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THE NEW ACADEMIC REQUIREMENTS FOR AMATEUR SPORTS: NO PASS, NO PLAY

Thomas H. Sawyer*

This court is not saying that athletes aren't capable of scholarship; however, they are given little incentive to be scholars and few persons care how the student athlete performs academically, including many of the athletes themselves. The exceptionally talented student athlete is raised to perceive the basketball, football, and other athletic programs as farm teams and proving grounds for professional sports leagues. It well may be true that a good academic program for the athlete is made virtually impossible by the demands of their sport at the college level. If this situation causes harm to the University, it is because they have fostered it and the institution rather than the individual should suffer the consequence.¹

I. INTRODUCTION

In the quote above, Judge Lord intimates that amateur sports are not as pure as they used to be. Amateurism began in the 1700s as a leisure outlet for the upper class. Amateur sportsmen neither desired income nor had aspirations for a greater level of notoriety from their athletic pursuits. In contrast, present day amateurs have visions of grandeur and greatness. Today, the distinction between amateurs and professionals may become extremely hazy and confused as young athletes hurdle the obstacles to become college stars and possibly professional athletes. The higher the

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athlete climbs, the greater the confusion between amateurism and professionalism becomes.

More and more high school athletes are striving to earn college athletic scholarships and are beginning to specialize in one sport rather than participating in two or three as was previously the norm. Intercollegiate athletic programs, in many respects, have become a grooming ground for professional sports. This has further clouded the distinction between amateur and professional sports.

The key to the analysis of amateur sports is the status of the amateur athlete. However, the definitions and categorizations are somewhat confusing and contradictory. Since the governing body of each sport can and does subscribe to a somewhat different definition of the term "amateur," an individual can be viewed as an amateur under the rules of the United States Olympic Committee, but not under a state high school association's rules or those of the National Collegiate Athletic Association ("NCAA").

Courts are generally reluctant to interfere with the internal affairs of voluntary associations. This includes athletic association regulations regarding eligibility, participation, and discipline of their athletic participants. Absent some violation of law or public policy, the regulations of athletic associations are considered valid and binding upon their members. Courts do not have the responsibility to inquire into the expediency, practicability, or wisdom of these regulations. Furthermore, courts are reluctant to interpret the rules and regulations of athletic associations. These associations are therefore free to adopt reasonable regulations governing student athletes.

Various issues arise when determining whether or not a student is eligible to participate in school athletics. Each athletic association has applicable eligibility regulations that the student athlete must fulfill. This Article will focus on one aspect of eligibility requirements — scholarship.

Scholarship regulations have the same common objectives as other athletic regulations. In particular, these regulations protect the student athlete, promote education, and encourage amateurism. Scholarship requirements meet these objectives by restricting a student athlete's eligibility to participate. Critics argue that these regulations restrict the student athlete's so-called right to participate in school athletics. However,

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3. Kentucky High Sch. Athletic Ass'n, 552 S.W.2d at 687.
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courts have found that participation in school athletics is a privilege, not a right.4

This Article will discuss the various aspects of academic requirements in interscholastic and intercollegiate athletics. Part II is a brief analysis of the student athlete’s right to participate. Part III explores the due process and equal protection rights afforded student athletes. Part IV discusses the various legislative enactments on this issue of scholastic eligibility. Part V addresses the various court challenges to these legislative enactments. Finally, Part VI outlines the status of scholarship eligibility rules in North America.

II. RIGHT TO PARTICIPATE

One of the fundamental questions relating to eligibility of the student athlete, interscholastic or intercollegiate, is whether that individual has a right or a privilege to participate. The legal relationship between the student athlete and the athletic association depends upon whether participation is a right or a privilege. The threshold question is whether a student athlete in a public institution has a sufficiently important property or liberty interest in participating in the sport. If so, the athlete is entitled to the procedural safeguards guaranteed by the due process clauses of the federal and state constitutions.

When confronted with this precise issue, the overwhelming majority of federal courts have held that participation in interscholastic or intercollegiate athletics or other extracurricular activities is not a constitutionally protected liberty or property interest.5 In Hall v. University of Minnesota,6

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a federal district court found that a student athlete has only a limited property interest in participation in intercollegiate sports.\(^7\) In *Colorado Seminary v. NCAA*,\(^8\) the Tenth Circuit held that the interest of student athletes, including those on scholarship, in participating in intercollegiate hockey does not rise to the level of a constitutionally protected property right.\(^9\)

Similarly, the majority of state courts rarely find that a right to participate in school athletics is a constitutionally protected interest.\(^10\) As stated by the Supreme Court of Appeals of West Virginia, "participation in interscholastic athletics or other nonacademic extracurricular activities does not rise to the level of a constitutionally protected 'property' or 'liberty' interest."

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\(^6\) 530 F. Supp. at 104.

\(^7\) Id. at 107.

\(^8\) Colorado Seminary (Univ. of Denver) v. NCAA, 570 F.2d 320 (10th Cir. 1978) (case arising in connection with the NCAA's imposition of sanctions against the university for failure to declare several of its players ineligible).

\(^9\) Id.


Because participation in sports is not a fundamental right, student athletes are not afforded due process protection.\textsuperscript{12} Therefore, eligibility to participate in school athletics is not entitled to a strict standard of review by the court.\textsuperscript{13} However, in some limited situations, student athletes have successfully invoked their due process or equal protection rights.

III. DUE PROCESS AND EQUAL PROTECTION

Under certain circumstances, a student athlete may properly establish an entitlement to due process protection in connection with his suspension and exclusion from high school athletics.\textsuperscript{14} Similarly, some students have been able to successfully argue an equal protection right in high school athletics.\textsuperscript{15} Thus, in reviewing the constitutionality of eligibility regulations, two basic rights must be considered — due process and equal protection.

A. Due Process

Due process has been used to eliminate regulations that are overbroad in restricting a student athlete’s protected rights as well as regulations that

\textsuperscript{12} Kite v. Marshall, 494 F. Supp. 227 (S.D. Tex. 1980) (citing Walsh v. Louisiana High Sch. Athletic Ass’n, 616 F.2d 152 (5th Cir. 1980); Mitchell v. Louisiana High Sch. Athletic Ass’n, 430 F.2d 1155 (5th Cir. 1970)).

\textsuperscript{13} Id.


\textsuperscript{15} Brenden v. Independent Sch. Dist., 477 F.2d 1292, 1299 (8th Cir. 1973) (a “substantial and cognizable” interest justifies application of equal protection principles); Barnhorst v. Missouri State High Sch. Activities Ass’n, 504 F. Supp. 449, 458 (W.D. Mo. 1980) (holding that student may not have a right to participate in athletic competition, but review of request requires equal protection), rev’d on other grounds, 682 F.2d 147 (8th Cir. 1982); Moran v. School Dist. #7, Yellowstone County, 350 F. Supp. 1180, 1184 (D. Mont. 1972).
overlook more feasible alternatives that place fewer restrictions on a student athlete's protected liberties. For example, procedural due process is required before a student can be dismissed for misconduct. Students will be granted both notice and an opportunity to be heard prior to disciplinary expulsion because of potential interference with a protected liberty interest. However, dismissals based strictly on academic performance, will not merit the same level of due process as disciplinary dismissals. Scholastic expulsions will be afforded great judicial deference, as they involve an expertise that the judiciary does not possess.

In *Board of Curators of the University of Missouri v. Horowitz*, the United States Supreme Court ruled that the dismissal of a student for academic reasons does not necessitate the same degree of procedural protection as would a dismissal for misconduct. The *Horowitz* decision indicates that courts will defer to the judgment of educators in strictly academic matters.

The Court observed, "[a]cademic evaluations of a student, in contrast to disciplinary determinations, bear little resemblance to the judicial and administrative fact finding [requirement]." The substantially subjective judgments in an academic dismissal require the evaluative skills of a professional educator and therefore are not easily adapted to the framework of a judicial or administrative hearing. *Horowitz* suggests that students dismissed for misconduct are entitled to a higher degree of procedural protection than athletes rendered ineligible by a failure to maintain the minimum grade point average necessary for continued eligibility. However, *Horowitz* does not pose a threat to the due process rights of scholarship athletes. This is partly because other cases recognize two

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16. CHAMPION, supra note 2, at 307.
18. *Id.* A "liberty interest" now includes an individual's interest in his or her good name and reputation. *Id.*
19. *Id.* at 583.
20. *Id.*
22. *Id.*
23. See Note, supra note 17.
25. *Id.* at 90.
significant exceptions to Horowitz's general rule. The first exception applies when the student alleges that the institution's actions are "motivated by bad faith, arbitrariness or capriciousness." The second is triggered when the dismissal involves unusually serious consequences for the student. In Hall v. University of Minnesota, a student athlete's right to procedural due process protection was upheld. Mr. Hall was a college basketball player who was denied admission to a degree program and lost his athletic eligibility. He claimed the denial was in bad faith and did not afford him due process. The federal district court granted Mr. Hall a preliminary injunction. The court found that the actions of the school constituted a threat of an irreparable harm to Mr. Hall's potential professional basketball career. Additionally, the potential of harm to the university was minor and the public interest in the university's regulation was "ambivalent." In granting the injunction, the court articulated various factors that must be balanced when analyzing due process. These factors include: "(1) the private interests affected by the action; (2) the risk of erroneous deprivation of such interest through the procedures used; (3) the value of additional procedural safeguards; and (4) the governmental interest involved, including fiscal and administrative burdens."

The importance of the Horowitz and Hall cases is that due process in academic dismissals can be guaranteed by notifying the student athlete of deficiencies while time remains to correct those deficiencies and by providing an informal meeting with faculty members so the student can present reasons why the dismissal should not occur. The more clear and timely the notice to the student of impending failure, the less formal the subsequent meeting concerning the consequences needs to be. Finally, student athletes who fail to earn the grades or credits necessary for continued eligibility, despite awareness of their universities' published

27. See Note, *supra* note 17, at 584.
28. Connelly v. University of Vt. & State Agric. College, 244 F. Supp. 156, 159 (D. Vt. 1965); see also Gaspar v. Bruton, 513 F.2d 843, 850 (10th Cir. 1975) (institution's action has been in good faith and not arbitrary).
29. See generally Greenhill v. Bailey, 519 F.2d 5, 8 (8th Cir. 1975).
31. *Id.* at 105.
32. *Id.* at 105-06.
33. *Id.* at 109-10.
34. *Id.* at 108-10.
37. *Id.*
academic requirements and adequate notice of potential failure, are not guaranteed the protection of formal adjudicatory proceedings.\textsuperscript{38}

\textbf{B. Equal Protection}

Equal protection, unlike due process, requires only that a law or regulation has a rational relation to a legitimate state interest if the regulation neither infringes upon a fundamental right nor burdens an inherently suspect class.\textsuperscript{39} In \textit{Bell v. Lone Oak Independent School District},\textsuperscript{40} the Texas Supreme Court held that a regulation prohibiting married high school students from participating in interscholastic activities violated the equal protection clause.\textsuperscript{41} The high school failed to show a compelling state interest in a classification based on marital status.\textsuperscript{42}

According to the court:

\begin{itemize}
  \item If the state and the local school provide free public education and an athletic program, it must do so in a manner not calculated to discriminate against a class of individuals who will be treated differently from the remainder of the students, unless the school district can show that such rule is a necessary restraint to promote a compelling state interest.\textsuperscript{43}
  \item Conversely, in \textit{Spring Branch I.S.D. v. Stamos},\textsuperscript{44} the Texas Supreme Court held: (1) the no pass, no play rule was rationally related to the legitimate state interest of providing quality education; and (2) students do not possess a constitutionally protected interest to participate in extracurricular activities. Thus, the no pass, no play rule did not violate due process or equal protection rights.\textsuperscript{45} Further, the court said that "[t]he no pass, no play rule distinguishes students based on whether they maintain a satisfactory minimum level of performance in each of their classes."\textsuperscript{46}
\end{itemize}

Students who fail to maintain a minimum proficiency in all of their classes are ineligible for participation in school-sponsored extracurricular activities for the following six week period with no carry-over from one year to the

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38. See Porto, supra note 26, at 1178.
39. \textsc{Champion}, supra note 2, at 307.
41. \textit{Id}.
42. \textit{Id}. at 638.
43. \textit{Id}.
44. 695 S.W.2d 556 (Tex. 1985), appeal dismissed, 475 U.S. 1001 (1986).
45. \textit{Id}.
46. \textit{Id}.
\end{flushright}
Students who wish to participate in extracurricular activities are provided with a strong incentive to maintain a minimum level of performance in all of their classes. Finally, the court found that the rule was rationally related to the legitimate state interest of providing quality education, and that its objective was to promote improved classroom performance. 

IV. LEGISLATIVE ENACTMENTS

In the early eighties, no pass, no play legislation began sweeping the country. This legislation ties the eligibility to participate in interscholastic sports to the student athlete’s ability to achieve certain academic grades. This legislation, parallel to the NCAA adoption of far-reaching academic standards in 1984, attempts to strike a balance between access to education and academic integrity on college campuses.

This phenomenon apparently started at the interscholastic level in 1984, when Texas wanted to know why its students failed their standardized tests. It concluded that extracurricular activities, especially football, interfered with the student’s ability to concentrate on academics. As a result, Texas enacted the no pass, no play statute, which demands that no student participate in any extracurricular activity, for a six-week period, if he or she fails any course during the preceding six-week period, other than the last grading period before the summer break. Some states have enacted similar statutes, while others have left the decision up to the state.
high school athletic associations. All have one thing in common: they tie high school athletic eligibility to the student's previous academic achievement.

Although Texas was the first to initiate a no pass, no play program, other states such as West Virginia and California have also enacted versions of no pass, no play statutes. Since these statutes were passed, the state high school athletic associations have provided greater direction for the school districts in each state. The Texas statute applies to all extracurricular activities, whereas the West Virginia statute applies only to "nonacademic" extracurricular activities such as interscholastic athletics and cheerleading. In California, the regulations apply to extracurricular activities that are not part of the regular school curriculum, are not graded, do not offer credit, and do not take place during classroom time. Any program that has "as its primary goal, the improvement of academic or educational achievements of pupils is not [extracurricular]."

The intent of all the no pass, no play mechanisms is to emphasize to each student that his or her preeminent responsibility is to meet the academic challenge of learning. These mechanisms are not to be construed as a means of excluding participation in extracurricular activities but rather of fostering academic excellence. The intent of each regulation is to provide a "strong incentive for students wishing to participate in extracurricular activities to maintain minimum levels of performance in all of their classes . . . [and] to promote improved classroom performance by students." Part VI of this Article outlines the various methods used to achieve these objectives.

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52. See, e.g., W. VA. CODE § 18-2-25 (1994) (leaves the responsibility of initiating the no pass, no play procedures to each county board of education); CAL. EDUC. CODE § 35160.5 (West 1993) (establishes a school district policy regarding participation in extracurricular and co-curricular activities by pupils in grades 7-12 as a condition for the receipt of an inflation adjustment).
54. See infra part VI.
57. CAL. EDUC. CODE § 35160.5(b)(2) (West 1993).
58. CAL. EDUC. CODE § 35160.5(b)(7) (West 1993).
V. COURT CHALLENGES

There have been a number of court challenges to the no pass, no play statutes and regulations.\textsuperscript{60} These challenges have focused on constitutional grounds relating to equal protection and due process and fundamental rights arguments.\textsuperscript{61}

If the regulation neither infringes upon a fundamental right nor burdens an inherently suspect class, then equal protection requires only a rational relation to a legitimate state interest.\textsuperscript{62} The right to play interscholastic or intercollegiate sports has rarely been viewed as a fundamental right.\textsuperscript{63} The possibility remains that the privilege to play will be elevated to a property right if other factors are present.\textsuperscript{64} Accordingly, playing sports is a privilege rather than a fundamental right.\textsuperscript{65}

When analyzing the constitutionality of no pass, no play regulations, equal protection is the first and most obvious analysis to consider.\textsuperscript{66} Equal protection is directed at the states and admonishes that "no state shall . . . deny to any person within its jurisdiction the equal protection of the law."\textsuperscript{67} However, some classification of a state's citizens, complete with the corresponding disparate treatment of differently situated individuals, may be necessary for various limited purposes.\textsuperscript{68} When the state's regulatory classification scheme neither infringes fundamental rights nor burdens an inherently suspect class, then the equal protection analysis

\begin{itemize}
\item \textsuperscript{61} \textit{See cases cited supra note 60.}
\item \textsuperscript{62} \textit{See CHAMPION, supra note 2, at 307.}
\item \textsuperscript{63} \textit{See cases cited supra note 5.}
\item \textsuperscript{64} Consider, for example, a college senior who will lose his or her ability to earn a living as a professional athlete if he or she is denied further intercollegiate eligibility.
\item \textsuperscript{66} CHAMPION, supra note 2, at 335. For example, in \textit{Sullivan v. University Interscholastic League}, the plaintiff challenged the validity and constitutionality of a rule that prevented students who had attended another school district from participating in football or basketball for one year. 599 S.W.2d 860 (Tex. Civ. App. 1980), \textit{rev'd in part on other grounds}, 616 S.W.2d 170 (Tex. 1981).
\item \textsuperscript{67} U.S. CONST. amend. XIV, § 1.
\item \textsuperscript{68} CHAMPION, \textit{supra} note 2, at 336.
\end{itemize}
requires only that the classification be rationally related to a legitimate state interest. 69

In most sport eligibility cases, it is well established that participation in extracurricular activities is not a fundamental right. 70 In Spring Branch the court stated:

Fundamental rights have their genesis in the express and implied protections of personal liberty recognized in federal and state constitutions. A student’s “right” to participate in extracurricular activities does not rise to the same level as the right to free speech or free exercise of religion, both of which have long been recognized as fundamental rights under our state and federal constitutions. 71

More specifically, “because the no pass, no play rule neither infringes upon fundamental rights nor burdens an inherently suspect class, . . . it is not subject to ‘strict’ or heightened equal protection scrutiny.” 72

In Bailey v. Truby, 73 the court held that participation in “nonacademic extracurricular activities, including interscholastic athletics,” did not rise to the level of a fundamental right under either the federal or the state constitutions. 74 Therefore, it seems that a student who wishes to challenge a determination of ineligibility based upon a failure to meet no pass, no play requirements may do so only by challenging either the grades upon which the average was calculated or the calculation itself. The court further held that the rule was a legitimate exercise of the State Board of Education’s “general supervision” power over the education system and in furtherance of the fundamental educational goal of academic excellence. 75

The rule did not violate the student’s rights to procedural due process, substantive due process or equal protection. 76

In Kite v. Marshall, 77 Judge Cire noted that the state has a responsibility for the education of its citizens; however, he emphasized the rights of parents to make developmental decisions for their families. 78 Although

69. Id.
70. See cases cited, supra note 5.
71. Spring Branch, 695 S.W.2d at 560.
72. Id.
74. Id. at 316-18.
75. Id. at 319.
76. Id.
78. Id. at 234.
the court agreed that there is no fundamental right to participate in interscholastic athletics, the Texas law requiring athletic summer camp participation was held to be "an overbroad and unreasonable infringement on the right of a family to make decisions concerning the education of its children." If this case had involved the denial of the right to play a sport instead of parental decisional authority, the connection between no pass, no play and parental freedom of choice in family matters would be the most effective way to attack no pass, no play.

A no pass, no play statute or regulation can be found unconstitutional on equal protection grounds if it is not reasonably and rationally related to its intended goal. This goal must also further a legitimate state interest. In Associated Students, Inc. of California State University v. NCAA, a student challenged the NCAA's rule that limited eligibility for participation in intercollegiate athletics to students who had earned a grade point average of at least 1.6. The court held that the rule was reasonably related to the purposes for which it was enacted and did not create an unconstitutional classification. Further, in Bartmess v. Board of Trustees, the Montana Supreme Court analyzed a rule that required a student to maintain a 2.0 (or "C") grade point average for the preceding nine week period as a prerequisite to participate in any extracurricular activities for the following nine week period. Interestingly, the school district's rule was more stringent than what was required by the Montana High School Association, which demanded only a 1.0 (or "D") grade point average for participation in extracurricular activities. The court held that the school district's no pass, no play rule operated as an incentive for students who wished to participate in extracurricular activities and that it promoted adequate time to study for those who had not maintained a 2.0 grade point average.

79. Id. at 232.
80. Id. at 234.
81. 493 F.2d 1251 (9th Cir. 1974).
82. Id.; see also Note, Judicial Review of Disputes Between Athletes and the National Collegiate Athletic Association, 24 STAN. L. REV. 903 (1972).
83. Associated Students, 493 F.2d at 1256.
84. 726 P.2d 801 (Mont. 1986).
85. Id.
86. Id. at 802.
87. Id. at 805.
VI. STATUS OF NO PASS, NO PLAY RULES IN NORTH AMERICA 1995

<table>
<thead>
<tr>
<th>State</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>The student must have passed, during the preceding year in attendance, at least five new full Carnegie units with a minimum composite numerical average of seventy in those five units or subjects. Students who do not pass five new units lose their eligibility for the entire succeeding school year unless the required five units are completed before the next school year starts (i.e. summer school).</td>
</tr>
<tr>
<td>Alaska</td>
<td>Does not require a specific minimum grade point average (GPA). The student must have passed, during the immediately preceding semester, at least four semester units of credit toward graduation.</td>
</tr>
<tr>
<td>Arizona</td>
<td>The student must be enrolled in a minimum of five courses during the first six semesters of high school. The minimum is determined by the district during the seventh and eighth semesters.</td>
</tr>
<tr>
<td>Arkansas</td>
<td>According to the Arkansas Activities Association (AAA), the student must have passed four academic courses the preceding semester with a GPA of 1.6 or better.</td>
</tr>
<tr>
<td>California</td>
<td>For initial eligibility, the student must have achieved a 2.0 GPA, on a 4.0 scale, at the conclusion of the</td>
</tr>
</tbody>
</table>

89. Id.
90. ALASKA STATE ATHLETIC ASSOCIATION ACTIVITIES art. 12, § 7, at 5 (1995-96).
92. Id.
93. ARKANSAS ACTIVITIES ASSOCIATION OFFICIAL HANDBOOK rule 10, at 46 (1994-95).
The student remains scholastically eligible if:

1. The student is currently enrolled in at least twenty semester periods of work;
2. The student passed at least twenty semester periods of work at the completion of the preceding grading period;
3. The student is maintaining minimum progress toward meeting the high school graduation requirements as prescribed by the governing board; and
4. The student has maintained during the preceding grading period a minimum 2.0 GPA, on a 4.0 scale, in all enrolled courses.

Colorado

At the close of the preceding semester of attendance, the student must have fulfilled either Plan A or Plan B.

Plan A: During the period of participation, the student must be enrolled in courses which offer, in aggregate, a minimum of 2.5 Carnegie units of credit per semester. In addition, the student must not be failing more than the equivalent of one-half Carnegie unit of credit.

Plan B: During the period of participation, the student must be enrolled in courses which offer, in aggregate, a minimum of 2.5 Carnegie units of credit per semester. The student must pass a minimum of the equivalent of 2.5 Carnegie units of credit.

94. CALIFORNIA INTERSCHOLASTIC FEDERATION CONSTITUTION AND BYLAWS art. 2, § 204, at 12 (1994-95).
95. Id. at 13.
96. COLORADO HIGH SCHOOL ACTIVITIES ASSOCIATION HANDBOOK, CONSTITUTION & BYLAWS § 1620, at 46 (1994-95).
97. Id. at 46.
98. Id. at 47.
99. Id.
Connecticut  To be eligible for fall sports, a student must have received credit toward graduation at the close of the school year preceding the contest in at least four Carnegie units of work or its equivalent.100

Delaware  In order to be eligible for participation in interscholastic athletics, including practices, the student must pursue a regular course of study or its equivalent as approved by the Department of Public Instruction, and must be passing at least four credits.101 A student in the twelfth grade must be passing all courses necessary for graduation from high school in order to be eligible for participation.102 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.103

Florida  To be eligible during the first grading period, the student must have earned credit in each of five unit subjects for the immediately preceding school year.104 Florida School Laws 232.425 requires that the student must comply with the minimum grade point average required by state statute during the immediately preceding school year.105

Georgia  To be academically eligible to participate and/or try-out for an activity, the student must be enrolled in grades 9-12 inclusive, be in regular attendance, and

100. CONNECTICUT INTERSCHOLASTIC ATHLETIC CONFERENCE HANDBOOK § 7.1(a) (1994-95).
102. Id. at rule 4B, at 27-28.
103. Id. at rule 4C, at 28.
104. FLORIDA HIGH SCHOOL ACTIVITIES ASSOCIATION BYLAWS § 19-6-1 n.1, at 21 (1994-95). A unit subject, as the term is used in eligibility requirements, consists of a subject for which a full unit credit toward graduation is regularly given by the school for 180 days successful school work, or a half unit credit for 90 days, whether consecutive or not, successful school work. Id.
105. Id.
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be taking a minimum of five subjects that count toward graduation.\textsuperscript{106}

Hawaii

To maintain eligibility, the student must be eligible under the rules of his or her league and also under the requirements as specified by the Hawaii High School Athletic Association.\textsuperscript{107}

Idaho

To be academically eligible, the student must be enrolled full-time, have received passing grades, and earned credits in at least five full-credit subjects during the preceding semester or grading period for which credit is granted.\textsuperscript{108}

Illinois

The student must have completed twenty credit hours of high school work for which credit was granted during the preceding semester.\textsuperscript{109} In addition, the student must be doing passing work in at least twenty credit hours of high school work per week.\textsuperscript{110}

Indiana

The student must have received passing grades at the end of the preceding grading period in at least five full-credit subjects, or the equivalent, and must be currently enrolled in at least five full-credit subjects, or the equivalent.\textsuperscript{111}

Iowa

The student shall have earned twenty semester hours credit toward graduation in the preceding semester and shall be making passing grades in subjects for

\begin{itemize}
\item \textsuperscript{106} GEORGIA HIGH SCHOOL ASSOCIATION CONSTITUTION AND BYLAWS § 1.21, at 37 (1994-95).
\item \textsuperscript{107} HAWAII HIGH SCHOOL ATHLETIC ASSOCIATION OFFICIAL HANDBOOK art. IV, §§ 3 & 4(d), at 19-20 (1994-95).
\item \textsuperscript{108} IDAHO HIGH SCHOOL ACTIVITIES ASSOCIATION RULES & REGULATIONS MANUAL rule 8-1, at 77 (1994-95).
\item \textsuperscript{109} ILLINOIS HIGH SCHOOL ASSOCIATION OFFICIAL HANDBOOK § 3.022, at 21 (1994-95).
\item \textsuperscript{110} Id. at § 3.021.
\item \textsuperscript{111} INDIANA HIGH SCHOOL ATHLETIC ASSOCIATION BYLAWS & ARTICLES OF INCORPORATION rule 18-1, at 49 (1994-95).
\end{itemize}
which twenty semester hours credit is given for the current semester as determined by local policy.¹¹²

Kansas: During the preceding semester or the last semester of attendance, the student shall have passed at least five new subjects (those not previously passed) of unit weight, or its equivalency.¹¹³

Kentucky: The student must have, for the current academic school year, a passing average in each of at least four full-credit high school subject hours, or their equivalent, in units of credit accepted for graduation.¹¹⁴

Louisiana: To be academically eligible, the student must maintain a 1.5 GPA in five full-credit classes.¹¹⁵

Maine: The student must have completed and passed work in the equivalent of four full-time subjects with credit toward graduation in the most recently completed quarter.¹¹⁶

Maryland: Each local school system shall establish standards of participation which assure that students involved in interscholastic athletics are making satisfactory progress toward graduation.¹¹⁷

Massachusetts: The student must secure, during the last marking period preceding the contest, a passing grade in the equivalent of four major subjects.¹¹⁸

¹¹³. KANSAS STATE HIGH SCHOOL ACTIVITIES ASSOCIATION HANDBOOK rule 13, § 1, at 25-26 (1994-95).
¹¹⁴. KENTUCKY HIGH SCHOOL ATHLETIC ASSOCIATION HANDBOOK bylaw 5, § 1, at 10 (1994-95).
¹¹⁵. LOUISIANA HIGH SCHOOL ATHLETIC ASSOCIATION OFFICIAL HANDBOOK art. 1, § 1.9.2, at 3-4 (1994-95).
¹¹⁷. MARYLAND PUBLIC SECONDARY SCHOOLS ATHLETIC ASSOCIATION subtitle 06, § .02(B), at 21 (1994-95).
The student's eligibility depends on a passing grade, in at least twenty credit hours, from the beginning of the semester to the date of the eligibility check.¹¹⁹

The student is not required to be passing course work during a current marking period.¹²⁰ However, the student forfeits eligibility for the next marking period if they are not making satisfactory progress toward the school's requirements for graduation at the end of the marking period.¹²¹

To be academically eligible, the student shall, at the end of each semester, be able to demonstrate normal progress toward the earning of eighteen Carnegie units of credit required for graduation.¹²² The student must have at least an average of seventy in each course amounting to 4.5 credits toward graduation each year.¹²³ A student must earn five units toward graduation each year to total the twenty Carnegie units required for graduation.¹²⁴ A student who fails to meet the requirements at the end of the first semester would be placed on probation for the following semester.¹²⁵ If requirements have not been met by the end of the warning semester, the student would be ineligible.¹²⁶ A student who is not eligible at the beginning of the school year may become eligible the second semester by passing the first semester with a seventy average in subjects worth five credits toward graduation.¹²⁷

¹¹⁹. MICHIGAN HIGH SCHOOL ATHLETIC ASSOCIATION HANDBOOK § 8(47), at 31 (1995-96).
¹²⁰. MINNESOTA STATE HIGH SCHOOL LEAGUE OFFICIAL HANDBOOK § 108.00(4), at 28-29 (1994-95).
¹²¹. Id.
¹²³. Id.
¹²⁴. Id.
¹²⁵. Id.
¹²⁶. Id.
Missouri

The student must be currently enrolled in and regularly attending courses that offer a minimum of 2.50 units of credit, and must have earned a minimum of 2.50 units of credit the preceding semester of attendance.128

Montana

To be eligible to participate, the student must have received a passing grade in at least twenty periods of prepared work per week, or its equivalent, during the preceding semester of attendance.129

Nebraska

To be eligible to participate, the student must be taking at least twenty semester hours of instruction per week, and have received credit for at least twenty semester hours during the preceding semester.130

Nevada

For initial eligibility, the ninth grade student must pass four classes during the last semester of the eighth grade year, be enrolled in two credits, and be in regular attendance.131 Continuing students must have passed a minimum of two units the previous semester and must maintain a passing academic grade and satisfactory citizenship in all courses during the sport season.132

New Hampshire

The student must have passed four units of work during the preceding “ranking period.”133 A minimum of four units of work per “marking period” is required for participation.134

128. MISSOURI STATE HIGH SCHOOL ACTIVITIES ASSOCIATION OFFICIAL HANDBOOK bylaw 213.0(a), at 20 (1994-95).
129. MONTANA HIGH SCHOOL ASSOCIATION OFFICIAL HANDBOOK § 3, at 18 (1994-95).
130. NEBRASKA SCHOOL ACTIVITIES ASSOCIATION YEARBOOK § 8, at 19 (1994-95).
132. Id.
134. Id.
NEW REQUIREMENTS FOR SPORTS

New Jersey  
To be eligible for athletic competition during the first semester of the tenth grade or higher, or the second or higher year of attendance in secondary school, the student must have passed twenty-five percent of the credits (27.5) required by the State of New Jersey for graduation (110) during the immediately preceding academic year.  

New Mexico  
The student shall have passed a minimum of four classes, not have failed more than one, and have had a GPA of 2.0 or better for the most immediate prior grading period or cumulatively, beginning with and including the second semester of eighth grade.

New York  
The student shall be eligible to participate during a semester provided that he or she is enrolled during the first fifteen days of the semester, is registered in the equivalent of three regular courses, is meeting the physical education requirement, and has been in regular attendance eighty percent of the school time, bona fide absence caused by personal illness excepted.

North Carolina  
The student must have passed a minimum of five courses during the preceding semester to be eligible at any time during the present semester. However, if he or she passes a minimum load for the year, his or her record during the spring semester shall be immaterial to his or her status during the following fall semester. The student must also meet local promotion standards.

137. NEW YORK STATE PUBLIC HIGH SCHOOL ATHLETIC ASSOCIATION INCORPORATED HANDBOOK 58-59 (1994-96).
139. Id.
140. Id.
North Dakota

The student shall be doing passing work in at least twenty hours of credit per week, the passing grade to be computed from the opening of the semester.\textsuperscript{141}

Ohio

In order to be eligible in grades 9-12, a student must be currently enrolled and must have been enrolled in school during the immediately preceding grading period.\textsuperscript{142} During the preceding grading period, the student must have received passing grades in a minimum of four one-credit courses which count toward graduation.\textsuperscript{143}

Oklahoma

During the last semester in which the student attended fifteen or more days, he or she must have received a passing grade in any five subjects counted for graduation.\textsuperscript{144} Scholastic eligibility for students will be checked after three weeks of a semester and each succeeding week thereafter.\textsuperscript{145}

Oregon

An eligible student is one who is enrolled in school, attending regularly, and passing in subjects equivalent to at least five credits of work; and who during the preceding semester, was enrolled in school, attended regularly, and passed subjects equivalent to at least five credits of work.\textsuperscript{146}

Pennsylvania

To be eligible for interscholastic athletic competition, the student must pursue a curriculum defined and approved by the principal as a full-time curriculum.\textsuperscript{147} The student must be passing at least four full credit subjects, or the equivalent.\textsuperscript{148}

\textsuperscript{141} NORTH DAKOTA HIGH SCHOOL ACTIVITIES ASSOCIATION OFFICIAL HANDBOOK part 2, § V, at 16 (1994-95).
\textsuperscript{142} OHIO HIGH SCHOOL ATHLETIC ASSOCIATION HANDBOOK § 4-4-1, at 37 (1994-95).
\textsuperscript{143} Id.
\textsuperscript{144} OKLAHOMA SECONDARY SCHOOL ACTIVITIES ASSOCIATION ADMINISTRATORS HANDBOOK rule 3, § 1(a), at 8 (1994-95).
\textsuperscript{145} Id. at § 2(a).
\textsuperscript{146} OREGON SCHOOL ACTIVITIES ASSOCIATION HANDBOOK rule 8-1, at 18 (1995).
\textsuperscript{147} PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION HANDBOOK bylaw art. 9, §§ 1-2, at 14 (1995-96).
\textsuperscript{148} Id.
Eligibility shall be cumulative from the beginning of a grading period. 149

Rhode Island

The student must be taking at least four subjects, not including physical education, each involving at least four periods of work per day or an aggregate of fifteen periods of work per week. 150

South Carolina

To participate in interscholastic activities, the high school student must achieve an overall passing average and either: (1) pass at least four academic courses, including each subject the student takes that is required for graduation; or (2) pass a total of five academic courses. 151

South Dakota

In the preceding or most recent semester of attendance, unless the student is entering high school for the first time, he or she shall have successfully passed twenty hours of high school work per week, for which academic units of credits earned are used in the issuance of a diploma. 152 In the current semester, the student shall be enrolled and attend a minimum of twenty hours of high school work per week for which academic units of credits earned are used in the issuance of a diploma. 153

Tennessee

The student must be enrolled in a minimum of five full courses. 154 In addition, the student shall have made a passing grade the preceding semester in at least five full unit subjects. 155

149. Id. at § 3.
152. SOUTH DAKOTA HIGH SCHOOL ACTIVITIES ASSOCIATION CONSTITUTION AND BYLAWS ch. 1, part IV, § 1(d)(1), at 8 (1994-95).
153. Id. at § 1(d)(2).
154. TENNESSEE SECONDARY SCHOOL ATHLETIC ASSOCIATION REGULATIONS art. II, § 1(b), at B-3 (1994-95).
155. Id. at § 1(a), at B-2.
Texas

The determination of academic eligibility for the first six weeks of the school year is dependent upon the grade level of the student. Students in grades nine and below must have been promoted from the previous grade; students in grade ten must have five accumulated credits; students in grade eleven must have ten accumulated credits or five credits during the previous twelve months; and students in grade twelve must have fifteen accumulated credits or five credits during the previous twelve months.\textsuperscript{156} Continuing academic eligibility is subsequently determined every six weeks.\textsuperscript{157} A student is eligible if he or she passed all courses the previous six weeks.\textsuperscript{158}

Utah

To be eligible, the student must be a full-time student in the school he or she wishes to represent.\textsuperscript{159} No student may represent his or her school if he or she is academically failing more than one subject.\textsuperscript{160}

Vermont

No policy regarding academic performance standards for the student athlete.

Virginia

The student must be currently enrolled in no fewer than five subjects, or their equivalent, offered for credit and which may be used for graduation.\textsuperscript{161} In addition, during the immediately preceding year, or the immediately preceding semester, the student must have passed five subjects offered for credit and which may be used for graduation.\textsuperscript{162}

\textsuperscript{156} UNIVERSITY INTERSCHOLASTIC LEAGUE CONSTITUTION & CONTEST RULES (University of Texas at Austin Division of Continuing Education) § 440 (1994-95).

\textsuperscript{157} Id.

\textsuperscript{158} Id.

\textsuperscript{159} UTAH HIGH SCHOOL ATHLETIC ASSOCIATION BYLAWS art. I, § 6, at 18 (1994-95).

\textsuperscript{160} Id.

\textsuperscript{161} VIRGINIA HIGH SCHOOL LEAGUE, INC. HANDBOOK rule 28-4-1(a), at 63 (1995-96).

\textsuperscript{162} Id.
Washington
The student shall maintain passing grades in a minimum of four full-time subjects. Schools shall establish a grade monitoring system to ascertain the student's passing status in four full-time subjects. A student shall have passed at least four full-time subjects (at least two credits) in the immediately preceding semester or trimester in order to be eligible for competition in the succeeding semester or trimester.

West Virginia
In order to participate in extracurricular activities, the student must maintain a 2.0 average.

Wisconsin
The student is eligible if he or she does passing work, in a minimum of twenty hours in the latest grade-reporting or academic evaluation period.

Wyoming
In order to be eligible for any level of interscholastic competition, the student must be currently enrolled. Also, the student must have been enrolled in school the immediately preceding semester and have received passing grades during that semester in subjects that earn a minimum of four credit per year toward graduation. Furthermore, the student must be enrolled in no fewer than twenty class hours of work per week.

164. Id.
165. Id. at § 18.6.1.
169. Id.
170. Id. at 6.2.2.
The student must register for a minimum of 800 instructional minutes per week in which Alberta Education Credits are earned.\textsuperscript{171}

British Columbia

No policy regarding academic performance standards for the student athlete.

Manitoba

No policy regarding academic performance standards for the student athlete.

Ontario

All participants are encouraged to achieve creditable academic progress and to contribute to the general educational program of the school.\textsuperscript{172}

Prince Edward Island

The student must be enrolled in a registrar-prescribed curriculum for the school, and must have been in regular attendance during the school term in which the student wishes to compete.\textsuperscript{173} The student must be enrolled in courses equivalent to more than seventy percent of a full course load per year in non-semester schools, or three full credits per semester in semester schools.\textsuperscript{174}

Saskatchewan

No policy regarding academic performance standards for the student athlete.

\textbf{VII. CONCLUSIONS AND RECOMMENDATIONS}

Amateur athletics are ordinarily part of the educational activities of high schools and colleges. The no pass, no play statutes or regulations are commonly used to ensure that only academically qualified athletes are eligible for interscholastic or intercollegiate competition. They will withstand constitutional scrutiny because they foster scholastic, not athletic, achievement, a primary objective of the academic institution, and deny participation in extracurricular activities to those who are unable to render

\textsuperscript{171} \textit{Alberta Schools' Athletic Association Handbook} § III(2)(B), at 29-30 (1994-95).

\textsuperscript{172} \textit{Ontario Federation of School Athletic Association Constitution} (1994).


\textsuperscript{174} Id.
satisfactory academic performance. They will also be found “reasonable” if their impact is felt only by those unable to maintain satisfactory academic standing.

Rules are continually being passed to further academic success in an effort to eliminate the controversy raised by challenges to no pass, no play. Though many still question the validity of these regulations, it appears that their constitutionality has been settled. The NCAA also fosters this concern for scholastic ability, as evidenced by the passage of its new academic standards in January 1995. However, future legislation by states or athletic governing bodies should include the following considerations.

Recommendations relating to the new academic requirements for amateur sports should include the following proposals. The regulations:

(1) should have three objectives: the protection of the student athlete, the promotion of education, and the continuation of amateurism;

(2) must not be arbitrary, capricious, or drafted in bad faith;

(3) should guarantee due process for athletic disqualifications by notifying the student athlete of deficiencies in time to correct them, and by providing informal meetings with faculty members so the student can defend against them, whereas formal adjudicatory proceedings should not be required for students who fail to earn the grades or credits necessary for continued eligibility, despite awareness of their high schools’, colleges’ or universities’ published academic requirements;

(4) should provide a strong incentive for students wishing to participate in extracurricular activities to maintain minimal levels of performance in all of their classes;

(5) must be rationally related to the legitimate state interest of providing quality education; and

175. See cases cited supra notes 5 and 10.
176. See supra part VI.
177. See supra note 49.
(6) since regulations must be rationally related to the legitimate state interest in education, they should promote satisfactory classroom performance, emphasizing academics over athletics.