



The Drake Group
ACADEMIC INTEGRITY IN COLLEGIATE SPORT

POSITION STATEMENT

Rights of College Athletes¹

June 4, 2015

EXECUTIVE SUMMARY

In light of the current national debate about transfer rules in intercollegiate athletics and other restrictions on the eligibility of college athletes, The Drake Group² believes there is a need to acknowledge and define the basic rights of college students who participate in intercollegiate athletics.

National governance associations, institutions of higher education, and athletic department routinely impose restrictions on college athletes that are not imposed on non-athlete students. These restrictions are not limited to transfer rules. These restrictions (along with an absence of protective rules) serve the interest of the institution and its athletic program rather than the interest and protection of the college athlete. The absence of protective rules is noteworthy in the areas of health, respectful and non-discriminatory treatment, due process, and academics. The presence of unwarranted restrictions, juxtaposed with the absence of important protections, results in the proprietary control of athletes, leading to

¹ Preferred citation: Lopiano, D., Gurney, G., Willingham, M., Meyer, J., Porto, B., Ridpath, D.B., Sack, A., and Zimbalist, A. (2015) The Drake Group Position Statement: Rights of College Athletes. (June 4, 2015) Retrieve at: [<http://thedrakegroup.org>]

² The Drake Group is a national organization of faculty and others whose mission is to defend academic integrity in higher education from the corrosive aspects of commercialized college sports. The Drake Group goals include: (1) ensure that universities provide accountability of trustees, administrators, and faculty by publicly disclosing information about the quality of education college athletes receive; (2) advance proposals that ensure quality education for students who participate in intercollegiate athletics, (3) support faculty and staff whose job security and professional standing are threatened when they defend academic standards in intercollegiate sports; (4) influence public discourse on current issues and controversies in sports and higher education; and (5) coordinate local and national reform efforts with other groups that share its mission and goals. The Drake Group is "In residence" at the University of New Haven. For further information see: <http://thedrakegroup.org> or contact Gerald S. Gurney, *President at* geraldgurney@gmail.com

their exploitation. Thus, a compelling need exists to define the rights of college athletes so as to protect athletes from abuses.

The Drake Group offers criteria for eliminating rules that have the potential to affect athletes adversely. The Drake Group also offers twenty-two recommendations for defining the rights of college athletes.

Introduction

National athletic governance and other organizations routinely impose rules on college athletes that limit their transfer to other institutions or choice of institution upon transfer. The rules levy athletic participation penalties, such as the loss of a year of eligibility or ineligibility to participate for one year. Non-athlete students face no such restrictions. In fact, a 2011 U.S. Department of Education report by the National Center for Educational Statistics found that 25.7% of first time four-year college students in the 2003-2004 class transferred to another four-year institution during their six-year enrollment.³ These non-athlete college students, who may be gifted academically or talented in other areas, are not penalized when they leave, nor are they asked to return financial aid already received. These students transfer for various reasons. For instance, students who connect with faculty mentors or engage in an artistic apprenticeship might feel compelled to follow a professor who has moved to another college. Students majoring or participating in music, dance, or debate may elect to transfer so as to advance their education or hone their talents in a setting that better meets their needs. The many reasons that can lead to a transfer decision make any restriction of transfers difficult to defend.

Transfer restrictions are imposed on college athletes for three primary causes: (1) concern that the institution's considerable investment in the recruitment and financial aid offered or awarded will be lost; (2) fear that loss of the athlete will render an institution's sports program less competitive, thereby affecting its revenue potential; and (3) desire to protect college athletes from "poaching" by representatives of competing institutions who seek to entice the athlete away from his or her original institution. The first two reasons treat athletes as a labor force instead of as students seeking an education while also playing sports. They stem from institutional self-interest and are exploitative in that the institution's well-being is placed before the freedom and well-being of the student-athlete. The third reason (protection from poaching) is valid, but can be best addressed through penalties on "poacher" coaches and their institutions, not penalties on athletes.

Currently, athletes from non-revenue-generating sports may use the NCAA's one-time transfer exception to compete immediately at another institution, but those from revenue-generating sports, such as football and basketball, cannot compete for one year after

³ U.S. Department of Education. (2011). Six-year attainment, persistence, transfer, retention, and withdrawal rates of students who began postsecondary education in 2003-04 (NCES 2011-152). Retrieved from <http://nces.ed.gov/pubs2011/2011152.pdf>

transferring. This is unfair because these sports have the highest-paid coaches, who can move to the highest-bidding institution without restriction. The only reason for the college athlete residency penalty is to protect the institutions' and coaches' investments in their athletic talent. College athletes should share in the freedom coaches have to explore other institutional options.⁴

Other restrictions on athletes' rights range from limits on allowable benefits to rules that require all athletes to be covered by athletic injury insurance but do not require institutions to pay for it. Equally troublesome is the absence of rule protections concerning health, due process, the right to respectful, nondiscriminatory treatment, and academics. Although the athlete is neither an employee nor a commodity owned by the institution, the presence of unwarranted restrictions combined with the absence of important protections, results in athlete exploitation and is a major source of the present discontent among athletes. Thus, a compelling need exists to define the rights of college athletes so as to protect them from abuse.

Recommended Criteria for the Consideration Rules Having the Potential to Affect College Athletes Adversely

Current and proposed athletic governance association rules should be carefully examined to ensure that they do not:

- a. restrict the college athlete's access to full academic and educational choices;
- b. allow excessive athletics-related time demands that limit the ability of athletes to meet academic demands;
- c. create inadvertent dangers to the health and well-being of college athletes; or
- d. limit a college athlete's access to professional athletics following collegiate eligibility and his or her right to earn money in the same manner as other students or to obtain career advice.

The national athletic governance association and its member institutions must promulgate rules that protect student-athletes from:

- a. discrimination based on color, disability, gender, national origin, race, religion, creed or sexual orientation;
- b. disrespectful pedagogical practices or other potentially injurious treatment;
- c. injury or other harm due to unsafe conditions, training or competition practices, inadequate medical supervision or unethical professional conduct;
- d. financial loss due to inadequate insurance benefits;
- e. exploitative or unfair decision-making that results in the removal of participation privileges or scholarship benefits;
- f. admissions, academic advising or tutoring practices that place athletic eligibility above academic integrity; and

⁴ Dennie, C.S. and Gurney, G.S. (2012, January 8). It's time for the NCAA to get it right. *The Chronicle of Higher Education*. Retrieved from <http://chronicle.com>.

- g. athletic department practices that isolate athletes from the normal experience of other undergraduate students, including the restricted transfer policy.

The governance association may adopt rules that restrict college athletic participation to students who are not professional athlete employees in order to establish a clear line of demarcation between college athletics and professional sports.

Recommended Rights of College Athletes

To advance fair treatment of college athletes and eliminate exploitative practices, The Drake Group recommends the adoption of the following national governance association and institutional policies, which define the rights of every college athlete, regardless of sport or scholarship status.

A college athlete should have the right to:

ACADEMIC AND CAREER GOALS

1. Transfer to another institution without athletic participation ineligibility or other penalty at least once during undergraduate enrollment, conditioned on meeting all academic and athletic participation eligibility requirements at the original institution at the time of transfer.
2. Receive learning disability testing, remedial education, and other remedies for academic unpreparedness if the athlete enters college via a waiver of normal institutional admissions standards;
3. Experience fully the institution's academic opportunities and responsibilities, such as participating in class projects, attending classes and special recommended campus events, or taking examinations without athletic department interference, penalty, or threat of loss of scholarship.
4. Obtain employment other than as a professional athlete.
5. Engage an agent to explore the feasibility of a professional sports career or to obtain commercial opportunities related to the use of the athlete's name, likeness, and image (that do not identify the athlete's institutional affiliation).⁵

⁵ For a full discussion of this issue, see Lopiano, D., Porto, B., Gurney, G., Ridpath, D.B., Sack, A., Willingham, M., Zimbalist, A. (2015) The Drake Group Position Statement: Compensation of College Athletes Including Revenues from Commercial Use of Their Names, Likenesses, and Images. (March 24, 2015). Retrieve at: <http://thedrakegroup.org/>

HEALTH AND WELFARE

6. Receive initial and continuing treatment for any injury directly resulting from participation in his or her institution's athletic program at no cost to the athlete, the athlete's parents/legal guardians. This requirement shall not apply to any medical condition that predates the athlete's participation in the institution's athletic program unless the injury was disclosed to the institution and participation in the institution's athletic program aggravated it.
7. Receive athletics injury insurance and/or an institutional member medical cost subsidy program that covers usual and customary charges for treatment of athletics injuries suffered while participating in the institution's athletics program. Coverage shall continue for not less than two years following the athlete's departure from the institution at no cost to the athlete or his/her parents or legal guardians.
8. Receive permanent injury insurance that closes the gap between narrow definitions of "catastrophic injury" (e.g., loss of life, limb, etc) and disabilities stemming from college sports injuries that may be discovered or may continue after other athletic injury insurance has expired. To the extent that such athletic-injury-induced disabilities limit employment or other activities, the injured athlete would be eligible for lifelong benefits to replace lost income, similar to workers' compensation benefits.
9. Receive catastrophic injury coverage that pays benefits for a lifetime. An independent board of experts shall review the policy's terms and conditions to ensure that it meets the needs of the athletes it covers. The independent expert panel should recommend revisions to the policy and/or the use of a gap claims fund to remedy identified deficiencies.
10. Receive institutionally financed prevention education and baseline and/or monitoring assessments for sports-related injuries and risks (e.g., neurological baseline assessments related to concussion, presence of sickle cell trait, review of susceptibility to dehydration, etc.). College athletes predisposed to injury risk due to the nature of their sports participation shall receive these services, as recommended by the American College of Sports Medicine, the U.S. Centers for Disease Control and Prevention, or other nationally recognized medical authorities.
11. Be protected from injuries caused by blows to the head or other vulnerable body parts through the adoption of (a) policies and practices that limit physical contact during practice and (b) competition rules promulgated by national governance associations and enforced by qualified sport officials.
12. Receive exercise and supervision guidelines for identified potentially life-threatening health conditions;

13. Receive a determination by a licensed physician for return-to-play following any injury or other medical decision affecting the athlete's safe participation;
14. Be protected by an ethics code, applicable to coaches and other employees, prohibiting sexual or other relationship misconduct with athletes, physical or mental abuse, or pedagogical practices that endanger athletes' health and welfare.
15. Be protected from discriminatory treatment based on disability, gender, national origin, race, religion, or sexual orientation regarding governance policies, participation opportunities, treatment and benefits, educational programs, activities, and employment policies.
16. Have full access to and be fully integrated within the common student experience at the college athlete's institution without being required or being offered the use of exclusive 'athletics only' academic support, housing, dining (training tables), lounge, game room, and other facilities.

ATHLETICS FINANCIAL AID

17. Be treated as a students rather than employees regarding athletics grant-in-aid Awards. All athletics-related full or partial scholarship awards extend to graduation (a maximum of five years) and must not be reduced or cancelled during the award period based on a coach's evaluation of athletic ability, performance or contribution to team success, illness, incapacitating injury, or physical or mental condition. Such awards may be reduced or cancelled only if the recipient: (a) voluntarily withdraws from participation, (b) fraudulently misrepresents information on any application, letter of intent or financial aid agreement, (c) engages in serious misconduct prohibited by institutional conduct codes applicable to all students and warranting substantial disciplinary penalty, (d) fails to meet academic requirements necessary for all athletes to retain athletics eligibility, or (e) fails to meet academic requirements necessary for all students to retain financial aid.

DUE PROCESS

18. Receive the services of an "Athlete Welfare Advocate," furnished by the NCAA. The Athlete Welfare Advocate shall provide independent legal advice, at no cost to athletes or their parents or legal guardians, regarding the application of Association rules and the athletes' due process rights when athletic eligibility or access to athletics-related financial aid is threatened.
19. An appeals process within the institution that does not include athletic department staff members. The appeals process referenced here shall be available for any decision that limits the athlete's participation in athletics or results in nonrenewal or termination of

financial aid, including institutional “declarations of ineligibility” for violating NCAA rules other than academic eligibility rules or drug tests. Athletic department staff members shall not serve on the appeals panel, nor shall they be present when that panel deliberates preparatory to reaching its decision. During the appeal, the athlete is entitled to be represented by an attorney or, alternatively, to have the assistance of an “Athlete Welfare Advocate.”

20. Receive the benefit of binding arbitration in case of a reduction to an athlete’s financial aid dollar amount or to the award period. Binding arbitration shall also be available for athletes seeking reinstatement of their athletic eligibility for reasons other than an insufficient grade-point average, failure to make satisfactory progress toward a degree or similar academic failure, or a non-athletics-related institutional determination concerning sexual abuse, sexual harassment, academic discipline, or other student misconduct. Binding arbitration shall be available in the circumstances described because of the need for timely decisions regarding the withdrawal of time-limited participation benefits or of financial aid intended to meet an athlete’s educational expenses.
21. “Whistleblower protection” for reporting to a non-athletics institutional employee or to an employee of a national athletic governance association a coach, other athletics personnel, faculty, administrators, or college athletes for alleged misconduct or for violating institutional rules or the rules of a national athletic governance association.
22. Team and athletic department disciplinary rules that are consistent with student welfare best practices, as determined by an annual review by a faculty oversight committee.