

NCAA Eligibility Battles Take to the Courts

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In the brave new world of Name Image and Likeness ("NIL") payments to college athletes, the inevitable question arises – do the NCAA's eligibility rules violate federal antitrust laws? Those legal issues have taken center stage in courts around the country with mixed results.

Under current NCAA bylaws, athletes have five calendar years to complete four seasons of intercollegiate competition ("Five-Year Rule"). Under current NCAA eligibility rules, an athlete's eligibility clock begins when the athlete starts competing at either a two-year junior college ("JUCO") institution governed by the NJCAA or a four-year NCAA institution. Regardless of where an athlete begins their eligibility window, they have four seasons of intercollegiate competition.

JUCO Eligibility Challenges Gain Early Traction

Student-athletes who have challenged the JUCO eligibility rule have seen success. For example, the District Court of New Jersey in *Elad v. NCAA* granted a preliminary injunction for Rutgers Football player Jett Elad, finding that within the new commercial NIL market of collegiate athletics, the NCAA's restriction on the eligibility of former junior college student-athletes transferring to four-year institutions has a substantial effect on the labor market for college football and violates the Sherman Act. Similarly, in *Pavia v. NCAA*, the Middle District of Tennessee held that the disparate treatment of the JUCO athletes and four-year Division I athletes distorts the labor market by forcing athletes to choose four-year NCAA member institutions to maximize their four seasons, even when JUCO may be a better option academically or athletically. In granting these preliminary injunctions, both courts determined that the rule unfairly penalizes athletes who do not start at four-year NCAA institutions by limiting their opportunities.

However, not all JUCO athletes have seen the same successes in court. In *Osuna v. NCAA*, the Eastern District of Tennessee denied a preliminary injunction for a former JUCO baseball player due to its hesitation to conclude on anti-competitive arguments based on a "quick look" review for the eligibility rule's harm on competition.

Courts Show Greater Skepticism Toward Five-Year and Redshirt Rule Challenges

Student-athletes have also filed court challenges to the NCAA's "Five-Year Rule" and "Redshirt" rules as they are applied to NCAA athletes with mixed results. Recently, the same court that decided *Pavia*, ruled in *Patterson et al. v. NCAA* that the group of plaintiffs could not show the likelihood of success on the merits of their antitrust claim and denied their preliminary injunction. Importantly, the court highlighted that, when analyzing the Five-Year Rule on its own, it is more skeptical of the plaintiffs' ability to prove the anti-competitive effect of the rule and irreparable harm necessary for an injunction. The court also hinted at its reservations about claims of this nature surviving the releases made in the *House* settlement.

Eligibility Disputes Extend Beyond Division I

The most highly publicized lawsuits have focused on Division I athletes in revenue-producing sports (primarily football and basketball); however, student-athletes in Divisions II and III also face eligibility challenges. Recently, star Ole Miss quarterback, and former Division II Ferris State quarterback, Trinidad Chambliss filed an injunction claiming the NCAA breached its contractual duty of good faith and fair dealing when it denied his eligibility waiver preventing him from playing another season at Ole Miss. Straying from anti-trust arguments and instead pursuing an intended third-party beneficiary contract based argument, Chambliss' injunction illustrates the extent to which all athletes are pursuing challenges against the NCAA eligibility restrictions.

In their analyses, courts have also focused primarily on the collegiate market of major Division I programs, but JUCO athletes transitioning to Division II and III institutions face similar restrictions which could bring similar anti-trust arguments. While Division II and III athletes traditionally have fewer commercial opportunities than Division I athletes, NCAA restrictions may nonetheless seriously affect these athletes. Increasingly, through the reformed transfer portal, Division II and III athletes (primarily in football and basketball) are getting opportunities to transfer to major Division I programs and capitalize on increased commercial potential after successful athletic performance in lower divisions. Eligibility restrictions that limit JUCO athletes' ability to move from JUCO, to Division II or III, and then to Division I, may therefore face similar antitrust challenges. Ultimately, athletes are taking these challenges to court and testing the limits of the NCAA's authority to limit commercial potential in the NIL market by capping eligibility.

Challenges to established NCAA rules and practices are becoming more common, setting the stage for novel legal theories and influential court rulings. In this new era of college sports, it has become clear that the field of play now includes the courtroom.

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