athletics. All employees of an athletic department and all student athletes are prohibited from making bets or wagers on any intercollegiate athletic competition (Guide for the College-Bound Student-Athlete, 2001). Problems arise from intercollegiate athletic gambling such as student athletes shaving points to either earn money or pay back a debt, or receiving funds for not competing well in the most recent

contest. Presently, college presidents, athletic administrators, and coaches are trying to develop legislation that would “extend a ban on legal sports wagering on college athletics to all states” (NCAA News, 2001). This ban would prohibit gambling on all intercollegiate athletic competitions. The biggest examples of wagering on intercollegiate athletics are March Madness in NCAA Basketball and the Championship Bowl Series in NCAA Football. Pools for both of these championships are common among the general populace. This is exactly what college presidents, athletic administrators, and coaches are targeting. Banning such wagering events will make it more difficult, if not impossible, for student athletes to get involved.

Discussion and Recommendations for Student Affairs Professionals

working with NCAA Student Athletes

Legal issues in intercollegiate athletics have implications for student affairs professionals and their everyday practice of providing student programs and services. As higher learning communities, college and university campuses are demographically plural in many aspects. Males and females, and individuals of different races, cultures, ethnicities, languages, religions, and sexual preferences make up today’s average college campus. Several of these differences found on campus stem from student athletes recruited to compete. With recent changes to NCAA initial freshmen eligibility entrance standards, more differences have followed and will continue to follow. Student athletes come from all walks of life from all across the nation. Athletics is a popular recruiting tool for students located around the world. With increasing demographic pluralism, a pluralism that encompasses myriad differences, student services professionals need to

keep up with this “new” athletic student body. There are now several different student organizations and student groups for which student services must meet the needs.

Student affairs professionals must adapt to today’s constantly changing campuses in order to be effective in their work with student athletes. Student affairs graduate students and practitioners must understand new and different college student development theories to be able to provide appropriate and effective programs and services. For example, with increasing numbers of female students, female college student development must be examined, as well as racial and ethnic development, the development of students with disabilities, and the development of different nationalities of students. Transition theory is another theory that must be examined when assisting students. For example, what does an academic advisor, a career advisor, or an athletic academic advisor know about the transition for a general male student athlete whose athletic program has recently been dropped? How has this event affected the student’s motivation to study, achieve academically, and choose a career path? Unfortunately for student affairs professionals, there is little research to answer these questions about the increasingly diverse college student athlete population and their specific needs.

Regarding the legal issue of drug testing, student affairs professionals can approach this issue by examining their own students’ attitudes on drug use. What effect does the enforcement of drug testing have on student athletes’ attitudes toward drugs (Tricker & Connolly, 1997)? Does it play a role in their decision to use or not to use drugs at all? Drug use not only risks student athletes’ eligibility to compete, but also has a negative effect on their performance in academics and extracurricular activities such as student organizations and community service. If student affairs professionals recognize

the signs associated with drug use in their students and the reasons behind their use of drugs they can provide their students with the services and knowledge to quit. After all, the two most important tasks student affairs professionals must strive to excel in are to challenge and support students, and to assist in their development as whole persons.

On a separate note, court cases and decisions involving the NCAA have brought about changes for not only all students, but for all Americans. Racial and ethnic discrimination continues to be a major problem for U.S. society, even after massive public protests and movements. However, the NCAA has taken huge steps forward in trying to eliminate discrimination in intercollegiate athletics by refusing to allow competition in states where Confederate flags are flown. Athletic teams have also contributed to the civil rights effort by changing their team names, mascots, and logos. Discrimination on the basis of disability cases have provided students with disabilities equal opportunity to participate in physical education classes, and have required college and university campuses to alter their physical structures. Title IX paved the way for women to have an equal opportunity to compete, receive a higher education, and obtain more employment opportunities. All of these state and federal regulations have been supported and enforced by the NCAA.

Summary

In general, athletes are looked up to and admired by many, and in turn, must accept their role and the consequences that come with being public icons. Participants within the NCAA intercollegiate athletics community often receive negative attention from the media and society due to violating the law and/or NCAA regulations. To avoid such negative attention, and most importantly, to maintain the integrity of intercollegiate

athletics as a whole, the NCAA establishes and enforces regulations pertaining to all of its member institutions. This paper examined several legal issues in intercollegiate athletics and provided recommendations for student affairs professionals providing services to student athletes. By examining and understanding legal issues in NCAA intercollegiate athletics, student affairs professionals will be better equipped to challenge and support student athletes, and to assist them in their continuous development as whole persons.

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