

## INTERNATIONAL STUDENT ATHLETES IN THE NCAA: PROFESSIONALS OR EXPLOITED CHILDREN?

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## I. INTRODUCTION

Why can't eighteen-year-old Turkish basketball player Enes Kanter go to the University of Kentucky? An investigation by the National Collegiate Athletics Association (NCAA) determined that Kanter received benefits beyond those required for actual competition from his club team in Turkey. "Enes took advantage of an opportunity to play at the highest level available to him, but the consequences of receiving payments above his actual expenses is not compatible with the collegiate model of sports that our members have developed," said Kevin Lennon, NCAA vice president of academic and membership affairs.<sup>1</sup>

Kanter is a recent example of the result of intermingling two systems of developmental athletics.<sup>2</sup> He was attempting to make the transition from the governmental and club model for developmental sports in Turkey<sup>3</sup> to the scholastic model in America, where athletic teams are tied to education. The underlying principles of amateurism promoted by the NCAA are

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1. *NCAA Rules Kentucky Freshman Ineligible*, FOXSPORTS.COM (Nov. 12, 2010, 12:19 AM), <http://msn.foxsports.com/collegebasketball/story/Enes-Kanter-Kentucky-basketball-recruit-ruled-permanently-ineligible-by-NCAA-111010>.

2. *See generally* LARS HALGREEN, *EUROPEAN SPORTS LAW: A COMPARATIVE ANALYSIS OF THE EUROPEAN AND AMERICAN MODELS OF SPORT* (2004) (explaining the difference between the sports industry in the United States and in Europe).

3. Emir Turam, *The Structure of the Turkish Basketball Federation*, FIBA ASSIST MAG., Mar. 2003, at 53, available at [http://www.fiba.com/asp\\_includes/download.asp?file\\_id=160](http://www.fiba.com/asp_includes/download.asp?file_id=160).

directly at odds with the culture both ideologically and governmentally of that which Kanter was accustomed to.<sup>4</sup> The developmental athletics institutions in Turkey are built on a club and governmental model rather than a scholastic model.<sup>5</sup>

The result of the NCAA investigation into his amateur status determined that he received approximately thirty-three thousand dollars above his actual expenses not directly required for competition.<sup>6</sup> Included in these expenses were housing and travel provided to his family members.<sup>7</sup>

If Kanter's situation had been slightly different and he was born into the scholastic model for developmental athletics in the United States, his eligibility would not be in question. If Kanter had been born in America, he could have attended a private school on a scholarship that would have provided him with full-time room and board, and the NCAA would consider these expenses to be directly related to competition.<sup>8</sup> American-born amateur athletes and their parents have always found ways to fit in with the NCAA system and its rules that limit them from taking advantage of the opportunities presented by a packed stadium. If Enes had been born in the United States, his parents could have taken a high interest loan leveraged against their son's potential future income and current marketability as a blue chip recruit.<sup>9</sup>

For American-born students, the NCAA provides some exceptional multisport athletes with another alternative where they get paid and are still able to attend a NCAA university by getting paid in another sport.<sup>10</sup> If Kanter had played

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4. Compare Halgreen, *supra* note 2, at 72–73 (explaining NCAA eligibility rules and policy goal of amateurism), with Turam, *supra* note 3, and *NCAA Rules Kentucky Freshman Ineligible*, *supra* note 1 (discussing Kanter's NCAA ineligibility due to him receiving pay to play basketball in Turkey).

5. See Turam, *supra* note 3, at 53.

<sup>6</sup> *NCAA Rules Kentucky Freshman Ineligible*, *supra* note 1.

7. Pete Thamel, *Turkish Team Says It Paid a Top Kentucky Recruit*, N.Y. TIMES (Sept. 7, 2010), <http://www.nytimes.com/2010/09/08/sports/ncaabasketball/08basketball.html>.

8. See NCAA CONST. § 15.2.2, reprinted in NAT'L COLLEGIATE ATHLETIC ASS'N, 2009–10 NCAA DIVISION I MANUAL (2009) [hereinafter NCAA CONST.].

9. See *id.* § 15.1.

10. See *id.* § 15.5.9.

professional soccer, the most popular sport in Turkey, he could still be eligible to play basketball at Kentucky.<sup>11</sup> By way of example, college football is currently rich in former minor league baseball players following in the footsteps of former Heisman trophy winner Chris Weinke from Florida State University.<sup>12</sup> Chris Weinke played in the Toronto Blue Jays farm system.<sup>13</sup> After six years playing professional baseball, Weinke switched gears and went to play football at Florida State University.<sup>14</sup> After leading the Seminoles to the National Championship, Weinke became the oldest Heisman Trophy winner in history.<sup>15</sup>

Why does it matter to the NCAA if Enes Kanter received compensation while playing in his native Turkey for a system that customarily paid certain expenses for its star athletes and their families? Why, considering the fact that he made the move while still younger than eighteen to come to the United States to hone his skills in his chosen craft, would he make the mistake of accepting illegal contributions from his club team? He was already a fan favorite at Kentucky before ever playing in a game.<sup>16</sup> Less than five hundred jerseys, sold at the seventy five dollar price that the official university website sells other Wildcat basketball players' jerseys, would recoup the living and travel expenses paid illegally to the Kanter family, while they continue to live at home in Turkey.<sup>17</sup> With his athletic status, Kanter stood little chance of coming out of the Turkish system eligible to play basketball at an NCAA institution, thus

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11. See *id.* § 12.1.3. Cf. *2009 ACC Football Legends: Chris Weinke, Florida State*, THEACC.COM (Oct. 6, 2009), <http://www.theacc.com/sports/m-footbl/spec-rel/100609aac.html> (outlining an instance where a former professional baseball player was able to play football at the scholastic level).

12. *Id.*

13. *Chris Weinke Profile*, SEMINOLES.COM, [http://www.seminoles.com/sports/m-footbl/mtt/weinke\\_chris00.html](http://www.seminoles.com/sports/m-footbl/mtt/weinke_chris00.html) (last visited Oct. 26, 2012).

14. *Id.*

15. *2000—66<sup>th</sup> Award: Chris Weinke, Florida State Back*, HEISMAN.COM, <http://www.heisman.com/winners/c-weinke00.php> (last visited Oct. 26, 2012).

16. *NCAA Rules Kentucky Freshman Ineligible*, *supra* note 1.

17. *Official Online Store of the Kentucky Wildcats*, <http://www.ukteamshop.com/> (last visited Oct. 26, 2012). As mentioned previously, the NCAA determined that Kanter's family received \$33,000 in illegal expenses. *NCAA Rules Kentucky Freshman Ineligible*, *supra* note 1.

preventing him from receiving an education at the University of Kentucky.<sup>18</sup> Kanter still hopes to attend and play basketball for the University of Kentucky,<sup>19</sup> even though he could go back to Europe and reap the benefits that come with his considerable talents.

This paper proposes that Enes Kanter and those like him are receiving unfair treatment from the NCAA. First, this paper will examine the importance of foreign students and the pivotal role that they play in the American higher education system. Second, it will look at the different systems of amateur athletics from which this situation arose. In a system that sponsors equality<sup>20</sup> and diversity<sup>21</sup> as virtues for the student athletes, the NCAA lives up to neither criterion in the treatment of international prospects. The subtopic of the paper will be the underlying sham that is amateurism in big time college sports.

## II. FOREIGN STUDENTS IN AMERICAN HIGHER EDUCATION

The American economy is at a trade deficit in almost all areas of commerce.<sup>22</sup> It relies heavily on the rest of the world to provide automobiles, electronics, clothing and most other products that Americans use on a day-to-day basis.<sup>23</sup> The U.S.'s

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18. See Mike DeCourcy, *Enes Kanter a Revolutionary Case for Kentucky*, NCAA, AOL.COM SPORTING NEWS (Apr. 14, 2010, 5:57 PM), <http://aol.sportingnews.com/ncaa-basketball/story/2010-04-14/enes-kanter-revolutionary-case-for-kentucky-ncaa> (discussing the hurdles that Kanter would have to face in order to play for the University of Kentucky).

19. See Mike DeCourcy, *Kanter Will Stay at Kentucky if Asked to Sit Out a Year*, SPORTING NEWS (Dec. 22, 2010, 11:02 a.m.), <http://www.sportingnews.com/ncaa-basketball/feed/2010-09/enes-kanter/story/kanter-will-stay-at-kentucky-if-asked-to-sit-out-a-year#ixzz1C40XV1w3>.

20. NAT'L COLLEGIATE ATHLETIC ASSOC., 2011–2012 NCAA DIVISION 1 MANUAL 4, available at [http://grfx.cstv.com/photos/schools/aub/genrel/auto\\_pdf/2011=12/misc\\_non\\_event/1112ncaa-compliance-manual.pdf](http://grfx.cstv.com/photos/schools/aub/genrel/auto_pdf/2011=12/misc_non_event/1112ncaa-compliance-manual.pdf).

21. *Diversity and Inclusion: Enhancing Diversity in Intercollegiate Athletics*, NCAA.ORG (Dec. 2006), <http://fs.ncaa.org/Docs/AMA/Athletics%20Cert/Diversity%20brochure.pdf>.

22. *U.S. International Trade in Goods and Services: July 2012*, U.S. DEP'T COM.: BUREAU OF ECON. ANALYSIS (Sept. 11, 2012, 8:30 AM), <http://www.bea.gov/newsreleases/international/trade/tradnewsrelease.htm>.

23. Robert E. Scott, *The U.S. Trade Deficit: Are We Trading Away Our Future?*, ECON. POLICY INST. (Mar. 4, 2002), [http://www.epi.org/publications/entry/webfeatures\\_](http://www.epi.org/publications/entry/webfeatures_)

alarming and growing trade deficit puts an enormous strain on the American economy and threatens its place at the top of the world's super powers.<sup>24</sup> However, the U.S. does have one commodity that almost every wealthy nation in the world wants to get their hands on: as of 2009, the American education system boasted fifty-four of the world's top two hundred universities.<sup>25</sup>

Many world leaders have gained experience at American Universities;<sup>26</sup> foreign government officials throughout the world have sought the benefits of the American higher education system.<sup>27</sup> In 2009, international students contributed nearly twenty billion dollars to the U.S. economy.<sup>28</sup> International students boost the local economy by paying for books, room and board, other living expenses, health care, transportation, and for family members who have traveled with the student.<sup>29</sup>

That economic boost does not take in to account the cultural additions and benefits that come with diversity.<sup>30</sup> The Supreme Court affirmed in *Grutter v. Bollinger* that diversity is a compelling state interest.<sup>31</sup> Both professors and students recognize the benefit they receive from different points of view and from different cultural upbringings represented in their classes.<sup>32</sup>

International students are generally considered to enrich cultural diversity of the educational experience as well as

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viewpoints\_tradetestimony/.

24. *See id.*

25. Phil Baty, *Rankings 09: Asia Advances*, *TIMES HIGHER EDUC.* (Oct. 8, 2009), <http://www.timeshighereducation.co.uk/story.asp?storycode=408560>.

26. *Famous International Students*, USA STUDY GUIDE, <http://www.usastudyguide.com/famousstudents.htm> (last visited Oct. 26, 2012).

27. *See id.*

28. *International Student Enrollments Rose Modestly in 2009/10, Led by Strong Increase in Students from China*, INST. OF INT'L EDUC. (Nov. 15, 2010), <http://www.iie.org/en/Who-We-Are/News-and-Events/Press-Center/Press-Releases/2010/2010-11-15-Open-Doors-International-Students-In-The-US>.

29. *Id.*

30. *See id.*; *see also* *Grutter v. Bollinger*, 539 U.S. 306, 330–31 (2003) (noting the numerous noneconomic benefits of a diverse student body are not taken into account in an economic analysis).

31. *Grutter*, 539 U.S. at 328–29.

32. *See id.* at 308.

enhance the reputation of United States universities as world-class scholastic institutions.<sup>33</sup> For these reasons, the United States has since fostered and encouraged the international student system.

*A. History of Foreign Students in American Colleges and Universities*

Since the Immigration Act of 1924,<sup>34</sup> the United States has allowed foreign students to study in American universities.<sup>35</sup> The purpose of the original act was to limit the quota on many nations' immigrants to two percent.<sup>36</sup> The restrictions were intended to limit the number of foreign nationals that were allowed to immigrate to the United States.<sup>37</sup> The legislation also created the category of international student for American colleges and Universities.<sup>38</sup> Students and faculty members were not counted against the quotas for immigration,<sup>39</sup> which is a telling sign that the legislators at the time believed that educated immigrants brought more to the table than the rest of their countries' populations.<sup>40</sup>

The Immigration and Nationality Act of 1952 established a change in the American view of immigration.<sup>41</sup> The hard quotas

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33. *See id.*

34. Immigration Act of 1924, Pub. L. No. 68-139, § 4(e), 43 Stat. 153 (1924).

35. CHAD C. HADDAL, CONG. RESEARCH SERV., RL31146, FOREIGN STUDENTS IN THE UNITED STATES: POLICIES AND LEGISLATION CRS-1 (2006), available at <http://www.fas.org/sgp/crs/homesec/RL31146.pdf>.

36. Immigration Act of 1924, Pub. L. No. 68-139, §§ 11–12, 43 Stat. 153 (1924).

37. *Id.*

38. *Id.* § 4(e).

39. *Id.* § 4.

40. *See* H.R. REP. NO. 68-350 (1924) (laying out the legislative history and rationales for the Immigration Act of 1924). The House majority argued that the prosperity of America did not depend on additional unskilled immigrants, and even distinguished rare skilled labor from the “ordinary run of skilled laborers who must come . . . with quotas.” *Id.* at 21, 23. In the same report, the House minority echoed this assumption of education being desirable by arguing that the amount of educated and skilled immigrants entering the U.S. showed no entering of “drags upon the Nation[.]” but instead “men of brain and brawn.” H.R. REP. NO. 68-350, pt. 2, at 6 (1924).

41. *See* Alicia J. Campi, *The McCarran-Walter Act: A Contradictory Legacy on Race, Quotas, and Ideology*, IMMIGRATION POLICY CENTER (June 1, 2004), <http://www.immigrationpolicy.org/sites/default/files/docs/Brief21%20-%20McCarran->

based on country of origin were no longer the standard.<sup>42</sup> The new immigration policy was based on a person-by-person basis where it was the responsibility of the Attorney General to determine whether an applicant for immigration would be a benefit rather than a detriment.<sup>43</sup> Placing an emphasis on screening immigrants and nonimmigrants for admission to the country is an indicator that the creators of the statute had specific goals in mind. It is possible that they could have believed that bringing in the best and brightest minds from all over the world would be a significant benefit to America.

Stemming from the Mutual Educational and Cultural Exchange Act of 1961, the development of “F-1” visas and the creation of “J-1” visas for students who were to be considered nonimmigrants was meant to streamline the international student process.<sup>44</sup> The criteria to be a nonimmigrant was that the Attorney General had to be convinced that the applicant had a satisfactory home in his country of origin and had the intent to return after completing his studies.<sup>45</sup> The applicant also had to be eligible to enroll in the approved educational track that he was visiting America to pursue.<sup>46</sup>

The immigration policies were adapted in 1961 to allow the family members of certain approved nonimmigrants to travel to the United States with the same status.<sup>47</sup> These changes

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Walter.pdf.

42. See Immigration and Nationality Act of 1952, 8 U.S.C. § 1151 (1952).

43. See John W. Porter, *The McCarran-Walter Act*, 13 *LAW. GUILD REV.* 79, 79–80 (1953).

44. *Temporary Migration to the United States: Nonimmigrant Admissions under U.S. Immigration Law*, U.S. CITIZENSHIP AND IMMIGRATION SERVS. 5, 18 (JAN. 2006), available at [http://administration.sru.edu/payroll/etc/intl/uscis\\_temp\\_migr\\_tt\\_us.pdf](http://administration.sru.edu/payroll/etc/intl/uscis_temp_migr_tt_us.pdf) (including “Timeline of the Evolution of Nonimmigrant Categories”).

45. Immigration and Nationality Act of 1952, 8 U.S.C. § 1101(a)(15)(F) (describing a “bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily”). See also David Weissbrodt & Laura Danielson, *IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL* 185–88 (Thompson West 5<sup>th</sup> ed. 2005).

46. Weissbrodt & Danielson, *supra* note 45, at 185–88. See also *Understanding Your I-20*, BERKELEY INT’L OFFICE, <http://internationaloffice.berkeley.edu/i-20> (last visited Oct. 26, 2012) (explaining that the I-20 certifies that an individual has been admitted to a full-time study program).

47. See *Temporary Migration to the United States*, *supra* note 44, at 21–23 (noting

dramatically simplified the path for both foreign students and professors to take time in the United States, because they were then able to maintain a family structure without having to jump through all of the hoops of bringing their spouses and children with them.<sup>48</sup>

The 1965 amendments to the Immigration and Nationality Act removed the national origins quota system and the professional restrictions from the decision-making criteria for admission.<sup>49</sup> While these factors continued to play a role in the ultimate determination of admission status, the immigration policy continued to develop with preference for family-based immigration.<sup>50</sup>

The current policy for foreign student admission is based more on national security than protectionism.<sup>51</sup> Foreign students are on a tighter rope due to (a) the September 11, 2001 World Trade Center attacks, (b) other terrorist actions, and (c) the general political state of the country.<sup>52</sup> Schools must now report any foreign students that do not enroll within thirty days of the beginning of a term.<sup>53</sup> Students working on nonimmigrant visas are not allowed to work off campus while in the United States.<sup>54</sup>

The Patriot Act . . . was passed by the House and Senate and signed by President Bush on October 26, 2001.<sup>55</sup> It “includes provisions to expand

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how the immigration law was changed to add more categories of nonimmigrants including exchange workers and family members).

48. See *generally id.* (explaining how the new categories of nonimmigrant visas prevented the haphazard application of various types of visas being applied to exchange aliens by reserving the F visas students and J visas for exchange students thereby making the process more predictable. New categories were also created to accommodate the spouses and children of foreign students and exchange visitors).

49. *Id.* at 23; Charles B. Keely, *Effects of the Immigration Act of 1965 on Selected Characteristics of Immigrants to the United States*, vol. 8, no. 2 DEMOGRAPHY 157, 159–61 (1971).

50. See *Temporary Migration to the United States*, *supra* note 44, at 5, 20–23.

51. See HADDAL, *supra* note 35, at CRS-1.

52. See *id.*

53. 8 C.F.R. § 214.3(g)(2).

54. HADDAL, *supra* note 35, at CRS-2.

55. Patriot Act, Pub. L. No. 107-56, §416, 115 Stat. 272, 354 (2001).

the foreign students tracking system and authorizes \$36 million in appropriations for the foreign student monitoring system. It also requires INS to have the foreign students tracking system fully operational by January 1, 2003.<sup>56</sup>

These decisions by the government may be necessary for national security, but they make it more difficult for foreign students to enroll at an American university, and to come and contribute to American society.

In 2006, President George W. Bush supported a bill that would have allowed foreign students to work off campus while pursuing their degrees, but it did not make it through the 109th Congress.<sup>57</sup> The bill would have also allowed some students in “shortage” occupations to obtain green cards after graduation.<sup>58</sup>

The most recent adaptation to the Immigration and Nationality Act allows the Attorney General to request a bond from nonimmigrant foreign students to ensure that upon the completion of their studies they return to their nation of origin.<sup>59</sup>

Enes Kanter fits under the category of the F-1 visa. He is eligible to remain in the country only during his period of study.<sup>60</sup> To be approved to study in the United States, he must “document that he has sufficient funds . . . to cover all expenses for 12 months.”<sup>61</sup> It can be difficult for a student in his situation to establish twelve months of funding. While a full athletic scholarship is supposed to cover all of the needs of the student,

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56. Meng Lu, *Not Part of the Family: U.S. Immigration Policy and Foreign Students*, 34 T. MARSHALL L. REV. 343, 364 n.152 (2009) (citing Ruth Wasem, CONG. RESEARCH SERV., RL31146, FOREIGN STUDENTS IN THE UNITED STATES: POLICIES AND LEGISLATION 1 (2003)).

57. Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. § 525(b) (2006).

58. *See id.* §524(a).

59. *See* Immigration and Nationality Act, 8 U.S.C. § 1184(a) (2006). *See also* United States v. Manufacturers Cas. Ins. Co., 113 F. Supp. 402, 404 (S.D.N.Y. 1953) (“The exaction of such a bond is authorized . . . to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States.”) (citation omitted).

60. HADDAL, *supra* note 35, at CRS-2.

61. *Id.*

leaving them with no need for outside employment, many schools leave quite a gap in the amount of financial aid provided and the actual cost of attending the school.<sup>62</sup> The shortfall at the University of Kentucky is \$2,100 per year or \$10,500 over the five-year life of the scholarship.<sup>63</sup>

Under the “F-1” visa, nonimmigrant students are only allowed to work on campus, and only in a position that does not displace an American student or employee.<sup>64</sup> The burden placed on Kanter as an international student in this situation is much heavier than an American student who would have access to on campus jobs in order to close the gap left by his athletic scholarship.

### *B. Current Economics and Distribution of Foreign Students*

Higher education programs in the United States are filled with foreign students looking to take advantage of the American education system.<sup>65</sup> The students hope to take advantage of the reputation of American universities on which they will be able to capitalize, either when returning to their home countries or when trying to gain employment in America.<sup>66</sup>

There are two drastically different schools of thought on the subject of foreign students in American universities. One concept is that in order to be the world leader in all aspects of education, America needs to attract the best and brightest minds from all over the globe.<sup>67</sup> There are several reasons for

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62. NCPA Scholarship Shortfall Search Tool, NCPA, <http://www.ncpanow.org/research?id=0018> (last visited Oct. 10, 2012).

63. *Id.* (follow “3. Scholarship Shortfalls at 336 NCAA Division I Colleges” hyperlink).

64. See HADDAL, *supra* note 35, at CRS-2.

65. See Stephen C. Dunnett, *The Advantages of American Higher Education*, USCAMPUS.COM, [http://www.uscampus.com/get\\_help/library\\_edugeneral/article\\_highhigh.htm](http://www.uscampus.com/get_help/library_edugeneral/article_highhigh.htm) (last visited Oct. 6, 2012) (explaining four general features of the American education system attracting foreign students to higher education programs in the U.S.).

66. *Will They Still Come? A Fast-Growing Industry in which Britain is a World Greater: What Could Go Wrong? Sadly, Rather a Lot*, THE ECONOMIST, Aug. 5, 2010, at 56, available at <http://www.economist.com/node/16743639> (discussing efforts by American universities to recruit foreign students).

67. *Id.*

universities to bring in foreign students. There is global competition to bring the best and brightest students to colleges and universities in order to improve the overall education experience for all students in the programs.<sup>68</sup> American universities have found that they need a boost in the representation of foreign-born students in their science and engineering programs because on some levels the country is lacking in those areas of study in primary schools.<sup>69</sup> Evidence of American universities' intentions can be found in the population of graduate school programs.<sup>70</sup>

The second concept revolves around the belief that foreign students should be prohibited from remaining to work in the United States, if allowed to study here at all.<sup>71</sup> This mindset is split between a national security model and a protectionist model that is based on the desire to conserve American resources for American citizens.<sup>72</sup>

The Ewing Marion Kauffman Foundation study examined the background of foreign students that have gone on to shape American business industries.<sup>73</sup> The study showed that more than half of the foreign-born entrepreneurs who have helped to build the American economy and assist in the American technical landscape first came to the country to study in

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68. See *id.* at 55–56.

69. U.N. Educ., Scientific, and Cultural Org., *The Status of Education for All in the United States*, EFA 2000 ASSESSMENT: COUNTRY REPORTS—UNITED STATES OF AMERICA, [http://www.unesco.org/education/wef/countryreports/usa/rapport\\_2.html](http://www.unesco.org/education/wef/countryreports/usa/rapport_2.html) (last visited Oct. 26, 2012).

70. See Karin Fischer, *Chinese Students Account for About Half of All International Applicants to U.S. Graduate Programs*, CHRON. HIGHER EDUC. (2012), available at <http://chronicle.com/article/Chinese-Students-Account-for/131416/> (foreign graduate students comprise fourteen percent of all students at American graduate schools).

71. See George J. Borjas, *An Evaluation of the Foreign Student Program* 7–9 (Harvard Univ. Faculty Research Working Papers Series, Paper No. RWP02-026, 2002), available at <http://ssrn.com/abstract=320248> (detailing the debate of the contributions of foreign students).

72. *Id.*

73. *Kauffman Foundation Study Offers Revealing New Data on Immigrant Entrepreneurs Who Are Fueling U.S. Technology and Engineering Companies*, EWING MARION KAUFFMAN FOUND. (June 11, 2007), <http://www.kauffman.org/Details.aspx?id=1508>.

American universities.<sup>74</sup>

On an individual level, it is definitely the international student that benefits most from his nonimmigrant status and the permission to study and work in the United States.<sup>75</sup> The gross national income per capita of the United States is the sixth highest in the world at almost \$42,000 USD per person.<sup>76</sup> The weighted average for the world is almost \$9,000 USD, and Turkey, for example, comes in at seventieth place at around \$5,000 USD per year.<sup>77</sup> These numbers are averages across an incredibly large sample set, and not necessarily reflective of college-educated individuals,<sup>78</sup> however, it is a good example of the disparity between earning power in the United States and some of the world's developing countries.<sup>79</sup>

From a system-wide viewpoint, it is the American people that benefit from having the best and brightest from all over the world train and wish to work in the United States. Besides the direct economic impact of international students and their dependents,<sup>80</sup> the talent and intelligence of international students looking to remain in the United States is vital for many American corporations.<sup>81</sup>

Americans also benefit from the purely intellectual additions supplied by the labor of both former and current international

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74. Lu, *supra* note 56, at 343.

75. *See GNI > Current US\$ (Per Capita) by Country, World Development Indicators database*, NATIONMASTER.COM, [http://www.NationMaster.com/graph/eco\\_gni\\_cur\\_us\\_percap-gni-current-us-per-capita](http://www.NationMaster.com/graph/eco_gni_cur_us_percap-gni-current-us-per-capita) (last visited Sept. 13, 2012) (listing countries' gross national product in current U.S. dollars).

76. *Id.*

77. *Id.*

78. *See id.* (per capital figures are expressed per population).

79. *Id.*

80. *See The Economic Benefits of International Education to the United States of America: A Statistical Analysis*, 2004–2005, NAFSA, [http://www.nafsa.org/Explore\\_International\\_Education/Impact/Data\\_And\\_Statistics/The\\_Economic\\_Benefits\\_of\\_International\\_Education\\_to\\_the\\_United\\_States\\_of\\_America\\_A\\_Statistical\\_Analysis\\_2004-2005/](http://www.nafsa.org/Explore_International_Education/Impact/Data_And_Statistics/The_Economic_Benefits_of_International_Education_to_the_United_States_of_America_A_Statistical_Analysis_2004-2005/) (“[F]oreign students and their dependents contributed approximately \$13.29 billion to the U.S. economy during the 2004–2005 academic year.”).

81. *See* Daniel Gross, *Send Us Your Tired, Your Poor, Your Business Executives: Why are Big American Companies Hiring Foreign-born CEOs?*, SLATE (Aug. 17, 2007), <http://www.slate.com/id/2172346/> (examining why large companies need top executives who are comfortable operating around the world).

students.<sup>82</sup> For example, the man “[k]nown as the Father of the Pentium processor, which runs ninety percent of computers today, Vinod Dham, a native of India, graduated from the University of Cincinnati in 1977.”<sup>83</sup>

The 2006 addition to the Comprehensive Immigration Reform Act, had it been passed, would have allowed off campus work authorization for foreign students and to allow America to economically benefit from having foreign students in the country.<sup>84</sup> The act would have allowed “eligible students who obtain an offer of employment to obtain a green card after paying a \$1,000 fee and completing necessary security clearances.”<sup>85</sup>

### *C. Interests of the American People in Retaining Foreign Students*

As noted, President Bush attempted to pass legislation to allow students going into “shortage” occupations a chance to gain permanent resident status or even citizenship.<sup>86</sup> That idea is quite a departure from the previous statutory regime, as the current code requires the Attorney General to certify that each student had strong enough ties to their country of origin to make sure they would return.<sup>87</sup>

In order for a foreign student to remain in the United States after the term of their visa, the student must be sponsored by an employer or have a family tie to a United States citizen.<sup>88</sup> As mentioned, many American companies owe large parts of their success to foreign executives.<sup>89</sup> These companies do not just rely

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82. Lu, *supra* note 56, at 345–46.

83. *Id.* at 343.

84. *Id.* at 372–73.

85. *Id.* at 373 (citing Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. § 525(b)).

86. See National Conference of State Legislatures, *Summary: Comprehensive Immigration Reform Act of 2006, S. 2611*, 16 (2006), <http://www.ncsl.org/print/immig/immigS2611.pdf> (explaining both the goal of the “shortage occupations” section of the Comprehensive Immigration Reform Act of easing green card related issues and the process for doing so).

87. See HADDAL, *supra* note 35, at CRS-2.

88. *Id.* at CRS-14.

89. See Daniel Gross, *Send Us Your Tired, Your Poor, Your Business Executives:*

on foreign employees for the skills and knowledge to run the show; many American corporations hire foreign students directly out of school to bolster their workforce, preferring potential employees to have permanent resident status when conducting the hiring process.<sup>90</sup>

#### *D. Burdens that Foreign Student Athletes Face in America*

One particular type of foreign student is the student athlete. Foreign student athletes generally face greater pressures than other foreign students.<sup>91</sup> They must closely interact with native born American students and coaches, who frequently do not speak the student's native language,<sup>92</sup> and they are usually younger than their largely graduate school counterparts.

### III. DRASTICALLY DIFFERENT DEVELOPMENTAL SPORTS MODELS

Sport has a social value and continues to occupy the privileged place which it enjoys today only because it is a source of emulation for youth, a school of will and perseverance, one of the last strongholds of fair-play and respect for opponents, an initiation into team spirit and camaraderie and a games practiced at all ages.<sup>93</sup>

While the value of grass roots athletics is similar throughout the world, there are some specific differences in the community sports philosophy that shape the developmental systems used in various communities. Parents could choose to send their

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*Why are Big American Companies Hiring Foreign-born CEOs?*, SLATE (Aug. 17, 2007), <http://www.slate.com/id/2172346/>.

90. Gautham Pandiyan, *The Argument Left Unsaid About Foreign Students*, INSIDE HIGHER ED. (Mar. 14, 2008), <http://www.insidehighered.com/views/2008/03/14/pandiyan>.

91. DANIEL B. KISSINGER & MICHAEL T. MILLER, COLLEGE STUDENT-ATHLETES: CHALLENGES, OPPORTUNITIES, AND POLICY IMPLICATIONS 164–65 (2009).

92. See, e.g., Washington State University, *Quick Facts*, <http://about.wsu.edu/about/facts.aspx> (last visited Oct. 22, 2012); University of Missouri—St. Louis, *Student Body Profile Fall 2011*, <http://www.umsl.edu/about/studentprofile.html> (last updated June 27, 2012); Southeastern Louisiana University Office of Institutional Research and Assessment, *Undergraduate & Graduate Students by Age and Gender*, (May 10, 2011) <http://www2.southeastern.edu/Administration/Inst-Research/Student/data.cgi?stuage.txt>.

93. International Sports Federation Charter, INTERNATIONAL FEDERATION OF BODY BUILDING, <http://www.getbig.com/info/ifbb/faq-isfc.htm>.

children through a system different from what is customary, but that would add an expense that may not make sense.

*A. The European Union Model*

“Sport is an area of human activity that greatly interests citizens of the European Union and has enormous potential for bringing them together, reaching out to all, regardless of age or social origin.”<sup>94</sup> The method implemented for grass roots athletic training in Europe is system that starts with volunteers from the community.<sup>95</sup> The system is a pyramid with a recreational and developmental base and an elite, professional cap.<sup>96</sup> The bottom of that developmental base is relegated to the community.<sup>97</sup> As the young athlete progresses from novice to burgeoning young star, he will transition from community-centered training to a sports club or federation.<sup>98</sup>

The basis for European sport can be separated in to four models: “bureaucratic, entrepreneurial, social and missionary.”<sup>99</sup> The four models can be best distinguished by the amount of government regulation in their implementation. The most influential government system is direct government intervention.<sup>100</sup> In that system, the central government of the country defines the goals of the sports program and regulates the implementation.<sup>101</sup> In a semi-governmental model, the government will define the objectives, but the implementation is left up to either semi-governmental or non-governmental

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94. *White Paper on Sport*, at 3, COM (2007) 391 final (July 11, 2007), available at [http://ec.europa.eu/sport/documents/wp\\_on\\_sport\\_en.pdf](http://ec.europa.eu/sport/documents/wp_on_sport_en.pdf).

95. *See id.* at 6 (“[T]he organization of amateur sport [is] based on non-profit clubs and volunteering”).

96. *The Helsinki Report on Sport*, at 9, COM (1999) 644 final (Dec. 12, 1999), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1999:0644:FIN:EN:PDF>.

97. Jolanta Żyśko & Monika Piątkowsk, *Models of Organisation of Youth Elite Sports Training System in Europe*, 47 *PHYSICAL CULTURE AND SPORT STUDIES AND RESEARCH* 64, 65 (2009), available at <http://versita.metapress.com/content/8l5m144104m36154/fulltext.pdf>.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

bodies.<sup>102</sup>

The European semi-governmental model is most similar to the NCAA and the United States' scholastic athletic model.<sup>103</sup> Several other European countries employ a free market approach in which the only government involvement is directed at the health, safety, and welfare of the children involved.<sup>104</sup> Malta is the only nation in Europe that has a system with no government intervention.<sup>105</sup>

These organizational systems can be further broken down by two key components. The first is the funding for the organizations, and the second is the actual management and coaching that implements the training.<sup>106</sup> The most common model for Olympic sports is public funding coupled with club run training facilities.<sup>107</sup> In the most common model for the European major team sports, soccer and basketball, the organization typically includes a mix of public and private funding with the club in complete control of the operation of the training and recruitment.<sup>108</sup> In the situation where the private club is responsible for the actual training of the athletes, the club will, on its own initiative, recruit talented athletes.<sup>109</sup>

The club-based model is not directly analogous to the free market system; however, it is an entrepreneurial system that is decidedly for profit.<sup>110</sup> While young athletes cannot be considered a simple commodity, there is definitely competition amongst the clubs to sign the best players at a young age.<sup>111</sup> A

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102. *Id.* at 65–66.

103. *See id.* at 66 (noting that Spain and the United Kingdom are among other European countries following the semi-governmental model).

104. *Id.*

105. *Id.*

106. *Id.* at 68.

107. *Id.* at 69.

108. *Id.* at 70.

109. *See id.* at 71.

110. *But see* Pedro Garcia-del-Barro and Stefan Szymanski, *Goal! Profit Maximization and Win Maximization in Football Leagues*, 20 (Int'l Ass'n of Sports Economists Working Paper No. 06-21, 2006), available at [http://college.holycross.edu/RePEc/spe/GarciaSzymanski\\_Goal.pdf](http://college.holycross.edu/RePEc/spe/GarciaSzymanski_Goal.pdf) (illustrating that despite some football clubs in England operating at a profit, the majority of the club systems operate at a loss).

111. Żyśko & Piątkowski, *supra* note 97, at 70–71.

good example of the bidding process for young athletes is Italian Mario Balotelli, who signed his first professional contract at age fifteen with A.C. Lumezzane.<sup>112</sup> At age sixteen, he negotiated to change clubs.<sup>113</sup> The eventual winner in the battle for his services was F.C. Internazionale (Inter) based out of Milan, Italy.<sup>114</sup> When he was twenty, a second round of negotiations started.<sup>115</sup> Manchester United and Manchester City, two of the top teams in the English Premier League, battled to sign the young star.<sup>116</sup> Manchester City won and purchased Balotelli from Inter for 25 million Euros.<sup>117</sup>

There are some recognizable drawbacks to the European model for athletic development. In cases where the children start young in their respective sports, some of the athletes miss out on the well-rounded upbringing that can be included in the scholastic environment.<sup>118</sup>

There has been a tendency to focus on short-term goals in the pursuit of starting success which means that the question of life after sport has been overlooked. As a result, many athletes reach the end of their professional sports careers only to find themselves without the necessary academic or other vocational qualifications to gain employment in other sectors.<sup>119</sup>

The club Real Madrid is good example of the “semi-governmental model”. The club has professional teams in both soccer and basketball, and developmental youth teams.<sup>120</sup>

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112. *Mario Story*, MARIO BALOTELLI—OFFICIAL WEBSITE, <http://www.mariobalotelli.it/en/mario-story/> (last visited Sept. 8, 2012).

113. *Id.*

114. *Id.*

115. *See id.*

116. Salvatore Landolina, *Manchester City & Manchester United Face Bidding War For €35m Rated Inter Striker Mario Balotelli—Report*, GOAL.COM (July 17, 2010, 7:37AM), <http://www.goal.com/en/news/11/transfer-zone/2010/07/17/2029343/manchester-city-manchester-united-face-bidding-war-for-35m-rated>.

117. Daniel Taylor, *'Fantastic' Mario Balotelli Signs for Manchester City in £22.5m Deal*, THE GUARDIAN (Aug. 13, 2010, 17:00EDT), <http://www.guardian.co.uk/football/2010/aug/13/mario-balotelli-manchester-city>.

118. Żyśko & Piątkowsk, *supra* note 97, at 64.

119. *Id.* at 64–65.

120. *Organizational Chart*, REALMADRID C.F. OFFICIAL WEBSITE, <http://www>.

The Real Madrid Academy of Champions selects the best players from the city and surrounding community to nurture their talents and bring out the best from their potential.<sup>121</sup> The club's youth leagues extend all the way down to eleven-year-old competition (U11).<sup>122</sup> While the majority of coaching for the younger divisions of the club is handled by volunteers, the entire venture in no way can be described as amateur. As club president Florentino Perez stated, after the club signed Cristiano Ronaldo for an amazing eighty six million Euros, that "[t]his is a business project and we are investing. Whoever sees it any other way is mistaken."<sup>123</sup> The club is run as a nonprofit social trust.<sup>124</sup> That means that the Spanish government has accepted the club as a benefit to the community and they receive comparable tax-exempt status.<sup>125</sup> The more than eighty five thousand shareholders, or "socios," for the team are different from shareholders of other public corporations.<sup>126</sup> The member owners treat the business as a nonprofit venture, and therefore all of the profits from the business are able to return to the club.<sup>127</sup>

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realmadrid.com/cs/Satellite/en/Club/1330063315335/1330063315314/OrganigramaClub/Organizational\_structure.htm (last visited Sept. 8, 2012).

121. See *Castilla*, REAL MADRID C.F. OFFICIAL WEBSITE, <http://www.realmadrid.com/cs/Satellite/en/Academy/1193041496596/Plantilla/Castilla.htm> (last visited Oct. 11, 2012) (listing of current players on Castilla, Real Madrid's academy team, with links to the nationalities of each player).

122. Cristin Monge, *Academy of Champions*, REAL MADRID C.F. OFFICIAL WEBSITE (June 1, 2010), [http://www.realmadrid.com/cs/Satellite/en/1193040487639/1330006561956/noticia/Noticia/Academy\\_of\\_champions.htm](http://www.realmadrid.com/cs/Satellite/en/1193040487639/1330006561956/noticia/Noticia/Academy_of_champions.htm) (Michael J. O'Donnell trans.).

123. Florentino Perez, *We Want a Spectacular Team*, REAL MADRID C.F. OFFICIAL WEBSITE (June 17, 2009), [http://www.realmadrid.com/cs/Satellite/en/1202774144435/noticia/Noticia/%E2%80%9CWe\\_want\\_a\\_spectacular\\_team%E2%80%9D.htm](http://www.realmadrid.com/cs/Satellite/en/1202774144435/noticia/Noticia/%E2%80%9CWe_want_a_spectacular_team%E2%80%9D.htm).

124. Gabriele Marcotti, *How Tax Breaks and Brand Help Club Break the Bank*, TIMES (London), June 12, 2009, at 6.

125. *Id.*

126. *Football Business Management*, UK ESSAYS, <http://www.ukessays.co.uk/essays/international-business/football-business-management.php> (last visited Sept. 12, 2012); Khalid Khan, *Cure or Curse: Socio Club Ownerships in Spanish La Liga*, BLEACHER REPORT (June 11, 2010) <http://www.bleacherreport.com/articles/404511-cure-or-curse-socio-club-ownerships-in-spanish-la-liga>.

127. Khan, *supra* note 126.

*B. The American Model*

The basic foundation for youth sports in America is parallel to the European system. Both are pyramid structures with a solid base created by volunteers and parents working to establish their children's futures in sport. The first substantial diversion from the European model becomes evident by the time American children reach the adolescent stage.<sup>128</sup> At that time, the American tradition fosters a horizontally integrated system with a major dichotomy between amateur and professional sports.<sup>129</sup>

At age twelve, when a promising young European athlete would be guided to the developmental level of a vertically integrated club team,<sup>130</sup> his corresponding American counterpart will be heading off to either a governmentally or privately sponsored junior high school.<sup>131</sup> Even when young athletes enter college and participate in college sports, they will not be considered to be participating in a market for college sports.<sup>132</sup> The American system is characterized by a sharp dichotomy between amateurs and professionals, but the line dividing the two is more complicated than whether or not an athlete is "paid to play."<sup>133</sup>

#### IV. NATIONAL COLLEGIATE ATHLETICS ASSOCIATION RULES AND STANDARDS

For the majority of athletes and fans across the country, college sports embody everything that is great about America. Competitive and motivated student athletes strive to represent their schools to the best of their ability, not because they are

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128. James A.R. Nafziger, *A Comparison of the European and North American Models of Sports Organization*, INT'L SPORTS L.J. no. 3-4, 100, 104-05 (2008), available at [http://www.asser.nl/Default.aspx?site\\_id=11&level1=13908&level2=13941&level3=14043](http://www.asser.nl/Default.aspx?site_id=11&level1=13908&level2=13941&level3=14043).

129. *Id.* at 102-03.

130. Żyśko & Piątkowski, *supra* note 97, at 71.

131. See Nafziger, *supra* note 128, at 104 (highlighting the role that schools and colleges play in the development of professional and non-professional American athletes).

132. Mary Grace Miller, *The NCAA and the Student-Athlete: Reform Is on the Horizon*, 46 U. RICH. L. REV. 1141, 1155 (2012).

133. Nafziger, *supra* note 128, at 104.

getting paid, but because they love their sport, their school, and their fellow students. In an ideal world, that majority would encompass the whole, and the revenue generated in the billions by fans across the country would be used to provide educational expenses for both student athletes as well as their classmates.<sup>134</sup> Unfortunately, those conditions are not representative of the whole. While the hard work and perseverance of all student athletes is commendable, some of those students, for various reasons, are more talented as well as more marketable than their peers.<sup>135</sup> Because of those differences, they are more valuable commodities.<sup>136</sup> High-performing athletes bring in large amounts of revenue for their schools. For instance, the University of Texas' revenue from merchandise increased to eight million dollars after the football team won the 2006 national championship.<sup>137</sup>

In the Kanter case, the NCAA claims that he violated several of the bylaws by receiving benefits for playing basketball above those required for competition.<sup>138</sup> The specific bylaws that Kanter violated have not been released by the NCAA, but the list of rules that were broken (if all of the allegations are true) is quite long.<sup>139</sup> Under article 12, section 1.2.1, the NCAA lists out

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134. See *College Athletics Revenues and Expenses—2008*, ESPN, [http://espn.go.com/ncaa/revenue/\\_/year/2008](http://espn.go.com/ncaa/revenue/_/year/2008) (last visited Sept. 10, 2012) (listing the total revenues earned by major colleges' athletic departments in the United States).

135. See *NCAA Addresses Cam Newton's Eligibility*, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/December/NCAA+addresses+eligibility+of+Cam+Newton> (last visited Sept. 10, 2012) (giving an example of a student-athlete that had been marketed as part of a "pay-for-play scenario" in return for a commitment to attend college and play football).

136. See Peter J. Schwartz, *Forbes Sports Values: The Most Valuable College Basketball Teams*, FORBES (Jan. 2, 2008, 12:00 PM), [http://www.forbes.com/2007/12/27/college-basketball-valuations-biz-sports\\_cz\\_js\\_0102basketball.html](http://www.forbes.com/2007/12/27/college-basketball-valuations-biz-sports_cz_js_0102basketball.html) (discussing high dollar sponsorship of college athletics programs).

137. Peter J. Schwartz, *The Most Valuable College Football Teams*, FORBES (Nov. 20, 2007, 10:00 AM), [http://www.forbes.com/2007/11/20/notre-dame-football-biz-sports-cx\\_ps\\_1120collegeball.html](http://www.forbes.com/2007/11/20/notre-dame-football-biz-sports-cx_ps_1120collegeball.html).

138. *Kanter Ruled Permanently Ineligible*, NCAA.ORG (Jan. 7, 2011), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2011/January/Kanter+ruled+permanently+ineligible>.

139. See *id.*; John Infante, *What Kanter Case Means Going Forward*, NCAA.ORG (Jan. 15, 2011), <http://www.ncaa.org/blog/2011/01/what-kanter-case-means-going-forward>.

the prohibited forms of pay or compensation.<sup>140</sup> Kanter violated the rules regarding direct payment; expenses, awards, and benefits; and expenses for parents/legal guardians of participants.<sup>141</sup> He also violated the rules regarding involvement with professional teams.<sup>142</sup> All of these violations stem from the cultural differences between Turkish and American athletics.

#### A. *Eligibility Requirements*

The NCAA bylaws on amateurism are written to be clear-cut, with little room for discussion or debate. Section 12 of the NCAA bylaws deals with the general principles of amateurism.<sup>143</sup> Section 12.1.2 deals with the overall qualifications regarding amateur status.<sup>144</sup> The summary of 12.1.2 is that the athlete cannot receive compensation of any kind in the sport in which they wish to compete on the NCAA level.<sup>145</sup>

To ensure that the association is living up to their motto of amateurism as a virtue in sports, the NCAA has established an eligibility center to oversee the final standing of students before they are able to compete in competition.<sup>146</sup>

NCAA initial-eligibility guidelines attempt to ensure that international and domestic students meet essentially the same academic and amateurism eligibility requirements. Since the international community does not have a system comparable to American high school athletics, many international students compete for clubs. Many such clubs are professional or involve professional athletes. This circumstance sometimes affects the amateur status of international student-athletes attempting to

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140. NCAA CONST., *supra* note 8, § 12.1.2.

141. *See id.*

142. *See id.* § 12.2.

143. *See id.* § 12.1.2.

144. *Id.* § 12.1.2(a).

145. *See id.*

146. NAT'L COLLEGIATE ATHLETIC ASS'N [NCAA], ELIGIBILITY, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Eligibility/index.html> (last visited Oct. 27, 2012) ("Prospective student-athletes must meet minimum academic standards and amateurism . . . [and] [t]he NCAA Eligibility Center administers the process for prospects seeking initial eligibility.").

play NCAA sports.<sup>147</sup>

The NCAA has several criteria for both international and domestic students that can be reviewed by the NCAA eligibility clearinghouse.<sup>148</sup> In the case of international student athletes, some of these criteria can be breached simply because of the developmental system that trained them through adolescence. It is quite standard for athletes coming out of the club sports programs to have experience competing against professional athletes.<sup>149</sup> In the European system, athletes of any age can be paid depending on the market for either their current skills or their potential.<sup>150</sup> An amateur could frequently find himself competing with or against professionals.<sup>151</sup> The same could be said for an amateur who merely tries out with a professional team.<sup>152</sup>

Generally, signing a contract and accepting payment from a professional team makes an athlete ineligible to compete in college athletics.<sup>153</sup> The same is true for receiving a salary to participate on the team, whether the team is considered an amateur or professional team.<sup>154</sup> The situation is again murky with regard to benefits from an agent or a prospective agent.<sup>155</sup> The young players in European sports clubs are represented by

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147. *International Recruiting*, NCAA.ORG (Dec 2, 2010), <http://www.ncaa.org/wps/wcm/connect/public/Test/Issues/Recruiting/International+Recruiting>.

148. NCAA ELIGIBILITY CENTER, 2010–11 GUIDE FOR THE COLLEGE-BOUND STUDENT ATHLETE 10–13 (2010), *available at* <http://www.ncaapublications.com/productdownloads/CB11.pdf>.

149. Jeff Miller, *Amateur Eligibility for Non U.S. Citizens*, ATHNET, <http://www.athleticscholarships.net/amateurforeign.htm> (last visited Sept. 12, 2012) [hereinafter Miller, *Amateur Eligibility*].

150. See Erin Abbey-Pinegar, *The Need for a Global Amateurism Standard: International Student-Athlete Issues and Controversies*, 17 IND. J. GLOBAL LEGAL STUD. 341, 348–49 (2010).

151. See Miller, *Amateur Eligibility*, *supra* note 149 (noting that club teams and professional teams are often combined).

152. 2010–11 GUIDE FOR THE COLLEGE-BOUND STUDENT ATHLETE, *supra* note 148, at 11.

153. NCAA CONST., *supra* note 8, § 12.1.2.

154. *Id.*

155. 2010–11 GUIDE FOR THE COLLEGE-BOUND STUDENT ATHLETE, *supra* note 148, at 11.

personnel from the club.<sup>156</sup> In this situation, benefits that could normally be considered specifically in use for competition would be coming from a prospective agent under technical NCAA rules.<sup>157</sup>

The NCAA's website gives the following story behind its founding:

The NCAA was founded in 1906 to protect young people from the dangerous and exploitive athletics practices of the time. The rugged nature of early-day football, typified by mass formations and gang tackling, resulted in numerous injuries and deaths and prompted many college and universities to discontinue the sport. In many places, college football was run by student groups that often hired players and allowed them to compete as non-students. Common sentiment among the public was that college football should be reformed or abolished.<sup>158</sup>

The founders of the NCAA most likely did not consider an environment where large numbers of international students came to colleges and universities to pursue an education, while contributing back to the schools through athletics.<sup>159</sup> The primary focus was on restricting nonstudents from competing in scholastic football leagues.

The purpose of continued legislation by the NCAA was to ensure that the sanctity of sports in higher education was not tarnished by professional athletes who could steal the sport's innocence and manipulate the core values of athletics.<sup>160</sup> The NCAA states that its goal is to "preserve amateurism by assuring that the recruitment of student athletes does not

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156. See Ineum Consulting & Taj Societe D'Avocats, *European Union: Study on Training of Young Sportsmen/women in Europe*, EUROPEAN COMMISSION 116–17 (June 2008), [http://ec.europa.eu/sport/library/documents/c3/doc512\\_en.pdf](http://ec.europa.eu/sport/library/documents/c3/doc512_en.pdf).

157. See *id.*; 2010–11 GUIDE FOR THE COLLEGE-BOUND STUDENT ATHLETE, *supra* note 148, at 11.

158. *About the NCAA: History*, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/ncaa/about+the+ncaa/history> (last visited Sept. 12, 2012).

159. See *id.* (making no specific reference to international students and stating that that after World War II, the "Sanity Code" was adopted to establish guidelines for recruiting).

160. See *id.* (explaining that prior to 1950, college football was run by students that hired players to compete as non-students).

become a commercial activity.”<sup>161</sup> To preserve amateurism, the NCAA implemented rules regarding prep athletics where the NCAA eligibility clearinghouse scrutinizes the player’s involvement with what could be professional teams.<sup>162</sup>

The NCAA established additional rules to assist the eligibility officers with more easily determining if a youth athlete was participating on a professional team.<sup>163</sup> Athletes may not participate in college athletics if they have participated in organized competition in the sport that they wish to compete in for a year after graduating from high school.<sup>164</sup> The criterion for whether competition is organized is an easy standard to reach.<sup>165</sup> While these rules, which are intended to simplify the rulings and reduce the overhead cost of eligibility investigations, are simple to follow, they are also very broad and leave a lot of room for individual decisions on eligibility.

Beyond amateurism, the NCAA has professed an interest in maintaining the competitive balance between teams.<sup>166</sup> The justification for wanting to “harmonize the rules of intercollegiate sports competition with the goals of amateurism, competitive balance among teams, and the larger educational mission of higher education”<sup>167</sup> goes beyond the welfare of student athletes. The NCAA is also responsible for maintaining the product that is collegiate athletics. That requires a vigilant focus on the needs of the fans, the universities, the students and the sponsors.

Even in the early days of the NCAA, sponsorship and revenue were key focuses of the association.<sup>168</sup> “Member

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161. *Gaines v. Nat’l Collegiate Athletic Ass’n*, 746 F. Supp. 738, 743 (M.D. Tenn. 1990).

162. NCAA CONST., *supra* note 8, § 12.1.

163. *See id.* (stating that each division of the NCAA creates its own rules governing eligibility, consistent with the overall governing principles of the Association).

164. *See id.* at 12 (defining “organized competition”).

165. *Id.*

166. Brief Amicus Curiae at 3, *Nat’l Collegiate Athletic Ass’n v. Law*, 525 U.S. 1013 (1997) (No. 97-2004), 1998 WL 34103010, at \*3.

167. *Id.*

168. Taylor Branch, *The Shame of College Sports*, THE ATLANTIC, Oct. 2011, <http://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/> (explaining how Walter Byers, the NCAA director at that time, gained control of college

institutions were increasingly concerned about how the new medium of television would affect football attendance.”<sup>169</sup>

## V. SIGNIFICANT ISSUES WITH NCAA AMATEUR ATHLETICS

Two main issues with NCAA are the loopholes around athletes’ eligibility status and the anti-trust issues involving the restriction of athletes’ bargaining power.

### A. *Loopholes*

The NCAA’s treatment of benefits as not being related to competition is an arbitrary standard. The letter of the rule states that a school cannot provide a student anything more than “actual and necessary expenses for participation on the team.”<sup>170</sup> In spite of that rule, it is a common practice of the NCAA regarding the college football bowl games to offer gift suites for the players.<sup>171</sup> The gift suites are not actually sponsored by the NCAA or the member universities, but they have become a standard practice that has replaced giving bonuses to athletes.<sup>172</sup> “The NCAA generally prohibits amateur college-football players from receiving gifts, cash, services or sports-club memberships. But the exceptions include player awards valued at \$175 for underclassmen and \$325 for seniors.”<sup>173</sup> The gift to the players is not the problem. Leniency on behalf of the NCAA in the administration of their rules helps the student athletes at a time when they are not allowed to pursue employment off campus.<sup>174</sup> The issue is that the NCAA is participating in and allowing an activity that would be

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sports by taking control of revenue-providing television contracts).

169. *Id.*

170. 2010–11 GUIDE FOR THE COLLEGE-BOUND STUDENT ATHLETE, *supra* note 148, at 12.

171. Peter Corbett, *Gifts Await Bowl-Game Teams Playing*, 12 NEWS (Jan. 4, 2011, 12:00 AM), <http://www.azcentral.com/12news/news/articles/2011/01/04/20110104fiesta-bowl-teams-gifts.html>.

172. *Id.*

173. *Id.*

174. See Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. § 525(b) (as passed by Senate, May 25, 2006) available at <http://www.gpo.gov/fdsys/pkg/BILLS-109s2611es/pdf/BILLS-109s2611es.pdf>.

investigated during the eligibility determination process.

A second pre-collegiate enrollment activity that will be reviewed by the eligibility clearinghouse is receiving “benefits from an agent or prospective agent.”<sup>175</sup> As a member of the national championship Auburn University Tigers football team, Cam Newton was embroiled in controversy all season because of money that his father allegedly solicited from universities when Cam was in the process of transferring from Blinn Junior College back to Division I football.<sup>176</sup> Cam argued that even if his father did solicit money from a booster or agent’s representative, he claimed that he had no knowledge of the event.<sup>177</sup> The NCAA rule states that neither the athlete nor his family can accept benefits.<sup>178</sup> In Cam’s case, the NCAA determined that neither he nor Auburn University had knowledge of the violation that occurred.<sup>179</sup>

However, the NCAA does not always consistently apply these rules. On appeal to the NCAA regarding his son’s eligibility, Enes Kanter’s father claimed that his son had no knowledge of the benefits received by the family from his club team.<sup>180</sup> “We were informed by the NCAA that the flexible decisions made by the NCAA staff in other high-profile cases could not be used in case precedent and were not binding on the NCAA going forward,” UK athletic director Mitch Barnhart said in a release.<sup>181</sup> If the NCAA fact finders believed that the

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175. 2010–11 GUIDE FOR THE COLLEGE-BOUND STUDENT ATHLETE, *supra* note 148, at 11.

176. Kelly Whiteside, *Questions About Cam Newton Threaten Auburn’s Dream Ride*, USA TODAY (Nov. 23, 2010), [http://www.usatoday.com/sports/college/football/sec/2010-11-22-cam-newton-auburn-alabama-iron-bowl\\_N.htm?csp=34sports&utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed:+UsatodaycomSports-TopStories+\(Sports+-+Top+Stories\)](http://www.usatoday.com/sports/college/football/sec/2010-11-22-cam-newton-auburn-alabama-iron-bowl_N.htm?csp=34sports&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+UsatodaycomSports-TopStories+(Sports+-+Top+Stories)).

177. *Id.*

178. *Id.*

179. *NCAA Addresses Cam Newton’s Eligibility*, NCAA.ORG (Dec. 1, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/December/NCAA+addresses+eligibility+of+Cam+Newton>.

180. Brett Dawson, *NCAA Says Enes Kanter Can’t Play Basketball for Kentucky*, COURIER-JOURNAL.COM (Jan. 7, 2011), <http://www.courier-journal.com/article/20110107/SPORTS03/301070100/NCAA-says-Enes-Kanter-can-t-play-basketball-for-Kentucky>.

181. *Id.*

statement from his father was accurate, then this is an unfair result. Payment from any source to a student or his family should be treated equally. The NCAA should not take the position that a high profile player on the verge of winning the Heisman trophy,<sup>182</sup> like Cam Newton,<sup>183</sup> and earning millions of dollars for the NCAA and member universities has different rights or privileges than an incoming freshman from Turkey.

There are examples of students in the same situation being treated differently in other aspects of NCAA amateurism reviews. Richard Jefferson and Luke Walton were teammates on the University of Arizona basketball team.<sup>184</sup> Walton was originally from San Diego and Jefferson was originally from Phoenix.<sup>185</sup> The two met each other while playing high school basketball and decided to attend the same university.<sup>186</sup> During summer vacation, Walton's father paid for his son and his son's friend to fly from Tucson to San Diego.<sup>187</sup> The NCAA suspended Jefferson for a game for receiving benefits from a prospective agent not related to actual competition.<sup>188</sup> The suspension occurred because the elder Walton, a former professional basketball player, was considered to be an agent or an agent's representative.<sup>189</sup> Even though the treatment and benefits received by the two players were identical, only Jefferson was suspended. The favorable treatment from the NCAA stems from a bylaw which allows expenses to be paid if the athlete is

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182. *The Heisman Trophy: "The Most Prestigious Award in College Football,"* HEISMAN TROPHY, <http://www.heisman.com/index.php#> (last visited Sept. 12, 2012).

183. *Cam Newton Wins Heisman Trophy*, ASSOCIATED PRESS, Dec. 13, 2010, available at <http://sports.espn.go.com/nfl/news/story?id=5909569>.

184. *UA's Richard Jefferson Suspended One Game for NCAA Violation*, ARIZONAWILDCATS.COM, <http://www.arizonawildcats.com/sports/m-baskbl/spec-rel/120200aaa.html> (last visited Sept. 12, 2012).

185. *Luke Walton*, ESPN, [http://espn.go.com/nba/player/\\_id/2027/luke-walton](http://espn.go.com/nba/player/_id/2027/luke-walton) (last visited Sept. 12, 2012); *Richard Jefferson*, ESPN, [http://espn.go.com/nba/player/\\_id/1006/richard-jefferson](http://espn.go.com/nba/player/_id/1006/richard-jefferson) (last visited Sept. 12, 2012).

186. *UA's Richard Jefferson Suspended One Game for NCAA Violation*, *supra* note 184.

187. *Id.*; *Walton's Gift Costs Jefferson*, L.A. TIMES (Dec. 3, 2000), <http://articles.latimes.com/2000/dec/03/sports/sp-60762>.

188. Ryan Finley, *NCAA Rules Bothersome but Necessary*, ARIZONA DAILY (Dec. 4, 2000), [http://wc.arizona.edu/papers/94/72/02\\_6\\_m.html](http://wc.arizona.edu/papers/94/72/02_6_m.html).

189. *Id.*

“naturally or legally dependent” on the individual giving the gift.<sup>190</sup>

The rule regarding benefits from agents or potential agents is particularly difficult for international student athletes.<sup>191</sup> The NCAA rule only states that the eligibility must be reviewed if the benefits received are from a person who meets the criteria of being an agent or an agent’s representative.<sup>192</sup> In a sports model based on either the club system or the governmental system, the person paying the bills for the team will almost always be considered an agent or an agent’s representative.<sup>193</sup> All of the negotiating for these leagues is internal.<sup>194</sup>

Possibly the biggest loophole around the NCAA amateur eligibility requirements is the possibility of signing a contract to play a different sport professionally and still maintain amateur status.<sup>195</sup> College football is currently rich in former minor league baseball players, like Heisman trophy winner Chris Weinke from Florida State University.<sup>196</sup> Another baseball player, Brandon Weeden, recently led the Oklahoma State University (OSU) football team to the top of the Big XII and to a spot in the Valero Alamo Bowl.<sup>197</sup>

Both OSU and the University of Arizona received over three million dollars for participating in the event.<sup>198</sup> After being selected in the second round of the MLB draft, Weeden spent

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190. See NCAA CONST., *supra* note 8, § 12.1.2.1.4.5.

191. 2010–11 GUIDE FOR THE COLLEGE-BOUND STUDENT ATHLETE, *supra* note 148, at 11.

192. *Id.*

193. See Emir Turam, *The Structure of the Turkish Basketball Federation*, FIBA ASSIST MAG. 54 (Mar. 2003), available at [http://www.fiba.com/asp\\_includes/download.asp?file\\_id=160](http://www.fiba.com/asp_includes/download.asp?file_id=160) (explaining that league management is responsible for, among other things, business development, marketing, and sponsorship matters).

194. *Id.* at 53.

195. See NCAA CONST., *supra* note 8, § 12.1.2.

196. 2009 ACC Football Legends: Chris Weinke, Florida State, THEACC.COM (Oct. 6, 2009), <http://www.theacc.com/sports/m-footbl/spec-rel/100609aac.html>.

197. 2010 Valero Alamo Bowl, ALAMOBOWL.COM, [http://www.alamobowl.com/main/bowl\\_history\\_detail.php?uid=20](http://www.alamobowl.com/main/bowl_history_detail.php?uid=20) (last visited Sept. 14, 2012).

198. Valero Alamo Bowl—About Us/Quickfacts, ALAMOBOWL.COM, <http://www.alamobowl.com/main/about.php> (last visited Sept. 5, 2012).

five years in the New York Yankees farm system.<sup>199</sup> Weeden's success as a minor league baseball prospect did not implicate the NCAA's amateur-status rules, thus enabling him to lead Oklahoma State University to a lucrative position in a national bowl game in addition to academic success.<sup>200</sup>

*B. Anti-Trust Issues*

The NCAA organizes athletics for colleges and universities. A century ago, the presidents of the universities and those responsible for organizing athletics decided that there was a need for a uniform association responsible for all rules and regulations regarding athletic competition.<sup>201</sup> The organization and rules that sprang up from those early decisions is the NCAA.<sup>202</sup> The established thought that emerged was that students were amateurs, and the revenue produced through college athletics belonged to the schools.<sup>203</sup> If the athletes wanted a different system, they had other options in major and minor professional sports leagues.<sup>204</sup>

The athletic directors and university presidents of the larger programs have no interest in changing the system that brings big money to the big time athletic programs.<sup>205</sup> "Never. Ever. No, no, no," said Chris Plonsky, who oversees women's athletics at the University of Texas. "Athletes will never, ever be treated as employees of universities. I can promise you that."<sup>206</sup>

The casual fan will often look at the revenue from college football and basketball and find it absurd that the school is not

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199. Jeff Latzke, *Former Yankees Draft Pick Brandon Weeden Now Throwing No. 12 Oklahoma State into BCS Mix*, STAR TRIBUNE (Nov. 11, 2010), [http://www.startribune.com/templates/Print\\_This\\_Story?sid=107294168](http://www.startribune.com/templates/Print_This_Story?sid=107294168).

200. *Id.*; John Helsley, *OSU Quarterback Brandon Weeden Named Academic Award Semifinalist*, NEWS OK (Sept. 29, 2011), <http://newsok.com/article/3608671>.

201. *See About the NCAA: History*, *supra* note 158.

202. *See id.*

203. *See* Sean Hanlon & Ray Yasser, "*J.J. Morrison*" and his Right of Publicity Lawsuit Against the NCAA, 15 VILL. SPORTS & ENT. L.J. 241, 243 (2008). *See also* NCAA CONST., *supra* note 8, § 2.9.

204. Johnette Howard, *Pay College Athletes? No*, ESPN (Nov. 18, 2010), <http://sports.espn.go.com/espn/commentary/news/story?id=5821775>.

205. *See id.*

206. *Id.*

compensating the workers who earn these revenues.<sup>207</sup> The policy from the NCAA is that all of the athletes receive scholarships.<sup>208</sup> The average full scholarship to the University of Texas pays out \$41,832 with a total five-year scholarship paying the athlete more than \$200,000 for tuition, room, board, books, and other expenses.<sup>209</sup>

One of the first things critics challenge about the NCAA's system of amateurism is the unfair labor practice in restricting the bargaining power of the workers in the field.<sup>210</sup> The common claim is that the NCAA as well as member institutions, violate the Sherman Anti-Trust Act.<sup>211</sup>

The Sherman Antitrust Act prohibits unreasonable restraints on trade.<sup>212</sup> In *National Collegiate Athletic Ass'n v. Board of Regents of the University of Oklahoma*, the U.S. Supreme Court decided a case where the NCAA was sued by the University of Oklahoma for an unreasonable restraint on trade:<sup>213</sup>

There can be no doubt that the challenged practices of the NCAA constitute a 'restraint of trade' in the sense that they limit members' freedom to negotiate and enter into their own television contracts. In that sense, however, every contract is a restraint of trade, and as we have repeatedly recognized, the Sherman Act was

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207. See Joe Nocera, *Let's Start Paying College Athletes*, N.Y. TIMES (Dec. 30, 2011), [http://www.nytimes.com/2012/01/01/magazine/lets-start-paying-college-athletes.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2012/01/01/magazine/lets-start-paying-college-athletes.html?_r=1&pagewanted=all); *Finances: Revenue*, NCAA.ORG (Jan. 17, 2012), <http://ncaa.org/wps/wcm/connect/public/NCAA/Finances/Revenue>.

208. See Nocera, *supra* note 207 (quoting Mark Emmert, the president of the National Collegiate Athletic Association, insisting that stipends for student athletes are only an effort to increase the value of scholarships).

209. Howard, *supra* note 204.

210. C. Peter Goplerud III, *Pay For Play For College Athletes: Now, More Than Ever*, 38 S. TEX. L. REV. 1081, 1090, 1093 (1997).

211. See Sherman Antitrust Act, 15 U.S.C. § 1 (2004). See also Stephanie M. Greene, *Regulating the NCAA: Making the Calls under the Sherman Antitrust Act and Title IX*, 52 ME. L. REV. 81, 82–88 (2000); Len Elmore, *Exempt the NCAA from Antitrust*, CHRON. OF HIGHER EDUC. (Dec. 11, 2011), <http://chronicle.com/article/Exempt-the-NCAA-From-Antitrust/130073>.

212. See Green, *supra* note 211, at 82–88.

213. *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 86 (1984) (applying the Rule of Reason for NCAA athletics).

intended to prohibit only unreasonable restraints of trade.<sup>214</sup>

This case was only related to television contracts, and had no holding on student compensation, but it opened the door to the consideration that college athletics are commercial ventures.<sup>215</sup> In *Gaines v. Nat'l Collegiate Athletic Ass'n*, the federal district court found that the NCAA is subject to antitrust litigation because “the NCAA—and its member institutions—are . . . engaged in a business venture of far greater magnitude than the vast majority of ‘profit-making’ enterprises.”<sup>216</sup> In that case, a college football player was denied eligibility under the NCAA rules regarding amateurism.<sup>217</sup>

The NCAA eligibility rule, on the other hand, are not subject to the same scrutiny.<sup>218</sup> In spite of the fact that the Court opened the NCAA up to the possibility of antitrust regulation, athletes’ eligibility remains restricted by the amateurism rules established by the Association.<sup>219</sup> To date, courts have consistently held that the athlete’s amateur status does not merit antitrust consideration.<sup>220</sup>

## VI. PRACTICAL AND IMPRACTICAL SOLUTIONS

“The history and culture of the NCAA has for decades revolved around the concept of amateurism and the notion of the ‘student-athlete.’”<sup>221</sup> The institution probably could not function if professional athletes were fully incorporated into the mix.

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214. *Id.* at 98.

215. See James S. Arico, *NCAA v. Board of Regents of the University of Oklahoma: Has the Supreme Court Abrogated the Per Se Rule of Antitrust Analysis*, 19 LOY. L.A. L. REV. 437, 437–38 (1985).

216. *Gaines v. Nat'l Collegiate Athletic Ass'n*, 746 F. Supp. 738, 743 (M.D. Tenn. 1990) (citing *Hennessey v. Nat'l Collegiate Athletic Ass'n*, 564 F.2d 1136, 1149 n. 14 (5th Cir. 1977)) (citation omitted).

217. See *id.* at 740–41.

218. *Id.* at 744–45.

219. 2010–11 GUIDE FOR THE COLLEGE-BOUND STUDENT ATHLETE, *supra* note 148, at 11–13 (providing information or links to information regarding NCAA amateurism rules).

220. Daniel E. Lazaroff, *The NCAA in Its Second Century: Defender of Amateurism or Antitrust Recidivist?*, 86 OR. L. REV. 329, 339–40 (2007).

221. Goplerud III, *supra* note 210, at 1102.

With over four hundred thousand athletes participating in NCAA sports,<sup>222</sup> even paying them a partial monthly stipend of one hundred dollars could cost schools tens of millions of dollars.

*A. Plausible Solution for International Student Athletes*

The NCAA could take strides to recognize some of the cultural differences of international athletic programs. The easiest way to regulate and perform eligibility checks would be to enforce few bright line rules. This Article proposes that the NCAA should eliminate the rules related to playing with professional teams while involved in developmental sports. Furthermore, the NCAA should discard rules about teams paying incentives beyond actual and necessary expenses for competition, and they should remove the rules about trying out for professional teams. Lastly, this Article proposes that the NCAA should get rid of a status of any kind, be it amateur or professional, before a certain age.

The NCAA could establish a fair structure that would work within its core values, including “an inclusive culture that fosters equitable participation for student-athletes and career opportunities for coaches and administrators from diverse backgrounds.”<sup>223</sup> The NCAA ought to simplify the eligibility process by removing the restriction on playing with and trying out for professional teams before entering college. The rules regulating the behavior of colleges and universities would remain in place. The schools would not pay the athletes, and the restrictions on athletes being paid directly for their participation in athletics through scholarships would remain.

The student athletes should also be allowed to earn money to support themselves and their families while in school. This change would also help to enable athletes to benefit the school through athletics. The NCAA or a similar organization could put a restrictive cap on the hourly wage that a athlete could earn to

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222. Behind the Blue Disk—How do Athletic Scholarships Work?, NCAA.ORG (Jun. 21, 2011), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Behind+the+Blue+Disk/How+Do+Athletic+Scholarships+Work>.

223. *Events: Inclusion Summit*, NCAA.ORG, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Events/Inclusion+Summit> (last visited Sept. 5, 2012).

prevent the corruption of booster groups paying an athlete for his performance through outside channels.

*B. Implausible Total Change*

Running contrary to the capitalistic ideal that controls college sports, and therefore largely improbable, this paper suggests a total system change. Change would bring the American developmental athletic system more in line with the rest of the world. Colleges and universities should not worry if the athletes are professional. The school could function similar to the senior team for a European soccer club.<sup>224</sup> Each school could align themselves with one or two of the high schools and junior high schools in the area to form junior leagues. The schools could then use the revenue that they receive from the community and the billions of dollars possible from television revenue to build up the academics of the entire education system.

The athletic program could still wear the name of the school. The traditional rivalries could still compete in the same leagues. The community could still have the pride of sending both the best and brightest academically and athletically to the college or university of their choosing. However, much like the rest of the student body is not required to play football because that does not make sense for their academic success, the athletes would not be required to be regular students in the sense that the scholastic undertaking is not directly in line with the athletic success.

The international students coming to America and bringing with them a different background of culture and ideas would easily fit into this system. Nothing would prevent them from attending classes if that were part of their interest, but the system would remove the farce of amateur student athletes in

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224. See Ian Herbert, *Green light for U21s league to replace reserves*, THE INDEPENDENT (Apr. 6, 2012), <http://www.independent.co.uk/sport/football/premier-league/green-light-for-u21s-league-to-replace-reserves-7622226.html> (discussing how a non-commercial youth development program will become the feeder league for the English Premier League clubs, which is similar to the suggested alignment of colleges “with one or two of the high schools and junior high schools in the area to form junior leagues”).

schools.

The possibility would then exist for some of the teams to compensate athletes, where it makes sense commercially. The state schools might see a problem conforming these payments and overall athletic opportunities to the equal protection requirements of Title IX and the Constitution.<sup>225</sup> The more complete solution would have these teams sponsored entirely by corporations. If the athletes were not actually students, programs might be able to skirt by the constitutional issues.

## VII. EPILOGUE

The story for Enes Kanter results in an unfortunate decision by the NCAA. The NCAA recently ruled on Kanter's final appeal: he will never be allowed to play basketball for the University of Kentucky.<sup>226</sup> Fortunately for Enes, the end result should be quite positive because the University of Kentucky will remain true to their promise.<sup>227</sup> They plan to keep Kanter on as a student assistant coach.<sup>228</sup> The basketball coach at Kentucky, John Calipari, has stated that he will use this year to prepare Kanter to enter the NBA draft.<sup>229</sup>

Calipari has transitioned many of his players from college superstars to quality NBA talent.<sup>230</sup> The past two NBA rookies of the year have come out of his stable of college talent.<sup>231</sup> From Calipari's 2006 team, only one player has not played in the NBA. Five players from Kentucky's roster last year were drafted and are playing in the NBA this season.<sup>232</sup> While no one is

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225. Mechelle Voepel, *Title IX a Pay-for-Play Roadblock*, ESPN (July 15, 2011), [http://espn.go.com/college-sports/story/\\_id/6769337/title-ix-seen-substantial-roadblock-pay-play-college-athletics](http://espn.go.com/college-sports/story/_id/6769337/title-ix-seen-substantial-roadblock-pay-play-college-athletics).

226. Brett Dawson, *supra* note 180.

227. *Id.*

228. *Id.*

229. *Id.*

230. See Matt Moore, *How Good is Calipari at Developing NBA Talent? Ask the Thunder's Newest Player*, NBC SPORTS (Feb. 21, 2010, 8:00 PM), <http://probasketballtalk.nbcsports.com/2010/02/21/how-good-is-calipari-at-developing-nba-talent-ask-the-thunders-newest-player> (summarizing some of Calipari's successes with basketball players).

231. *Id.*

232. See *id.*

saying that Calipari developed the players or was the only reason for their success, he should be able to give Enes Kanter the best possible opportunity to continue his transformation. He has gone from child, to child prodigy, to superstar athlete, to a symbol of what many people believe is wrong with the NCAA.