ATHLETIC SCHOLARSHIPS AS CONTRACTS: LEGAL RAMIFICATIONS FOR THE UNIVERSITY AND OBLIGATIONS OF THE STUDENT-ATHLETE

Judy L. Reed
Texas A & M University

ABSTRACT

Scholarships based on athletic ability are the principal method used by universities to attract student-athletes to their schools. The idea that athletic scholarships are contracts between student-athletes and universities has been argued in the court system on a limited basis. Selected court cases pertaining to athletic scholarships for athletic performance are reviewed, and the contractual obligation that exists for universities to educate student-athletes is considered.

INTRODUCTION

On November 6, 1989, Rutgers University played Princeton University in what is recognized as the first college football game (Smith, 1988). From these early beginnings, its popularity spread quickly as colleges discovered the value of football, particularly winning football. However, the early games were filled with violence and corruption. In 1905, representatives of 13 colleges met in Washington, D. C., to discuss the fate of college football. At this meeting, President Theodore Roosevelt admonished the colleges either to reform college football or to give it up. On December 28, 1905, the Intercollegiate Athletic Association of the United States was formed to govern college sports (Smith, 1988). The association was renamed the National Collegiate Athletic Association (NCAA) in 1910.

Since its origin, the NCAA has grown to a membership of over 1000 institutions (Lapchick, 1989a). Through the years the role of the NCAA has

expanded to include specific rules concerning eligibility, ethical conduct, recruiting, financial aid, awards, playing and practice seasons, championships, and rule enforcement (Tow, 1989). Unfortunately, as institutions strive to put winning teams on the field, college athletics has again become filled with corruption and illegalities.

A recent case of dishonesty uncovered rules violations involving members of the University of Missouri men's basketball team (Horst, 1990). Violations included the use of an improper recruiting agent, scholarship payments to an ineligible player, and small cash payments to other players. As a result of these infractions, the Mizzou men's basketball team was banned from the 1991 NCAA basketball tournament.

Meggyesy (1989) suggests that, if college athletics is to survive, reform must occur. For reform to take place, a clear definition of the relationship between major college sports programs and scholarship student-athletes must be formulated. This involves clarifying and changing the public's misconceptions about the role of student-athletes in big-time sports programs. As Meggyesy states, the NCAA and its member institutions have developed and endorsed the idealized characterization of the scholarship athlete as a student who receives an athletic scholarship and becomes a student-athlete. The university provides the student-athlete with the chance to attain a college education while being promoted as an amateur.

According to Meggyesy (1989), this perception is greatly in error. A more realistic and honest depiction suggests that athletes have entered into an employment contract with the university through the athletic scholarship. The terms of the employment contract include an obligation by the athlete to participate in all activities connected with the sport, including games, practices, and off-season training and conditioning sessions. In many ways, from the athletic department's perspective, the student-athlete is an employee, not a student.

This paradox is reiterated by many concerned about the future of college athletics (Lapchick, 1989b). The purpose of this paper is to examine court decisions concerning athletic scholarships as contracts between student-athletes and universities and to discuss the legal ramifications and concerns associated with the employer/employee relationship embodied in scholarships as contracts. In order to analyze the legalities of athletic scholarships, the NCAA regulations pertinent to athletic scholarships and the contents of a legal contract will be discussed.

NCAA RULES AND REGULATIONS

An examination of all NCAA rules and regulations exceeds the scope of this paper. However, an understanding of the rules that govern student-athlete eligibility is necessary in order to scrutinize scholarships as contracts.

According to Tow (1989), one purpose of the NCAA is to initiate, stimulate, and improve intercollegiate athletics programs for student-athletes and to promote and develop educational leadership, physical fitness, athletics excellence, and athletics participation as a recreational pursuit. Therefore, students who participate in intercollegiate athletics must be amateurs. The NCAA defines an amateur student-athlete as one who engages in a particular sport for the educational, physical, mental, and social benefits derived therefrom and for whom participation in that sport is an avocation. Athletes lose their amateur status and, therefore, eligibility for participation in interscholastic athletics if they, among other things, use their athletic skills (directly or indirectly) for pay in any form in that sport.

However, student-athletes may receive scholarships or educational grants-in-aid administered by an educational institution. Financial aid means the funds provided to student-athletes from various sources to pay or assist in paying their cost of education at the institution. Full institutional financial aid is payment for tuition and fees, room and board, and required course-related textbooks, and it cannot exceed the total value of these items.

Other restrictions are placed on scholarships if athletic ability is taken into consideration in any degree when financial aid is awarded. Such aid cannot be awarded in excess of one academic year or for more than five years total. Institutions may gradate or cancel financial aid during the period of the award for three reasons: (1) the recipients become ineligible for intercollegiate competition; (2) they fraudulently misrepresent any information on an application, letter of intent, or financial aid agreement; or (3) they voluntarily withdraw from a sport for personal reasons.

Student-athletes often declare their intention to compete for a particular school by signing a National Letter of Intent. This letter is an official document administered by the Collegiate Commission Association and is used by member institutions to establish the commitment of prospects to attend particular institutions. The accepting institution then responds in writing to a prospect that a grant-in-aid for athletics will be offered by that institution.

CONTENTS OF A BINDING CONTRACT

Considering the issue of athletic scholarships as contracts requires an understanding of the criteria for a contract. A contract is any agreement expressed orally or in writing between two or more people to do or not do something in exchange for something else (Meehan, Milko, & Ostberg, 1989). In order to have a valid contract, five elements must be present: (1) offer; (2) acceptance; (3) consideration; (4) itemized terms; and (5) no valid defenses.

An offer is an invitation to make a deal or an invitation to exchange promises. Acceptance is the agreement to the deal on the terms offered. The offer and the acceptance may be oral or written. Acceptance, however, may be inferred when one party completes one side of the contract or, in some cases, when one party fails to complete one side of the contract (Meehan et al., 1989).

Consideration is the glue that binds a deal. To have a valid contract, there must be an exchange; i.e., each party must give up something of value. This exchange may not be a duty that one has already previously agreed to do or a duty by which one is legally bound. In these situations, there is no consideration and therefore no contract.

In making a contract, it must be clear who is making the contract and what property, time, place, price, and other pertinent details are involved (Meehan et al., 1989). These "terms" help define each side's rights and obligations in the contract. If the essential terms are missing or vague, no "meeting of the minds" has occurred and, technically, no contract is present.

When a contract has been entered into with an offer, acceptance, consideration, and clear terms, the contract may not be enforceable if one side has a valid defense against enforcing it (Meehan et al., 1989). Valid defenses may be that a contract was entered into for illegal purposes, that one or both sides were not competent to enter into the contract, that the contract violates the state's Statute of Frauds (generally, a law requiring certain obligations to be set forth in writing), that one side was forced or tricked into signing the contract, or that the contract includes unconscionable provisions.

ATHLETIC SCHOLARSHIPS AS CONTRACTS

Various definitions of scholarships have been suggested contrary to the definition used by the NCAA. According to Shea and Wieman (1977), the term "athletic scholarship" refers to financial aid awarded to a student primarily for athletic prowess. Stotlar (1985) defines an athletic scholarship as payment for athletic performance. It is distinguished from other aid because the amount of the scholarship is not based on need, because minimal academic qualifications are placed on the recipient, and because the scholarship may be withdrawn for nonacademic reasons.

The question persists whether scholarships are contracts between student-athletes and institutions; this has been argued in the court system on a limited basis. Weistard and Lowell (1979) proposed that, in order to resolve these cases, the courts must determine the relationship between student-athletes and institutions. Two alternative perspectives are suggested: traditional or contractual.

The traditional view considers student-athletes as members of the institution's student body participating in athletics as part of the educational program and receiving financial aid to defray the cost of an education. Conversely, the contractual view holds that athletic participation is undertaken in exchange for the promise of financial support. Athletics are judged not as a part of the general concept of education but more as a business activity conducted by the school. In this relationship, student-athletes are recognized as employees of the institution. Consequently, parties are subject to all legal principles attached to contractual transactions and the employer/employee

relationship. A review of court opinions provides an understanding of the current status of athletic scholarships as contracts.

COURT CASES

In the few cases that have interpreted athletic scholarships, the courts have treated the scholarships as contractual arrangements (Weistard & Lowell, 1979).

The case most often cited concerning scholarships as contracts is *Taylor v. Wake Forest University* (1972). In this case, Gregg Taylor and his father sued Wake Forest University for recovery of educational expenses and alleged wrongful termination of an athletic scholarship.

In February 1967, Gregg Taylor signed an application entitled "Atlantic Coast Conference Application for a Football Grant-In-Aid or a Scholarship," which in part stated the following:

> This grant will be for four years provided I conduct myself in accordance with the rules of the Conference, the NCAA, and the Institution. I agree to maintain eligibility for intercollegiate athletics under both Conference and Institutional rules. Training rules for intercollegiate athletics are considered rules of the Institution, and I agree to abide by them. . . .This grant is awarded for academic and athletic achievement and is not to be interpreted as employment in any manner.

Taylor enrolled as a student at Wake Forest in the fall of 1967, earning a GPA of 1.00. At the time, Wake Forest required student-athletes to attain an average GPA of 1.35 after the freshman year. In February 1968, Taylor informed the football coach that he would not participate in spring football practice until his grades improved. At the end of the spring semester, Taylor's grades had improved so that he met Wake Forest's minimum GPA for freshman student-athletes.

By that time, Taylor had decided he no longer wanted to participate in football and refused to attend practice sessions. In July 1969, the university notified Taylor that his scholarship had been terminated as of the end of the 1968-69 academic year. Taylor continued his studies at Wake Forest and received a degree in June 1971. For the two years he was not on scholarship, a total of $5,000 in expenses was accrued. Taylor and his father brought suit to recover this amount.

The trial court granted a summary judgment (i.e., judgment without trial) to the university, and the Taylors appealed. On appeal, the court found that Taylor failed to comply with his contractual agreement to attend and participate in football practice and therefore the summary judgment was proper.

The question of a contractual agreement between the student-athlete and the institution was also examined in *Begley v. The Corporation of Mercer*

University (1973), in which Mark Begley attempted to recover educational expenses when a basketball scholarship, awarded to him as a result of incorrect assumptions, was denied him. Begley and Mercer University entered into a "contract" in January 1972, agreeing that Mark would receive monetary aid to assist him in pursuing a degree from the university in exchange for his participation on Mercer's basketball team. The stipulations of the contract in part were as follows:

> The student will receive aid toward the completion of an undergraduate degree for participating in basketball provided that he abides by all University Regulations, keeps all training rules, maintains satisfactory progress toward graduating, maintains a minimum GPA of 1.60 and abides by all rules and regulations of the NCAA.

Prior to the university's offer of the scholarship, Begley's GPA had been figured at 2.90. Under NCAA regulations, scholarships were limited to student-athletes who had a minimum GPA of 1.60 (based on a 4.00 scale). Before Begley enrolled at the university, admissions officers at Mercer discovered that Begley's GPA had been figured on an 8.00 scale. One-half of the 2.90 GPA originally calculated gave Begley a GPA below NCAA standards. Begley was then notified that the scholarship from Mercer could not be honored. Based on these facts, Begley brought suit to retain the scholarship.

The court found that, from the commencement of the agreement, Begley was not able to comply with the fifth condition of the contract. Therefore, because Begley was unable to perform his part of the contract, he was not entitled to the performance of the contract by the university. Hence, Mercer University was correct in discontinuing Begley's athletic scholarship.

Another case focused on the contractual burden of an oral promise of a scholarship. In 1982, the oral agreement between a student-athlete and an institution was found to be obligatory ("Athlete Wins," 1984). In this case, Jeff Fishel sued Northeast Missouri State after he had been told he would not be given a full athletic scholarship for the 1982-83 academic year as promised by the university's football coach. Fishel had played junior college football for two years before enrolling at Northeast Missouri State in the spring of 1982, expecting to play football the following fall on a full scholarship. The scholarship was not granted, and Fishel brought suit against the school. The court found that the university had breached an oral contract made to Fishel. Fishel's position was strengthened by the fact that he had enrolled in the university, which was interpreted as a willingness on his part to fulfill his part of the contract.

Because of these decisions, some courts have begun to refer to athletic scholarships as contracts. For example, the case report for *Waters v. University of South Carolina* (1984) declares that the athletic scholarship is a contract, noting that "Waters signed an athletic grant-in-aid contract with the University of South Carolina to play football."

PROBLEMS WITH THE CONTRACTUAL VIEW

Although these decisions may seem reasonable, Weistard & Lowell (1979) suggest several problems which may arise when the relationship between student-athletes and institutions is perceived to be contractual. First, if the athletic scholarship creates a contractual agreement in which student-athletes participate in consideration of the award (i.e., financial aid), then they may be violating NCAA regulations which require participants to retain amateur status (since the award is an economic benefit, or "pay"). Second, if student-athletes wish to withdraw from school or transfer to another school, a breach of contract could be adduced on the part of the student-athletes. Institutions then might be able to sue student-athletes for breach of contract and demand that services be rendered (although public policy rarely requires such "specific performance" of an act a person doesn't want to do). Third, if scholarships are awarded in exchange for participation, the relationship could be viewed as the institution providing compensation to student-athletes for personal services. An employer/employee relationship could be construed, qualifying student-athletes for workmen's compensation if injured on the "job."

What have the courts found? With regard to the amateur status of scholarship student-athletes, no court to date has been asked to determine this question. In order to preserve the constitution of the NCAA, this may never be brought to issue. However, the question of breach of contract has been addressed. In most cases, the courts will not require specific performance in personal service contracts (Schubert, Smith, & Trentadue, 1986).

WORKMEN'S COMPENSATION CASES

The question of workmen's compensation brings up many interesting issues. Some cases have followed the reasoning that a contractual relationship between student-athletes and institutions results in employee status for student-athletes, and attempts have been made to secure consideration for injured players under workmen's compensation legislation.

In *University of Denver v. Nemeth* (1953), Nemeth was injured while participating in spring football practice and asserted that he was employed to play football for the university. The court found that the injuries sustained by Nemeth arose out of and in the course of his employment, and Nemeth was granted compensation.

In *Rensing v. Indiana State University* (1982), Fred Rensing was on full athletic scholarship at Indiana State University. In April 1976, Rensing was injured while participating in spring football practice and was left 95-100% disabled. Following his disability, Rensing applied for workmen's compensation through the Industrial Board of Indiana and was denied. Rensing appealed. To reach a judgment, the court focused on the definition of "employee" under workmen's compensation statutes. An "employee" was defined as a person in the service of another, under any contract of hire or apprenticeship, written or implied, except whose employment is both casual and

not in the usual course of the trade, business, occupation, or profession of the employer. The court found that the financial agreement between Rensing and the university established an employer/employee relationship. Subsequent to this finding, however, Rensing was not granted relief because his "employment" was found to be seasonal and not the business of the university.

Other cases have found that student-athletes are not employees of the institution, and compensation has not been granted when student-athletes are injured while participating in college athletic competition. In *Coleman v. Western Michigan University* (1983), Willie Coleman sought workmen's compensation claiming that, as a scholarship athlete, he was an employee of the university. In determining whether there was a contract for hire, the court found none:

> We do not find that any contract existed between plaintiff and defendant university so as to bring plaintiff's claim. Per plaintiff's testimony, his purpose at the university was to further his education. In order to be able to financially accomplish this, he played football. It was understood that, in order to have his scholarship renewed each year, plaintiff had to attend practices and games and otherwise fulfill the requirements of a university football player. The record does not support the inference that plaintiff considered himself an "employee" for the university.

In *State Compensation Insurance Fund v. Industrial Commission* (1957) and *Van Horn v. Industrial Accident Commission* (1963), the courts found that the injured student-athletes were not under contract of hire and were not rendering services within the meaning of the Workmen's Compensation Act. Benefits were denied in both cases.

A case which may set precedent for workmen's compensation cases for student-athletes, however, is *Graczyk v. Workers' Compensation Appeals Board* (1986). The status of the student-athlete was determined not to be that of employee, based on a statute denying this relationship. In this case, Ricky Graczyk appealed a decision that he was not an employee of the university, although he was on athletic scholarship. In finding that Graczyk was not an employee of the university, the court cited the California Labor Code, Section 3352(k):

> Employee status is not granted to any student participating as an athlete in amateur sporting events sponsored by any public agency, public or private nonprofit college, university or school, who receives remuneration for such participation other than the use of athletic equipment, uniforms, transportation, meals, lodging scholarships, grant-in-aid, or other expenses incidental thereto.

CONCLUSIONS

College athletics is a valuable institution. Many people—students, administrators, players, spectators, and alumni—are committed to higher education because of college athletics (Rush, 1989). The opportunity for many young people to attend college is provided because of athletic scholarships. Since 1952, when the NCAA first allowed scholarships based on athletic ability alone, many students have had the opportunity to further their education because of the athletic scholarship.

For college athletics to survive, the relationship between student-athletes and universities must be clearly defined (Meggyesy, 1989). According to some recent court decisions, a contractual agreement binds the athlete and the university through the athletic scholarship even before the student-athlete arrives on campus. The student-athlete agrees to perform in the competitive arena, and the university agrees to provide the student-athlete with the opportunity for an education.

However, the courts have ruled that the athletic scholarship does not imply that the student-athlete is an employee of the university. The most recent court case to examine the student-athlete/university relationship (*Graczyk v. Workers' Compensation Appeals Board*, 1986) found that the relationship was not that of employee/employer. Also of interest is the decision in *Rensing v. Indiana State University* (1982), in which the court found that student-athletes are not employees of the university based on the idea that athletics is not the "business" of the university.

What, then, is the business of the university? Logically, its primary business is to educate all students. Johnson (1985) suggests that the athletic scholarship implies a contractual obligation to educate student-athletes that is no different from the obligation to educate the general student body. However, he emphasizes that a stronger case of liability can be made for student-athletes. According to Johnson, athletes go to college under different conditions than ordinary students do. The conflict of interest in the universities' bargaining position refutes the assumption that schools act in good faith, for, as Meggyesy (1989) found, many athletic departments view student-athletes as employees of the university.

Because neither the NCAA nor any other external regulatory bodies have prevented many of the academic abuses in college athletics, legal recourse based on contract theory is an appropriate means of insuring justice for student-athletes. As Johnson (1985) states, "recognition by the courts of the contract to educate the student-athlete resurrects the 'student first, athlete second' contention as a fundamental premise of American higher education."

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