Will Athletes Ever Learn? Examining the Ways the NCAA Has Tried to and Can Deter Student-Athletes from Accepting Extra Benefits

Devon L. Stauffer

Follow this and additional works at: http://digitalcommons.law.villanova.edu/mslj

Part of the Entertainment, Arts, and Sports Law Commons

Recommended Citation

Available at: http://digitalcommons.law.villanova.edu/mslj/vol24/iss1/5

This Comment is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Jeffrey S. Moorad Sports Law Journal by an authorized editor of Villanova University Charles Widger School of Law Digital Repository. For more information, please contact Benjamin.Carlson@law.villanova.edu.
WILL ATHLETES EVER LEARN?: EXAMINING WAYS THE
NCAA HAS TRIED TO AND CAN DETER STUDENT-ATHLETES
FROM ACCEPTING EXTRA BENEFITS

I. A REVIEW SESSION

In the summer of 2010, the National Collegiate Athletic Association (NCAA) issued its most severe penalties since 2002 to the University of Southern California (USC).\(^1\) The NCAA punished USC after a four-year investigation into Reggie Bush, a former star running back at USC.\(^2\) The investigation revealed that Bush and his family received extra benefits from a sports agent while Bush played at USC.\(^3\) These actions violated the NCAA’s amateurism legislation, Bylaw 12, and extra benefits legislation, Bylaw 16.\(^4\) As a result, the NCAA sanctioned USC in 2010.\(^5\)

An extra benefit is “any special arrangement by an institutional employee or representative of the institution’s athletics interest to provide a student-athlete or his/her family member or friend a benefit not expressly authorized by NCAA legislation.”\(^6\)

\(^1\) See Mary Elizabeth Kane, When The NCAA Strikes, Who is Called Out?, 7 Depaul J. Sports L. & Contemp. Problems 119, 119–20 (2011) (explaining USC endured NCAA punishment of 2010 and 2011 bowl bans, all victories in which Bush participated vacated, and thirty scholarships eliminated over three years.)

\(^2\) See id. (discussing NCAA’s investigation of USC).

\(^3\) See Mark Yost, Schools for Scandals, Wall St. J. (Sept. 14, 2010), http://www.wsj.com/articles/SB10001424052748703453804575479663933878090 (discussing findings of NCAA investigation); see also infra notes 100–103 and accompanying text (discussing extra benefits Bush accepted while competing at USC).


\(^6\) Nate Mink, What is an Extra Benefit, Other Key Words You May Read in NCAA Report for Syracuse Case (Glossary), Syracuse.com (last updated Mar. 6, 2015, 10:58 AM), http://www.syracuse.com/orangesports/index.ssf/2015/03/key_words_syracuse_ncaa_report_extra_benefit_penalty.html [https://perma.cc/2QH8-3JK8]
extra benefits violates NCAA Bylaws. The NCAA created Bylaws 12 and 16 for the purpose of preventing such extra benefits. Bylaw 12 addresses the eligibility requirements student-athletes must meet in order to maintain their amateurism status. A student-athlete loses their amateurism and eligibility status under Bylaw 12 when they accept extra benefits from agents. Bylaw 16 places limits on what benefits a student-athlete can receive. Any benefit received by a student-athlete that is not authorized by the NCAA is considered an extra benefit, putting a student-athlete’s eligibility in jeopardy.

In order to punish violators of these Bylaws, the NCAA created the Committee on Infractions (“Committee”). The Committee makes factual findings, concludes whether the institution violated the NCAA Constitution and Bylaws, and imposes appropriate penalties if a violation occurred. Prior to 2013, the Committee determined sanctions on a two-tiered penalty structure. In 2013, due to criticism of the two-tiered penalty structure, the NCAA implemented a four-tiered penalty structure to create clearer and stricter

(discussing terms used in Syracuse infractions case); NCAA Manual, supra note 4, at Bylaw 16.02.3 (defining extra benefit).

7. See NCAA Manual, supra note 4, at Bylaw 16.01.1 (acknowledging Bylaws prohibit extra benefits)

8. See id. at Bylaws 12.01, 16.02.3 (stating legislations implemented by NCAA on member institutions).

9. See id. at Bylaw 12.1 (noting in order to maintain amateur status, student-athlete must first be certified as an amateur and then must maintain their amateur status through their time playing in college athletics).

10. See id. at Bylaw 12.1.2 (stating student-athlete loses amateur status if they accept improper expenses, awards, and benefits); id. at Bylaw 12.02.1 (“An agent is any individual who directly, or indirectly, [r]epresents or attempts to represent an individual for the purpose of marketing his or her athletics ability or reputation.”).

11. See id. at Bylaw 16.01.1 (noting accepting extra benefit can affect student-athletes’ eligibility). The NCAA Manual also lists permissible and impermissible extra benefits. See id. at Bylaw 16.11.

12. See id. at Bylaw 16.01.1 (acknowledging if student-athlete accepts extra benefit not authorized by NCAA legislation, student-athlete becomes ineligible in sport in which extra benefit was received but if student-athlete receives extra benefit not authorized by NCAA legislation, student-athlete is ineligible in all sports).

13. See id. at Bylaw 19.3.3 (discussing hearing panel constituting of not less than five and not more than seven members on Committee of Infractions for violations).

14. See id. at Bylaw 19.3.6 (stating the Committee cannot suspend or terminate an institution’s NCAA membership for violating NCAA Constitution and Bylaw).

penalties.\textsuperscript{16} However, the NCAA’s punishments and penalty structures may not deter student-athletes, as they continue accepting extra benefits.\textsuperscript{17}

This Comment explores NCAA Division I extra benefit violations and whether previous sanctions imposed on institutions and the penalty structure deter student-athletes from accepting extra benefits.\textsuperscript{18} Section II highlights the history of the NCAA and explains the NCAA Bylaws.\textsuperscript{19} Section II also addresses the way in which student-athletes are bound to the NCAA Constitution and Bylaws.\textsuperscript{20} Section III first examines the two-tiered penalty structure and how student-athletes continued to accept extra benefits despite previous institutions being sanctioned and the penalty structure.\textsuperscript{21} Next, Section III discusses the change to the four-tiered penalty structure and how student-athletes continued to accept extra benefits despite previous sanctions on institutions and the new penalty structure in place.\textsuperscript{22} Third, Section III discusses how agents are being regulated under the Uniform Athletes Agents Act (UAAA) and the Sports Agent Responsibility and Trust Act (SPARTA) and how these acts do not deter agents from providing extra benefits to student-athletes.\textsuperscript{23} Finally, Section IV concludes by discussing the next


\textsuperscript{17} See infra notes 72–173 and accompanying text (discussing how student-athletes at University of Wisconsin, University of Miami, USC, Syracuse University, Wichita State, and University of Mississippi took extra benefits despite rules and teams being punished previously).

\textsuperscript{18} See infra notes 72–173 and accompanying text (laying out extra benefit violations).

\textsuperscript{19} See infra notes 25–60 and accompanying text (discussing development of both the NCAA and rules that govern it).

\textsuperscript{20} See infra notes 61–65 and accompanying text (discussing how student-athletes are bound to NCAA rules).

\textsuperscript{21} See infra notes 66–119 and accompanying text (discussing how athletes at University of Wisconsin, University of Miami, and USC accepted extra benefits despite rules in NCAA Constitution and Bylaws, violations they could endure under two-tiered structure, and previous sanctions against teams).

\textsuperscript{22} See infra notes 120–174 and accompanying text (laying out change to four-tiered penalty structure and how student-athletes at Syracuse University, Wichita State, and University of Mississippi took extra benefits despite rules in NCAA Constitution and Bylaws, increased penalty structure, and previous sanctions against teams).

\textsuperscript{23} See infra notes 175–238 and accompanying text (acknowledging how Uniform Athlete Agents Act and Sports Agent Responsibility and Trust Act attempt to regulate agents and how agents are not following rules).
steps NCAA could take to deter student-athletes from accepting extra benefits and deter agents from providing extra benefits.24

II. A CRASH COURSE ON THE NCAA’S HISTORY

In 1905, after multiple deaths and injuries during college football games, President Theodore Roosevelt sought a presidential intervention to review collegiate football rules.25 This intervention led to the creation of Intercollegiate Athletic Association of the United States (IAAUS) in 1906.26 In 1910, IAAUS was renamed the National Collegiate Athletic Association (NCAA).27 Initially, the NCAA was formed to review college athletics rules; however, the NCAA has expanded to creating and enforcing rules.28

The NCAA is a membership-driven organization dedicated to implementing and enforcing rules to allow student-athletes to compete in college athletics.29 The NCAA consists of 1,200 member schools which are broken into three divisions: Division I, Division II, and Division III.30 Division I schools generally have the largest student bodies, the largest athletic budget, and the most scholarships.31 This division consists of 300 colleges and universities, 6,000

---

24. See infra notes 299–248 and accompanying text (discussing how paying college athletes and NCAA working with agents may prevent student-athletes from accepting extra benefits).


26. See Kane, supra note 1, at 121 (noting IAAUS was created to reform college football rules); see also Smith, supra note 25, at 12 (noting in 1905 “there were over eighteen deaths and one hundred major injuries” in college football).

27. See Kane, supra note 1, at 122 (discussing NCAA consisting of “four-year, post high-school colleges, universities, and other educational institutions”).


30. See Jean S. Frankel & Nancy Alexander, Pumped-Up Governance: Lessons from the NCAA’s Restructuring, ASSOCIATIONS NOW (Feb. 1, 2015), http://association-snow.com/2015/02/pumped-up-governance-lessons-from-the-ncaas-restructuring/ [https://perma.cc/Q8L8-XKEN] (acknowledging each division has its own board of directors, made up of regional athletic conferences, and stakeholders such as athletic directors, coaches, faculty, and 460,000 student-athletes).

Stauffer: Will Athletes Ever Learn? Examining the Ways the NCAA Has Tried t

2017] WILL ATHLETES EVER LEARN? 115

athletic teams, and 17,000 student-athletes. Division II is the division below Division I; however, student-athletes are just as competitive and skilled as Division I athletes. Compared to Division I schools, Division II schools generally do not have the same financial resources to devote to athletics. Division II consists of over 300 colleges and universities and thousands of student-athletes. Division III is the bottom division in the NCAA, with student-athletes primarily focusing on academics. Division III schools help student-athletes focus on academics by having shorter practices and playing seasons, thereby minimizing conflicts Division I and Division II student-athletes may experience. Division III consists of 450 colleges and institutions and more than 18,000 student-athletes.

A. NCAA Constitution and Bylaws

Since the NCAA’s inception, it has been the rule-making body for college athletics. The quality and quantity of rules have “immensely grown and expanded since 1906.” The NCAA’s legislation, which governs the NCAA’s member institutions’ conduct, is contained within the NCAA Constitution and Bylaws. The legislation covers many areas of college athletics including principles of conduct, NCAA membership, ethical conduct, amateurism and athletics eligibility, benefits, and enforcement.

32. Id. (discussing Division I concept).
34. See id. (noting Division II offers a “partial-scholarship,” which is a “mix of athletic scholarships, academic aid, need-based grants and/or employment earnings”).
35. See id. (discussing background of Division II).
36. See NCAA Division III, NCAA, http://www.ncaa.org/about?division=D3 [https://perma.cc/5SAQ-TDXW] (last visited Jan. 28, 2016) (acknowledging Division III student-athletes are “integrated on campus and treated like all other members of the student body”).
37. See id. (discussing life of Division III student-athlete).
38. See id. (discussing makeup of Division III).
39. See Kane, supra note 1, at 122 (noting original purpose of NCAA was to create rules for college football).
40. Id. (discussing growth of NCAA through its history).
41. See NCAA Manual, supra note 4, at Organization of the NCAA Manual (noting NCAA Constitution “consists of information relevant to the purposes of the Association” and NCAA Bylaws are “to promote the principles enunciated in the constitution and to achieve the Associations purposes”).
42. See id. at Const. arts. 1–6, Bylaws 10–22 (discussing composition of NCAA Constitution and Bylaws).
B. Governing the NCAA

In order to achieve its goals, the NCAA “is committed to enforcing the rules, creating fair competition, and establishing a positive competitive environment for student-athletes across the country.” In order to uphold the integrity and fair play among the NCAA membership and to impose appropriate and fair penalties, the NCAA created the infractions program. The NCAA also established a governance structure that “consists of a legislative bodies . . . that govern each division . . . [and] committees that set association-wide policy.”

The Committee acts as the judge and jury for the infraction process. It makes factual findings, concludes whether the institution violated the NCAA Constitution and Bylaws, and imposes appropriate penalties if a violation occurred. The NCAA also created an Infractions Appeals Committee to hear appeals from decisions involving Level I and Level II violations. The Infractions

43. Fairness and Integrity, NCAA, http://www.ncaa.org/about/what-we-do/fairness-and-integrity [https://perma.cc/F2GF-DJR9] (last visited Jan. 28, 2016) (acknowledging “[v]alues such as respect, caring, fairness, civility, honesty, integrity, and responsibility are equally important on and off the field”). For further discussion on how the NCAA governs college athletics, see infra notes 43–49 and accompanying text.

44. See NCAA Manual, supra note 4, at Bylaw 19.01.1 (acknowledging “ability to investigate allegations and penalize infractions is critical to the common interests of the Association’s membership and the preservation of its enduring values”).


46. See NCAA Manual, supra note 4, at Bylaw 19.3.1 (noting Committee is appointed by Board of Directors and consists of no more than twenty-four members).

47. See id. at Bylaw 19.3.6 (discussing duties of Committee). The Committee also has a duty to (d) Coordinate with the office of the Committees on Infractions as necessary for logistic, administrative or other support related to implementation of the committee’s decisions; (e) Monitor compliance with prescribed penalties . . .; (f) Consider complaints alleging the failure of any member to maintain the academic or athletics standards required for membership . . .; (g) Formulate and revise internal operating procedures and revise investigative guidelines . . .; and (h) Carry out such other duties directly related to the administration of the Association’s infractions programs. Id.

48. See id. at Bylaw 19.4.1 (stating five members comprise Infractions Appeals Committee).
Appeals Committee has the authority to review the Committee’s ruling and decide whether to overturn or affirm its decision.\textsuperscript{49}

C. NCAA Amateurism: Bylaw 12

Amateur competition is the driving factor behind college athletics and the NCAA.\textsuperscript{50} Amateurism rules ensure fair competition for all student-athletes.\textsuperscript{51} In order to keep professional sports separate from college athletics, the NCAA only allows student-athletes with amateur status to participate in college sports.\textsuperscript{52} A student-athlete must follow the eligibility requirements under Bylaw 12 in order to maintain their amateur status.\textsuperscript{53} A student-athlete loses their amateur status if they accept transportation, cash, entertainment, or other extra benefits from an agent while competing in college athletics.\textsuperscript{54} However, this Bylaw is not

\textsuperscript{49} See id. at Bylaw 19.4.5.\hfill\textsuperscript{50} See Amateurism, NCAA, http://www.ncaa.org/amateurism [https://perma.cc/R4MJ-AUDF] (last visited Jan. 30, 2016) (discussing amateurism is “a bedrock principle of college athletics and the NCAA”).\hfill\textsuperscript{51} See id. (stating “all incoming student-athletes must be certified as amateurs”).\hfill\textsuperscript{52} See NCAA Manual, supra note 4, at Bylaw 12.01.1 (stating only athletes with amateur status are eligible for college athletics participation).\hfill\textsuperscript{53} See id. at Bylaw 12.1 (noting general principles of maintaining amateurism or situations in which student-athlete may lose amateur status).\hfill\textsuperscript{54} See id. at Bylaw 12.1.2 (discussing how student-athlete loses amateurism status). A student-athlete loses their amateur status if the student-athlete:

(a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;
(b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;
(c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received, except as permitted in Bylaw 12.2.5.1;
(d) Receives, directly or indirectly, a salary, reimbursement of expenses, or any other form of financial assistance from a professional sports organization based on athletics skills or participation, except as permitted by NCAA rules and regulations;
(e) Competes on any professional athletics team per Bylaw 12.02.11, even if no pay or remuneration for expenses was received, except as permitted in Bylaw 12.2.5.2.1;
(f) After initial full-time collegiate enrollment, enters into a professional draft; or
(g) Enters into an agreement with an agent.
the only one to abrogate a student-athlete’s participation eligibility.55

D. NCAA Extra Benefits: Bylaw 16

Bylaw 16 provides limitations of allowable awards, benefits, and expenses student-athletes can accept while playing.56 A student-athlete becomes ineligible when they accept an award, benefit, or expense not authorized by the NCAA legislation.57 An extra benefit is “any special arrangement by an institutional employee or representative of the institution’s athletics interest to provide student-athlete or the student-athlete family member or friend a benefit not expressly authorized by NCAA legislation.”58 Accepting extra benefits violates NCAA rules.59 However, extra benefits are not a characterized violation if the benefit is available to general population or student body.60

E. Student-Athletes Are Bound to NCAA Rules

All colleges, universities, athletic conferences or associations, and other groups that are related to college athletics can be a member of the NCAA.61 Colleges and universities choose to become a member of the NCAA by applying and being elected into active

---

55. See NCAA MANUAL, supra note 4, at Bylaw 16 (stating how student-athlete can lose their eligibility status by accepting extra benefits).

56. See Keith Starr, The Path to Antitrust Success Against The NCAA Is More Limited than You Think, 79 Mo. L. Rev. 1157, 1171 (2014) (discussing extra benefits given to student-athletes “because of their athletic ability”).

57. See NCAA MANUAL, supra note 4, at Bylaws 16.01.1, 16.02.1–16.02.3 (defining award as “an item given in recognition of athletics participation of performance,” an excessive expense as “one not specifically authorized under regulations of the Association concerning awards, benefits, and expenses,” and an extra benefit as “any special arrangement by an institutional employee or representative of the institution’s athletics interests to provide a student-athlete or student-athlete family member or friend a benefit not expressly authorized by NCAA legislation”).

58. Id. (defining extra benefit).

59. See id. (discussing extra benefit violations).

60. See id. (stating benefit is not characterized as violation “if it is demonstrated that the same benefit is generally available to the institution’s students or their family members or friends or to a particular segment of the student body . . . determined on a basis unrelated to athletics ability”).

61. See id. at Const. art. 3.1 (noting colleges, universities, athletic conferences or associations, and other groups must be accredited by one of six regional accrediting agencies and must be located in United States, its territories, or possessions).
membership. When an active member, the institution must comply with the NCAA’s Constitution and Bylaws and other legislation. As members, the institutions have the responsibility to ensure their athletic programs, which include participating student-athletes, are in compliance with the rules and regulations. A student-athlete agrees to these rules by joining a member institution and signing a Student-Athlete Statement each year.

II. THE NCAA’S UNSUCCESSFUL ATTEMPTS ON PUNISHING EXTRA BENEFIT VIOLATIONS

A. Two-Tiered Penalty Structure

Prior to 2013, the NCAA created and enforced a two-tiered penalty structure. The Committee punished violators of the penalty structure. Violations under this penalty structure would have been characterized as a secondary or major violation. A secondary violation was “a violation that [was] isolated or inadvertent in nature, provide[d] or . . . intended to provide only a minimal recruiting, competitive or other advantage and does not include

See id. at Const. art. 3.2.1 (stating institutions must apply and be elected to active membership).

See id. at Const. art. 3.2.1.1 (acknowledging “[a]ctive membership is available to four-year colleges and universities, accredited by the appropriate regional accrediting agency . . . and duly elected to active membership”).


See NCAA MANUAL, supra note 4, at Const. art. 3.2.4.6 (noting all active member institutions must administer Student-Athlete Statement form annually); Form 15-3a Academic Year 2015–16: Student-Athlete Statement – NCAA Division I, NCAA, available at http://lehighsports.com/documents/2015/8/4//Form_15_3a_Student_Athlete_Statement.pdf?id=1353 [https://perma.cc/EWE7-3JNE] (last visited Mar. 22, 2016) (noting athletes must sign Student-Athlete Statement every year agreeing to understanding NCAA rules in order to be eligible for collegiate competition); see also NCAA MANUAL, supra note 4, at Bylaws 12.1.2, 16.01.1 (stating extra benefits received from an agent affects eligibility).


See NCAA MANUAL 2012–13, supra note 15, at Bylaw 19.1 (stating Committee was “responsible for administration of the NCAA enforcement program”).

See id. at Bylaw 19.02.2 (discussing two-tiered structure used by NCAA prior to 2013).
any significant impermissible benefit.”69 A major violation included “[a]ll violations other than secondary violations.”70 However, despite the NCAA, the Committee, and the penalty structure, athletes continued to accept extra benefits.71

1. University of Wisconsin

From 1993 to 2000, the University of Wisconsin athletes accepted unadvertised shoe discounts from a local shoe store, The Shoe Box.72 In what is now known as the University of Wisconsin Shoe Box Scandal, investigators found that 157 athletes in fourteen sports violated the NCAA Bylaws by accepting at least $23,000 in unadvertised discounts.73 In some instances, athletes even exchanged university-issued athletics equipment for items in the store.74 At least seven men’s basketball players, twenty-six football players, and one women’s soccer player accepted discounts and several did not pay back interest-free credit accounts at the store.75 These discounts and interest-free accounts were not available to other students and thus a violation of the NCAA Bylaws.76 The NCAA also found a booster provided transportation to two men’s

69. Id. (discussing violations “including, but not limited to, an extra benefit, recruiting inducement, preferential treatment or financial aid”).

70. Id. (noting major violations include “extensive recruiting or competitive advantage”).

71. See infra notes 72–119 and accompanying text (discussing student-athletes accepting benefits at University of Wisconsin, University of Miami, USC, and University of Tennessee).


74. See Wisconsin Infractions Report, supra note 72 (discussing ways student-athletes received extra benefits).

75. See Hall, supra note 72 (noting all athletes were ordered to pay back value of their discounts to charity).

76. See id. (detailing extra benefit violations at University of Wisconsin); see Wisconsin Infractions Report, supra note 72, at 5 (explaining “extension of credit was based upon their status as student-athletes”).
basketball players on one occasion. Prior to the NCAA’s sanctions, the University of Wisconsin self-imposed its own sanctions: three years of probation, a $150,000 fine, and an exclusion of four football and one men’s basketball scholarship.

On October 2, 2001, the Committee determined this conduct was a major violation of Bylaw 16 under the two-tiered penalty structure. Student-athletes violated Bylaw 16 when they accepted discounts and interest free credit accounts from The Shoe Box that were not available to the rest of the student body. In addition, men’s basketball players violated Bylaw 16 when they accepted transportation from a representative. Due to these violations, the NCAA put Wisconsin on five years of probation and took away multiple football and basketball scholarships. The University of Wisconsin’s punishment did not educate student-athletes at other schools on punishment they would face when accepting extra bene-

77. See Wisconsin Infractions Report, supra note 72 (noting violation would usually be considered secondary violation; however, violation was more serious because it indicated “an elevation of the relationship between athletics representative and student-athlete”). The NCAA Manual defines a booster as an individual who is known (or should have been known) by a member of an institution’s executive or athletics administration to:

(a) Have participated in or to be a member of an agency or organization promoting the institution’s intercollegiate athletics program;
(b) Have made financial contributions to the athletics department or to an athletics booster organization of that institution;
(c) Be assisting or to have been requested (by the athletics department staff) to assist in the recruitment of prospective student-athletes;
(d) Be assisting or to have assisted in providing benefits to enrolled student-athletes or their families; or
(e) Have been involved otherwise in promoting the institution’s athletics program.

NCAA MANUAL, supra note 4, at Bylaw 13.02.14.

78. See Wisconsin Infractions Report, supra note 72 (noting school also banned players from shopping at The Shoe Box); see also Badgers Get Probation in Football, Men’s Hoops, supra note 73 (acknowledging University of Wisconsin “banned athletes, coaches, and athletic administrators from shopping at the Shoe Box”).

79. See Baggot, supra note 72 (stating this was third major violation in eight years at University of Wisconsin).

80. See Wisconsin Infractions Report, supra note 72 (discussing ways student-athletes received extra benefits).

81. See id. (discussing ways student-athletes accepted extra benefits); see also NCAA MANUAL, supra note 4, at Bylaw 16.11.2.2(d) (acknowledging transportation is expressly prohibited).

fits. In light of the deterrence the NCAA was trying to accomplish, these punishments were not nearly enough to deter and prevent extra benefits.

2. University of Miami

Despite the NCAA’s education on the penalties student-athletes will face for accepting extra benefits, it did not deter student-athletes at the University of Miami from accepting extra benefits from a booster and equipment manager from 2002 to 2010. Booster Nevin Shapiro provided student-athletes with meals, cash, lodging, transportation, and entertainment. Shapiro provided entertainment to student-athletes by hosting them at his home and on his yacht, paying for their beverages, providing admissions into nightclubs and strip clubs, and providing access to private rooms at Miami-area nightclubs and strip clubs. In addition, Shapiro was an investor in a sports agency and arranged meetings between student-athletes and his partner, a registered sports agent. Also, acting on behalf of the sports agency, Shapiro provided benefits to encourage student-athletes to seek representation from the sports agency. Student-athletes also accepted extra benefits from a for-
mer equipment staff member when they accepted meals, entertainment, and football gear. The coaches knew student-athletes received extra benefits and in some instances even arranged for student-athletes to receive them. Prior to the NCAA sanctions, Miami imposed its own postseason ban for two seasons.

The Committee determined, under the two-tiered penalty structure, that this was a major infractions case; Miami’s student-athletes violated both Bylaw 12 and 16. These Bylaws were violated when Shapiro, a booster and an investor in a sports agency, arranged meetings between student-athletes and an agent and bribed student-athletes with benefits to sign with his agency. Further, Miami’s student-athletes violated these Bylaws when they accepted meals, cash, and entertainment. The NCAA placed Miami on three years of probation. The football program lost nine scholarships and men’s basketball program lost three for multiple academic years. These extra benefits just continued to show why

90. See NCAA Infractions Case, supra note 86 (noting equipment manager provided student-athletes extra benefits from 2007 to 2011).

91. See id. (noting University of Miami also reduced number of official visits by twenty percent from 2012 to 2013, reduced fall evaluations from forty-two to thirty-six from 2012 to 2013, and reduced available contact days by twenty percent from 2013 to 2014).


93. See Miami Infractions Report, supra note 85, at 35–44, 46 (discussing violations of Bylaws 12.3.1.2, 16.11.2.1, and 16.11.2.3(d)).

94. See id. at 35–38 (detailing extra benefits are violations of Bylaw 12).

95. See id. at 6 (recounting “booster was major donor to institution’s athletics programs”).


97. See Miami Infractions Report, supra note 85, at 63 (noting football program lost scholarships during 2014–2015, 2015–2016, and 2016–2017 academic years); see also Adelson, supra note 96 (stating former Miami basketball coach, Frank Haith, was suspended five games and former assistant basketball coach, Jorge Fernandez, and former assistant football coaches, Clint Hurt and Aubrey Hill, received two-year show-cause penalty).
the NCAA needed to impose harsher penalties on student-athletes and schools; however, extra benefits did not stop here.98

3. University of Southern California

Despite everything the NCAA did to deter student-athletes from accepting extra benefits, it was not working.99 After a four-year investigation by the NCAA, the Committee concluded that USC’s star running back, Reggie Bush, and his family received extra benefits from 2004 to 2005.100 Bush and his family accepted “hundreds of thousands of dollars in gifts . . . from sports agents Lloyd Lake and Michael Michaels.”101 The extra benefits included round-trip airfare, limousine transportation, weekly payments of at least $1,500, and hotel accommodations.102 Bush also entered into an agreement with an agent to establish a sports agency featuring him.103

In the summer of 2010, the Committee determined this was a major violation of Bylaws 12 and 16.104 Bush and his family violated Bylaws 12 and 16 when Bush entered into an agreement with an agent and when they accepted cash, airfare, and transportation.105

98. See supra notes 85–97 and accompanying text (discussing extra benefits student-athletes accepted); see also infra notes 99–119 and accompanying text (observing other extra benefit violations). R

99. For a summary of previous sanctions imposed on institutions and twotiered penalty structure, see supra notes 65–97 and infra notes 100–110 and accompanying text. R

100. See Kane, supra note 1, at 132 (noting Bush and his family began receiving extra benefits beginning in December 2004). R


102. See Robinson & Cole, supra note 101 (acknowledging Bush and his family accepted $595.20 of round-trip airfare, $250.65 in limousine transportation, suits for Bush’s stepfather and brother, $1,500 weekly payments to the Bush family, $623.63 for hotel stay at Venetian Resort & Casino, $1,547.68 for hotel stay at Manchester Hyatt, $13,000 for Bush to purchase and modify car, $54,000 in rent-free living for a year, $28,000 to Bush’s family to help settle pre-existing debt, and thousands of dollars in spending money to Bush and his family); see also Yost, supra note 3 (noting under NCAA rules, student-athletes can only be paid by a small stipend from the university and cannot have contact with an agent until the student-athlete declares for the draft). R

103. See Report of the National Collegiate Athletic Association Division I Infractions Committee, supra note 4 (discussing Bush’s involvement with agents). R

104. See id. (discussing characterization of violation); see also Kane, supra note 1, at 119 (acknowledging this was “among . . . most severe penalties . . . NCAA had handed down since 2002.”). R

105. See Report of the National Collegiate Athletic Association Division I Infractions Committee, supra note 4 (discussing violations of Bylaws 12 and 16); see also NCAA R
Due to these violations, the NCAA barred the football team from bowl games in 2010 and 2011, forced the football team to vacate all victories in which Bush participated beginning in 2004 through 2005, and eliminated thirty scholarships over three years. In response to the penalties, “USC made moves to completely dissociate itself from Bush, including ‘remov[ing] his jersey from the steps of the [football stadium]’ and ‘remov[ing] all references to Bush at the school’s Heritage Hall.’” The NCAA was never able to punish Bush because he left USC before the NCAA issued its sanctions. However, Bush returned the Heisman Trophy he received in 2005 because he failed to comply with the Heisman Trophy ballot. These sanctions are some of the most severe ones the NCAA has applied; however, it proved not to be enough.

4. University of Tennessee

While the NCAA discovered some extra benefit violations, it did not discover them all, giving student-athletes the idea they might be able to get away with accepting extra benefits. From 2005 to 2008, Arian Foster accepted extra benefits while playing football at the University of Tennessee. Due to financial constraints, Foster accepted money so he did not have to decide be...
tween paying rent and buying food. In one circumstance, when Foster had no food and no money, he called his coach and said, “[e]ither you give us some food or I’m gonna do something stupid.” In response, the coach bought Foster and three others fifty tacos. Foster was never punished for receiving extra benefits while in college because it was not publicly known until he was playing in the National Football League (NFL). However, the Committee would have likely found Foster violated Bylaw 16 when he accepted cash and food from individuals and coaches, and the Committee would have punished him under the two-tiered penalty structure. The two-tiered penalty structure and sanctions were not enough to deter student-athletes from accepting extra benefits. The next step the NCAA needed to take was changing the penalty structure.

B. Four-Tiered Penalty System

In 2010, the NCAA began to discuss changing the two-tiered penalty structure. The panel discussed increasing the punishment from athletes paying fines for losing their college eligibility to

---


114. Ganguli, supra note 112 (noting Foster saw “nothing wrong” with accepting extra benefits).

115. See id. (describing how Foster took food but "never took money from coaches, but there were always people . . . to help him financially").

116. See id. (concluding Foster brought to light violations in a documentary called Schooled: The Price of College Sports); see also Taylor, supra note 113 (reporting Foster played for University of Tennessee from 2004 to 2008 and documentary aired in 2013).

117. See Ganguli, supra note 112 (discussing extra benefits Foster accepted); see also NCAA MANUAL, supra note 4, at Bylaw 16.02.3 (noting extra benefits include special arrangements by and institutional employee).

118. See supra notes 72–116 and accompanying text (observing two-tiered violations).

119. See infra notes 120–140 and accompanying text (discussing change to four-tiered penalty structure).

suspending players during their rookie season in the NFL.\textsuperscript{121} The
two-tiered penalty structure faced a lot of criticism because the 
"process was inefficient, lacked transparency, and was too pro-
tracted."\textsuperscript{122} The NCAA concluded certain major violations punish-
ments “failed to delineate sufficiently between individual and 
institutional culpability for infractions.”\textsuperscript{123} The case that brought 
the most criticism to the two-tiered penalty structure was the 
University of Miami case; however, other cases also revealed gaps in the 
penalty structure.\textsuperscript{124} “These deficiencies threatened the NCAA’s le-
gitimacy and weakened member institutions’ and the public’s trust 
in its ability to effectively handle rules violations.”\textsuperscript{125} The two-tiered 
structure was unsuccessful in discouraging violations and holding 
violators accountable.\textsuperscript{126} Therefore, the NCAA created the four-
tiered penalty structure to respond to the criticism and “restore 
trust in the [NCAA’s] ability to fairly and efficiently govern Division 
I intercollegiate athletics.”\textsuperscript{127}

In 2013, the NCAA enacted a new four-tiered penalty structure 
in order to focus on “conduct breaches that seriously undermine or 
threaten the integrity of the NCAA Constitution.”\textsuperscript{128} The new struc-
ture was formatted to “get rid of the risk/reward analysis that has
tempted people . . . to break the rules in the hopes that either they won’t get caught or that the consequences won’t be very harsh if they get caught.” The NCAA created a clearer “if you do this, then you can expect that” penalty structure by creating a structure that lays out the consequences for various types of violations. The four-tiered structure also holds those who break the rules “more accountable for their actions.”

Level I violations of the four-tiered structure address “severe breach of conduct.” These violations “seriously undermine[ ] or threaten[ ] the integrity of the NCAA.” Violations include a “significant recruiting or competitive advantage” and a “significant impermissible benefit.” Level II violations are a “significant breach...
of conduct." Violations include "minimal to significant recruiting or competitive advantage[s], . . . minimal to significant impermissible benefit[s], or . . . a pattern of systemic violations in a particular area." Level III violations are "isolated or limited in nature." Violations include "no more than a minimal recruiting, competitive, or other advantage" and a "minimal impermissible benefit." Level IV violations are "incidental issue[s]." Violations are "minor infraction[s] that [are] inadvertent and isolated, technical in nature and result[ ] in a negligible, if any, competitive advantage."

1. Syracuse University

The NCAA put its new penalty structure to the test when Syracuse University’s basketball and football players accepted extra benefits from a booster and a Syracuse staff member from 2001 to 2011. On at least five occasions, a Syracuse staff member provided two student-athletes with transportation that did not fit the definition of “local,” as defined in the NCAA Bylaws. Between 2002 to 2003 and 2006 to 2007, a booster provided or arranged transportation for student-athletes.

135. Id. (stating this is second highest violation).

136. Id. (noting multiple violations from less serious levels may collectively be considered Level II violation and some individual conduct that is unethical or dishonest may be Level I violation, even if institutions violations are not classified in this category).

137. Id. (noting Level III violations are second lowest violation).

138. Id. (explaining multiple Level IV violations collectively may be considered Level III violations).

139. Id. (stating Level IV violations are lowest violations).

140. Id. (noting “Level IV infractions generally will not impact eligibility”).


142. See SYRACUSE UNIVERSITY INFRACTIONS DECISION, supra note 141, at 12–13. In 2004, an assistant men’s basketball coach drove a student-athlete forty-five miles. In the spring of 2005, a football student-athlete was provided round trip transportation on four occasions totaling 128 miles by an institutions football academic support employee. See id. at 13.
transportation, over 750 miles, for student-athletes.\textsuperscript{143} The booster also provided student-athletes with money from a bank account registered for a YMCA.\textsuperscript{144} In total, the booster provided five student-athletes with twenty-one checks, ranging from $100 to $3,100, totaling $8,335.\textsuperscript{145} Further, the booster provided fast food meals to a student-athlete.\textsuperscript{146}

On March 6, 2015, the Committee determined Syracuse violated Bylaw 16.\textsuperscript{147} The student-athletes violated this Bylaw when five student-athletes accepted cash, transportation, and food from a representative and Syracuse staff member.\textsuperscript{148} Because the violations straddled the old penalty structure and the new penalty structure, the Committee decided to conduct a penalty analysis under both penalty structures and implemented the less stringent structure.\textsuperscript{149} As a result, the NCAA placed Syracuse on a five-year probation and required Syracuse football to vacate all wins from multiple academic years.\textsuperscript{150} Additionally, the men’s basketball program lost three scholarships multiple academic years.\textsuperscript{151} Finally, the NCAA suspended the men’s head basketball coach, Jim Boeheim, for the first nine conference games of the 2015–2016 season.\textsuperscript{152} The

\begin{itemize}
  \item \textsuperscript{143} See id. at 12 (discussing extra benefits received by student-athletes).
  \item \textsuperscript{144} See id. at 10 (noting representative opened bank account around the time Syracuse accepted and “allowed him to be embedded in the institution’s men’s basketball and football program”).
  \item \textsuperscript{145} See id. at 10–13. Syracuse’s athletics department had summer jobs at the YMCA for basketball and football student-athletes. The student-athletes and the representatives could not provide information regarding the kind of work actually performed or the rate the student-athletes were paid. In another instance, the student-athletes’ checks “did not coincide with YMCA related events.” \textit{Id.} Finally, the YMCA was unable to pay the student-athletes and the representative believed the student-athletes should be paid. \textit{See id.}
  \item \textsuperscript{146} See id. (discussing payment of student-athletes for their work at YMCA).
  \item \textsuperscript{147} See id. at 30–31 (noting all violations were Level III violations that collectively became Level II violation).
  \item \textsuperscript{148} See id. at 30 (explaining representative violated Bylaw 16 when they provided student-athletes with payment for volunteer work at YMCA). Also, Bylaw 16 expressly identifies transportation from a booster as a prohibited benefit. In addition, Bylaw 16 prohibits institutional staff members from providing non-local transportation. \textit{See id.}
  \item \textsuperscript{149} See, e.g., id. at 29–62 (acknowledging case involved Level I, Level II, and Level III violations).
  \item \textsuperscript{152} See id. at 2–3, 65 (discussing punishment imposed on Syracuse’s coach by NCAA).
\end{itemize}
NCAA was unsuccessful in deterring extra benefits under the new penalty structure because the sanctions were still not harsh enough to deter student-athletes from accepting extra benefits.153

2. Wichita State University

The NCAA’s reaction to Wichita State’s violations exemplify lenient sanctions.154 From 2011 to 2013, Wichita State’s baseball team accepted extra benefits.155 During these years, “twenty-one baseball players purchased shoes, clothing, hunting gear, and other non-athletics items for a total of $7,594.18, using [a] fifty percent discount.”156 Athletes received these discounts through an account set up by the institution’s athletics apparel provider and administered by Shelly Wombacher, a former baseball administrative assistant.157

On January 29, 2015, the Committee categorized the violations of Bylaw 16 as Level II under the four-tiered penalty structure.158 The NCAA implemented the four-tiered penalty structure in this case because the breaches occurred both before and after October 30, 2012, and the NCAA processed the violation after August 1, 2013.159 Student-athletes violated Bylaw 16 when they ordered discounted items through the apparel account controlled by Wombacher.160 Due to these violations, the NCAA placed the

153. For a discussion of violations at Wichita State University, see infra notes 155–161 and accompanying text.  
154. For a discussion of violations at Wichita State University and subsequent penalties, see infra notes 155–161 and accompanying text.  
155. See Paul Suellentrop, NCAA Puts Wichita State Baseball on Probation; Team Vacates Victories, THE KANSAS CITY STAR (Jan. 29, 2015, 12:59 PM), http://www.kansascity.com/sports/college/article8570213.html [https://perma.cc/WNQ5-BLYF] (stating Wichita State also was charged with failure to monitor); see Brown, supra note 16 (noting four-tiered penalty structure was implemented in 2013).  
156. Suellentrop, supra note 155 (internal quotation marks omitted) (observing NCAA rules allow athletes to purchase items related to their sport).  
157. See id. (reporting institution’s athletic apparel provider was Under Armour).  
159. See Brown, supra note 16 (concluding violations that occurred before and after October 30, 2012, and were processed after August 1, 2013, are subject to four-tiered penalty structure as long as most of violations occurred after October 30, 2012).  
160. See WICHITA STATE UNIVERSITY INFRACTIONS DECISION, supra note 158, at 14 (acknowledging Wombacher also committed Level III violation when she allowed softball coach from two-year institution to order discounted items for his team through her account).
school on a one-year probation, vacated all the wins in which ineligible baseball players competed, and required the school to pay a $5,000 fine. Still, these penalties were not harsh enough on student-athletes to deter other student-athletes from considering accepting extra benefits.

3. University of Mississippi

Despite all the institution and student-athlete sanctions before him, Laremy Tunsil, a former football player at the University of Mississippi, accepted extra benefits from an agent, his coach, and a teammate’s friend. Tunsil received three separate loaner vehicles over a six-month period without paying. In addition, Tunsil received a “four-month interest-free promissory note on a $3,000 down payment for a used vehicle, two nights of lodging at a local home, an airline ticket purchased by a friend of a teammate, and a one day use of a rental vehicle.” Further, Tunsil spent a night at a University of Mississippi’s assistant coach’s house.

The Committee punished Tunsil under the four-tiered penalty structure for violating Bylaws 12 and 16. The NCAA implemented the four-tiered penalty structure because all violations occurred after the four-tiered penalty structure went into effect. Tunsil violated Bylaws 12 and 16 when he accepted loaner vehicles, a promissory note, lodging, airline tickets, and a vehicle from an agent, an agent’s friend, and a teammate’s friend.

161. See id. at 17 (noting $5,000 fine was self-imposed by Wichita State).
162. See infra notes 163–174 and accompanying text (recounting violations at University of Mississippi).
163. See supra note 163 (listing extra benefits Tunsil received).
164. See Cooper, supra note 163 (reporting Tunsil was not forthcoming during the NCAA investigation);
165. Id. (internal quotation marks omitted).
167. See Brown, supra note 16 (discussing four-tiered penalty structure); see also NCAA Manual, supra note 4, at Bylaw 12.1.2 (prohibiting student-athletes from taking benefits from agents); id. at Bylaw 16.11.2 (listing of impermissible extra benefits which include, but are not limited to, transportation, signing a note, and money loan).
168. See Brown, supra note 16 (observing NCAA implemented four-tiered penalty structure on August 1, 2013).
agent, his coach, and a teammate’s friend. The NCAA punished Tunsil with a seven game suspension, ordered him to pay the value of the extra benefits to charity, perform community service, and make a vehicle down payment.

However, the NCAA did not discover all the extra benefits Tunsil accepted while playing at the University of Mississippi. After leaving the University of Mississippi, Tunsil admitted to accepting additional extra benefits that the NCAA did not discover during their investigation. Tunsil accepted money from the University of Mississippi’s assistant athletic director John Miller for rent and for Tunsil’s mother’s $305 electric bill. Here, not only did past penalties not deter Tunsil, but the NCAA did not find all the extra benefits in its investigation.

C. Agents

In an attempt to regulate contacts between agents and student-athletes, the state and the government created two acts: the Uniform Athlete Agents Act (UAAA) and the Sports Agent Responsibility and Trust Act (SPARTA). Both of these acts prevent agents...
from “trick[ing] or brib[ing] student-athletes into signing an agency contract.” The UAAA, state law, and SPARTA, federal law, both have state and political support.

In 2000, the National Conference of Commissioners on Uniform State Laws ("NCCUSL") ratified the UAAA into legislation to regulate agents. In 2015, the NCCUSL approved changes to the UAAA to strengthen the act. The NCCUSL created the UAAA to "govern[ ] relations among student-athletes, athlete agents, and educational institutions." Currently, there are forty states along with the District of Columbia and the U.S. Virgin Islands that have adopted the UAAA. The act "imposes significant disclosure, registration, and record-keeping requirements on athlete agents." The UAAA prohibits agents from "intentionally initiat[ing] contact with a student-athlete" unless the agent is registered under this act, "predat[ing] or postdat[ing] an agency contract," and "provid[ing] materially false or misleading information" when registering or re-

176. See Martin, supra note 175, at 210 (noting both agent and student-athlete can face civil liability).

177. See id. (explaining UAAA has political support from United States Congress and states that adopt it and SPARTA has political support from United States Congress).


179. See Revisions to Sports Agent Act that Protects NCAA Athletes Get Approved, ESPN (July 15, 2015), http://espn.go.com/college-football/story/_/id/13263390/law-commission-approves-changes-strengthen-uniform-athlete-agents-act [https://perma.cc/ZX4Y-G76J] (describing reason for amending UAAA was because many states amended old act and it was "not as uniform as it should be").


181. See Revisions to Sports Agent Act that Protects NCAA Athletes Get Approved, supra note 179 (noting "structure and penalties can vary from state to state").


The act requires agents to disclose their training, experience, and education, whether they or an associate have been convicted of a felony or crime of moral turpitude, have been administratively or judicially determined to have made false or deceptive representations, have had their agent’s license denied, suspended, or revoked in any state, or have been the subject or cause of any sanction, suspension, or declaration of ineligibility.

Id.
newing registration under the act. Further, the act requires the agent to inform the school before contacting athletes or their family and friends. The act attempts to prevent misconduct by agents by imposing civil and criminal penalties for violations of the act. Under Section 15 of the UAAA, a violator is guilty of a misdemeanor or felony and, if convicted, is punished based on state laws. Additionally, the act establishes civil remedies for educational institutions damaged by a student-athlete’s or an agent’s violations.

SPARTA is the “federal backstop” for the UAAA. SPARTA “protects student-athletes by making it illegal for sports agents to entice student-athletes with false or misleading information, promises, or representations in order to lure them into a contract.” SPARTA prohibits agents from “directly or indirectly recruiting or soliciting a student-athlete to enter into an agency contract,” prohibits agents from allowing student-athletes to enter into an agency contract without first warning the student-athlete that they may lose their eligibility, and prohibits “predating or postdating an agency contract.” If an agent violates this law, the agent is subject to monetary damages.

1. Agent Terry Watson

A notable agent who violated the UAAA and SPARTA is Terry Watson. In 2010, Watson, a Georgia-based agent, provided “thousands of dollars in cash and benefits” to three former Universi-

183. Id. (noting agent also “may not refuse or willfully fail to retain or permit inspection of required records” or “fail to notify a student athlete (prior to signing) that signing an agency contract may make the student ineligible to participate as a student athlete in that sport”).

184. See Revisions to Sports Agent Act that Protects NCAA Athletes Get Approved, supra note 179 (reporting this was an addition in the updated act).

185. See UAAA, supra note 175 (discussing punishment imposed on agents when violating the Uniform Athlete Agent Act).

186. See id. § 15 (discussing UAAA).

187. See id. at Prefatory Note (considering civil remedies available to the educational institution).

188. See 149 Cong. Rec. H3620-02 (daily ed. May 1, 2005) (determining SPARTA does not supplement state law).

189. Id. (explaining SPARTA is used to “protect student-athletes when they travel to other states”).


192. See Revisions to Sports Agent Act that Protects NCAA Athletes Get Approved, supra note 179 (discussing agents who violated the act).
sity of North Carolina football players: Marvin Austin, Greg Little, and Robert Quinn. The North Carolina UAAA “prohibits illegally luring collegiate athletes into contracts by providing them money, gifts, or other items of value.” Any agent who violates this provision is guilty of a Class I felony. Watson “allegedly attempted to induce” Austin, Little and Quinn “into signing an agency contract with him.” Watson provided Little with $20,457.24 in benefits, including $18,200 in cash, to cover two airline tickets to Florida and a hotel room. Quinn received $1,525.45 of benefits, which included $100 in cash, two airline tickets to Florida, and a hotel room. The grand jury indicted Watson on fourteen felony counts based on Athlete Agent Inducement and Felony Obstruction of Justice. This crime is a Class I felony with a possible penalty of fifteen months incarceration per count of athlete-agent related charges and thirty months in jail for obstruction of justice. He also faced civil penalties up to $25,000. Despite the UAAA and SPARTA in

193. Id. See As Part of UNC Probe, Former College Player Indicted for Breaking Sports Agent Law, FOX SPORTS (Aug. 31, 2015), http://www.foxsports.com/college-football/story/in-north-carolina-football-probe-former-player-indicted-for-breaking-sports-agent-law-083115 [https://perma.cc/J8VB-JBZF] (reporting UNC tutor was also charged but charges were later dropped).

194. As Part of UNC Probe, Former College Player Indicted for Breaking Sports Agent Law, supra note 193 (reviewing North Carolina UAAA).


198. See id. (discussing benefits Watson provided to Little).

199. See id. (discussing benefits Watson provided to Quinn).

200. See Heitner, supra note 196 (noting nine charges focused on Little, three charges focused on Quinn, and one charge focused on Austin).

201. See Cullen Browder, Derek Medlin & Aaron Schoonmaker, Sports Agent Terry Watson Faces 14 Felony Counts in UNC Scandal, WRAL SPORTS FAN (last updated Oct. 10, 2013) http://www.wralsportsfan.com/sports-agent-connected-to-unc-scandal-charged/12976259/ (noting “individuals with little or no previous criminal record will likely be subject to probation and/or fines”).

202. See Sports Agent Indicted in North Carolina, supra note 197 (discussing civil penalties Watson could face).
place, Watson took the risk of providing student-athletes with extra benefits and was reprimanded. Watson’s actions prove that the NCAA must incorporate greater penalties to deter agents from providing extra benefits.

2. Agent Josh Luchs

However, the UAAA and SPARTA did not catch every violation of the rule. Josh Luchs is a former sports agent who admitted to providing benefits to more than thirty former college players. Luchs supplied athletes with money, automobiles, bail money, and various luxuries. The first player Luchs provided benefits to was Kanavis McGhee, a University of Colorado football player. Luchs provided McGhee with $2,500 because McGhee’s mother lost her job and was behind on rent. The Government and state never punished Luchs under the UAAA or SPARTA. Luchs’s information did not come to light until his book was published in 2010. If the NCAA changes its policies regarding interaction between student-athletes and agents, extra benefits violations may possibly diminish.

D. How the NCAA Can Deter Extra Benefits

Many college athletes take extra benefits, such as money and food, because they cannot afford the essentials. In addition to the penalty structure, there are other options for the NCAA to de-
ter student-athletes from accepting extra benefits.\textsuperscript{214} For example, the NCAA could pay student-athletes.\textsuperscript{215} Student-athlete compensation came to light in 2009 when Ed O’Bannon brought a case to have student-athletes paid for the use of their name, image, or likeness.\textsuperscript{216} In \textit{O’Bannon v. NCAA}\textsuperscript{217} a group of current and former college football and men’s basketball players brought a class action against the NCAA challenging the NCAA’s restriction on compensation for student-athletes.\textsuperscript{218} The plaintiffs claimed the NCAA rules and Bylaws were an “unreasonable restraint of trade,” violating the Sherman Act.\textsuperscript{219} The District Court ruled in favor of the plaintiffs, concluding the NCAA’s rules violated the Sherman Act.\textsuperscript{220} The District Court concluded student-athletes should receive compensation, up to $5,000, for the use of their names, images, and likeness.\textsuperscript{221} The NCAA appealed the District Court’s ruling to the Ninth Circuit Court of Appeals.\textsuperscript{222} The Court of Appeals overturned the District Court’s ruling, concluding the cost of attendance, not more, is compensation for use of a student-athlete’s name, image, and likeness.\textsuperscript{223} The plaintiffs petitioned for a rehearing of the case before a larger panel of judges; however, the Court of Appeals denied the petition.\textsuperscript{224} Both the NCAA and the

\textsuperscript{214} See infra notes 216–238 and accompanying text (suggesting ways to prevent extra benefits).

\textsuperscript{215} See infra notes 216–238 and accompanying text (explaining paying student-athletes could deter extra benefits).


\textsuperscript{217} 7 F.Supp. 3d 955 (N.D. Cal. 2014), aff’d in part, vacated in part, 802 F.3d 1049 (9th Cir. 2015).

\textsuperscript{218} See id. at 962–93 (discussing class action challenging NCAA’s restriction on compensating men’s football and basketball players).

\textsuperscript{219} See id. at 963, 971 (noting NCAA “prohibits student-athletes from receiving ‘financial aid based on athletics ability’ that exceeds the value of a full ‘grant-in-aid’”); see also 15 U.S.C. § 1 (2004) (noting Sherman Act prevents restraint on trade or commerce among states).

\textsuperscript{220} See \textit{O’Bannon}, 7 F.Supp. at 1009 (deciding NCAA violated Sherman Act).

\textsuperscript{221} See id. at 1008 (acknowledging District Court placed a cap of $5,000 on compensation to student-athletes).

\textsuperscript{222} See \textit{O’Bannon} v. NCAA, 802 F.3d 1049, 1061 (9th Cir. 2015) (discussing NCAA’s appeal of District Court ruling).

\textsuperscript{223} See \textit{O’Bannon}, 802 F.3d at 1076–77 (determining setting compensation cap at student-athletes full cost of attendance is less restrictive means to accomplishing “NCAA’s legitimate procompetitive purposes”).

plaintiffs sought an appeal in the Supreme Court.\textsuperscript{225} Paying student-athletes could decrease the amount of extra benefits student-athletes accept because student-athletes would “have enough money to live and actually attend college.”\textsuperscript{226} For example, student-athletes could put money towards food rather than asking their coaches or agents for food, and thus not violate the NCAA Bylaws.\textsuperscript{227} Student-athletes could also use this money to help their families.\textsuperscript{228} For example, if he was being paid, Tunsil could have paid his mother’s electric bill rather than asking the University of Mississippi’s assistant athletic director to do so.\textsuperscript{229} Paying athletes is one option the NCAA can prevent student-athletes from accepting extra benefits; however, the NCAA has other options.\textsuperscript{230}

The NCAA also needs to address the issues of student-athletes interact with agents.\textsuperscript{231} While the UAAA and SPARTA are in place,
these laws are not always effective.\textsuperscript{232} Instead of banning agents, the NCAA should find a way to work with them on its own terms.\textsuperscript{233} The NCAA may not be able to control “what agents do, but it may be able to control how players interacts with them.”\textsuperscript{234} The NCAA could create a department that controls communication between players and agents by having agents sign up through the department to meet with a player.\textsuperscript{235} During meetings, the NCAA can mandate players “to keep a log of conversations they have with agents.”\textsuperscript{236} In addition to the penalty structure, UAAA, and SPARTA, working with agents would just add another layer to preventing extra benefits.\textsuperscript{237} This additional protection could prevent agents from sneaking around to speak to student-athletes.\textsuperscript{238}

IV. Conclusion

The NCAA has been unsuccessful in its attempts to prevent extra benefits and protect the integrity of the NCAA.\textsuperscript{239} Extra benefits are regulated through NCAA rules and state and federal laws.\textsuperscript{240} Throughout the NCAA’s history, it has tried different penalty structures to prevent extra benefits.\textsuperscript{241} The two-tiered penalty structure became ineffective after multiple student-athletes accepted extra benefits.\textsuperscript{242} After shifting to the four-tiered penalty structure, the

\textsuperscript{232} See supra notes 192–199, 206–210 and accompanying text (recognizing agents Watson and Luchs both provided extra benefits to student-athletes).

\textsuperscript{233} See Gagliardi, supra note 231 (discussing how working with agents “would be more advantageous” to the NCAA).

\textsuperscript{234} Mitrosilis, supra note 231 (acknowledging agents are competing in business world and if there is “a loophole,” they will “exploit it”).

\textsuperscript{235} See id. (discussing how department will facilitate interactions).

\textsuperscript{236} Id. (explaining how NCAA can keep track of athlete-agent conversations).

\textsuperscript{237} See id. (noting NCAA would be able to regulate interactions).

\textsuperscript{238} See id. (indicating NCAA could have agent sign up with department then have student-athlete log conversation).

\textsuperscript{239} See NCAA Manual, supra note 4, at Bylaw 12.01.1 (stating in order to keep college athletics separate from professional sports, only student-athletes with amateurism status are eligible to play in college athletics); see also id. at Bylaws 12, 16 (discussing how student-athletes lose eligibility by accepting extra benefits).

\textsuperscript{240} See id. at Organization of the NCAA Manual (stating NCAA Constitution and Bylaws govern NCAA); see generally Martin, supra note 175 (discussing UAAA and SPARTA).

\textsuperscript{241} See Note re: New NCAA Division I Enforcement Model, supra note 66 (discussing two-tiered penalty structure); Brown, supra note 16 (summarizing four-tiered penalty structure)

\textsuperscript{242} See supra notes 72–77, 85–91, 100–103, 112–115 and accompanying text (noting student-athletes at University of Wisconsin, University of Miami, USC, and University of Tennessee accepted extra benefits).
penalty structure still proved ineffective. Student-athletes realized they could get away with accepting extra benefits and not receive harsh punishment, causing the penalty structures to become ineffective. Further, state laws and federal laws prevented agents from providing student-athletes extra benefits. These laws were not effective considering the NCAA, the government, and the states did not discover agents communicating with student-athletes.

Despite the NCAA’s best attempts, more can be done to prevent extra benefits. In order to resolve the foreseeable violations, the NCAA will ultimately need to make a change. One possible change would be to pay athletes, allowing athletes to purchase things they would otherwise receive in violation of the NCAA Bylaws. A second possible change would be working with agents and student-athletes as a way to closely monitor their interac-

---

243. See Brown, supra note 16 (acknowledging change to four-tiered structure in 2013); see also supra notes 141–174 and accompanying text (noting student-athletes at Syracuse University, Wichita State University, and University of Mississippi accepted extra benefits).

244. See supra notes 72–77, 85–91, 100–103, 112–115 and accompanying text (acknowledging student-athletes at University of Wisconsin, University of Miami, USC, and University of Tennessee accepted extra benefits despite penalty structure and past sanctions); see also supra notes 112–115 and accompanying text (discussing how Arian Foster did not get caught accepting extra benefits); see also supra notes 141–174 and accompanying text (noting student-athletes at Syracuse University, Wichita State University, and University of Mississippi accepted extra benefits despite penalty structure and past sanctions); Schlabach, supra note 171 (acknowledging NCAA did not discover all of Tunsil’s extra benefits).

245. See Martin, supra note 175, at 211–13 (noting UAAA and SPARTA were enacted to prevent agents from “trick[ing] or brib[ing] student-athletes into signing an agency contract”).

246. See Revisions to Sports Agent Act that Protects NCAA Athletes Get Approved, supra note 179 (acknowledging Watson provided three student-athletes with extra benefits); see also The ‘Illegal Procedure’ of Paying College Athletes, supra note 206 (noting Luchs provided extra benefits to thirty student-athletes and was never caught or punished).

247. See supra notes 213–238 and accompanying text (acknowledging NCAA can pay student-athletes or regulate agent and student-athlete contact).

248. See supra notes 72–110, 141–172, 192–212 and accompanying text (discussing extra benefit violations despite penalty structure and past sanctions).

249. See Southall, supra note 226 (explaining how paying student-athletes may prevent them from taking extra benefits).
It is clear these changes could benefit the NCAA in preventing extra benefits.  

Devon Stauffer*

250. See Gagliardi, supra note 231 (discussing how the NCAA can join forces with agents to regulate athlete-agent contact).

251. See Southall, supra note 226 (acknowledging by paying student-athletes they would be more financially stable); see also Mitrosilis, supra note 231 (discussing regulating student-athlete and agent interactions it can prevent “shady conduct”).

* J.D. Candidate, May 2017, Villanova University Charles Widger School of Law. I would like to dedicate this article to my family and friends for their endless support and encouragement throughout my academic pursuits. Specifically, I would like to dedicate this to my parents, Randy and Beth, and my sister, Bailey.