

EDITORIAL

OPEN ACCESS

ACQUIRING TALENT FOR THE DIVISION I GRIDIRON: NCAA RECRUITING GOVERNANCE, AUTONOMY, LIMITATIONS, AND EXPANSIONS RELATED TO FOOTBALL STUDENT-ATHLETES

Hensley J¹ and Peak KA²

¹*The University of Oklahoma, College of Law, Norman, OK*

²*Tarleton State University, Stephenville, TX*

ABSTRACT

The purpose of this commentary is to explore the provisions and governance that guide the various avenues by which an amateur student-athlete may find himself on the roster of a Division I football team. In its entirety, the article is meant to clarify the complex scenarios woven into the NCAA Manual. Further, the observations serve to illuminate the obscure corners of collegiate football that house potential opportunity and possible pitfalls as the student-athlete advances to the gridiron.

The analysis distinguishes the most prominent parties affected by NCAA legislation while focusing on the 65 institutions entrusted with extended autonomy. Historical context outlines the path of the NCAA in financial and authoritative transitions. Insight is provided into the structure, voting, and applicability of NCAA football governance. The evolution of and modern developments in financial aid are studied, as well as the statutory limitations enforced against competitors within self-promulgating NCAA membership. Examples illustrate the various methods explained. Lastly, observations and conclusions are offered regarding the future of NCAA governance of student-athlete financial aid and compensation.

Keywords: Division I Football, Recruiting, National Letter of Intent, Financial Aid, Power Five, Transfer Process, FBS, FCS, Student-Athlete, NCAA

INTRODUCTION

Spend a Saturday taking in all that is college football, and you will find that it is home to some of the most thrilling antics, mind-bending results, and heartbreaking disappointments ever presented in the

sporting world. And with the show, comes the cost. In 2014, the College Football Playoff was unveiled and presented in true over-the-top fashion its 12-year broadcasting partner in ESPN [9]. ESPN will reportedly pay out \$5.64 billion, or a mere \$470 million annually for rights to the three post-season games

throughout the life of the deal [3]. Billion-dollar focus on the gridiron spells tremendous pressure to secure on-field talent who will bring wins to the institution. Recognizing that the modern recruit often desires notoriety, flashy gear, championships, and the glitz of the athlete's spotlight, many a coach has hastened to go above and beyond to secure the game-changers. And with that, come the ever-evolving bylaws of the National Collegiate Athletic Association (NCAA). So the field is painted as such: with America's attention comes pressure to win and financial backing to do so, with pressure to win comes the necessity to secure talented student-athletes, and with the one-ups-manship of acquiring talent comes the need to regulate how coaches recruit.

The NCAA has long been an organization looking over the shoulder of its many subordinate institutions. However, this arrangement is not by accident; bylaws enforced by the organization become so only after member institutions vote them into existence. As Turow wrote, "the NCAA supervises athletic competitions among its member schools under self-promulgated rules approved by its members...many of its practices resemble those of commercial profit seeking organizations. [20]"

Billion-dollar playoffs and wall-to-wall gameday coverage have not always been the norm. This self-promulgation aspect of the NCAA took its most intriguing turn in the 1980s when member institutions, the University of Oklahoma's Board of Regents and the University of Georgia challenged the television contracts being force-fed to schools by the NCAA. There, the plaintiffs successfully distinguished the self-promulgated rules related to fair and organized competition from the Sherman Act violations of the "recommended fee set by a representative of the NCAA for the different

types of telecasts." [22] To put it into perspective, the contracts under fire, in that case, would have amounted to \$263.5 million from ABC and CBS over four years and \$17.696 million from Turner Broadcasting System, Inc. in the span of two years for the NCAA [22].

College football is a head-count sport, meaning that football student-athletes receive full financial aid as counters. The modern NCAA defines full grant-in-aid as "tuition and fees, room and board, books, and other expenses related to attendance at the institution up to the cost of attendance (NCAA Bylaw 15.05.5) [11]." Within these parameters, a college or university may award student-athletes institutional financial aid in the form of scholarships, grants, tuition waivers, employee dependent tuition benefits, or loans to accommodate the costs incurred with their enrollment and living (NCAA Bylaw 15.02.4.2) [11].

The principles guiding the NCAA's current stance on financial awards to student-athletes is characterized by a commitment to the boundaries of amateurism and an even deeper commitment to its jurisdiction in maintaining a fair playing field among its member institutions (NCAA Bylaw 2.13) [11]. Within its Division I model, the NCAA notes established legislation with a commitment to amateurism and "maintaining a line of demarcation between student-athletes who participate in the Collegiate Model and athletes competing in the professional model [11]." Additionally, the Division I Model asserts a commitment to, among other principles, fair competition, sportsmanship, institutional control, and compliance among members [11].

UNDERSTANDING NCAA DIVISION I FOOTBALL

A football squad functions as a collective of multiple subgroups, each having a clearly defined role within the overall unit and each contributing to a global goal. The NCAA operates in a similar fashion: three divisions are governed by over-arching principles of fairness and student-athlete success. Separately, these divisions are individually shaped according to membership adherence to specific rules and guidelines unique to that level of competition. Division I, upon which the focus remains here, represents the highest level of athletic competition, ample academic breadth available to the student-athletes, widest variety of varsity sports in which student-athletes may compete, and inevitably more money poured into these programs. As the saying goes: more money, more provisions.

The Division I football membership is further divided into Football Bowl Subdivision and Football Championship Subdivision classifications. These groups were formerly known as Division I-A, now FBS, and Division I-AA, which is now FCS [12]. Currently, 128 teams compete in the FBS and 125 in the FCS [7]. Institutions characterized as FBS or FCS are distinguished by factors such as average attendance to home games and financial aid minimum and maximum limits. These subdivision distinctions relate specifically to football program alignment only.

Navigating the NCAA Manual

Kevin Sweeney, outside counsel to the Big XII Conference, once opined that the draw of collegiate athletic competition comes from the self-imposed restrictions that the participating members place on themselves [17]. Consumer and spectator enchantment

with amateur competition is bolstered by the concept that all those competing have followed — perhaps begrudgingly — those restrictions, whether they are the cost of attendance, amateurism certification, or following the deadlines for when athletes commit to an institution. Understanding those limitations means navigating the extensive NCAA Division I Manual that is revisited and amended annually by current member schools.

Among the manual's intricacies are the distinctions across voting requirements for certain rules. Understanding the different types of provisions that make up the manual allows the reader to follow the specific action required to enact change or adoptions of that provision [11]. These regulations allow for flexibility of the part of the Power Five conferences and their member institutions, which will be discussed later. Autonomy provisions are designated for those 65 institutions, and flexibility is legislatively created to allow for decisions on an individual institutional basis that “permit[s] the use of resources to advance the legitimate educational or athletics-related needs of student-athletes and for legislative changes that will otherwise enhance student-athlete well-being [11].” Autonomy provisions are designated in the NCAA Division I manual by the following symbol: [A].

On the other hand, dominant provisions in the manual are those provisions that originated or have remained since the 1988-1989 Manual or the 1989 Convention. These provisions require a two-thirds vote of the total membership, which is specified as “present and voting,” to enact the amendment or adoption [11]. Common provisions, found in bylaws 9, 10, 12, and 13, were also derived from the 1988-1989 Manual and required a majority vote from each of the three separate

divisions (I, II, and III) to affect adoption or change [11].

Federated provisions also have a similar background in their retained authority from the 1988-1989 Manual. However, federated provisions may be amended and adopted by a majority vote from one or more of the divisions, who vote separately on these provisions [11]. These regulations are distinguished according to what division(s) they affect and can be credited for many of the distinctions that shape divisional bylaw variations. Additionally, there are dominant provisions which apply to all members of that division. These provisions are designated as significant, or dominant, enough within the division's competitive structure that they require a two-thirds vote for adoption or amendment [11].

Lastly, within the manual are designated Football Championship Subdivision Dominant provisions. The provisions that specifically affect the members of the FCS and their dominance in its infrastructure means that legislation to change or adopt them before the membership requires a two-thirds majority vote. The constitution of the NCAA outlines the above legislation requirements and further establishes the requirements for voting on any provision that is not specifically classified according to the key in the manual [11].

Identifying the Power Five

Critical to understanding the intricacies of the NLI, IFAA, and the regulations that govern both is the knowledge of the autonomy conferences [4]. In August 2014, the NCAA voted to allow the top five athletic conferences extensive autonomy to write their own rules within the bounds of NCAA compliance. These five conferences, the Big XII, Southeastern Conference

(“SEC”), Pacific Athletic Conference (“Pac-12”), Atlantic Coast Conference (“ACC”), and the Big Ten represent the top 64 programs in the nation and are joined by Notre Dame to round out 65 teams.

This subsection of the NCAA membership is known as the “autonomy conferences,” or despite the reluctance of the NCAA, “the Power Five [4].” While their inception and authority is still in its infancy, concerns loom regarding the outcomes of such autonomy. Dissenters fear the legislation will simply mask deeper problems. “[T]he establishment of unprecedented regulations...creates the perception of a healthy environment, often masking underlying problems that have not been addressed,” wrote Anthony Weaver of *Elon Law Review* [23]. Challengers to the creation of the Power Five have cited concern that the goal of student-athlete welfare will soon fade from its original importance.

A Brief History of Grant-in-Aid

The early decades of the 20th century saw a NCAA that forbade the exchange of financial assistance for performance in collegiate athletics, a rule that did not carry much weight among most members [16]. Member institutions distributed funds to prospects and student-athletes by virtue of “player subsidies” while the NCAA spoke publicly against any benefit that extended beyond the participants’ social and personal enjoyment [16]. The strict definition of amateurism meant that nothing beyond pleasure could lure young athletes to the competition in which they excelled, a concept lost on those with deep pockets and competitive minds.

What “grant-in-aid” consists of was regulated by the NCAA as early as 1956, when the organization enacted amateurism

rules allowing for athletic scholarship awards to be presented to student-athletes [16]. Original grant-in-aid covered the educational staples of the student-athlete: tuition, fees, room, board, books, and included only enough cash to account for related incidental costs such as laundry [16]. This 1956 definition was revisited and edited to no longer reflect such incidentals, according to NCAA rule changes in 1975 [6]. In 2004, restrictions were again revisited to allow student-athletes to receive more than grant-in-aid and beyond the cost of attendance via qualification for federal Pell grants [11].

In the modern NCAA definition, a “counter” is a student-athlete whose financial aid award is a calculated toward the institution’s aid limitations in that particular sport (NCAA Bylaw 15.02.3) [11]. To further aid in determining if a student-athlete is considered a “counter” and to supplement NCAA Bylaw 15.02.8, the NCAA provides a navigable question chart in Figure 15-2 of the most recent Division I Manual [11]. Further, an “initial counter” in terms of FBS award is one “who is receiving countable financial aid in a sport for the first time (NCAA Bylaw 15.02.3.1) [11].” In an FBS, or Football Bowl Subdivision institution, an annual maximum of 25 total National Letters of Intent or institutional financial aid agreements may be awarded between December 1 and May 31 (NCAA Bylaw 15.5.1.9.1) [11]. In addition, an institution that has not otherwise executed self-imposed or a NCAA Committee on Infractions-rendered reduction in aid may award an annual total of 85 counters for football student-athletes (NCAA Bylaw 15.5.6) [11]. An initial counter’s financial aid award must be taken into account within the 85-scholarship limit. A program’s graduation and student-athlete attrition, whether significant or minimal, must adhere to the 25 initial counter and 85 total headcount limitations annually.

Prospective student-athletes signing a National Letter of Intent or an Institutional Financial Aid Agreement are required to first be registered with the NCAA Eligibility Center. The student-athlete must have been placed on the school’s IRL, or institutional request list, with the Eligibility Center, and the prospective student-athlete’s high school must have completed the amateurism certification questionnaire supplied by the Eligibility Center. A student-athlete’s eligibility to become a counter at the Division I level and receive athletically-related financial aid is contingent on his classification as a qualifier coming out of high school, a concept that will be discussed later.

Cost of Attendance

One area in which the aforementioned parameters are tested and stretched by member institutions is the cost of attendance calculation. This NCAA legislation, voted into effect for the beginning of the 2015-2016 school year, allows the autonomy institutions to calculate individually the “cost of attendance” amount of financial aid with which they supplement the student-athlete’s educational expenses. In essence, each autonomy institution—recall there are 65 total—may calculate and publish its own rate for the cost of attendance. Cost of attendance represents the full gambit of financial aid award when “other expenses related to attendance at the institution” are calculated in with the cost of financial cornerstones such as tuition, fees, room, board, and books (NCAA Bylaw 15.02.2) [11].

An institution’s financial aid office may determine the cost of attendance by “using federal regulations” to tabulate potential expenses a student-athlete would incur throughout attendance to that school (NCAA Bylaw 15.02.2) [11]. Among costs that may be tallied into the cost of attendance

are such “indirect costs” as supplies, childcare, transportation, and miscellaneous personal expenses (NCAA Bylaw 15.02.2.1) [11]. Further, these costs may be adjusted on an individual basis for a student-athlete according to the institution’s calculated figures. As long as a financial aid office adjusts the figure in a way that would be equitably available to all students who were similarly situated and who could also request an adjustment, such modifications are allowed within the autonomy model (NCAA Bylaw 15.02.2.1) [11]. Providing the Power Five with the autonomy to calculate their own “cost of attendance” affords an unprecedented level of deference to these schools to “write their own check” when it comes to bringing in prospective student-athletes. Autonomy also allows for an increase in institutional financial aid for any reason at any time, another benefit written over to the Power Five as of August 1, 2015 (NCAA Bylaw 15.3.6) [11].

Early assessments of the cost of attendance stipends were assessed at \$2,000 to \$5,000 per player – dollar amounts subject to what the universities calculate as necessarily related expenses [4]. The stipends, as well as other rules specifically left up to the Power Five collective decision, create a divergence between the heavily funded programs and their smaller-scale counterparts. While non-autonomy institutions may elect to follow autonomy provisions, it will truly be a “keeping up with the Joneses” scenario in which the middle and lower-tier budgeted programs are fighting to remain competitive with the Power Five.

The National Letter of Intent

Arguably the more commonly known of the two student-athlete agreements, the NLI is often the star of the show each February. The most highly coveted football talent across the nation lock into their

destination institution by signing an NLI. This document creates a contractual agreement that, if breached by the student-athlete will result in his loss of one season of competition for one year, which is defined as two full-time semesters or three quarters [14]. Across all Division I sports, approximately two percent of the almost 43,000 NLIs that are signed annually by prospective student-athletes are followed by a subsequent request for release [14].

The NCAA defines the NLI as “the official document administered by the Collegiate Commissioners Association and used by subscribing member institutions to establish the commitment of a prospective student-athlete to attend a particular institution (NCAA Bylaw 13.02.11) [11].” Until this point in his certified amateur athletic career, the student-athlete has likely had consistent communication with the coaching staff according to recruiting regulations and has received an offer of financial assistance from an athletic source after August 1 of his senior year (NCAA Bylaw 13.9.2.2) [11]. However, this document represents the initial binding agreement in writing between the student-athlete and institution.

National Letters of Intent are sent by mail to the student-athlete and are not to be signed in the presence of an institutional coach or athletics staff member. Similarly, the NLI may not be signed on the campus for which the commitment is being made. Most commonly, these forms are instead signed at the student-athlete’s high school. Additional financial aid agreements or forms may be included within the paperwork, but none is to be memorialized and signed before 7 a.m. on the first Wednesday of February. Parental signatures are also required for an NLI offered to a student-athlete who is under the age of 21. The NLI must be signed within

seven days of the date issued and the final signed copy is to be submitted to the conference for validation within fourteen days of signature. Signature of the NLI initializes a recruiting ban by other university programs on that student-athlete, a ban that remains in effect until he enrolls at the signed institution [15].

A football student-athlete transferring midyear may sign an NLI as early as December 14 of this year and as late as January 15, 2017 (to use this winter as an example). A student-athlete entering his freshman year of college may sign his NLI as early as the first Wednesday in February (February 1, 2017) through April 1 [15]. High school seniors who graduate midyear are instead offered a financial aid agreement as they are settling into their first college semester by early February.

Currently, 650 Division I and Division II institutions participate in the NLI program [14]. The program is voluntary, meaning that institutions are not required to participate nor are prospective student-athletes or their parents obligated to sign an NLI. However, in doing so, a student-athlete agrees to attend the institution full-time for one academic year, and the university agrees to provide athletic financial aid for that academic year [14]. As in any contract, adequate consideration must be present; here, the student-athlete promises his physical talent and commits to academic enrollment and progress while the institution promises financial support pursuant to the limitations, enforcement of which has only been held to the condition of receipt of money. In the *Hysaw v. Washburn University of Topeka* decision of 1987, the court held that verbal promises of playing time were not enforceable but that the document, in fact, represented an agreement to award the athlete institutional money [11]. Because of this contractual relationship, a breach by either

side warrants further action but the university retains a distinct advantage. For example, a student-athlete remains bound by an NLI even if the head coach who recruited him leaves the institution before the athlete's year or years of competition have been fulfilled.

Cancellation or reduction of financial support based on athletic ability is regulated and supported by the NCAA bylaws in some circumstances. The institution is permitted to cancel or reduce aid should the student-athlete render himself ineligible for the athletic competition for which he was commissioned, be found to have fraudulently misrepresented himself throughout the application or signing process, engage in such conduct that warrants serious disciplinary action, or withdraws himself from athletic competition for personal reasons (NCAA Bylaw 15.3.4.2) [11]. Cancellation or reduction cannot, however, be conducted without a hearing being available to the student-athlete.

The NLI obligation dually creates a duty in the student-athlete while securing in the institution the right to affiliate and publicize the commitment of new talent. In exchange for this right, the institution has a narrower window of time in which the NLI may be offered. The earliest possible written and signed agreement may only be executed within the bounds of the NLI Program (NCAA Bylaw 13.9.2.2) [11]. Only at the signing and after an official written commitment may the institution publicly comment about the student-athlete's potential contribution to the football program or details as to his joining the team.

The Institutional Financial Aid Agreement

The institutional financial aid agreement is a separate and alternative document offered to a prospective student-athlete to memorialize a school's interest in

his attendance. While the NLI follows a formulaic presentation, institutions are allotted more freedom in what a financial aid agreement entails. However, just as the NLI does, a financial aid agreement creates a contractual relationship between the student-athlete and the institution. The contractual relationship of an IFAA reaches beyond that of the athletics department. First, the document is to be signed by an official of the institution's general financial aid operation or his or her designee. A signature on the IFAA by the athletic director will not suffice to seal the deal (NCAA Bylaw 13.9.2.2) [11].

Institutions retain the autonomy to decide how to word, organize, and facilitate an IFAA. A written requirement is enforced for universities offering an IFAA. According to NCAA bylaws, an institutional financial aid agreement must be submitted in writing to the recipient and include information regarding the "amount, duration, conditions and terms of the award (NCAA Bylaw 15.3.2.2) [11]." All agreements are to be provided to the student-athlete in writing, a protective measure for both sides, and the IFAA may include language designating the period of an award as a single year or as many as the five years of eligibility a qualifier athlete enjoys when he enters the collegiate field (NCAA Bylaw 15.3.2.2) [11].

For example, the Financial Aid Agreement Form offered by the University of Oklahoma includes the following language: "This is to certify that the University of Oklahoma will issue you an athletic financial aid award if you meet the academic requirements of the NCAA, Big 12 Conference and the University of Oklahoma." The agreement goes on to specify that the award consists of "Full Grant-In-Aid: Tuition, Fees, Books, Room, Board, and Other Expenses Related to Attendance [21]."

Conditions and Conference Autonomy

Additional terms may be added to an institutional financial aid agreement. The conditions and restrictions on conditions available to the college or university are further splintered by whether or not the school is an autonomy or non-autonomy institutions. For example, a non-autonomy institution may include academic standards or athletic compliance expectations that create an additional condition of the IFAA. These "non-athletically related conditions" were adopted and revisited with the advent of social media student conduct and the emergence of disciplinary needs beyond the field (NCAA Bylaw 15.3.4.2.2) [11]. These conditions are permitted for reduction by the approval of the member institutions during the period of the award.

Seemingly in the same voting breath, the NCAA membership was mindful of creating strict restrictions on those conditions for non-autonomy conferences (NCAA Bylaw 15.3.4.3) [11]. According to these restrictions, which were revisited as recently as August 2014, a student-athlete's financial aid award may not be reduced or cancelled because of an injury or illness that renders him unable to participate, his lack of productivity or performance in the sport, or for any reason related to athletic performance. A financial aid agreement may not include conditions that are related to specific athletic performance, performance at a certain position, or that otherwise incentivizes the student-athlete athletically with financial promises (NCAA Bylaw 15.3.4.3.1) [11]. Additionally, financial decreases that fall outside the permitted conditions mentioned above for non-autonomy institutions may not occur between the time the student-athlete signed the financial aid agreement and the conclusion of the period set forth by the agreement (NCAA Bylaw 15.3.4.3.2) [11].

Separate from the regulations above are the bylaws adopted by the autonomy conferences along with those institutions that have elected to mimic the provisions set out for the Power Five. In these instances, the financial aid agreement may be subject to reduction, cancellation, or nonrenewal in the following circumstances: A student-athlete renders himself ineligible for athletic competition, fraudulently misrepresents himself throughout the signing and certification process, engages in misconduct that warrants disciplinary action, or voluntarily withdraws from the sport for personal reasons. In addition to these conditions, the autonomy conferences have the option to cancel or reduce a student-athlete's financial aid should he violate a non-athletically related condition in the IFAA or included in the institution's policies. This option speaks to the broader freedoms bestowed upon the Power Five schools (NCAA Bylaw 15.3.5.1) [11]. Reduction or cancellation of the award granted by the financial aid agreement requires that the student-athlete be provided with an opportunity for a hearing (NCAA Bylaw 15.3.5.1.1) [11]. Notice of a nonrenewal of financial aid based on athletic ability is to be provided to the student-athlete by July 1; such notice must be generated from the school's financial aid office rather than the athletics office (NCAA Bylaw 15.3.7.1) [11].

The Transfer Process

While the restrictions that tie NCAA institutions together create a network of similarly-bound competitors, multiple avenues have been legislated and carved out for student-athletes to reach the Division I stage. When grades, exposure, recruiting, or off-the-field issues leave a talented football student-athlete without a Division I program coming to call, transfer represents his next

best choice. Further understanding the complexities of the NCAA competitive model requires an overview of the student-athlete eligibility qualification standard. During the recruitment process, high school student-athletes are classified as "qualifiers" or "non-qualifiers," terms that reflect fulfillment of certain NCAA criteria for eligibility to receive financial aid, practice and compete for a member institution (NCAA Bylaw 14.02.10.1) [11]. A qualifier is a prospective student-athlete who has met eligibility requirements in the four designated ways outlined by the NCAA.

A prospective student-athlete meets this qualification by graduating from high school, successfully completing the core curriculum courses and subjects, and retaining a specified minimum grade-point average that is considered in conjunction with a required minimum SAT or ACT score (NCAA Bylaw 14.02.10.1) [11]. The Initial-Eligibility Index within the NCAA Manual provides a quick-reference for supplemental grade-point averages and exam scores (NCAA Bylaw 14.3.1.1.2) [11]. Individual colleges and universities retain the authority to require additional or heightened qualifications for enrollment as they see fit to align with institutional academic standards. Upon satisfying each of these, a student-athlete qualifies for financial aid, practice, and competition at a NCAA institution. Alternatively, this qualified student-athlete may also meet the prerequisites for the academic redshirt provision, which went into effect in August 2016 (NCAA Bylaw 14.02.10.2.) [11].

Another testament to the dynamic nature of the competitive collegiate athletic model, the Division I membership installed new qualifier requirements as of August. Eligibility to compete in the first year of college at the Division I level remains

dependent upon the previous four factors: graduation, meeting curriculum requirements, and core curriculum GPA in combination with a qualifying SAT or ACT mark. However, the NCAA is launching an initiative that requires a prospective student-athlete to have maintained a 2.300 GPA in his core curriculum courses as spelled out by NCAA academic bylaw. The “2.3 or take a knee” campaign influences the incoming freshman class of 2016 [13].

Students who do not meet the qualifier status upon completion of their high school career are considered non-qualifiers. A non-qualifier is not immediately eliminated from a chance to compete at the collegiate level. Instead, he may attend a junior or community college to satisfy the residency requirement, accrue course credits toward a degree or earn an associate’s degree, and build eligibility to potentially transfer to a four-year school. Football student-athletes who were non-qualifiers coming out of high school may infiltrate the Division I level and become competition and financial aid eligible by graduating from the two-year school with a degree, satisfactorily completing the minimum transferable degree credits into the new institution, successfully completed three full semesters or four quarters (not including summer terms, and maintaining a 2.500 GPA or higher (NCAA Bylaw 14.5.4.2) [11].

HIGH PROFILE EXAMPLES OF TRANSFER ATHLETES

Dede Westbrook

University of Oklahoma wide receiver Dede Westbrook of Cameron, Texas permeated the Division I level in 2015 as a transfer from Blinn Community College, a junior college near his hometown. The junior transferred mid-year and began attending the University of Oklahoma in the spring

semester of 2015 before earning a starting spot in the receiving corps [1]. Westbrook satisfied the requirements of a non-qualifier making the leap to Division I after three full semesters. Westbrook’s quarterback, Baker Mayfield took a longer route to obtain his spot as the Sooners’ front man.

Baker Mayfield

Baker Mayfield, a native of Lake Travis, Texas, started his collegiate career as a walk-on with the Texas Tech Red Raider football program and served as the squad’s starter as a freshman in 2013. This role earned him recognition at the conference and national level. Following his first season, he transferred from Texas Tech to the University of Oklahoma to walk on once again and compete for the job of Sooner quarterback. Mayfield’s transfer to an inter-conference institution triggered a process in which he was required to complete a year of residency before being eligible for competition.

Transfer student-athletes who have not completed a degree at their initial institution are subject to NCAA Bylaw 14.5, which requires a year of residency to establish eligibility for competition. “Residency” in NCAA terms does not pertain to geography, but instead to enrollment within a “full-time academic program” as defined by the institution; and “year” is defined as two full academic semesters or three academic quarters (NCAA Bylaw 14.02.11) [11]. Mayfield’s application for a waiver allowing him to forego his year of residency was denied by the NCAA Committee, and he was required to sit out of competition for the 2014 season. In that time, Mayfield earned honors on the practice field as Oklahoma’s Scout Team Offensive Player of the Year [2]. Mayfield completed the 2015 regular season at the Sooners’ helm with an 11-1 record, Big XII Championship, and received the

Burlsworth Trophy in early December, which is awarded to the nation's top player who began his collegiate career as a walk-on [18].

In a plot twist unique to NCAA football, in June 2016 the Big XII voted against and then subsequently for an amended rule allowing "only walk-ons without written scholarship offers from their original schools to transfer without losing a season of eligibility. If the walk-on elected to transfer after being offered a scholarship from the original school, then the player would face the league's same eligibility restrictions that apply to scholarship players." [19] Affectionately referred to as the "Baker Mayfield rule," this change of policy effectively returned a year of eligibility to the quarterback for time lost in the 2014 season.

Cam Newton

Players forced to sit a year in order to return to the field for another institution in the same division do not always spend that year sitting. Quarterback Cam Newton of the Carolina Panthers first entered the collegiate football world at the University of Florida in 2008 [7]. In November of that year, Newton was arrested and charged with burglary, larceny, and obstruction of justice. After the charges were eventually dropped and 2008 Heisman Trophy winner Tim Tebow announced that he would be returning to Florida for his senior season, Newton chose to leave the Gators. In his year out from Division I football, Newton attended Blinn Community College in Brenham, Texas. In his two semesters as a Buccaneer student-athlete, he completed an associate's degree, fulfilled his year "out," and led Blinn to a 2009 national championship. Newton personifies the NCAA's example of the 4-2-4 athlete who in his intermission between four-year institutions managed to accrue transferrable credit, established one year of

residency, and graduated from the two-year school (NCAA Bylaw 14.5.6) [11]. The rest of Newton's story is well publicized: in the 2010 football season he led the Auburn Tigers to a Division I National Championship and he was drafted number one overall by the NFL's Carolina Panthers in 2011.

Vernon Adams

Vernon Adams provides yet another example of extraordinary transfer circumstances. Adams' academic status made national news when he entered an Eastern Washington University classroom in early August 2015 to take a final math exam to graduate. The course was the last required for Adams to graduate from Eastern Washington, a FCS school, with a bachelor's degree in three years. Ultimately, Adams passed the course and joined the Oregon Ducks within days to begin team camp and eventually earn the starting quarterback position. Adams was able to enroll and complete immediately in making the jump to an FBS school because he completed his degree and enrolled at Oregon as a graduate student. Upon completion of his degree from EWU, Adams signed an institutional financial aid agreement with the University of Oregon [5]. He was subject to the one-time transfer exception and graduate student stipulations outlined by the NCAA (NCAA Bylaw 14.5.5.2.10) [11].

Each of these examples represents a scenario in which the student-athlete, whether by failure to qualify, lack of recruiting attention, or off-the-field issues, missed the initial Division I call before making it to the NCAA's grandest stage.

OBSERVATIONS

In the increasingly competitive and results-driven world that is NCAA football, distinct advantages underlie each method of

securing Division I level talent for the gridiron. The NCAA members legislate themselves based on recognition of certain mutual parameters and the bounds of amateurism – the agreed-upon academic standards and competitive restrictions. The glass bubble that is intercollegiate athletics is one that is often poked and prodded with many pitfalls available for the members inside to fracture the walls.

A talented football student-athlete may reach his destination institution in any number of ways: as a qualifier as a standout high school star, via transfer, by sitting a year, or maybe finishing his degree and pursuing a graduate degree. And when he does arrive, the beginning of that relationship will be memorialized in one of two ways: a letter of intent or an institutional financial aid agreement. Admittedly, the decision of which he signs will rarely be his own.

The institution will prefer the NLI when a highly coveted high school senior finally decides to pen his collegiate choice. Before the first class bell has rung on a crisp Wednesday morning in February the head football coach and his staff can, with some security and some certainty, publicize their commitments and scheme on what the coming fall will look like. The young man is tied to that decision by penalty of a year lost in competition, regardless of whether the coach who brought him there stays.

A financial aid agreement still offers perks and promises to a young transfer athlete or one who was originally a non-qualifier for Division I. If he is highly recruited, an IFAA may be placed before him on his December visit to the Division I school. This offering provides him the security of seeing another season in pads and being financially aided to do so. On the other hand, the university snags itself a developed guy, on the spot, and

ideally ready for the field before the spring semester even starts. In each scenario a contract is created, binding the two parties together with financial support and a commitment to join the team effort.

The NLI provides the institution with the security of bragging rights when a new recruit is signed and ties that student-athlete to that school contractually. On the other hand, the IFAA provides an autonomy institution the flexibility of writing its own terms when a highly touted talent crunches the numbers. In the particular case of a junior college transfer who is looking to transition mid-year, the IFAA provides the opportunity for an institution to put ‘its money where its mouth is’ shortly after his season has concluded (or as late as the following summer) and with its impression fresh in the mind of a recruit. Before he leaves the campus, and up-and-coming transfer student-athlete or even a senior graduating a semester early can commit to the program and solidify his place in the head count, maybe even the depth chart.

CONCLUSION

So the playing field is painted, but it is not necessarily an even one. Division I football is a climate of the haves and have-nots. The 65 top programs in the country, effectively known as the Power Five, have been granted unprecedented autonomy in writing their own rules and finagling provisions according to their interpretation. Whether it is promised via the NLI or an IFAA, autonomy perks will supplement a Power Five recruit’s financial support. That amount will not only reflect the costs of the college experience, but also the stipend amount that keeps the school’s offer competitive. What will come of such unbridled financial and interpretive authority remains to be seen as the Power Five and

others navigate a free market of options. So it stands: with the attention comes the money, the money the pressure, the pressure the recruiting, the recruiting the rules, unless you are headed to a Power Five school, that is.

REFERENCES

1. Anderson, K. (2015). OU Football Media Guide; *2015 Signing Class: Dede Westbrook*, p. 104. Retrieved from http://www.soonersports.com/fls/31000/pdfs/15fb_mediaguide.pdf?DB_OEM_ID=31000
2. Anderson, K. (2015). OU Football Media Guide; *Player Bios: Baker Mayfield*, p. 89. Retrieved from http://www.soonersports.com/fls/31000/pdfs/15fb_mediaguide.pdf?DB_OEM_ID=31000
3. Bachman R. (2012, November 21). ESPN strike deal for college football playoff. *The Wall Street Journal*. <http://www.wsj.com/articles/SB10001424127887324851704578133223970790516>
4. Bennett, B. (2014, August 8). NCAA board votes to allow autonomy. *ESPN.com*. Retrieved from http://espn.go.com/college-sports/story/_/id/11321551/ncaa-board-votes-allow-autonomy-five-power-conferences
5. Bonagura, K. (2015, August 29). Vernon Adams named starting QB for Ducks in Week 1 vs. E. Washington. *ESPN.com*. Retrieved from http://www.espn.com/college-football/story/_/id/13535134/vernon-adams-named-oregon-ducks-starting-quarterback
6. Byers, W. (2010, Feb. 8) Deposition, *O'Bannon v. Nat'l Collegiate Athletic Ass'n*.
7. College Football Teams. (2015). FBS & FCS Teams. *ESPN.com*. Retrieved from <http://espn.go.com/college-football/teams>
8. Durate, J. (2010, November 15). Newton found refuge at Blinn before heading to Auburn. *Houston Chronicle*. Retrieved from <http://www.chron.com/sports/college/article/Newton-found-refuge-at-Blinn-before-heading-to-1703666.php>
9. ESPN to Televisе College Playoff. (2012, February 21). College football. *ESPN.com*. Retrieved from http://espn.go.com/college-football/story/_/id/8660304/espn-televisе-college-football-playoff-12-year-deal
10. Hysaw v. Washburn University of Topeka. (1987). 690 F. Supp. 940 (United States District Court, D. Kansas). Retrieved from http://scholar.google.com/scholar_case?case=7085057766297445415&hl=en&as_sdt=6,44&as_vis=1
11. National Collegiate Athletic Association. (2015). *2015-2016 NCAA Division I Manual*. Indianapolis, IN: NCAA Academic and Membership Affairs Staff. Retrieved from <https://www.ncaapublications.com/p-4388-2015-2016-ncaa-division-i-manual-august-version-available-august-2015.aspx>

12. National Collegiate Athletic Association. (2015). *Divisional Differences and the History of Multidivisional Classification*. NCAA website (About; Who We Are; Membership). Retrieved from <http://www.ncaa.org/about/who-we-are/membership/divisional-differences-and-history-multidivision-classification>
13. National Collegiate Athletic Association. (2015). *Don't Get Stuck on the Bench in College*. NCAA website (2.3 Or Take a Knee Campaign). Retrieved from <http://www.ncaa.org/static/2point3/>
14. National Letter of Intent. (2015). *About the National Letter of Intent (NLI)*. Retrieved from <http://www.nationalletter.org/aboutTheNli/>
15. National Letter of Intent. (2015). *Quick Reference Guide to the NLI*. Retrieved from <http://www.nationalletter.org/documentLibrary/nli-guide-2016-17.pdf>.
16. O'Bannon v. National Collegiate Athletic Association. (2014). No. C 09-1967 CW, 2010 WL 445190 (United States District Court for the Northern District of California).
17. Sweeney, K. (2015, November 24). Presentation, interview with NCAA Compliance Course.
18. Trotter, J. (2015, December). Oklahoma QB Baker Mayfield's career epitomized by trip to Arkansas. *ESPN.com*. Retrieved from http://www.espn.com/blog/big12/post/_id/107655/baker-mayfields-career-epitomized-by-trip-to-arkansas
19. Trotter, J. (2016, June). Baker Mayfield eligible for OU in '17 after Big 12 OK's tweaked rule. *ESPN.com*. Retrieved from http://www.espn.com/college-football/story/_id/15912568/big-12-reversal-makes-baker-mayfield-eligible-oklahoma-sooners-2017
20. Turow, S. (1985). Oklahoma routs NCAA 7-2 in the television bowl: National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma. *University of Bridgeport Law Review*; 6(2), 333-358.
21. University of Oklahoma Financial Aid Agreement Form. (2015, November). Provided by Jason Leonard, personal communication, University of Oklahoma Athletics Compliance Office.
22. (1985). The effect of NCAA v. Board of Regents on the power of the NCAA to impose television sanctions. *Indiana Law Review*; 18(4), 937-958. <https://journals.iupui.edu/index.php/inlawrev/article/view/2650>
23. Weaver, A. (2015). New policies, new structure, new problems reviewing the NCAA's autonomy model. *Elon Law Review*; 7(2), 551-570. https://www.elon.edu/docs/web/law/law_review/Issues/Elon_Law_Review_V7_No2_Weaver.pdf