

Level the Playing Field: An Examination of California's "Student-Athletes' Right to Know Act"

By Stephen K. Rush

Introduction

It is well established that all major college athletic programs take recruiting very seriously. The competition is fierce for top recruits to sign a formal letter of intent. For example Stanford University recruiters undoubtedly emphasize the many great advantages of playing football at Stanford. The recruiters from Stanford in all likelihood emphasize the history of Stanford football, the school's winning history, including its recent Orange Bowl victory over Virginia Tech, and the benefits of living in the Bay Area. They will also pitch the benefits of receiving a top notch education for free on a "full" athletic scholarship.

Since the majority of college athletes will never have the opportunity to play professionally, where they attend college to develop and demonstrate their athletic skills will depend substantially on the scholarship package offered by the school. Although the decision is very important to the athletes and their parents, both usually fail to understand that "full" scholarship offers are accompanied with a good deal of fine print that leaves them with significant out-of-pocket expenses for education-connected expenses such as various academic related supplies and student fees. In analyzing scholarship offers it is critical to determine what would happen to the scholarship if the athlete is injured. Who would be responsible for any subsequent medical expenses and for how long? What happens if the athlete fails to perform up to expectations? The athlete and his/her parents should analyze how much a "full" scholarship really covers and what expenses will they be responsible for.

A joint study conducted by the National College Players Association (NCPA) and the Ithaca College Graduate Program in Sport Management revealed that in 2009, student-athletes in Division I receiving a so-called "full scholarship" were left with an average shortfall of \$295 for the year, or \$14,755 over five years. The NCAA rules prevent all member institutions from providing athletic scholarships that fully cover the price of the school also known as the cost of attendance. The NCAA formula for scholarships leaves very different shortfalls from one college to the next. The range in scholarship shortfalls is \$200/year to \$10,962/year. A full scholarship athlete at the University of Arkansas would be expected to pay almost \$55,000 over five years. The NCPA asserts that colleges and universities deceive recruits, many of whom are from disadvantaged backgrounds, into unknowingly becoming responsible for paying shortfalls of thousands of dollars while on "full" athletic scholarship. The Association believes that a full scholarship should cover the full cost of attendance. Coaches and recruiters assert that they make every effort to go over the fine print of a formal letter of

intent with recruits. However the ultimate goal for a recruiter is to get student-athletes to commit to their school.

California's New Law

On September 30, 2010 then California Governor Arnold Schwarzenegger signed the NCAA sponsored "Student-Athletes' Right to Know Act" (AB 2079) into law amending its Education Code. The NCPA, a strong supporter of the law, receives substantial support from the United Steelworkers International and the California Labor Federation. The law, commencing January 1, 2012, will require a California postsecondary educational institution that offers athletic scholarships, or that provides, by any delivery method, written material regarding its athletic program to a student athlete, to provide specified information on its Internet Website that describes, among other things, the institution's athletic program's policies concerning athletic scholarship issuance, renewal, release, and medical expenses. At best the law is just a beginning as it is only applicable to postsecondary institutions in California. Hopefully other states will consider enacting a similar law.

Consequently, if a student athlete is recruited by Ohio State, for example, rather than Stanford, he would not be benefited by the law. Further, the provisions of the law do not become mandatory until January 1, 2012, so it will not afford any benefits to this year's class of recruits. Additionally the law does not provide any new substantive rights to college athletes. Instead it is only a law of disclosure setting forth certain requirements for California college coaches and recruiters going forward. Specifically when a post secondary educational institution provides written material regarding its athletic program to a student athlete it must contain a direct link to the institution's Internet Web page that sets forth certain information regarding the institution's athletic scholarship program, including:

- The most recent cost of attendance expenses for the academic year and for the summer year.
- The expenses that are prohibited from inclusion in a full grant-in-aid athletic scholarship pursuant to NCAA rules and regulations.
- The policy as to whether student athletes will receive athletic scholarships for summer school.
- The average monthly full grant-in-aid athletic scholarship payment received by student athletes who live on-campus and off-campus.
- The NCAA scholarship rules providing that a verbal commitment is not binding on either the student athlete or the institution and that only the National Letter of Intent is binding.
- The policy concerning the renewal or nonrenewal of a scholarship including circumstances in which a student athlete suffers a temporary or permanent sports-related injury, there is a coaching change, or the student's performance is deemed below expectations.
- The policy on whether student athletes' related medical expenses will be paid including deductibles, copays, and coinsurance.

- The policy concerning whether the institution may refuse to grant a transfer to another educational institution.

Conclusion

Although the new law's only meaningful change is in transparency, it is reasonable to anticipate that if any California postsecondary educational institution fails to fully comply with the law's requirements and if a student athlete accepts a grant-in-aid scholarship at such institution and incurs substantial expenses that are not covered, the parties will likely end up in court. Accordingly California colleges and universities should immediately undertake to set up a website that clearly sets forth the information mandated by the new law. Further they should implement an educational program for their coaches and recruiters to be sure that they are familiar with the new disclosure requirements. Greater transparency will likely provide a recruiting advantage to California institutions over other schools that do not publish such information. Finally, California is expected to be the first of many states to enact such a law given the importance of the issue to the NCPA.

This article is intended to provide a general summary and should not be construed as a legal opinion nor a complete legal analysis of the subject matter. Stephen Rush is an attorney at Niesar & Vestal LLP in San Francisco, a law firm specializing in business law, corporate finance and intellectual property law.