

HEINONLINE

Citation: 1995 Wis. L. Rev. 599 1995

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Tue May 25 23:17:07 2010

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=0043-650X](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0043-650X)

A MODEL OF INSTITUTIONAL GOVERNANCE FOR INTERCOLLEGIATE ATHLETICS

TIMOTHY DAVIS*

I. INTRODUCTION

Following two years of study, the Knight Foundation Commission reported that the importance of intercollegiate athletics to college life created a dilemma: unless kept in perspective, intercollegiate athletics threatened to overwhelm and undermine the integrity of institutions of higher education.¹ The Commission openly acknowledged that college sports had encroached upon the fundamental mission of colleges, leading to problems so pervasive as to be deemed systematic.² The need to curb

* Associate Professor of Law, Southern Methodist University School of Law; B.A. 1975, Stanford University; J.D. 1979, University of California at Berkeley School of Law. The author gratefully acknowledges the research assistance of Mark Valencia and the helpful comments of Will Anzenberger and other members of the *Wisconsin Law Review*.

1. REPORT OF KNIGHT FOUNDATION COMM'N ON INTERCOLLEGIATE ATHLETICS (1991) [hereinafter KNIGHT COMM'N REPORT].

2. KNIGHT COMM'N REPORT, *supra* note 1, at 7. These widely reported problems include recruiting improprieties, illegal payments to student-athletes, academic abuses, and the overall failure of institutions to control the athletics enterprise. *Id.* at 4.

In openly acknowledging the pervasiveness of such problems, the Knight Commission forced college presidents to confront problems which have been heralded by numerous researchers and commentators. See JOHN R. THELIN, GAMES COLLEGES PLAY: SCANDAL AND REFORM IN INTERCOLLEGIATE ATHLETICS 191 (1994) (concluding that bringing college presidents together to address the serious issues involving college sports is the primary contribution of the Knight Foundation Commission).

Since the early stages of intercollegiate athletics, numerous commentators and social scientists have warned of the threat which intercollegiate athletics, if left unchecked, poses to the overall well-being of institutions of higher education. A representative sampling of these works includes: DONALD CHU, THE CHARACTER OF AMERICAN HIGHER EDUCATION AND INTERCOLLEGIATE SPORT (1989); JOHN F. ROONEY, JR., THE RECRUITING GAME: TOWARD A NEW SYSTEM OF INTERCOLLEGIATE SPORT (2d ed. 1987); HOWARD J. SAVAGE, AMERICAN COLLEGE ATHLETICS (1929); MURRAY SPERBER, COLLEGE SPORTS INC.: THE ATHLETIC DEPARTMENT VS. THE UNIVERSITY (1990); THELIN, *supra*; Harry M. Cross, *The College Athlete and the Institution*, 38 LAW & CONTEMP. PROBS. 151 (1973); Stephen Horn, *Intercollegiate Athletes: Waning Amateurism and Rising Professionalism*, 5 J.C. & U.L. 97 (1979); Rodney K. Smith, *An Academic Game Plan for Reforming Big-Time Intercollegiate Athletics*, 67 DENV. U. L. REV. 213 (1990); The Special Committee on Athletics, *The Role of Faculty in the*

this encroachment led the Knight Commission to propose a model of reform which combined presidential control with three interrelated principles: academic integrity, financial integrity, and independent certification of intercollegiate athletics programs.³

This Article also proposes a model designed to prevent intercollegiate athletics from interfering with universities' educational mission. Fundamental to this model is an understanding that the problems associated with intercollegiate athletics must be addressed at the national and institutional levels. Therefore, the model proposes a system of institutional governance that operates in conjunction with uniform national standards. Through promulgating rules and regulations, the National Collegiate Athletic Association (NCAA)⁴ has set national standards for the governance of intercollegiate athletics.⁵ Indeed, critical components of the proposed model derive their legitimacy from principles articulated in the NCAA constitution and bylaws.

The proposed model rests primary accountability for institutional governance with each member institution. It acknowledges the NCAA's significant role in creating rules and articulating fundamental policies to which its member institutions must adhere.⁶ As noted by Professor

Governance of College Athletics, ACADEME, Jan.-Feb. 1990, at 43 [hereinafter *The Role of Faculty*].

3. KNIGHT COMM'N REPORT, *supra* note 1, at vii-ix; see THELIN, *supra* note 2, at 190-92 (commenting on the Knight Commission's findings and their significance).

4. The NCAA is a nonprofit voluntary association which consists of approximately 900 four-year colleges and universities. NCAA MINORITY OPPORTUNITIES AND INTERESTS COMM., FOUR YEAR STUDY OF RACE DEMOGRAPHICS OF MEMBER INSTITUTIONS 1 (1994) (noting that in 1993-94, the NCAA was comprised of 893 member institutions); see also Thomas R. Ostdiek, Comment, *LB 69: Need-Based Financial Aid for College Athletes*, 25 CREIGHTON L. REV. 729, 738 (1992).

The NCAA states that its primary purpose "is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports." 1994-95 NCAA MANUAL art. 1.3.1.

5. Significantly, the NCAA professes through its rules and regulations to adhere to educational values in governing intercollegiate athletics. Rules relating to initial eligibility requirements and limitations on the number of hours a student-athlete can engage in athletically related activities illustrate NCAA efforts to promote such values. 1994-95 NCAA MANUAL arts. 14.1, 17.1.5.

6. See DAVID F. SALTER, BLUEPRINT FOR SUCCESS: AN IN-DEPTH ANALYSIS OF NCAA DIVISION III ATHLETICS, AND WHY IT SHOULD BE THE MODEL FOR INTERCOLLEGIATE REFORM 7 (1993) (noting that each institution, not the NCAA, is responsible for the graduation rates of student-athletes, for "the social misconduct of student-athletes, [and] the ethical breaches by coaches and athletic administrators").

The NCAA has adopted the principle of institutional control of intercollegiate athletics. The NCAA Constitution provides: "It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and

Allison, institutions may delegate a measure of the control over their intercollegiate athletics programs to the NCAA or to the conferences to which they belong.⁷ Ultimately, the responsibility of each institution to monitor and regulate its intercollegiate athletics program represents a nondelegable duty.⁸ Professor Allison further states: "No one could seriously consider a governance mechanism in which NCAA functionaries de jure or de facto take up continual or even frequent residence at a university for the purpose of monitoring the athletics program."⁹ He concludes that a system which treats institutions as self-regulating entities is pragmatically workable.¹⁰

Localized governance is also supported by an institution's relationship with its student-athletes. Each institution ultimately bears the responsibility to attend to the educational, social, and athletic interests of its student-athletes.¹¹ It is the institution that recruits student-athletes, contracts with them, and determines the quality of their overall college experiences.

Given these considerations, the proposed model is premised on the belief that the governance of intercollegiate athletics must be addressed at the institutional level. As such, the model incorporates through a formal structure principles necessary to assist institutions in reassigning intercollegiate athletics a role that does not subvert the fundamental mission and values of colleges and universities. Therefore, the model is grounded on the premise that without the proper form of institutional governance, intercollegiate athletics threatens the moral and financial stability of colleges and universities.

More specifically, the proposed model of governance is based on three concepts. First, intercollegiate athletics is a subsidiary of post-

regulations of the Association." 1994-95 NCAA MANUAL art. 2.1.1. The notion of institutional control is reemphasized in Article 6 of the NCAA Constitution, which specifically addresses issues of institutional control. The fundamental idea is expressed as follows: "The control and responsibility for the conduct of intercollegiate athletics shall be exercised by the institution itself and by the conference(s), if any, of which it is a member." *Id.* art. 6.01.1.

7. John R. Allison, *Rule-Making Accuracy in the NCAA and Its Member Institutions: Do Their Decisional Structures and Processes Promote Educational Primacy for the Student-Athlete?*, 44 KAN. L. REV. (forthcoming 1995).

8. *Id.*

9. *Id.*

10. *Id.*

11. Smith, *supra* note 2, at 222-23 (noting the reciprocal commitments between institutions and their student-athletes); see also *infra* text accompanying notes 161-62 (addressing imposing a legally cognizable duty on institutions to provide their student-athletes with an educational opportunity as a means of advancing reform of intercollegiate athletics).

secondary education.¹² Second, a formalized system of checks and balances, structural and substantive, is necessary to ensure a proper balance between athletics and academics.¹³ Finally, the nature of the relationship between student-athletes and their institutions, as well as the commercialism of college sports, justifies and requires external mechanisms for holding colleges and universities accountable.¹⁴ This Article argues that collectively, these concepts are critical to the success of any model of governance for intercollegiate athletics.

After discussing the concepts which form the core of the proposed model, this Article explains its key components. The proposed Model of Governance for Intercollegiate Athletics is set forth in the Appendix.¹⁵

II. ATHLETICS AS A SUBSIDIARY PART OF POST-SECONDARY EDUCATION

The abuses in intercollegiate athletics are well documented.¹⁶ The commercialized nature of big-time intercollegiate athletics¹⁷ has altered the university culture. This cultural change is epitomized by the promotion of values that are antithetical to the fundamental purpose of institutions of higher learning. For instance, commercialism and the concomitant increased pressure to win compromises student-athletes'

12. See *infra* text accompanying notes 19-30.

13. See *infra* text accompanying notes 31-35.

14. See *infra* part IV.A.-B.

15. Many readers may obtain greater comfort from first reading the proposed model set forth in the Appendix. Other readers may prefer to read the text first, which provides an overview of critical components of and justifications for the model.

16. See sources cited *supra* note 2 and accompanying text. For additional illustrations of the abuses in college athletics, see generally THELIN, *supra* note 2; Timothy Davis, *An Absence of Good Faith: Defining a University's Obligation to Student-Athletes*, 28 HOUS. L. REV. 743, 751-59 (1991).

17. Big-time intercollegiate athletics, as typically defined, consists of Division I-A football and Division I men's basketball, which represent the primary revenue-producing sports. Professor Rodney Smith draws the following critical distinction between Division I and the other levels of intercollegiate competition: "[I]ntercollegiate athletics at the Division II and III levels rarely pose problems in terms of the furtherance of academic values because the economic pressures to win and to produce an entertainment product is less inherent in athletics at those levels than at the more competitive Division I level." Rodney K. Smith, *Little Ado About Something: Playing Games with the Reform of Big-Time Intercollegiate Athletics*, 20 CAP. U. L. REV. 567, 569 n.5 (1991). See generally SALTER, *supra* note 6 (discussing the differences between intercollegiate athletics at the Division I level and intercollegiate athletics at Division II and III levels).

education.¹⁸ In short, college sport too often dictates the culture of our institutions.

To ameliorate this pernicious influence, the proposed model views athletics as merely a subsidiary of post-secondary education.¹⁹ Viewing college sport as a part of the larger university culture rather than as a quasi-autonomous unit operating within the university has several implications.²⁰ As an integral part of colleges and universities, athletics must be governed by principles generally applicable to post-secondary education.²¹ Consequently, the proposed model is premised on an intercollegiate athletics structure²² which has as its nucleus the most fundamental of these principles, the educational mission of American universities.²³ Building a governance system on this premise sets the stage for subordinating athletic values to educational values.²⁴ An

18. Lee Goldman, *Sports and Antitrust: Should College Athletes Be Paid to Play?*, 65 NOTRE DAME L. REV. 206, 241 (1990).

19. William A. Kaplin, *An Overview of Legal Principles and Issues Affecting Postsecondary Athletics*, 5 J.C. & U.L. 1 (1977).

20. Treating athletics departments as autonomous entities has been a persistent problem in Division I athletics. SALTER, *supra* note 6, at 52. Indeed, once an athletics department embraces the cloak of autonomy and views itself as an entity apart from the institution, "it is bound to stray" from the academic mission of colleges and universities. *Id.* at 67; *see also The Role of Faculty*, *supra* note 2, at 44.

21. Of course, these generally applicable principles must be modified or applied in light of the unique characteristics and problems associated with intercollegiate athletics. Kaplin, *supra* note 19, at 1. For instance, a student-athlete's eligibility for financial aid would be governed both by the rules which apply to financial aid for non-athlete students and NCAA requirements regarding student-athlete financial aid. *Id.*

22. *See* Smith, *supra* note 2, at 229 (arguing that the educational value, not values associated with amateurism, efficiency or cost-containment, should be the focal point of efforts aimed at reforming the regulation of college sports).

23. H.R. 2620, 99th Cong., 1st Sess. 2 (1985) (declaring the primary purpose of colleges as providing and encouraging higher education); KNIGHT COMM'N REPORT, *supra* note 1, at 11 (identifying education as the purpose which principally justifies the existence of colleges and universities); Alex M. Johnson, Jr., *Bid Whist, Tonk, and United States v. Fordice: Why Integration Fails African-Americans Again*, 81 CAL. L. REV. 1401, 1433 (1993) (commenting that the primary purpose of post-secondary education is to provide students with the skills needed to enable them to compete effectively in a changing community); *see* SAVAGE, *supra* note 2, at xii (questioning whether a university can promote organized athletics on an extensive commercial basis in addition to its primary purpose of education); THELIN, *supra* note 2, at 2 (noting the historical reluctance of university administrators to discuss the relationship between intercollegiate athletics and institutions' primary educational purposes: teaching, research and service).

24. *See* SALTER, *supra* note 6, at 64. The president of Ohio Wesleyan explains that the concomitant success of academics and athletics at the Division III level "flows from the underlying assumption that athletics is and must be an extension of the educational process." *Id.* at 64.

A similar view was expressed in the Knight Commission Report:

effective model for corporate governance must recognize that intercollegiate athletics has developed as a subculture within post-secondary education.²⁵ Yet, recognizing this reality should not translate into accepting college sports as a separate entity. Indeed, the NCAA constitution articulates that “[i]ntercollegiate athletics programs shall be maintained as a vital component of the educational program.”²⁶

Therefore, by treating athletics as merely a constituent of the university culture, the proposed model grants universities more influence over the subculture of athletics.²⁷ For example, the model renders athletics a university department just like English, history, or mathematics. While these non-athletic departments have their own goals and objectives, it is understood that each department’s goals are in keeping with the university’s mission. The proposed governance model requires the same commitment from university athletics departments. The model is premised on a structure which clearly provides for intercollegiate

Individual institutions and the NCAA have consistently dealt with problems in athletics by defining most issues as immediate ones: curbing particular abuses, developing nationally uniform standards, or creating a “level playing field” overseen by athletic administrators.

But the real problem is not one of curbing particular abuses. It is a more central need to have academic administrators define the terms under which athletics will be conducted in the university’s name. The . . . more fundamental issue [is] grounding the regulatory process in the primacy of academic values.

KNIGHT COMM’N REPORT, *supra* note 1, at 11.

25. The subculture of big-time college athletics which has developed has been described by one commentator as follows:

The Division IA institutions have the largest athletic budgets, receive the most television exposure and revenues, and perpetrate most abuses. Typically at these schools the athletic departments are more autonomous than elsewhere and farther divorced from the college or university academic structure; they exist as semi-autonomous sport entertainment adjuncts to the parent institution. This separation of athletic department and school causes many problems of governance and control for university administrations.

David Meggyesy, *Still out of Their League: Who Is Speaking for the Athlete?*, in *THE RULES OF THE GAME: ETHICS IN COLLEGE SPORTS* 114-15 (Richard E. Lapchick & John B. Slaughter eds., 1989) [hereinafter *THE RULES OF THE GAME*].

26. 1994-95 NCAA MANUAL art. 2.5.

27. Certain institutions are taking just such a holistic approach to their athletics programs. Following its football scandal, Southern Methodist University initiated a study of the role of college sport within the broader university culture. The University of Minnesota is taking a similar approach. The role of men’s intercollegiate athletics is being viewed in the larger context of the strategic objectives of the university. See McKinley Boston, *At ‘U,’ Athletic and Academic Excellence Can Be Compatible*, *STAR TRIB.*, Dec. 31, 1994, at 15A.

athletics' mission to be in concert with the university's overall mission—learning and teaching.²⁸

The ultimate goal of this model is to promote the overall academic and social experiences of student-athletes. One scholar describes the three elements of a college education which are critical to all student-athletes as being the following: "(a) the refinement of personal competence; (b) upward social mobility; and (c) the earning of a degree."²⁹ It is unrealistic to think that any model will guarantee the achievement of these goals.³⁰ Nevertheless, the proposed model seeks to enhance the likelihood that student-athletes will benefit in a total sense from their college experiences and that athletics programs will be run with integrity.

III. CRITICAL COMPONENTS OF A MODEL OF GOVERNANCE

As suggested in Part II, the model presented in this Article is premised on the belief that athletics is an integral part of colleges and universities and not a semi-autonomous unit. The model is also premised on the belief that the stakeholders within the university community, including presidents, trustees, faculty, administrators, and students, share responsibility for maintaining the integrity of university athletics programs. The NCAA's constitution sets forth a concept of shared responsibility. Article 6 states "[a]dministrative control or faculty control, or a combination of the two, shall constitute institutional control."³¹ Moreover, the NCAA has stated the following: "The athletics program shall be an integral part of the educational enterprise of the institution. As such, appropriate campus constituencies shall have the opportunity to provide input into the formulation of policies relating to the conduct of the athletics program and to scrutinize the implementation of such policies."³²

28. See *SALTER*, *supra* note 6, at 57 (noting how lines of communication should be established so that the athletics program's philosophy coincides with the institution's philosophy).

29. Robert M. Sellers, *Black Student-Athletes: Reaping the Benefits or Recovering from the Exploitation*, in *RACISM IN COLLEGE ATHLETICS: THE AFRICAN-AMERICAN ATHLETE'S EXPERIENCE* 143, 157 (Dana Brooks & Robert Althouse eds., 1993) [hereinafter *RACISM IN COLLEGE ATHLETICS*]. Professor Sellers adds that the last two of these factors are particularly critical to African-American student-athletes.

30. For example, many NCAA rules and regulations intended to ensure that all programs are run with integrity have failed. See generally *THELIN*, *supra* note 2.

31. 1994-95 NCAA MANUAL art. 6.01.1.

32. NAT'L COLLEGIATE ATHLETIC ASS'N, *SELF-STUDY INSTRUMENT: DIVISION I ATHLETICS CERTIFICATION 7* (1993) [hereinafter *SELF-STUDY INSTRUMENT*].

Shared governance has not been a consistent feature in the governance of intercollegiate athletics. "The control of college sport has changed hands a number of

Against a backdrop of shared responsibility, the proposed model incorporates several structures. By facilitating the exchange of information among governance stakeholders, the proposed model's aim is to end the athletic department's isolation, which contributes to NCAA rules violations.³³ Thus, the proposed model furnishes an organizational structure which will apprise governance stakeholders of the athletic program's proper operation. The critical feature of this organizational structure is open communication.³⁴

Finally, the proposed model includes components which focus specifically on enhancing the ability of student-athletes to derive educational benefits from their college experiences.³⁵ These mechanisms are both structural and substantive. For example, the model constructs an admissions process based on admitting only those student-athletes with a reasonable opportunity to succeed academically. It also provides for an academic assistance program integrated into mainstream university academic affairs and focused on the long-term educational interests of student-athletes.

In sum, the proposed model promotes the educational interest of student-athletes by integrating intercollegiate athletics programs into the university community. The next section discusses the proposed model's key components and their underlying principles.

times during the last one hundred thirty years, as students, alumni, presidents, faculty, and professional administrators (athletic directors) have enjoyed periods of absolute or shared domination." Stephen H. Hardy & Jack W. Berryman, *A Historical View of the Governance Issue*, in *THE GOVERNANCE OF INTERCOLLEGIATE ATHLETICS* 17 (James H. Frey ed., 1982). During its infancy, intercollegiate athletics was controlled by student sponsors. *Id.* Intercollegiate competition led to the need for some form of collective governance. *Id.* Student-initiated and student-run governing bodies controlled college sports during these early years. *Id.* at 19. During the late 1800s, an increased desire on the part of alumni, administrators and faculty to participate in the control of college sports eventually led to the demise of student control. *Id.* at 19-21.

33. See *SALTER*, *supra* note 6, at 67.

34. The notion of open communication also has legal significance. Communicating information concerning the state of the athletics program to those responsible for it operates as a predicate to holding them legally accountable for institutional governance. See *infra* text accompanying notes 160-62 (discussing the legal bases for holding institutions accountable for reform). See generally Smith, *supra* note 2.

35. The NCAA envisions that the protection and enhancement of the "physical and educational welfare of student-athletes" is a fundamental principle of intercollegiate athletics. 1994-95 NCAA MANUAL art. 2.2.

A. Trustees' Responsibility

The board of trustees, in conjunction with the president, is responsible for determining a university's mission.³⁶ As such, the board and the president determine the role of an intercollegiate athletics program within the university.³⁷ In view of this, the proposed model attempts to develop a unified system of governance pursuant to which the president and trustees dictate the overall policy of the athletics program.³⁸ The model also contains a trustees' "statement of policy," which articulates the mission of athletics and the principles which will ensure adherence to the university's overall mission.

In addition, the proposed model includes provisions to assist the trustees in fulfilling their oversight responsibilities. To that end, the proposed model sets mechanisms in place to convey information concerning the state of the athletics program to the trustees. One way the model does this is by requiring the university president to submit a yearly status report on the intercollegiate athletics program to the board of trustees.³⁹ The model, therefore, sets up an organizational structure to transmit information concerning the state of the intercollegiate athletics program and the welfare of student-athletes to the trustees. This reporting mechanism will aid in discerning whether the athletics program is operating consistently with the university's mission.⁴⁰

36. "The chief executive officer shall be assigned ultimate responsibility and authority for the actual operation of the athletics program, with clear and direct support of the [governing] board." SELF-STUDY INSTRUMENT, *supra* note 32, at 7.

37. In the final analysis, the university's chief executive officer and board of trustees should be the parties ultimately responsible for the fate of the athlete. The athlete should not be solely in the hands of the athletics department. It is the university administration that sets in place policies and practices that will shape the athlete's career and determine the degree of equity at a particular school. Meggyesy, *supra* note 25, at 115.

38. The NCAA maintains that an "institution's governing board shall provide oversight and broad policy formulation." SELF-STUDY INSTRUMENT, *supra* note 32, at 7; Smith, *supra* note 2, at 248 (governing boards are ultimately responsible for maintaining the integrity of their intercollegiate athletics programs).

39. Professor Rodney Smith has recommended that such reports include the following: "[I]nformation as to the academic progress of each athlete, graduation rates, academic support, time spent in practice and preparation for performance by the student-athlete in his or her sport, and a section dealing with the treatment of student-athletes by their coaches." Smith, *supra* note 2, at 250.

40. Although the board of trustees will not be engaged in the day-to-day management and oversight of intercollegiate athletics, provision is made for a more direct form of trustee involvement. The model reserves an *ex officio* seat on the athletics board for a member of the board of trustees.

B. Presidential Responsibility

The model recognizes that ultimate athletics oversight responsibility within the university rests with the president.⁴¹ As the institution's chief executive officer, the president must establish a tone that clearly identifies the role of athletics within the overall university culture.⁴² As noted by Professor Rodney Smith, "[T]he president must send a strong and unambiguous signal to the athletic department, booster groups, governing board, faculty, and students that athletics will receive the same personal oversight as do all other critical activities of the college or university."⁴³

However, college presidents cannot be involved in the day-to-day operation of their institutions' athletics programs.⁴⁴ It is the responsibility of athletics directors to manage the details of the athletics programs and implement the institutionally developed policy.⁴⁵ Nevertheless, each university president is responsible for knowing the manner in which each university department, including athletics, conducts its operations.⁴⁶ The principle of educational primacy is best served by each university president receiving input from all relevant perspectives.⁴⁷

41. The NCAA charges college presidents with ultimate responsibility for the manner in which an institution conducts its athletics program. "A member institution's chief executive officer has ultimate responsibility and final authority for the conduct of the intercollegiate athletics program and the actions of any board in control of that program." 1994-95 NCAA MANUAL art. 6.1.1.

The similarities of function between a college president and a corporate CEO have been identified as justification for holding the former accountable for university intercollegiate athletics programs. As noted by one commentator, "The president is the CEO of the institution and—in any company or corporation, big or small—the CEO is responsible for that company. It should be no different in higher education." SALTER, *supra* note 6, at 5. This same commentator states: "Presidential control helps to maintain proper focus. And, it seems logical, if a president is in control, he is going to want his coaches to 'do it right,' as the cliché goes." *Id.* at 67; see Stephen Horn, *Intercollegiate Athletics: Waning Amateurism and Rising Professionalism*, 5 J.C. & U.L. 97, 100 (1978) (noting that responsibility for maintaining the credibility of athletics lies with university administrators and faculty).

42. See Allison, *supra* note 7.

43. Smith, *supra* note 2, at 197.

44. SALTER, *supra* note 6, at 62, 86 (noting that college presidents are incapable of overseeing the day-to-day operations of an athletics program, just as they are incapable of administering the "daily ongoings of financial aid, admissions, or maintenance").

45. *Id.* at 65-66.

46. *Id.* at 62-63.

47. Professor Allison states: "[For a system premised on institutional control] to work toward realization of the educational primacy principle, the college president[s] . . . decision-making must be informed and meaningfully guided by input from those with a variety of relevant perspectives." Allison, *supra* note 7.

Consequently, presidents require the support of an organizational structure which allows them to oversee effectively athletics department activities. Most critically, this structure must provide information indicating the true state of the intercollegiate athletics program.⁴⁸

However, providing the president with a formalized flow of information operates as more than an enabling mechanism; it also provides a source of accountability. Thus, the proposed model forces presidents to confront problems within an athletics program. In turn, this reduces presidents' ability to avoid their oversight duties. The history of intercollegiate athletics is replete with illustrations of college presidents who looked the other way when abuses occurred in athletics programs.⁴⁹ Ultimately, however, such avoidance is ineffective, since athletic scandals have spurred the resignations of more than one college president.⁵⁰

C. Faculty Responsibility: Athletics Board

At least one commentator has identified lack of faculty involvement as a key factor in intercollegiate athletics' encroachment on institutional educational values.⁵¹ Reasons for the absence of faculty from the governance of intercollegiate athletics were summarized by one commentator as follows:

[T]he absence of professional rewards for university service in oversight of athletics, the athletic department's coolness to such

48. The president's success in overseeing an athletics program is dependent on his or her access not only to accurate information concerning the programs, but to ideas concerning issues affecting the athletics program. Smith, *supra* note 2, at 252.

49. See generally THELIN, *supra* note 2.

50. In this regard, Professor Thelin writes:

The conventional wisdom in the presidential primer was that football for the alumni, along with parking for the faculty and social life for undergraduates, was an entrenched domain of campus life where administrative reform was risky business. A university president might rationalize this accommodation because, after all, winning teams allegedly brought national publicity and loyalty among alumni and students, provided funding for the entire athletic department, and perhaps even stimulated donors to contribute to the university's educational programs.

This presidential strategy of avoidance and accommodation, however, ultimately exacted a price. . . . And there is evidence that Clark Kerr's avoidance play for university presidents provides little guarantee of administrative security, let alone success. Several presidents and chancellors have been fired in the aftermath of intercollegiate athletic scandals at their respective institutions.

Id. at 9.

51. See THELIN, *supra* note 2, at 187-88.

a role, and the strong incentives to mind one's own business in academia combine to discourage vigorous faculty involvement in reviewing athletic department policy. Indeed, for those who are most promising in their academic endeavors, probing the athletic department may be among the least appealing of administrative assignments.⁵²

As described in greater detail below, faculty participation is a critical feature of the proposed model; yet it must be asked whether faculty involvement in athletics governance would effectively curb abuses in intercollegiate athletics. Faculty athletics boards were in place at many universities involved in major infractions scandals during the early eighties.⁵³ On the other hand, faculty athletics boards are present at universities with the highest student-athlete graduation rates.⁵⁴

However, the evidence is too sketchy and anecdotal to draw firm conclusions as to the effectiveness or ineffectiveness of recent efforts to involve faculty in institutional governance. Still, over the last five to ten years, faculty governance of intercollegiate athletics has gained momentum.

The proposed model envisions an athletics board as a formalized means of enabling faculty to participate actively in the oversight and administration of athletics. Under the NCAA rules, member institutions are not required to establish an athletics board, but the rules do define such a board as having "responsibility for advising or establishing athletics policies and making policy decisions"⁵⁵ If an institution establishes an athletics board, the NCAA provides guidelines which govern its composition, structure and role.⁵⁶ These provisions reserve

52. John C. Weistart, *College Sports Reform: Where Are the Faculty?*, ACADEME, July-Aug. 1987, at 12, 14.

To counteract the problems posed by Professor Weistart, Professor Allison discusses mechanisms for encouraging and rewarding increased faculty governance of intercollegiate athletics. Allison, *supra* note 7; see also Robert H. Atwell, *Sports Reform: Where Is the Faculty?*, ACADEME, Feb. 1991, at 10, 12.

53. Atwell, *supra* note 52, at 14 (noting that the lack of faculty independence on such boards contributes significantly to the ineffectiveness of faculty's ability to curb abuses).

54. Examples of such institutions include Notre Dame and Duke, where football players who matriculated in 1987-88 graduated at rates of 73% and 96%, respectively. The models of governance at each of these institutions feature substantial faculty involvement. See NOTRE DAME ACADEMIC MANUAL art. IV, subsec. J; DUKE UNIVERSITY ATHLETIC POLICY MANUAL § B (1994); NCAA DIVISION I GRADUATION-RATES REPORT 142, 380 (1994). On the other hand, Boston College and the University of Virginia have had consistently high graduation rates without faculty athletics boards.

55. 1994-95 NCAA MANUAL art. 6.1.2.

56. *Id.*

a critical role for faculty on an athletics board and, thus, in the governance of an institution's intercollegiate athletics program.⁵⁷

Consistent with the NCAA's position on athletics boards, the proposed model focuses on the board's utility in advising, setting and implementing policies for the governance of an intercollegiate athletics program.⁵⁸ For example, the model views the board as a significant resource to which the university president can look for information and ideas. To provide for a diversity of ideas, which is critical to a proper governance model, the model calls for representatives of various segments of the university community to sit as members of the athletics board. Thus, non-athletic and athletic staff and administrators, trustees, alumni, and students will sit with faculty as members of the athletics board.⁵⁹ This diversity enables consensus-building through constant dialogue about and evaluation of the athletics department's operation.⁶⁰ The model encourages the athletics boards to communicate information to the president in several ways: annually reporting to the president concerning the status of the intercollegiate athletics department; reviewing the governance manual and making a written report to the president of any recommended changes; advising the president of the academic performance of student-athletes; making recommendations to the president concerning student eligibility requirements for participation in intercollegiate athletics; and providing input to the president concerning athletic schedules.

The athletics board's primary charge is to protect student-athletes' interests. Consequently, the proposed model requires the board to monitor the extent to which athletics impinges upon student-athletes' academic interests.⁶¹ In accordance with this mandate, the model provides for a regular pattern of reporting on the academic progress of

57. "Administration and/or faculty staff members shall constitute at least a majority of the board in control of athletics or an athletics advisory board . . ." *Id.* art. 6.1.2.1.

58. *See id.* art. 6.1.2. *See generally The Role of Faculty, supra* note 2 (discussing the various ways in which faculty should participate in the governance of intercollegiate athletics).

59. The model proposes that the athletics advisory board consist of six faculty members who are chosen by an institution's faculty senate and appointed by the president. Such a system responds in part to suggestions of Professor Allison that an advisory athletics board be a part of an established faculty governance body such as the faculty senate. Allison, *supra* note 7. According to Allison, such a nexus increases the likelihood of a board having input from persons with purely educational perspectives. *Id.*

60. *See* SALTER, *supra* note 6, at 88-89.

61. Another direct means of faculty involvement in institutional governance of the athletics program is the faculty admissions committee. *See infra* text accompanying notes 110-13.

student-athletes.⁶² After each semester, the board receives reports on academic performance and progress from the university registrar, the academic liaison officer in the athletics department, and academic support staff.

The model includes provisions which allow the board to assess the overall quality of student-athletes' experiences. To do this, members of the board conduct exit interviews of graduating student-athletes.⁶³ In addition, the model establishes a system that allows student-athletes to report confidentially concerns and suspected abuses by athletics department administrators to members of the board.⁶⁴

D. Self-Governance: Student Advisory Committees

As noted above, student-athletes governed intercollegiate athletics during its infancy. Rarely have formalized mechanisms⁶⁵ allowed student-athletes to participate actively and formally in the governance of intercollegiate athletics. At the 1995 NCAA convention, the membership adopted Proposal 13.⁶⁶ beginning August 1, 1995, the proposal requires each institution to establish a campus student-advisory committee.⁶⁷ Such committees hold considerable promise as forums for student-athletes to air their needs and concerns, since student-athletes can best articulate their own needs and interests.⁶⁸ Student-athlete advisory committees will provide a potential mechanism to "enhance the involvement of student-athletes in matters that affect their lives, while improving both the academic and athletics experiences for them."⁶⁹ To serve these functions effectively, any such committees should be comprised primarily of enrolled student-athletes.⁷⁰

62. See Meggyesy, *supra* note 25, at 120 (suggesting the propriety of this form of academic oversight).

63. Exit interviews conducted by the athletics board are in addition to exit interviews mandated by the NCAA. The NCAA mandates that "the institution's director of athletics, senior woman administrator or designated representatives (excluding coaching staff members) shall conduct exit interviews in each sport with a sample of student-athletes . . . whose eligibility has expired." 1994-95 NCAA MANUAL art. 6.3.2.

64. See Meggyesy, *supra* note 25, at 121 (suggesting that faculty play an ombudsmen-like role on behalf of student-athletes).

65. Some athletics advisory boards, such as the one proposed in this model, reserve a place for student-athlete representation.

66. *Convention Voting Summary*, NCAA NEWS, Jan. 18, 1995, at 6.

67. *Id.*

68. Erik Nedcau, *Convention Left Room to Improve*, NCAA NEWS, Jan. 25, 1995, at 4-5.

69. *Id.* at 5.

70. The composition of the student-athlete advisory board differs from that proposed by Professor Allison. He would create a board made up of former student-

E. Athletics Department Responsibility

The proposed model entrusts primary responsibility for the integrity of the intercollegiate athletics program, including rules compliance, to the director of athletics. The director's responsibilities include implementing goals and policies which ensure that coaches and staff conduct their programs consistent with academic and athletic values. Appendix A sets forth a comprehensive list of responsibilities for this position.

Despite placing primary responsibility with the director of athletics, the model includes elements which lessen the likelihood of an athletics department's isolation from the university. For example, the director of athletics is required to submit written reports on an annual basis to the president.⁷¹ Such reports should be sufficiently detailed so that they provide useful information concerning the overall state of the athletics program. Thus, the reports should address matters such as budgets, coaching performance, academic performance and progress of student-athletes, and compliance with NCAA rules.⁷² In addition, the director of athletics will be required to meet at least once annually with the athletics board to report on the status of the intercollegiate athletics program. The model also provides for the director of athletics to attend

athletes. Allison, *supra* note 7. He believes a board comprised of former student-athletes will possess the independence and maturity necessary to represent effectively the student-athlete's perspective. The board which the proposed model contemplates would be comprised principally of present student-athletes. As noted in the text, only present student-athletes can accurately identify their own needs and concerns. They have a unique perspective on their interests that even former student-athletes may not possess. As Professor Allison suggests, a board comprised of student-athletes may lack independence and freedom to act. After all, scholarships are renewable on a yearly basis. In addition, coaches determine the way in which student-athletes will be allowed to participate. These legitimate concerns can be addressed if the faculty advisory board and the NCAA critically scrutinize conduct which would appear motivated by attempts to retaliate against or to silence members of student-athlete advisory boards. Moreover, the model proposes that the chair of the student-athlete advisory board also sit as one of the student members of the faculty advisory board. Recognizing that former student-athletes may add maturity and experience, the model provides for the input of two former student-athletes, who will act as advisors to the board. See generally Allison, *supra* note 7.

71. Smith, *supra* note 2, at 254 (advocating this form of reporting requirement as a fundamental element of maintaining a balanced athletics program).

72. Professor Smith argues for such regular reporting mechanisms. *Id.* He suggests that reports prepared by athletics directors include information sufficiently comprehensive to allow for a true understanding of the state of athletics at a particular institution. Reports should therefore include information pertaining to budgets, coaching performance, athletically related time demands on student-athletes, academic support for student-athletes, and rules compliance. *Id.* Professor Smith adds that athletics directors "should also report with regard to the institution's general or macro philosophy of athletics." *Id.*

regular meetings of the full athletics board and, when requested, its sub-committees.

The foregoing mechanisms are intended to facilitate communications and understanding between the athletics department and other segments of the university community. In addition, such mechanisms establish a process by which various segments of the university community are able to provide input to the director of athletics. Finally, the director of athletics, like coaches, is held accountable for the academic performance of student-athletes. The academic success of the university's intercollegiate teams constitutes one factor to be considered in evaluating the director's performance.

F. Coaches' Responsibility

The proposed model proceeds from the premise that coaches will be held personally responsible for maintaining the integrity of athletics programs. Coaches are responsible for NCAA and institutional rules compliance as well as for the academic success or failure of their student-athletes. Holding coaches accountable for the academic welfare of their student-athletes is justified in part by the significant control coaches wield.⁷³ One commentator states: "If you coach and recruit student-athletes, you have a greater influence over their lives than any single person on campus. Between practice, games and traveling, a coach has more contact with a student-athlete than any professor or administrator."⁷⁴ The author concludes that coaches' intimate involvement in their student-athletes' lives justifies placing responsibility with the coaches.⁷⁵

Accordingly, the proposed model measures a coach's success rate using several standards.⁷⁶ Notably, winning represents only one factor to be considered in evaluating a coach. Under the proposed model, the

73. SALTER, *supra* note 6, at 44.

74. *Id.* The Colorado Supreme Court recently recognized the pervasiveness of institutions' control over their student-athletes. The court stated that the extent to which colleges regulate the student-athlete's on-and-off-campus behavior reaches the "maintenance of a required level of academic performance, monitoring of course selection, training rules, mandatory practice sessions, diet restrictions, attendance of study halls, curfews, and prohibitions on alcohol and drug use." *University of Colo. v. Derdeyn*, 863 P.2d 929, 940 (Colo. 1993).

75. SALTER, *supra* note 6, at 44.

76. Thomas M. Dixon, *Achieving Educational Opportunity Through Freshman Ineligibility and Coaching Selection: Key Elements in the NCAA Battle for Academic Integrity of Intercollegiate Athletics*, 14 J.C. & U.L. 383, 396 (1987) (arguing for consideration of variables other than success on the playing fields as important in measuring a coach's performance).

academic performance of student-athletes becomes significant in determining the hiring, retention, and compensation of coaches.⁷⁷ Judging coaches by the quality of their student-athletes' overall academic and social experiences represents a significant step toward holding coaches accountable for things other than wins and losses.⁷⁸

G. Academic Experiences of Student-Athletes

Despite the fact that big-time intercollegiate athletics has embraced commercial values, the need to emphasize educational values remains crucial.⁷⁹ As noted, the educational value embodies the notion that intercollegiate athletics is but a component of the educational process at institutions of higher education. This belief is reflected in the statement of the basic purpose of the NCAA. The NCAA constitution provides that "[a] basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body."⁸⁰ Relatedly, the NCAA recognizes the principle that intercollegiate athletics should be conducted in a manner which minimizes interference with a student-athlete's opportunity to acquire a meaningful education.⁸¹

77. One writer justifies holding coaches accountable for student-athletes' academic success as follows:

If there is an opportunity to offer a prospective student-athlete a scholarship, that means a coach has a choice. He can choose any student-athletes he wants. But as long as that choice is made with athletic success as the first criteria, that selection will often be the wrong one. Therefore coaches should be held more accountable because they have the option of picking and choosing the student-athletes they desire to be in their program. If coaches choose student-athletes who are marginal academically and may or may not earn a college degree, but will be athletic standouts, the burden of that decision should be absorbed by that coach.

SALTER, *supra* note 6, at 26; see Dixon, *supra* note 76, at 397 (urging university administrators to measure a coach's success or failure in part by student-athletes' academic performance).

78. See SALTER, *supra* note 6, at 12 (opining that "[b]y and large, Division I coaches are judged and evaluated on their ability to do three things: win consistently; make sure you defeat the arch rival on a semi-regular basis; and, perhaps most importantly, take your squad to a bowl game or national tournament on a consistent basis").

79. A detailed discussion of the tensions which result from the coexistence of both commercial and educational values in college athletics appears in Timothy Davis, *Intercollegiate Athletics: Competing Models and Conflicting Realities*, 25 RUTGERS L.J. 269 (1994).

80. 1994-95 NCAA MANUAL art. 1.3.1.

81. *Id.* art. 2.13.

Additionally, the educational component of intercollegiate athletics is reflected in the nature of the relationship between student-athletes and their universities. The financial aid awarded to student-athletes provides educational opportunities that many of them would otherwise find elusive. The quid pro quo relationship between student-athletes and their universities imposes an obligation on the universities to provide the student-athletes unfettered educational opportunities.⁸² An effective model of institutional governance should include components that enhance the likelihood that student-athletes will have realistic opportunities to both obtain a quality education and enjoy the college experience.⁸³ As noted by one commentator: "At the scholarship levels, student-athletes are owed the attention of the institution's resources⁸⁴ to fulfilling an education. . . . Institutions have to be called at the highest level of examination to, once they accept these athletes, turn them into students."⁸⁵

82. Discussion of the existence and dimensions of an institution's educational obligation to its student-athletes is beyond the scope of this paper. Commentators who have addressed this issue include: Timothy Davis, *An Absence of Good Faith: Defining a University's Educational Obligation to Student-Athletes*, 28 HOUS. L. REV. 743 (1991); Alfred D. Mathewson, *Intercollegiate Athletics and the Assignment of Legal Rights*, 35 ST. LOUIS U. L.J. 39 (1990); Ron Waicukauski, *The Regulation of Academic Standards in Intercollegiate Athletics*, 1982 ARIZ. ST. L.J. 79; Lesa A. Barkowsky, Note, *The Illiteracy Problem and College Athletes: An Argument for Educational Malpractice*, 16 COLUM.-VLA J.L. & ARTS 537 (1992); Harold B. Hilborn, Comment, *Student-Athletes and Judicial Inconsistency: Establishing a Duty to Educate as a Means of Fostering Meaningful Reform of Intercollegiate Athletics*, 89 NW. U. L. REV. 741 (1995); Michael N. Widener, Note, *Suits by Student-Athletes Against Colleges for Obstructing Educational Opportunity*, 24 ARIZ. L. REV. 467 (1982).

83. See SALTER, *supra* note 6, at 48 (identifying an opportunity to earn a quality education, the ability to participate in a chosen athletic activity, and the opportunity to enjoy the collegiate experience as the three most important things to student-athletes); see also Boston, *supra* note 27, at A15 (commenting that institutions must provide resources which will enable student-athletes to obtain a meaningful educational experience).

In assessing the academic, social and psychological impact of participation in college sports on African-American student-athletes, Professor Robert Sellers argues that colleges possess an obligation to provide student-athletes with an opportunity to obtain a college education. Sellers, *supra* note 29, at 156. Related to this duty is the institution's obligation to provide the necessary support services to enhance student-athletes' opportunity to derive educational value from their college experiences. *Id.* Services which help to ensure student-athlete academic achievement include academic support programs and career counseling. *Id.* at 157.

84. SALTER, *supra* note 6, at 36 (noting that these resources include "faculty, administrators, academic advisement, philosophy, and a host of other intangibles that make the institution agree to give them an education").

85. *Id.* at 36-37; see also Boston, *supra* note 27, at A15 (noting University of Minnesota coaches and counselors are charged with providing student-athletes direction in successfully completing degree requirements and obtaining educational benefits).

Two components of the proposed model are particularly important in determining the quality of student-athletes' university experiences.⁸⁶ The first component is academic support services. The second component is the admissions policy for student-athletes.

1. ACADEMIC SUPPORT SERVICES

Student-athletes' opportunities to achieve academically face several barriers. These barriers range from the demands which athletics places on their time⁸⁷ to inferior academic preparation prior to college.⁸⁸ As such, academic support services represent a critical component of the institution's commitment to providing its student-athletes with a real opportunity to acquire an education.⁸⁹

Academic support programs help to ameliorate the impact of such adverse factors. Yet not all such programs are effective in carrying out their missions.⁹⁰ Therefore, the model proposes an academic support program which includes structures to ensure the program's effectiveness. The independence of academic support programs from athletics departments is an important structural feature. Academic assistance programs dominated by athletics departments tend to focus on providing assistance necessary to maintain athletic eligibility rather than furthering academic achievement.⁹¹ Notwithstanding the success of some academic

86. Structural factors also impact the institution's ability to fulfill its educational obligation to student-athletes. One such factor is the distance between the athletic subculture and other departments within a university. The more distance, the greater the likelihood that student-athletes will not have the same experiences as non-athlete students. Cross, *supra* note 2, at 162.

87. SALTER, *supra* note 6, at 38; Sellers, *supra* note 29, at 163 (comparing participating in college athletics to a full-time job).

88. Sellers, *supra* note 29, at 163 (noting inadequate preparation is particularly acute for African-American student-athletes).

89. "Educational opportunity includes ready access to effective tutoring, continuous monitoring of academic performance, sufficient study time, and other assistance tailored to the specific educational needs of each student-athlete." Dixon, *supra* note 76, at 385.

Providing the academic support services which will assist student-athletes in achieving this goal also fosters an environment in which academics is given priority over athletics. *Id.* (arguing that the university possesses an obligation to create an environment in which student-athletes realize they are students first and athletes second).

90. Professor Sellers notes that while "academic support programs for student-athletes are fairly widespread, many of them provide very little educational benefit to the student-athlete." He attributes this in part to the intimate involvement of the athletics department in running such programs. Sellers, *supra* note 29, at 165.

91. Doug Single, *The Role of Directors of Athletics in Restoring Integrity to Intercollegiate Sport*, in THE RULES OF THE GAME, *supra* note 25, at 157 (noting the

assistance programs controlled by athletics departments, an inherent conflict of interest⁹² resides in such programs that tends to widen the gap between academics and athletics.⁹³ As noted by one commentator:

[U]niversities must remove counseling and tutoring programs from the jurisdiction of athletic departments and place them in control of professional educators. Such programs will be more effective in the hands of those who are not answerable to win or loss records and who can readily focus on the student-athlete as a student. Programs run by educators might just establish an effective system of checks and balances.⁹⁴

The proposed model attempts to achieve this balance by placing the academic support center under the jurisdiction of an academic administrator. Accordingly, the director of the academic support center reports to the dean for academic affairs.

Student-athletes, like many students in other university programs, have special needs that other students do not share.⁹⁵ Therefore, support services should be geared toward responding to these specialized needs rather than affording student-athletes with preferential treatment.⁹⁶ One former athletic director expressed this notion as follows:

tendency of assistance programs controlled by the athletics department to focus on managing athletics and not solving academic problems).

92. See Single, *supra* note 91, at 157-58 ("Such programs are inherently driven toward maintaining eligibility rather than fostering education and toward protecting student-athletes from academic standards, faculty, and deans rather than assisting and educating student-athletes to take advantage of the available resources."); Clarence Spigner, *African American Student-Athletes: Academic Support or Institutionalized Racism?*, 114 EDUC. 144, 146 (1993) ("Academic support services which are influenced too much by the dictates of the institution's athletic programs run the risk of operating only superficially in the academic interests of the student.").

93. Spigner, *supra* note 92, at 157; see also *Policy Recommendations, in THE RULES OF THE GAME*, *supra* note 25, at 205 (emphasizing that support systems independent of athletics enable student-athletes to get away from the athletic environment).

94. Dixon, *supra* note 76, at 397.

95. Single asserts:

There is no question that student-athletes in Division I institutions have certain unique needs in comparison to non-athlete students. The time and emotional demands of athletics, combined with the distinctive culture that exists within organized athletics as a social institution, clearly separate the experiences of student-athletes from other college students.

Single, *supra* note 91, at 156-57.

96. *Id.*

The services provided to student-athletes by both the athletics department and other university departments should work toward integrating student-athletes into the academic life of the university rather than furthering their isolation as a subculture outside the university mainstream.⁹⁷

An academic support facility that has student-athletes as its only clientele would not adequately respond to the needs of student-athletes.⁹⁸

Therefore, the proposed model envisions an academic support center which is available to all students.⁹⁹ An academic support program with general availability further facilitates the integration of student-athletes into an institution's social and academic mainstream.¹⁰⁰ Separately run support services often stigmatize student-athletes, particularly those who are African-American.¹⁰¹

The extent to which an academic support system aids the institution in fulfilling its commitment depends on several factors. The focus of academic support programs should be on long-term development of

97. *Id.* at 157; *see also Policy Recommendations, supra* note 93, at 206 (arguing academic assistance programs should be structured to lessen the isolation of the athletic subculture and further the integration of student-athletes into the mainstream university community).

98. All too often this is the reality, since academic assistance programs are either operated independently of academic support services for non-athlete students or are not available to the general student population. *See Spigner, supra* note 92; Bruce Newman, *Classroom Coaches: Academic Advisers Are in the Team Picture*, *SPORTS ILLUSTRATED*, Nov. 19, 1990, at 62.

To respond to the unique needs of student-athletes, the model provides a liaison in the academic assistance center who will help to facilitate student-athlete use of academic support services and the provision of services focused specifically on student-athletes' needs.

99. *See Policy Recommendations, supra* note 93, at 206 (a goal of academic assistance programs for student-athletes should be to create "an integrated system of services that encompasses both the resources available to all students and a set of services based in the athletic department that is designed to supplement those resources"). While the resources of some institutions may preclude this, such an arrangement is certainly desirable.

In addition, this discussion is not intended to suggest that academic support programs within athletics departments will necessarily lack integrity. A system of control and accountability can ensure that academic assistance programs within the control of the athletics department are run ethically and with integrity. *See Smith, supra* note 2, at 255.

100. "The goal of any academic assistance program for student-athletes should be the integration of academics and athletics at both the individual and institutional levels. At the individual level, academic assistance programs ensure that participants in Division I intercollegiate athletics are students as well as athletes." *Single, supra* note 91, at 156.

101. *See Spigner, supra* note 92, at 146-47.

student-athletes.¹⁰² For example, at least for student-athletes, the program should emphasize the development of a life-skills curriculum that prepares the student-athlete for life beyond sports,¹⁰³ and should include academic skill-building features.¹⁰⁴ "These academic skills consist of such activities as writing, note taking, time management, and reading comprehension."¹⁰⁵ To provide direction, the model includes a statement of policy which applies this holistic approach to the educational development of student-athletes.¹⁰⁶

To facilitate the provision of services to student-athletes who need them, the model proposes academic monitoring aimed at ensuring that student-athletes are registered for full-time course loads, are performing satisfactorily in their courses, and are making progress toward a degree.¹⁰⁷ This objective is achieved through specific features, including meetings between academic assistance staff and incoming and poorly performing student-athletes, to review course selection and grade reports, and to discuss and arrange for tutorial assistance. Early-term academic warning reports will be used to evaluate student-athletes' academic performance during the early stages of each semester; academic progress reports (mid-term and semester reports) will indicate student-athletes' course grades;¹⁰⁸ and there will be a requirement that student-athletes with a grade point average of 2.1 or below participate in a study hall monitored by academic assistance center staff. These procedures attempt to operate as an early alert system which permits the academic assistance, academic counseling and athletics department staff to intervene when a student-athlete's academic performance is deficient. Moreover,

102. Sellers, *supra* note 29, at 167.

103. The model incorporates this emphasis in the statement of policy pertaining to academic assistance.

104. *Id.*

105. *Id.*

106. *Id.* at 168.

A program with a long-term focus would also emphasize a holistic approach to the student-athletes' development. Such a support program would facilitate black student-athletes' efforts to further develop personal competencies as well as improve their chances for a successful career after athletics. With regard to the development of personal competence, the support program must allow student-athletes to feel a sense of power and responsibility over their education. Student-athletes should be encouraged to make decisions for themselves and allowed to experience the consequences of those decisions. Such an approach teaches self-discipline, responsibility, and decision-making skills. It also promotes an overall sense of self-efficacy.

Id.

107. Janice M. Jordan & Eric L. Denson, "Student Services for Athletes": A Model for Enhancing the Student-Athlete Experience, 69 J. COUNSELING & DEV. 95 (1990).

108. *Id.*

it allows student-athletes to develop plans of action which will improve their academic performance.¹⁰⁹

2. ADMISSIONS POLICIES AND PROCEDURES

Another critical component of the model for governance centers on admissions policies. Many students' only means of access to an education is through participation in athletics.¹¹⁰ Providing educational opportunities is certainly a goal consistent with the educational mission of universities. Yet, dissonance between educational values and athletic values is created when institutions admit student-athletes with remote chances of academic success.

The model proposes admissions guidelines aimed at avoiding the exploitation of student-athletes. The premise underlying these guidelines is that only students who are capable of competing academically as well as athletically should be admitted.¹¹¹ The purpose of the admissions policies and procedures is to scrutinize those student-athletes who are deemed marginal.¹¹²

The admissions guidelines implement a collaborative decisionmaking process to determine whether to admit such prospective student-athletes. A collaborative approach is supported by the NCAA: "The responsibility for admission, certification of academic standing and evaluation of academic performance of student-athletes shall be vested in the same

109. *Id.*

110. See CLIFFORD ADELMAN, DEP'T OF EDUC., LIGHT AND SHADOWS ON COLLEGE ATHLETES 8-9 (1990); Douglas Lederman, *Blacks Make up Large Proportion of Scholarship Athletes, Yet Their Overall Enrollment Lags at Division I Colleges*, CHRON. HIGHER EDUC., June 17, 1992, at 34; Phil Taylor & Shelly Smith, *Exploitation or Opportunity?*, SPORTS ILLUSTRATED, Aug. 12, 1991, at 46.

Others question whether the African-American community pays too high a price for the upward mobility that sports provides a few student-athletes. JEAN A. COAKLEY, SPORT IN SOCIETY: ISSUES AND CONTROVERSIES 247 (5th ed. 1994); STEPHEN K. FIGLER & GAIL WHITAKER, SPORT AND PLAY IN AMERICAN LIFE 301 (2d ed. 1991); THELIN, *supra* note 2, at 175; Harry Edwards, *The Black "Dumb Jock": An American Sports Tragedy*, 131 C. BOARD REV. 8, 9 (1994).

111. Thus, the model provides that all prospective student-athletes must meet admissions standards approved by the president. The director of admissions is charged with implementing these standards. A faculty advisory committee has the responsibility to advise the director. See *The Role of the Faculty*, *supra* note 2, at 46 (discussing the role of faculty in admissions decisions concerning student-athletes).

112. Candidates with SAT and ACT scores below a set level (to be determined by the institution) will be considered marginal. At Southern Methodist University, candidates with a combined SAT score below 900 or a verbal SAT of below 450 are considered marginal.

agencies that have authority in these matters for students generally."¹¹³ The goal of this collaborative approach is to ensure that academic as well as athletic qualifications are critically evaluated in deciding whether a student-athlete should be admitted to the university.

IV. EXTERNAL MEANS OF ACCOUNTABILITY

Since 1929, at least four major studies have identified the need for drastic reforms in intercollegiate athletics to ensure the proper balance between athletics and academics.¹¹⁴ These studies document, in detail, the abuses in intercollegiate athletics and the need for reform.¹¹⁵ Despite these periodic calls for reform, and substantial change as a result of reform efforts,¹¹⁶ the negative influence of intercollegiate athletics on institutions of higher education has, at best, been slightly stymied.

Several factors contribute to reform efforts' failure to achieve the fundamental impact that those advocating change envision. These include the absence of a unified and coherent reform initiative centered around academic values;¹¹⁷ the adherence to precepts, such as amateurism, which mask the realities of big-time intercollegiate athletics;¹¹⁸ and piecemeal efforts that fail to consider the interrelationship of various problems which surface in college athletics.¹¹⁹

113. SELF-STUDY INSTRUMENT, *supra* note 32, at 11.

114. Historian John H. Thelin has identified four such efforts:

Specifically, the four national reports that provide the major points of departure for discussion by academic leaders about the condition and character of intercollegiate athletics are Howard Savage's *American College Athletics*, published in 1929 under the sponsorship of the Carnegie Foundation for the Advancement of Teaching; the 1952 report of the Special Committee on Athletic Policy of the American Council on Education; George Hanford's 1974 report to the American Council on Education on the need for a national study of intercollegiate athletics; and the 1991 report of the Knight Foundation Commission on Intercollegiate Athletics, *Keeping Faith with the Student-Athlete*, which proposed a new model for college sports.

THELIN, *supra* note 2, at 10-11.

115. For instance, in the 1920s, the Savage Report sponsored by the Carnegie Foundation identified commercialism and a negligent subversion of the principal purpose of colleges, educational opportunity, as principal defects in college sports. *Id.* at 25.

116. *Id.* at 198. Reform efforts have resulted in "substantial changes in the organization and control of college sport since 1929. Intercollegiate athletics, once a chaotic, unregulated activity, have become one of the most sophisticated and codified enterprises in American life." *Id.*

117. Smith, *supra* note 2, at 215.

118. Smith, *supra* note 2, at 215.

119. *Id.* at 230.

Another explanation for this failure is the absence of a mechanism capable of holding individual institutions accountable for failing to make changes to ensure the elevation of academic over athletic values. Legislative efforts such as Title IX¹²⁰ and the Student-Athlete Right to Know Act¹²¹ have influenced changes and possess potential for increasing accountability for intercollegiate athletics through national regulation.¹²²

However, individual institutions are ultimately responsible for determining the philosophy of their athletics programs. As such, they are responsible for ensuring that institutional athletic interests do not jeopardize the educational and athletic interests of their student-athletes. Without an established form of external accountability, well-intentioned and well-structured programs may succumb to some or all of the pressures that have reduced the impact of global intercollegiate athletics reform efforts.¹²³

A. NCAA Certification

External safeguards are necessary to pressure institutions to adhere to and implement governance mechanisms which actually provide a balance between academic and athletic values. One method of external control is the newly enacted NCAA certification.

Proposal 15, considered one of the most important reform provisions affecting Division I intercollegiate athletics, was passed at the 1993 NCAA convention.¹²⁴ According to the NCAA, "[A]thletics certification is meant to ensure the NCAA's fundamental commitment to integrity in intercollegiate athletics."¹²⁵ Proposal 15 attempts to achieve

120. THELIN, *supra* note 2, at 193. See generally B. Glenn George, *Who Plays and Who Pays: Defining Equality in Intercollegiate Athletics*, 1995 WIS. L. REV. 647.

121. 20 U.S.C.A. §§ 1085, 1092, 1094, 1232(g) (West Supp. 1994).

122. See Leroy D. Clark, *New Directions for the Civil Rights Movement: College Athletics as a Civil Rights Issue*, 36 HOW. L.J. 259, 282 (1993) (discussing legislative initiatives as part of a diverse strategy aimed at ending the exploitation of student-athletes).

123. For discussions of the pressures which tend to thwart the effectiveness of reform measures see SALTER, *supra* note 6, at 3; THELIN, *supra* note 2, at 2, 198-99; James H. Frewy, *Intercollegiate Athletics in the Future: Booster Coalition, Institutional Control and the Pursuit of Scarce Resources*, in *THE GOVERNANCE OF INTERCOLLEGIATE ATHLETICS* 225 (James H. Frewy ed., 1982); Smith, *supra* note 2, at 231.

124. 1994-95 NCAA MANUAL art. 6.3.1.1 (noting legislation was adopted on January 16, 1993 with an effective date of Jan. 1, 1994); Steve Berkowitz, *Maryland Examines Athletic Program*, WASH. POST, Mar. 1, 1994, at E4.

125. NCAA COMM. ON ATHLETICS CERTIFICATION, 1993-94 DIVISION I ATHLETICS CERTIFICATION HANDBOOK 5 (1994) [hereinafter CERTIFICATION HANDBOOK].

this goal by establishing a certification program requiring all Division I institutions to undergo peer review and conduct an internal self-study of their athletics programs within the first five years of the program.¹²⁶ Certification attempts to ensure program integrity by examining schools for their commitment to: (1) compliance with NCAA rules; (2) academic integrity; (3) fiscal integrity; and (4) racial and gender equity.¹²⁷ Finally, certification imposes sanctions for an institution's failure to conduct a self-study or to correct problems in its programs.¹²⁸

Each college or university must select a steering committee that represents a cross-section of the college or university to supervise this self-study.¹²⁹ The steering committee must be chaired by a member of the college or university's senior management group.¹³⁰ Once the self-study is completed, a peer review team comprised of Division I school administrators conducts an on-site review.¹³¹ These peer review teams are responsible for verifying campus-wide participation in the self-study process, the accuracy of an institution's self-study, and evaluating the self-

126. 1994-95 NCAA MANUAL art. 6.3.1.1 (noting legislation was adopted on January 16, 1993 with an effective date of January 1, 1994); CERTIFICATION HANDBOOK, *supra* note 125, at 5, 8.

127. 1994-95 NCAA MANUAL art. 6.3.1.1; CERTIFICATION HANDBOOK, *supra* note 125, at 5-6.

128. CERTIFICATION HANDBOOK, *supra* note 125, at 6. For a discussion of sanctions, see *infra* text accompanying notes 140-45.

129. Berkowitz, *supra* note 124, at E4. Responsibility is given the institution's chief executive officer to ensure that the steering committee effectively represents key campus constituent groups. CERTIFICATION HANDBOOK, *supra* note 125, at 11. However, chief executive officers and individuals with direct oversight of an athletics program (e.g., athletics directors) are precluded from serving as chair of the self-study steering committee. *Id.* The NCAA's *Certification Handbook* requires that four positions on the steering committee be filled by the chief executive officer, the faculty athletics representative, the director of athletics, and a senior woman administrator. *Id.* In order to obtain different perspectives and a wide range of expertise, the NCAA suggests that other steering committee members be selected from the following groups: the governing board, non-athletics administrators, faculty, students and alumni. *Id.* at 12. Finally, the *Handbook* instructs steering committees to establish as many subcommittees as they deem necessary to complete the self-study and to involve other members of the university community in the certification process. *Id.*

130. Berkowitz, *supra* note 124, at E4.

131. CERTIFICATION HANDBOOK, *supra* note 125, at 7. The NCAA additionally established a Committee on Athletics Certification, chaired by then-chancellor of the University of Mississippi, R. Gerald Turner, to oversee the entire certification process at the university level. *Turner to Chair Committee on Certification*, NCAA NEWS, Feb. 3, 1993, at 1. This committee was charged with, among other things, determining a schedule for the study, developing a certification handbook, and refining the self-study instrument. *Id.*

study in relation to the operating principles approved by Division I member institutions.¹³²

The NCAA believes that the self-study requirement will result in at least three benefits to institutions: (1) increasing awareness among various campus constituencies as to the goals and purposes of athletics programs; (2) revealing positive attributes and consequences of intercollegiate programs; and (3) identifying problems and offering a forum for suggestions to address them.¹³³

The certification decision is a two-step process.¹³⁴ The first step involves an assessment by the Committee on Athletics Certification of the adequacy of an institution's self-study.¹³⁵ If the Committee on Athletics Certification determines that a self-study is adequate, it will continue deliberations and make a "specific certification decision."¹³⁶ An institution's certification status will either be "certified,"¹³⁷ "certified with conditions,"¹³⁸ or "not certified."¹³⁹

It is unlikely that an institution will fall within the "not certified" category the first time it goes through the certification process. This does not necessarily mean, however, that the certification process is merely pro forma. Rather, the process is structured to allow even those institutions deemed "not certified" to take corrective action to avoid the imposition of sanctions. More specifically, "not certified" means that problems are so serious or pervasive that an institution is considered not to be operating its athletics program in "substantial conformity with the operating principles."¹⁴⁰ Nevertheless, if the institution takes corrective action to ameliorate the problems, it may obtain conditional certification, preventing the imposition of sanctions. Thus, with respect to certification, the emphasis is on identifying problems and allowing

132. CERTIFICATION HANDBOOK, *supra* note 125, at 7, 26.

133. *Id.* at 6.

134. Decisions regarding both steps of the process are to be based on information contained in the self-study report, the peer review team's written report, any additional written comments from the institution, and any written comments offered by the peer review committee in response to the institution's comments. *Id.* at 33.

135. *Id.*

136. *Id.*

137. An institution obtains "certified" status if it "is considered to be operating its athletics program in substantial conformity with the operating principles." *Id.* at 34. Accordingly, any problems identified are deemed not to be serious enough to affect adversely an institution's certification status. *Id.*

138. "Certified with Conditions" means the athletics program is operating in substantial conformity with the operating principles but sufficiently serious problems exist which warrant withholding full certification until they have been corrected. *Id.*

139. *Id.*

140. *Id.*

institutions an opportunity to develop a plan to address these problems.¹⁴¹

On the other hand, failure to take corrective action within a specified time frame may place an institution in the restricted membership category for a year.¹⁴² This category precludes an institution from participating in NCAA championships for any sports.¹⁴³ An institution's failure to address adequately the problems by the end of the restricted membership period may result in reclassification as a corresponding member.¹⁴⁴ Corresponding classification means the school is no longer an active member of the NCAA.¹⁴⁵

Enhancing credibility appears to be one of the primary goals of certification. University of New Orleans Chancellor Gregory O'Brien explained that "[certification] is very important in maintaining and enhancing credibility."¹⁴⁶ Some believe that it would "eliminate double standards in academics" by forcing student-athletes to comply with the same academic standards as the general student body, and by forcing colleges and universities to admit only "an athlete who could reasonably be expected to earn an academic degree."¹⁴⁷

Dick Schultz, former Executive Director of the NCAA, echoed the sentiments of Mr. O'Brien and considers certification "the capstone of the reform movement."¹⁴⁸ He further proclaimed that the self-study will help repair and deal with weaknesses and problems in athletics programs.¹⁴⁹ In fact, he concluded, "[C]ertification is really a piece of the whole reform puzzle because it covers a lot of things that have kind

141. Telephone Interview with Michael Marcil, Compliance Representative, Nat'l Collegiate Athletic Ass'n (Feb. 17, 1995). Five of the eight institutions that completed self-studies in the first round received certified designations. *First Round of Certification Decisions Completed*, NCAA NEWS, Mar. 8, 1995, at 1. Three institutions—Louisiana State University, Northern Illinois University, and St. Mary's College (California)—were designated as certified with conditions pending. *Id.* at 17. In order to receive full certification, these institutions must create comprehensive plans for addressing gender equity in their intercollegiate athletics programs. *Id.* St. Mary's must also develop a plan for addressing minority opportunities. *Id.*

142. CERTIFICATION HANDBOOK, *supra* note 125, at 35.

143. *Id.*

144. *Id.*

145. *Id.*

146. Ivan Maisel, *Presidents, Krzyzewski Lost Votes: But Certification Passes at NCAA Convention*, DALLAS MORNING NEWS, Jan. 15, 1993, at 1B.

147. Maisel, *supra* note 146, at 4B.

148. Adam Teicher, *Certification Will Punctuate NCAA's Reform Movement*, STAR TRIB., Jan. 11, 1993, at 7C.

149. *Id.*

of fallen in between. It will provide kind of a Good Housekeeping seal of approval on a program."¹⁵⁰

Others believe that certification will "be a tool to foster clear communication and promote better understanding of both academic and athletic concerns."¹⁵¹ Charles Knapp, the President of the University of Georgia, lists a number of benefits he believes the NCAA will reap as a result of certification. According to Mr. Knapp, certification will help

clarify required lines of communication . . . streamline[] necessary decision processes . . . formalize many working relationships between athletics department staff members and their counterparts in the academic community . . . focus[] greater attention on the relationship between student-athletics and the teaching, research and service missions of higher education [and in essence] move the academic and athletics communities toward better mutual understanding and cooperation through open disclosure.¹⁵²

Certification appears to be an intelligent NCAA creation that should have a positive impact on student-athletes. At a minimum, certification will encourage institutions to take a close look at the role of athletics within their organizational and administrative structures. Consequently, institutional certification may provide an external mechanism for focusing attention on institutional governance policies and procedures and the extent to which they help to ensure a proper balance between athletics and academics.

B. Judicial Intervention

1. NCAA ACCOUNTABILITY

Certification represents a significant extension of the NCAA's oversight function.¹⁵³ It is uncertain what impact NCAA certification will have on bringing its member institutions into line with their operating principles. The extent to which certification is effective in requiring institutions to correct problems which impinge upon the integrity of their

150. *Id.*

151. Charles B. Knapp, *Certification Will Bolster Image*, NCAA NEWS, June 30, 1993, at 4.

152. *Id.*

153. See David A. Skeel, Jr., *Some Corporate and Securities Law Perspectives on Student-Athletes and the NCAA*, 1995 WIS. L. REV. 669, 669 (noting the NCAA's expanding role in overseeing virtually every intercollegiate sport).

intercollegiate programs is uncertain. The effectiveness of certification will in large part turn on the NCAA's willingness to impose the sanctions that certification legislation authorizes. Given the failure of past reform efforts, and uneven NCAA imposition of sanctions for rules violations, a certain degree of skepticism is warranted.¹⁵⁴

Professor Skeel suggests imposing a fiduciary obligation on the NCAA (or at least its member institutions) as a means of forcing it to conduct its oversight responsibilities in a way that protects the interests of student-athletes.¹⁵⁵ In short, he proposes the imposition of fiduciary duties as a mechanism for enhancing the NCAA's accountability.¹⁵⁶ While Professor Skeel argues that NCAA decisionmakers owe fiduciary duties to student-athletes,¹⁵⁷ he acknowledges some fundamental concerns with imposing such duties: defining the parameters of fiduciary duties, and determining breach of the duty in a given case.¹⁵⁸ In addition, fiduciary duty analysis carries with it courts' unwillingness to second-guess expert decisionmakers.¹⁵⁹

NCAA decisionmaking, in the context of certification, would appear an appropriate place to apply Professor Skeel's fiduciary duty theory. The NCAA certification guidelines could be used to define the parameters of the fiduciary duty; moreover, these guidelines would provide courts with objective guideposts for determining breach of duty.

2. INSTITUTIONAL ACCOUNTABILITY

In addition, judicial intervention serves as an external protection for the academic and athletic interests of student-athletes at the institutional level. Models for governance may incorporate procedures which have as their ultimate objective ensuring institutional integrity and protection of student-athletes' academic and athletic interests. Unfortunately, the extent to which these policies and procedures are implemented varies. Therefore, judicial intervention becomes a mechanism for requiring that

154. See *SALTER*, *supra* note 6, at 103 (stating that since certification represents self-evaluation at multi-year intervals, it will not be effective inasmuch as the NCAA is not an independent policing agency)

155. See generally Skeel, *supra* note 153.

156. *Id.* at 671.

157. *Id.* at 694.

158. *Id.* at 692-94.

159. *Id.* Professor Skeel also notes the track record of courts deferring to the NCAA because of its presumed expertise.

institutions fairly implement these policies and procedures to protect and promote the interests of student-athletes.¹⁶⁰

Commentators have examined in-depth the various legal theories that provide possible substantive grounds for judicial intervention.¹⁶¹ Such a discussion is beyond the scope of this Article. However, to a significant extent, theories of judicial intervention at the institutional level revolve around concepts similar to those proposed by Professor Skeel. The nature of the student-athlete-university relationship imposes good faith and fiduciary obligations on the university to protect student-athletes' academic and athletic interests.

As they relate to the model of governance, these theories represent an external means of holding institutions and athletics administrators, coaches, and staff accountable to their student-athletes. Judicial intervention may ensure that institutions abide by institutional mechanisms and governance structures directed toward promoting the welfare of student-athletes.¹⁶²

V. CONCLUSION

The need for change in institutional governance is quite apparent. Despite the considerable literature and dialogue over the past sixty years concerning the role of intercollegiate athletics in post-secondary institutions, the fundamental issues posed remain the same. They were most succinctly stated by a college president: "This is a struggle for the

160. See THELIN, *supra* note 2, at 183 (noting that courts have acted as agents of change and have established that institutions do possess legal responsibilities to their student-athletes).

161. Historically, the judiciary has been reluctant to recognize the adverse impact of sports on academic values and educational opportunities afforded student-athletes. Donald L. Shuck, Jr., *Administration of Amateur Athletics: The Time for an Amateur Athletics Bill of Rights Has Arrived*, 48 FORDHAM L. REV. 53, 72 (1979). In a recent article, I argue that this reluctance arises in large part from courts' refusal to discard a conceptualization of college athletics premised on amateurism, and instead, recognize it as one premised on commercialism. See generally Davis, *supra* note 79.

Notwithstanding such judicial reticence, commentators have asserted various substantive theories which student-athletes may use to redress the failure of their institutions to protect and promote their academic and athletic participation interests. See, e.g., Barkowsky, *supra* note 82; Peter C. Carstensen & Paul Olszowka, *Antitrust Law, Student-Athletes, and the NCAA: Limiting the Scope and Conduct of Private Economic Regulation*, 1995 WIS. L. REV. 545; Davis, *supra* note 82; Mathewson, *supra* note 82; Waicukauski, *supra* note 82; Widener, *supra* note 82.

162. Judicial intervention is particularly appropriate for adjusting these rights and duties since student-athletes are unable to hold their institutions accountable through bargaining. Mathewson, *supra* note 82, 73-79 (noting that high transaction costs preclude student-athletes from bargaining with their institutions at the point of contract formation).

soul of the institution. The question that will be answered here is essentially this: What is our mission? Why do we exist? Are we here to teach and learn or are we here to house big-time athletics?"¹⁶³ Unless college administrators and faculty demonstrate a willingness to answer these questions, the imbalance of academics and athletics will persist. The proposed model represents an effort to address this basic problem in a manner that attempts to ensure that the educational mission of institutions always takes precedence over athletic interests.

163. THELIN, *supra* note 2, at 202-03.

Appendix

Model for Governance of Intercollegiate Athletics¹⁶⁴

I. General

A. Introduction

This manual contains the policies and procedures regarding intercollegiate sports programs of the University.

B. Authority for Athletics Policy

The athletics policy of the University is established by the Board of Trustees on recommendation by the President. Administration of the policy is under the direct control of the President. The President is ultimately responsible for ensuring that the University's athletics policies and programs are compatible with the University's educational mission and are in compliance with NCAA and Conference rules and regulations. The President shall annually make a written report to the Trustees concerning the state of the intercollegiate athletics program. The Director of Athletics, who is responsible for the administration and management of the intercollegiate athletics programs, is accountable to the President of the University.

II. Board of Trustees Policy

The primary mission of the University is the education and development of all of its students. In accordance with this mission, the intercollegiate athletics program is an integral part of the institution and its educational programs. The University is committed to establishing and

164. This model relies significantly on the institutional governance model adopted by Southern Methodist University in 1988. The SMU model is a product of a self-study of the role of college athletics at the University. The report followed the NCAA's imposition of the "death penalty" against SMU's football program for violations which included cash payments totaling \$61,000 to football players. See Mark Asher, *NCAA Cancels SMU's 1987 Football Season*, WASH. POST, Feb. 26, 1987, at A1. The punishment included the cancellation of SMU's 1987 football season and the imposition of a four-year probationary period. *Id.*

It should be noted, however, that although this model relies on the SMU model for determining both general parameters and detailed provisions, it has been modified considerably.

maintaining an environment in which its intercollegiate athletics program acts in accordance with academic objectives, is conducted with integrity and enriches the life of the institution. Thus, the primary purpose of the University's athletics program is the education and development of each student-athlete. Accordingly, the intercollegiate athletics program should be conducted so that a student-athlete's activities are an integral part of his or her educational experience.¹⁶⁵ No student-athlete will be admitted who does not have the capacity to complete successfully a baccalaureate degree at the University. The University will endeavor to provide to each student-athlete admitted the academic and support resources required to enable him or her to have a reasonable opportunity to complete a baccalaureate degree.

A. The Athletics Board

The Athletics Board shall be composed as follows:

1. A Chair, chosen by the President from the faculty after consultation with the Executive Committee of the Faculty Senate;
2. Six faculty members, chosen by the Faculty Senate and appointed by the President;
3. One faculty member from the above six, designated by the President as University Athletic Representative;
4. Two deans, who hold either associate or assistant status, appointed by the President after consultation with the Executive Committee of the Faculty Senate;
5. Three students, appointed by the President after consultation with the Student Senate. One student shall be the chair of the Student-Athlete Advisory Board. One student shall be a student in a graduate or professional school of the University;
6. Two alumni, appointed by the President after consultation with the President of the Alumni Association;

165. See NCAA MANUAL art. 2.2.1 (adopted Jan. 1994); *Immediately Effective Legislation Published*, NCAA NEWS, Jan. 25, 1995, at 12.

7. Three non-faculty representatives of the University Administration, preferably representing Admissions, Financial Aid, or Academic Support, appointed by the President;
8. One trustee, who may be emeritus, appointed by the President after consultation with the Chair of the Board of Trustees; and
9. The Director of Compliance, serving as an ex officio member.

Each Board member shall serve a minimum term of one year and a maximum of four one-year terms. Each Board will select a Vice-Chair and a Secretary.

The Athletics Board shall have an Academic Committee, an Executive Committee, an Audit Committee, and such other committees as the Chair shall from time to time appoint.

(a) Subcommittees

- (1) The Executive Committee of the Athletics Board shall be designated by the President, and be composed of the Chair, the Vice Chair, the University Athletics Representative, one additional faculty representative, one trustee, one student, one alumnus, and one administrator. It shall act between meetings of the Board (i) to study athletic-related concerns when necessary and make recommendations to the full Board, and (ii) to take all such action that the Board can take when in the opinion of the Chair a meeting of the full Board is impracticable. Actions taken by the Executive Committee shall be presented to the Board for approval at its next scheduled meeting. In emergency situations, Executive Committee actions shall be reported to Board members.
- (2) The Academic Subcommittee shall consist of faculty and administrative members of the Athletics Board. It shall have the responsibility of enforcing and monitoring, but not administering, scholarship, athletic, admissions, and eligibility requirements of the University for participation in intercollegiate sports, under such policies as shall be established by the

President. No requirement at the University shall be less stringent than the eligibility rules of the Conference and the National Collegiate Athletic Association (NCAA). It is the function of this Committee to make recommendations to the Director of Admissions and the Faculty Admissions Committee (FAC) regarding athletic admissions standards and to monitor the academic performance of all admitted athletes.

This Subcommittee shall meet independently of the full Athletics Board and shall provide the Board with a written report of its findings during regularly scheduled meetings with recommendations where appropriate.

- (3) An Audit Subcommittee of the Athletics Board shall consist of three members of the Board appointed by the Chair. Working collaboratively with the University Internal Auditor, the Subcommittee will determine the scope of the audit required by Section J of this manual. The results of the audit will be discussed with the University Internal Auditor and a written report provided to the full Board during the next regularly scheduled meeting.

This Subcommittee shall meet independently of the full Board with members determining the appropriate structure.

(b) Duties

The Athletics Board shall meet a minimum of four times each year. There will be two regularly scheduled meetings each semester with provisions for special meetings to address issues requiring immediate attention that fall outside the established meeting schedule.

The Board shall:

- (1) Promote an understanding of intercollegiate athletics among faculty members and other members of the University community;
- (2) Promote adoption and maintenance of strict academic standards at the University, in the NCAA, and in the Conference.

- (3) Annually review the athletics budget with the Director of Intercollegiate Athletics prior to the budget process and provide him or her with input concerning the allocations of limited funds for different athletic purposes.
- (4) Consult with the President concerning Director of Athletics candidates and consult with the Director of Athletics concerning head coaches and associate Director of Athletics candidates;
- (5) Report to the President and Faculty Senate annually concerning the status and prospects of intercollegiate athletics at the University;
- (6) Annually review the University's Manual of Governance of Intercollegiate Athletics and make a written report to the President of any recommended changes;
- (7) Monitor the University's compliance with Title IX;
- (8) Review the reports of its Academic and Audit Subcommittees, and take appropriate action when necessary;
- (9) Provide advice to the Director of Athletics concerning athletic schedules;
- (10) Advise the President of all sports to be classified as intercollegiate; provided that if a new sport is added, it will normally replace an existing intercollegiate sport, or will be accompanied by a recommendation that the required funds must be identified and provided exclusive of appropriations from the general University budget. It shall, where appropriate, advise the President which sports shall be dropped as intercollegiate sports;

- (11) Determine whether to accept invitations to post-season events, special holiday games, or other events outside the regular season schedule, after consulting with the Director of Athletics;
- (12) After consultation with the appropriate departments, make recommendations to the President, Provost, and appropriate faculty bodies concerning student eligibility requirements for participation in intercollegiate athletics and the award of financial assistance;
- (13) Receive reports of external auditors relating to the athletics department's compliance with University policies and report to the President any deviations from these policies;
- (14) Provide input to the President concerning its evaluation(s) of the Director of Athletics when requested; and
- (15) Be available to hear and investigate concerns of student-athletes and communicate all findings to the President and Board of Trustees.

In addition to the foregoing powers, the Board shall meet and/or request to meet with the President whenever it or the President thinks that consultation is in the best interest of the University's intercollegiate program. In turn, the President will ensure that the Board has access to all University records or files required for the performance of the functions entrusted to it.

(c) Chair of the Athletics Board

Appointment of the Chair is the prerogative of the President, who shall first consult with the Executive Committee of the Faculty Senate. The Chair serves at the will of the President. The duties of the chair are to:

- (1) Preside over and assure the efficient functioning of the Athletics Board;

- (2) Serve as the Board's spokesperson to the President;
 - (3) Serve as spokesperson to the faculty on behalf of the President;
 - (4) Monitor all athletic activities and confer regularly with the President on all matters which should come to his or her attention;
 - (5) Assure that required reports and recommendations from the Athletics Board are forthcoming to the President, Provost, and Faculty Senate;
 - (6) Report faculty concerns about athletics to the President and the Director of Athletics; and
 - (7) Interpret for the faculty, especially the Faculty Senate when so requested, the University's athletics policies and activities.
- (d) University Athletics Representative

The University Athletics Representative is appointed by the President and will represent the University before the Conference, the NCAA, and the College Football Association (CFA), expressing the views of the University as articulated by the President after consultation with the Director of Athletics and the Athletics Board. He or she is a member of the Athletics Board and will, in a timely manner, report to the Board concerning matters pending before or decided by the Conference and Association.

(e) Director of Athletics

The Director of Athletics is selected by the President after consulting with the Athletics Board, and is approved by the Board of Trustees. He or she is responsible to the President, and reports directly to the President. The Director of Athletics is responsible for the intercollegiate athletics program. He or she is responsible for the performance and activities of the various coaches, for budget management and fundraising for the athletics programs, for the maintenance and improvement of athletics facilities, and for such other duties as assigned by the President from time to time.

The Director of Athletics has primary responsibility for the integrity of the intercollegiate athletics program and the strict observance of all

relevant University, Conference, and NCAA rules and regulations. He or she shall report to the president and Chair of the Athletics Board any action which reasonably may be construed as constituting an infraction.

The Director of Athletics shall, on an annual basis, submit a written report to the President. The contents of the report should include matters pertaining to but not limited to the following: budgets, coaching performance, academic performance and progress of student-athletes, academic support for student-athletes and compliance with NCAA and Conference rules. The Director of Athletics and the President shall meet to discuss the contents of the report. The President shall make the report available to the Chair of the Athletics Board.

The Director of Athletics is not a member of the Athletics Board and is not responsible to the Athletics Board. Except as stated below, he or she does not regularly report to the Athletics Board, but has the responsibility of maintaining constant communication with the Chair of the Athletics Board. The Director of Athletics will meet with the Athletics Board once during each academic year at which time he or she will report on the status of the athletics program. In addition, the Director of Athletics is expected to attend regular and called meetings of the full Athletics Board and its subcommittees upon request.

It is his or her duty, on behalf of the President, to seek advice from the Board on all appropriate matters and to inform the Board on all actions and anticipated actions relating to the athletics program to the extent that it is reasonable to do so.

In selecting head coaches and associate directors, the Director of Athletics will serve as the coordinator of the search and obtain the advice of the Board or a committee thereof. A decision to relieve a coach of his or her duties or not to renew a contract is the responsibility of the Director of Athletics. It is at his or her discretion whether to consult with the Board.

The Director of Athletics will be evaluated by the President on the basis of his or her general management of the department; the integrity of the intercollegiate program; the academic success of intercollegiate teams; his or her ability to minimize the level of University subvention by raising endowment, generating external funding, or effecting internal economies; and participation as a leader in the University community. The President will review annually the performance of the Director of Athletics and may seek the advice of the Athletics Board and others in conjunction with that review.

The Director of Athletics shall provide the Athletics Board in confidence access to any information of which he or she has knowledge that is relevant to the performance of its duties.

B. Admissions Role of Athletics Board

The Academic Subcommittee of the Athletics Board shall have the responsibility of enforcing and monitoring, but not administering, scholarship, athletic admissions, and grants-in-aid requirements of the University for participation in intercollegiate sports, under such policies as shall be established by the President.

This Subcommittee is not responsible for the admission of student-athletes, and should not intervene in the process. It is a review group to observe the effectiveness of established policies and is free to make recommendations relative to such policies. Its responsibility for "enforcing" requirements shall be carried out through the President.

1. At the end of the basketball and football recruiting seasons and again at the end of the year, the Admissions Office will provide to the Academic Committee of the Athletics Board a report on the credentials of athletes in all sports to whom scholarships have been offered.
2. At the end of each semester, the Registrar's Office will provide the Academic Committee of the Athletics Board information on the academic performance of all scholarship athletes. Those reports will include SAT scores, high school GPA, University courses and grades, and grades and courses undertaken from any other colleges or institutions.
3. This information is confidential.

C. Academic Progress

High academic standards are expected of all students engaged in intercollegiate sports at the University. Athletes are required to be students first and they are admitted according to this criterion. Student-athletes representing the University are required to progress satisfactorily toward a degree, and their graduation rates as student-athletes should not differ significantly from those of non-athletes. Specific standards will be approved by the Athletics Board.

A team is excellent at the University not only when it competes successfully, but also when it is composed of students who will graduate and who in other respects embody qualities with which the institution can be positively identified. Integrity, athletic success and academic success are the crucial elements of athletic excellence at the University.

Eligibility is an academic matter to be determined by the Dean of the respective schools and NCAA regulations. The University Registrar is responsible for certifying continuing eligibility for athletic competition to the Chair of the Athletics Board. The Athletics Department shall report at the end of each semester to the Athletics Board on the academic performance and eligibility of student-athletes. The Academic Assistance Center shall report at the end of each semester to the Athletics Board on matters pertaining to student-athletes.

D. Competition During the Examination Period

Except in unusual circumstances, competitive games will not be permitted during the time mid-terms and final examinations are scheduled. The Athletics Board, in its discretion, may make exceptions if the importance of the event and alternative provisions for examinations justify such action. If permission has been granted, examinations of team members will be rescheduled as in the case of other authorized deferrals.

E. Out-of-Season Competition

If a coach, through the Director of Athletics, requests permission from the Athletics Board to enter competition outside the regular season schedule, the Board has authority to grant such a request after receiving the advice of the Director of Athletics and the endorsement of the team.

F. Selection and Retention of Coaches

Coaches shall be awarded contracts for a stated period of time, or one-year letters of agreement. Decisions regarding their employment are made by the Director of Athletics after consultation with the President and the Athletics Board. In deciding whether to hire a coach, consideration should be given to the academic performance of student-athletes at institutions at which the coach was previously employed. Coaches will be treated fairly and as professionals.

Coaches on contract will be reviewed by the Director of Athletics on a continuing basis at least a year prior to the expiration of the contract. Coaches will be evaluated on the basis of the overall academic experiences, which include but are not limited to graduation rates of student-athletes on his or her team; the integrity of his or her sport; and the competitiveness of his or her team. The Director of Athletics will then review his or her recommendations and conclusions with the President. The Director of Athletics may call on the Athletics Board for advice, and will keep the Board informed.

Coaches are expected to represent the University with dignity and integrity, and are personally responsible for the scrupulous observance of all Conference, NCAA, and University regulations and standards. The contracts of all coaches will provide that the University may terminate employment for cause at any time in the event of gross neglect of duties, willful violation of University rules and regulations, conduct calculated to bring the University into disrepute or willful violation of rules or regulations of the NCAA or the Conference. In addition, each contract will authorize termination if the coach had reason to know of a violation of Conference or NCAA rules.

G. External Representation of the University

The University Athletics Representative represents the University in the Conference, the NCAA, and the CFA. The Chair of the Athletics Board, the Director of Athletics, and others specifically designated by the President may also represent the University at meetings of the Conference, the NCAA and the CFA. The President exercises ultimate responsibility for University positions advanced before the Conference, the NCAA, and the CFA.

H. Admissions Policies and Procedures

1. Institutional Philosophy and Standards

No prospective student-athlete shall be admitted, regardless of athletic ability, unless he or she is able and willing to do the academic work required for graduation within five years.

All prospective student-athletes (PSAs) shall meet admissions standards, as set forth below, approved by the President. No policies shall be enforced that are not set forth in these policies and standards. The Director of Admissions has the responsibility to implement the policies reflected in the standards adopted. The Faculty Advisory Committee (FAC) has the responsibility of advising the Director.

2. General Policies and Procedures

- (a) Final decisionmaking authority regarding the admission of student-athletes shall rest with the Director of Admissions. In his/her absence, the Director may designate a staff member to act on his/her behalf while retaining ultimate responsibility for the admission of PSAs.

- (b) All cases involving “marginal” PSAs, as defined below, shall be presented to a PSA Subcommittee of three or more members of the FAC prior to making a final admissions decision. The Director of Admissions or his/her designee will be present at PSA Subcommittee meetings and will present statements concerning the academic preparation, home educational environment and school quality of each candidate and respond to questions from the Subcommittee when such factors cast light on the probability of academic success of the applicant.
- (c) This Subcommittee will maintain a written record of its review of cases referred to it and submit a written recommendation to the Director of Admissions on each case. The Director of Admissions, however, shall have final authority to admit or reject all such cases. The Director of Admissions shall state in writing and transmit to the FAC within ten days his or her decision whether to accept an applicant, when the FAC had recommended rejection. The statement shall indicate whether a coach made representations on behalf of the athlete and the substance of those statements.
- (d) All appeals of admissions decisions must be made in writing to the Director of Admissions by the Director of Athletics with a copy to the FAC. The written appeal shall contain additional relevant academic information concerning the PSA. The FAC will review the additional relevant information and submit a recommendation to the Director of Admissions. The Director of Admissions will notify the FAC and the Director of Athletics in every case when he or she grants an appeal.
- (e) At the conclusion of each academic year, the Director of Admissions shall submit to both the FAC and the Athletics Board a report on all PSAs formally reviewed for admission. The report will include statistics on both accepted and rejected applicants.
- (f) All “marginal” admittees shall be informed by the Director of Admissions and the Head Coach in the

relevant sport that the University's academic program is rigorous, but that it is the judgment of the University that the admittees will be able to graduate. No student will be admitted if this statement cannot be made in good faith. Students will also be informed that they may need to utilize support resources made available by the University to assist them in their studies.

3. Marginal Candidates

Criteria for defining "marginal" candidates are those which indicate that rigorous scrutiny should be given before an admissions decision is made. Since admissions decisions are made using a combination of factors, these guidelines should not be considered as absolutes; thus, a prospect exceeding the guidelines for one criterion might not be admitted because of deficiencies in other areas.

- (a) Combined SAT scores below ___ or a verbal SAT below ___ (or equivalent ACT scores) shall be considered "marginal."
- (b) The PSA should be mid-class or above in class rank with a few exceptions being made for students from secondary schools that are unusually academically competitive. Otherwise the PSA will be considered marginal.

I. Academic Assistance and Monitoring

The University is committed to providing academic assistance services to student-athletes which attempt to integrate them into the academic life of the University and provide them with an opportunity to develop academically. In this regard, the service provided by the Academic Assistance Center will focus on enhancing the long-term development of all students, including student-athletes. To provide direction, the statement of policy reflects a holistic approach to the educational development of student-athletes.

The University's academic assistance program is independent of the Athletics Department. The Director of the Academic Assistance Center reports to the Dean for Academic Affairs. In addition, academic support services are made available to all students, not just student-athletes.

Student-athletes will receive academic assistance from university-wide resources. A staff member of the Academic Assistance Center will serve as an athletics liaison, whose responsibility will include facilitating

student-athlete participation in academic assistance programs and developing and providing services focused on the unique needs of student-athletes. Such services include the following:

1. scheduling student-oriented services such as tutorials, workshops and counseling at times which consider the limited flexibility in student-athletes' schedules;
2. academic monitoring aimed at ensuring that student-athletes are registered for full-time course loads, are performing satisfactorily in their courses and are making progress toward a degree. The following procedures will monitor the academic progress of student-athletes:
 - (a) Prior to the beginning of the Fall semester, the Academic Assistance Center will forward a letter to all first-year student-athletes, all student-athletes transferring from other institutions, and all other student-athletes with a grade point below 2.2, inviting them to meet with the athletics liaison in the Academic Assistance Center. The purpose of the meeting, among other things, is to inform the student-athlete of the academic support services offered by the Academic Assistance Center; review course schedules; review grade reports (where appropriate); and arrange for tutorial assistance where necessary.
 - (b) During the fifth week of each semester, the Athletics Department will request that professors complete Early-Term Academic Warning Reports on student-athletes in their classes. This report indicates that a student-athlete is performing at a level of C- or below. The Athletics Department will distribute these reports to academic counselors and to the Academic Assistance Center. Student-athletes with deficiencies are requested to contact immediately their academic counselor and Academic Assistance staff.

- (c) During the tenth week of each semester, the Athletics Department will request that professors complete Academic Progress Reports for all student-athletes. This report will indicate the student-athlete's grade in the class at that mid-term point. An Academic Progress Report will also be completed at the end of each semester to reflect the final grades received by student-athletes in their courses.
- (d) Student-athletes with a grade point average of 2.1 or below are required to participate in a study hall monitored by Academic Assistance Center staff for eight hours per week.
- (e) The Academic Assistance Center and the Athletics Department shall implement other procedures necessary to allow them to monitor effectively the academic progress of student-athletes.

J. Audit

A financial audit is performed annually by an external auditor and submitted to the President. A policy audit by the Internal Auditor of the University will be conducted annually to assure compliance with the procedures and policies contained in the Manual and the rules of the NCAA and the Conference. Such audit shall be supplied to the Audit Committee of the Athletics Board and the Director of Athletics. After receiving responses, if any, from the Athletics Board and the Director of Athletics, it will be submitted to the President.

